

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A.No.449 of 2019

1. Coal India Limited through its Chairman, Coal Bhawan Premises No.4, MAR, Plot No. AF-III, New Town, Rajarhat, P.O. & P.S.-Rajarhat, District-Kolkata, PIN-700156 (West Bengal).
2. Chairman, Coal India Limited, Coal Bhawan Premises No.4, MAR, Plot No. AF-III, New Town, Rajarhat, P.O. & P.S.-Rajarhat, District-Kolkata, PIN-700156 (West Bengal).
3. Director (P & IR), Coal India Limited, Coal Bhawan Premises No.4, MAR, Plot No. AF-III, New Town, Rajarhat, P.O. & P.S.-Rajarhat, District-Kolkata, PIN-700156 (West Bengal).
4. General Manager (Personnel), Coal India Limited, Coal Bhawan Premises No.4, MAR, Plot No. AF-III, New Town, Rajarhat, P.O. & P.S.-Rajarhat, District-Kolkata, PIN-700156 (West Bengal).
5. Central Coalfields Limited through its Chairman-cum-Managing Director, Darbhanga House, P.O.-G.P.O., P.S.-Kotwali, District-Ranchi.
6. Chairman-cum-Managing Director, Central Coalfields Limited, Darbhanga House, P.O.-G.P.O., P.S.-Kotwali, District-Ranchi.
7. Director (Personnel), Central Coalfields Limited, Darbhanga House, P.O.-G.P.O., P.S.-Kotwali, District-Ranchi.

. . . Respondents/Appellants

Versus

Rekha Pandey, wife of Sri Binay Kumar Pandey, resident of Flat No.207, Vasundhara Elegance Apartment, Argora Chowk, P.O.-Doranda, P.S.-Argora, District-Ranchi (Jharkhand).

... Writ Petitioner/Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Respondents/Appellants : Mr. Indrajit Sinha, Advocate
 For the Writ Petitioner/Respondent : Mr. Pandey Neeraj Rai, Advocate
 Mr. Akchansh Kishore, Advocate

ORAL JUDGMENT

08/Dated 20th February, 2020

1. The instant intra-court appeal is directed against the order/judgment dated 13.12.2018 passed by learned Single Judge of this Court in W.P.(C) No.2614 of 2017 whereby and whereunder the relief sought for by the writ-petitioner/respondent, for a direction upon the respondents to grant E-6 grade promotion to the writ-petitioner at least with effect from the date her juniors have been promoted including Mr. Biswabash Behuria promoted with effect from 20.09.2013 and effective date of her promotion to all the earlier grades be amended in the like manner so as to make it at par with her juniors, has been allowed holding the writ-petitioner entitled for the same benefits as has been given to that of Mr. Biswabash Behuria and according to the report, Mr. Behuria and the writ-petitioner stand on the same footing.
2. Before entering into the legality and propriety of the impugned order, it requires to refer herein some factual aspects which read hereunder:

The writ-petitioner was appointed as Welfare Officer (Trainee) in Coal India Limited vide appointment letter dated 11.06.1994. In the aforesaid offer of appointment it was stipulated that the writ-petitioner will be on training for a period of two years. During the training period, she was to be paid pay scale of E-1 grade with other allowances admissible to the executives of Coal India Limited as per the condition stipulated under Clause 3.2. During the

period of training she was eligible to leave etc. as mentioned in Schedule-II (Clause 3.4). Schedule-II to the appointment letter provides for various categories of leave, including extraordinary leave to be granted after the casual or medical leave would be exhausted.

It further provides under the condition stipulated under Clause-4 of the appointment letter about appointment to regular post carrying higher pay scale for a period of one year on probation, after completion of training.

After appointment of the writ-petitioner, All India Merit List for Welfare Officers (Trainee) was published in the month of June, 1994, in which the name of writ-petitioner stands figured at serial No.11. The writ-petitioner joined on 23.06.1994 and assumed charge and was given posting in Central Coalfields Limited at Ranchi vide order dated 09.07.1994 issued by the Central Coalfields Limited.

Subsequently, a Global Seniority List was published on 03.09.1996 and as on 24.04.1996, under E-1 Grade, the name of the writ-petitioner figured at serial No.78. The seniority position was duly set out in accordance with the position in the original All India Merit List. The writ-petitioner, thereafter, was promoted to E-2 and E-3 Grades which were in the nature of cluster promotion and not vacancy based and as such, not affected by the *inter se* seniority position. Subsequently, the promotion to the E-4 grade, which was the first vacancy based promotion, was granted to the writ-petitioner on 15.02.2010 by Coal India Limited as was notified on 19.02.2010

by the Central Coalfields Limited. The grades were redesignated and the old E-4 got redesignated as E-5 and the old E-5 got redesignated as E-6.

Subsequently, the provisional list for E-5 grade was issued on 02.05.2016 showing the position of writ-petitioner at serial No.41 whereas the name of Mr. Behuria was shown at serial No.2 even though Mr. Behuria was much junior to the writ-petitioner as would appear from the Global Seniority List of E-1 grade wherein Mr. Behuria figured at serial No.120 as against the writ-petitioner whose name figured at serial No.78.

The writ-petitioner, subsequently, came to know that the said Mr. Behuria who was by then posted at Mahanadi Coalfields Limited (MCL) another subsidiary of Coal India Limited was being subjected to adverse effect on seniority owing to few days of being on leave without pay during his training and he had approached the Hon'ble Orissa High Court where the direction was passed, in pursuance thereto, her seniority was made to be affected adversely on account of the fact that she had likewise been on leave without pay for a few days during her training period, which was due to maternity reasons in her case with strict advise of gynecologist for bed confinement and was duly sanctioned and authorized leave, therefore, the writ-petitioner had made representation before the Chairman, Coal India Limited for redressal of her grievance but without any response to the said representation, Mr. Behuria was promoted to E-6 grade vide Coal India Limited's order dated 20.02.2017 but the writ-petitioner's case had not been considered as

because due to her position in the seniority list which was incorrectly maintained by the respondents/appellants, as such, the writ-petitioner approached to this Court under Article 226 of the Constitution of India for declaration about her entitlement to be treated as per the seniority position in the original All India Merit List (Annexure-2 to the writ petition) and the Global Seniority List prepared on 24.04.1996 for E-1 grade (Annexure-4 to the writ petition) vis-a-vis the others named in the seniority list and accordingly she also sought for a declaration holding her entitlement to be granted promotion in the E-6 grade as well as to modify the effective date of promotion in the previous grades at least with effect from the date the same has been granted to the writ-petitioner's juniors including Mr. Behuria.

3. The writ petition has been allowed by the learned Single Judge against which the present intra-court appeal has been filed *inter alia* on the ground that the learned Single Judge has failed to take into consideration that in the case of Mr. Behuria, the Hon'ble Orissa High Court had taken cognizance of letter dated 18/19.05.2008 of the then General Manager (A & EE), MCL which stated that there is no record in the file relating to extension of training period of Mr. Behuria although the fact is that the training period of Mr. Behuria has been extended with proper approval and the same was also available in the file and also produced before the Hon'ble Court while filing the review application but the review application was dismissed on technical ground, namely, the documents was produced for the first time in review application, further, on the ground that the learned Single Judge has not taken into consideration the condition

stipulated under Clause 17.1 of the agreement contained in Circular No.538 dated 19.05.1980 in the Common Coal Cadre which provides that the committee recommends that a common deemed date of entry into grades shall be determined for new recruits appointed in a batch on a particular date in a company to be fixed in regards to the date of joining of the first person from the same batch and the said deemed date is to be applicable only in respect of direct recruits whose training period is not extended for any reason.

The other ground that the learned Single Judge has not considered the fact about the knowledge of the respondent, writ-petitioner herein, that in application dated 24.01.1997 submitted during her training period, in case of her proceeding under leave without pay she would lose her seniority as per the existing rules as also on the ground that the learned Single Judge has not appreciated the fact that the case of the writ-petitioner does not stand on similar footing to that of Mr. Behuria. Further the ground of negative equality has also been agitated.

4. Mr. Indrajit Sinha, learned counsel for the appellants has submitted by agitating the aforesaid grounds as referred above that the learned Single Judge since has not considered all the aspects of the matter. The judgment rendered which is the subject matter of the present intra-court appeal is not sustainable in the eye of law.
5. Per contra Mr. Pandey Neeraj Rai, learned counsel for the writ-petitioner/respondent has submitted that there is no infirmity in the impugned order rather the learned Single Judge has considered the principle of equality as also the judgment rendered by Hon'ble

Orissa High Court delivered with respect to Mr. Behuria and after considering the fact that the case of the writ-petitioner is exactly similar to that of Mr. Behuria, order/judgment has been passed which cannot be said to suffer from any infirmity.

He further submits that it is incorrect to say that the case of the writ-petitioner is not similar to that of Mr. Behuria since it is also the case of the writ-petitioner that she has also proceeded on leave without pay owing to maternity reasons during her training period as she had no other leave to avail and Mr. Behuria was also on leave without pay during his training period specific to his life which makes no difference in the matter on consideration of subject matter of the *lis* and comparison between the two *inter se*, according to learned counsel, the reason for leave might be different but the fact would be same that the leave either by the writ-petitioner or by the said Mr. Behuria during their training period was leave without pay and considering the aforesaid aspect of the matter, the learned Single Judge has found that the case of the writ-petitioner is exactly similar to that of Mr. Behuria, therefore, has passed the order and as such the same may not be interfered with.

He further submits that admittedly in the seniority list which was in the nature of Global Seniority List, the writ-petitioner is shown to be above than Mr. Behuria and once the case of Mr. Behuria has been considered by the Hon'ble Orissa High Court basis upon which the order of promotion has been passed, there is no reason of the denial of the said benefit in favour of the writ-

petitioner and taking into consideration the fact, the learned Single Judge has passed such order.

He has also argued about the contention raised by Mr. Indrajit Sinha, learned counsel for the appellant about applicability of the principle of fence-sitter, according to him, the claim of the writ-petitioner cannot be thrown away on the ground of principle of fence-sitter as because the writ-petitioner cannot be said to be fence-sitter since on the basis of the order passed by the authority for promotion in favour of Mr. Behuria on 20.02.2017 as has been annexed as Annexure-9 to the writ petition and from that date only the cause of action of the writ-petitioner will be said to have arisen and since the writ petition was filed on 08.05.2017, hence, it cannot be said that the writ petition has been filed after delay and as such the principle of fence-sitter, delay, laches and acquiescence will not be applicable in the facts and circumstances of the instant case.

6. This Court has heard the learned counsel for the parties and on appreciation of their rival submissions, some undisputed facts are required to be referred herein which has been brought on record on behalf of the parties.

The writ-petitioner was appointed as Welfare Officer in Coal India Limited vide appointment letter dated 11.06.1994. As per the appointment letter, the writ-petitioner was supposed to be for training for a period of two years. During the training period she was to be paid pay scale of E-1 grade with other admissible allowances as applicable to the executives of the Coal India Limited as per the

Clause 3.2 of the offer of appointment as also she became eligible for leave etc. as per the condition mentioned in Schedule-II as contained in Clause 3.4 to the appointment letter as per which, various categories of leave including extraordinary leave to be granted after casual or medical leave would get exhausted.

It has further been provided in the offer of appointment as under Clause 4 about appointment to regular post carrying higher pay scale for a period of one year on probation after completion of training. That in the month of June, 1994, All India Merit List for Welfare Officer (Trainee) was published in which the writ-petitioner's name figured at serial No.11. The writ-petitioner had joined her services on 23.06.1994 and assumed charge and was posted in Central Coalfields Limited at Ranchi as would appear from the office order dated 09.07.1994 (Annexure-3 to the writ petition). On 03.09.1996, a Global Seniority List as on 24.04.1996 in E-1 grade was issued by the Coal India Limited in which the name of the writ-petitioner figured at serial No.78. The writ-petitioner, thereafter, was placed/promoted to E-2 & E-3 grades which were in the nature of cluster promotion and not vacancy based. Subsequently, the writ-petitioner was promoted to E-4 grade which was the first vacancy based promotion on 15.02.2010 vide office order dated 19.02.2010. Subsequently, old E-4 got redesignated as E-5 and the old E-5 got redesignated as E-6.

A provisional seniority list was published for E-5 grade, issued on 02.05.2016 wherein the writ-petitioner was shown at serial No.41 whereas the name of Mr. Behuria was shown at serial No.2 in

the seniority list, however, the said Mr. Behuria was much junior to the writ-petitioner as would be apparent from the Global Seniority List of E-1 grade published on 03.09.1996 wherein Mr. Behuria was shown to be at serial No.120 as against the writ-petitioner whose name figured at serial No.78. The writ-petitioner on enquiry, when Mr. Behuria was superseded in the seniority list by showing Mr. Behuria at serial No.2 and the writ petitioner at serial No.41, she came to know that her seniority had adversely been affected by the said Mr. Behuria which was on the basis of an order passed by Hon'ble Orissa High Court where some relief was granted for rectifying the seniority of Mr. Behuria.

She has further examined the fact basis upon which the relief was granted to Mr. Behuria showing him above in the seniority list then she came to know that Mr. Behuria was on leave without pay for few days during his training period, for the reason specific to his life, and then only she made protest against the supersession by Mr. Behuria so far as her position in the Global Seniority List is concerned.

7. Apart from the fact on merit, the main argument has been advanced by the learned counsel for the appellants about applicability of the principle of delay, laches and acquiescence as also the writ-petitioner has been termed to be fence-sitter and therefore, she cannot be held entitled to get the benefit of the judgment passed by the Hon'ble Orissa High Court. According to him, the writ Court is not available for such litigants who are waiting for positive direction/order having been passed in respect of one or the other, therefore, cannot be

allowed to approach the court for getting the similar treatment due to the concept of fence-sitter.

8. The aforesaid ground has seriously been objected by the learned counsel for the writ-petitioner *inter alia* on the ground that the writ-petitioner cannot be said to be fence-sitter as because for the first time the cause of action had arisen on 02.05.2016, the day when the writ petitioner has been shown below in the seniority list to that of Mr. Behuria as also due to the reason that the promotion order on the basis of the revised seniority list as on 02.05.2016 had been issued on 20.02.2017 and hence, the cause of action for the writ-petitioner will be said to have arisen on or after 02.05.2016 and since the writ-petition was filed on 08.05.2017, therefore, it cannot be said that the writ-petitioner had approached to this Court under Article 226 of the Constitution of India after inordinate delay attracting the principle of fence-sitter.
9. This Court, in order to proceed further, deem it fit and proper to first answer the issue as has been agitated with respect to the principle of fence-sitter as referred above.

There is no denial of the fact that fence-sitter cannot be allowed to get the benefit of judgment by invoking the jurisdiction of the Court of law after lapse of long delay but simultaneously it is also settled that when a particular set of employee is given relief by the Court, all other identical set of persons need to be treated alike by extending the benefit, not doing so would amount to discrimination and would be violative to Article 14 of the Constitution of India. This principle needs to be applied in service

matter more emphatically as the service jurisprudence from time to time postulates that all similarly situated persons should be treated similarly, therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like. On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it

can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence, reliance in this regard may be made to the judgment rendered by Hon'ble Apex Court in the case of *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.*, (2015) 1 SCC 347.

10. In the light of the aforesaid settled position, we have scrutinized the factual aspects of the instant case and gathered from the record that admittedly the writ-petitioner was appointed as Welfare Officer (Trainee) in Coal India Limited vide appointment letter dated 11.06.1994. She initially was on probation for a period of one year after completion of training. In the year 1994, All India Merit List for Welfare Officer (Trainee) published in which the name of the writ-petitioner figured at serial No.11 and *inter se* seniority of the persons in the merit list was to be governed by the position in their panel. The writ-petitioner subsequently joined on 23.06.1994 and was given posting in Central Coalfields Limited vide office order dated 09.07.1994. A Global Seniority List was published on 03.09.1996 and as on 24.04.1996 E-1 grade issued by the Coal India Limited in which the name of the writ-petitioner figured at serial No.78 and the seniority position was duly set out in accordance with the position in the original All India Merit List.

The writ-petitioner was then placed/promoted to E-2 & E-3 grades which were in the nature of cluster promotion, meaning thereby, not vacancy based and as such, not affected by the *inter se*

seniority position. She, for the first time, had been granted regular promotion to E-4 grade on 15.02.2010, being the first vacancy based promotion. A provisional seniority list was published on 02.05.2016 of the E-5 grade, the writ petitioner was at serial No.41 whereas the name of Mr. Behuria was shown at serial No.2, however, the said Mr. Behuria was much junior to the writ-petitioner in the Global Seniority List of E-1 grade wherein the writ-petitioner was at serial No.78 while Mr. Behuria was at serial No.120. It is further admitted as has been referred and for the risk of repetition the same is reiterated herein that position of Mr. Behuria has been rectified by an order passed by Hon'ble Orissa High Court. The said order has been brought on record by way of Annexure-7 to the memo of appeal wherein the relief was sought for by Mr. Behuria for restoration of seniority as per the All India Merit List for Welfare Officers (Trainee) fixing the deemed date of his entry into E-2 grade as 24.06.1996 and further direction to promote him to the E-4 grade with effect from the date his juniors in E-3 grade were so promoted i.e., from 22.09.2008 with all consequential benefits due to him.

The aforesaid admitted fact clarifies the position that the cause of action of the writ-petitioner has arisen for the first time after issuance of the provisional seniority list on 02.05.2016. It further appears from the record that on the basis of the provisional seniority list the order of promotion in E-3 grade had been issued on 20.02.2017 the first date i.e., the issuance of the provisional seniority list as on 02.05.2016 whereby and whereunder the writ-petitioner had been shown to be below in comparison to that of Mr. Behuria,

according to our considered view, will be said to be the first date when the cause of action of the writ-petitioner had arisen.

It is also not in dispute that after issuance of said provisional seniority list on 02.05.2016 the protest was filed by way of representation dated 06.10.2016 made before the Chairman, Coal India Limited and another representation dated 12.12.2016 before the competent authority of the Ministry of Coal as would appear from the statement made at paragraph 12 to the writ petition.

It requires to refer herein that the statement made at paragraph 12 to the writ petition has been replied at paragraph 9 to the rejoinder affidavit but the fact about the submission of the representation dated 06.10.2016 and 12.12.2016 has not been denied, meaning thereby, after the publication of the provisional seniority list dated 02.05.2016 the protest has been filed on 06.10.2016 and thereafter on 12.12.2016 but no order has been passed by the authority which compelled the writ-petitioner to approach this Court in the month of May, 2017, in view of the aforesaid fact and considering the admitted position herein, so far as the factual matrix is concerned, the cause of action to the writ-petitioner for the first time arose on 02.05.2016 and thereafter representations have been made on 06.10.2016 as also on 12.12.2016 but without passing any order in that representations, the order of promotions have been issued on 20.02.2017 to the E-5 grade, as such, it cannot be said that there is any delay and laches on the part of the writ-petitioner in approaching the court of law, therefore, the argument which has been advanced by the learned counsel for the appellant

about applicability of the principle of fence-sitter is not applicable in the facts and circumstances of the instant case as has been held by Hon'ble Apex Court in the case of *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors. (supra)* rather the judgment rendered in the said case will strictly be applicable so far as the case of the writ-petitioner is concerned in her favour as because when the issue of seniority is being re-determined even on the basis of an order passed by a court of law, it was incumbent upon the competent authority to rectify the seniority position of an employee in whose favour an order has been passed by the court of law applying it universally to all the employees who are to be affected as has been laid down in the case of *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors. (supra)* that the question of applicability of Article 14 of the Constitution of India is strictly to be complied in service matter as the service jurisprudence from time to time postulates that all similarly situated persons should be treated similarly, therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

11. Here in the instant case, it is not in denial that Mr. Behuria was below in comparison to that of the writ-petitioner but subsequently, on the basis of the judgment passed by Hon'ble Orissa High Court he has been shown to be senior to the writ-petitioner and while doing so, it was incumbent upon the competent authority, since the Global Seniority List was being revised on the basis of the order passed by Hon'ble Orissa High Court, to also examine the cases of the other

similarly situated employees like that of writ-petitioner by taking a decision in this regard on facts either in affirmative or negative but having not done so, it cannot be said that the authority has proceeded in justified manner for giving effect to the order passed by the Hon'ble Orissa High Court.

12. On the basis of the aforesaid discussion, we are of the view that the contention which has been raised by Mr. Behuria, learned counsel for the appellants about applicability of the principle of delay, laches and acquiescence, therefore, the writ-petitioner will be treated to be fence-sitter, is having no force, accordingly, this argument is rejected.
13. This Court is now proceeding to examine the order passed by the leaned Single Judge as to whether the case of the writ-petitioner is exactly on the similar footing to that of Mr. Behuria.
14. It is evident, from the case of the writ-petitioner as also the case of Mr. Behuria, both having been appointed as Welfare Officer (Trainee), that Mr. Behuria was below in the seniority list to that of the writ-petitioner. In course of service, the writ-petitioner was on leave without pay owing to maternity reasons during her training period as she had no other leave to avail while it is evident from the material available on record, which is not in dispute, that Mr. Behuria was also on leave without pay during his training period for the reasons specific to his life.

It further appears from the documents as has been annexed in the interlocutory application being I.A. No.9401 of 2019,

however, the said documents as has been appended in the said interlocutory application was not before the writ Court but has been sought to be brought on record by way of interlocutory application, this Court in order to reach to the rightful conclusion has also thought it proper to consider the documents in the ends of justice, wherefrom it is evident under Clause-17 which is under the caption heading, “*Deemed Date of Entry into a Grade*” which reads hereunder as:

“17. Deemed Date of Entry into a Grade

17.1 The committee recommends that a common deemed date of entry into a grade shall be determined for new recruits appointed in a batch on a particular date, in a company. This deemed date may be fixed in reference to the date of joining of the first person from the same batch. The said deemed date will be applicable only in respect of direct recruits whose training period is not extended for any reason.

17.2 This deemed date will help in fixing the seniority inter-se of direct recruits vis-a-vis promotes from non-executive cadre.”

The aforesaid clause is being reproduced hereinabove since it has been argued by Mr. Indrajit Sinha that the deemed date of entry in the present factual matrix would be applicable but it has not been brought to the notice of this Court as to whether the deemed date of entry of the writ-petitioner has ever been extended as required to be extended in view of the stipulation made under Clause-17 since no such document has been produced by the authority, save and except, one office note about consideration of an application submitted by the writ-petitioner for grant of extraordinary leave for a period of 10 days on medical ground but when it is the specific case of the writ-petitioner that she was on

leave without pay owing to maternity reasons during her training period as she had no other leave to avail, therefore, office note dated 30.01.1997 as also the Clause-17 as referred above (Annexure-15 to the interlocutory application) as also Schedule-II (Annexure 19 to the interlocutory application) will have no aid to the appellants.

15. The foremost question which has been considered by the learned Single Judge is the entitlement as has been declared in favour of Mr. Behuria.

Admitted position herein is that Mr. Behuria has already been granted relief by the Coal India Limited by acting upon the order passed by the Hon'ble Orissa High Court without assailing it before any higher forum while admittedly Mr. Behuria was below in the seniority list in comparison to that of the writ-petitioner as per the Global Seniority List and if the Hon'ble Orissa High Court has passed positive direction in favour of Mr. Behuria making him in the advantageous position to that of writ-petitioner so far as the seniority position in the Global Seniority List is concerned and when the order passed by Hon'ble Orissa High Court has not been assailed before any higher forum, it does suggest that the fact of the case of Mr. Behuria has been accepted by the respondents -authority, appellants herein.

16. In that circumstances can different approach be taken by this Court if the other employee, in the similar situation, has already got the positive order by the Hon'ble Orissa High Court.

17. As has been stated hereinabove, the position in the seniority list is the basis of all subsequent promotions creating a valuable right to one or the other employees. If an employee is above in the seniority in comparison to other employee and if the position of such employee who is above in the seniority list is being disturbed by order passed by any court of law and when the seniority position of such employee is rather going to be jeopardized, can he not be entitled to the same relief if approaching to the court in time.
18. As we have already reached to the conclusion that the writ-petitioner cannot be said to be a fence-sitter, therefore, only the case which is to be seen is to be shown as to whether the case of the writ-petitioner is similar to that of Mr. Behuria. The fact about factual situation which made Mr. Behuria in shifting of the seniority list due to non-adjustment of leave without pay due to medical reasons, since the said reason is also available in favour of the writ-petitioner and hence, the learned Single Judge after taking into consideration the aforesaid aspect of the matter has passed the order giving the similar relief to the writ-petitioner, which according to us, cannot be said to be unjustified.
19. The other question has been agitated by Mr. Behuria that if the seniority list would be allowed to be disturbed, the seniority of all the persons will be disturbed, in consequence thereof, the promotion order would also be affected.

The question is that if any disadvantage has been accrued to any of the employee due to the action of the authority although on the basis of the order passed by the court of law, herein Hon'ble

Orissa High Court, with respect to Mr. Behuria when the order passed by Hon'ble Orissa High Court has been acted upon without assailing the said order by taking such plea as has now been agitated about non-settlement of the seniority position as also the order of promotion granted in favour of one or the other employee when such plea was not taken in the case of Mr. Behuria, it will not be proper for this Court to allow the appellants to take such plea in the case of writ-petitioner. If the appellants were concern about this fact it was incumbent upon them to challenge the order passed by Hon'ble Orissa High Court instead of acting upon it but having not done so, merely on the ground that the position would be unsettled, the legitimate claim of the writ-petitioner cannot be thrown out.

20. On the basis of the discussion made in entirety herein and considering the order passed by learned Single Judge we are of the view that the learned Single Judge while allowing the writ petition by extending the relief as was prayed by her in the writ petition, cannot be said to be unjustified.
21. In the result, the instant appeal lacks merit, accordingly, stands dismissed.
22. Pending interlocutory applications also stands dismissed.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Saurabh

A.F.R.