

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. No.10 of 2019

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Subhendra Mohan Srichandan Singh *Petitioner*

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case:

For Petitioner : *Mr. Nitish Kumar Mishra, Adv.*

-versus-

For Opp. Parties : *Mr. S.S. Rao, Adv.*
(for O.P.3/BSE)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-06.09.2022

DATE OF JUDGMENT:-20.09.2022

Dr. S.K. Panigrahi, J.

1. The petitioner through this writ petition seeks to challenge the unjust, arbitrary and illegal action of the Opp. Parties in denying the legitimate pension dues of the petitioner despite repeated representations and grievances being raised by the

petitioner in such regard. The petitioner further challenges the evident inaction of the Opp. Parties in processing the legitimate pensionary benefits of the petitioner favourably even after the subject has been settled by this Court.

I. Facts of the case:

2. Shorn of unnecessary details, the brief facts of the case is that the petitioner, a retired employee of the Board of Secondary Education (hereinafter referred to as "Board") claims for release of arrear differential pension as well as current pension in full and other reliefs, after quashing the letter by which the Board of Secondary Education had rejected his representation. The case as set out by the petitioner in the present writ petition is that he was superannuated on attaining the age of 60 years on 31.08.1993 but his pensionary dues has not been settled yet. Although he was entitled to pension after the qualifying age of 58 years for the purpose of pension, yet he was not given the pension by taking into account the past services rendered by him and was given the pension calculating on the basis of period of service rendered by him in the Board.
3. Additionally, the Board's contribution towards Contributory Provident Fund account of the petitioner was withdrawn and deposited in the Central Pension Fund, as required under the Board's regulations as amended in 1997. Further, the case of

the petitioner is that he was discriminated from other similarly situated retired employees of the Board of Secondary Education who were already given the benefit. Being aggrieved by the same, the Petitioner is constrained to approach this Court.

II. Submissions advanced by the Petitioner:

4. Learned Counsel for the petitioner has submitted that the Board of Secondary Education while denying the case of the Petitioner vide letter dated 14.09.2011 cited the decision of this Court in W.P.(C) No.18242 of 2008 which in fact, directed the Board to pay full pension and it has been complied with after Contempt Application was preferred by one Sri Nayak, the petitioner therein. Additionally, there have been several other instances where, this Court as well as the Apex Court have repeatedly directed the Board authorities for paying pension as claimed by this petitioner to similarly situated retired employees of the Board. The Board till date has complied all such directives of the Court while making an exception in the case of the petitioner by not counting his past service for the purpose of pension disbursement by the Board.
5. Learned Counsel for the petitioner has further clarified that in W.P.(C) No.18242 of 2008, the Petitioner, in fact, had joined as Assistant Teacher in Kundukela Govt. M.E. School,

Sundargarh on 31.07.1953 and was appointed as S.I. of Schools on 09.04.1954. Thereafter, the Petitioner rejoined as Asst. Teacher in Govt. High School, Birmitrapur on 16.08.1960 and transferred on 06.07.1967 to Uditnagar High School, Rourkela. While serving at G. C. High School, Rairakhol since 12.05.1969, the Petitioner was relieved on 01.03.1976 from the Government service as teacher, after being sent to the Board of Secondary Education (Opp. Party No.3) to join on deputation as the Expert in Teaching Odia. In fact, the Petitioner joined the Board services on 02.03.1976 as Expert in Teaching Odia. The Petitioner retired from Board Service on superannuation on 31.08.1993 on reaching the age of 60 years. Thus, the Petitioner completed the pensionable age of 58 years on 31.08.1991 as per the Board Regulations while continuing as an employee of the Board. In total, the Petitioner has served for 40 years. He is not only eligible for full pension as per the Board Regulations, but also in line with the decisions rendered in *W.P.(C) No.18242 of 2008 (Rabindranath Nayak)* and *W.P.(C) No.25371 of 2011 (Smt. Bishnupriya Dei)* besides so many similar other settled cases. In the light of the aforementioned decisions as above and against the refusal by the Board authorities vide their letter dated 14.09.2011 and subsequent inaction by the authority, the Petitioner submitted a detailed representation dated 13.02.2017 which fell in the deaf ear of the authority.

6. He further submitted that the decision in Rabindranath Nayak's case having become final and binding upon the Board apart from other cases such as Judgments in W.A. No.74 of 2006 disposed of on 17.08.2010, W.A. No.61 of 2008 disposed of on 17.08.2010 and W.A. No.47 of 2007 disposed of on 19.08.2010, this Court has repeatedly affirmed the position of law in the Petitioner's favour. Further, the Supreme Court of India in Special Leave to Appeal against the Judgment in W.A. No. 74 of 2006 has also upheld the decision of this Court in very clear terms. Therefore, non-consideration of the petitioner's long pending prayer merited a relook and decision afresh in the interest of justice and fair play.
7. He has further adverted to the attention of this Court that the retired employees of the Board become entitled to pension in accordance with the Board of Secondary Education, Orissa (Amendment) Regulations 1997 after it came into effect retrospectively from 01.01.1982. Regulation 22 of the said Regulation stipulates the period of qualifying service for the purpose of pension calculation and runs as under.

"22. The period of qualifying service rendered by an employee under any of the following institutions shall count for the purpose of pension:

- (a) Central Government,*
- (b) State Government.*
- (c) Any Indian University*

- (d) Any College affiliated to any University of the State and aided by the State Government.*
- (e) Any Educational Institution recognised by the Board and/or any Research Institutions aided by the State/Central Government, and*
- (f) The previous service in any institution on the basis of which such persons have been appointed in the Board."*

8. Learned Counsel for the Petitioner further submits that the Petitioner was superannuated with effect from 31.08.1993 after reaching the age of retirement of 60 years. However, for the purpose of calculation and payment of pension, the period of service including the past service needed to be calculated till the Petitioner reached 58 years. Even though the Petitioner has claimed payment of pension accordingly but it has not been acceded to. Instead he has been paid pension only for the marginal period of service rendered under the Board alone, though there is no such stipulation in the Amended Regulations. Further, admittedly, the Board's contribution towards Contributory Provident Fund account of the Petitioner was withdrawn and deposited in the Central Pension Fund of the Board under the Board service in compliance with the afore said 1997 amended Regulations.
9. Moreover, several others employees have been allowed pension under similar circumstances, the case of the Petitioner

has been rejected in a bald and non-speaking manner vide letter of the Opp. Party No. 3 dated 29.09.2018. It is further surprising to note that no reference to the repetitive Orders of this Court has been made which makes believe the Petitioner that the grounds urged in the writ petition as well as the representation have been completely overlooked by the Opp. Party No. 3.

III. Submissions by Opposite Party No.3/ BSE, Orissa:

10. *Per Contra*, learned counsel for the Opposite Party No.3 has submitted that the petitioner was one of the applicants responding to the advertisement calling upon appointment to the post of expert in teaching. The advertisement dated 01.07.1975 was issued with a specific condition that in the event an applicant is in Government service, he has to pay leave salary and pension contribution. One Bansidhar Rath, a teacher serving in Higher Secondary School was selected and appointed on 29.09.1975. As he did not join, the petitioner who was second in the merit list was selected and an appointment order dated 17.01.1976 was issued. The petitioner, however, by letter dated 29.01.1976 while agreeing to abide by the service conditions of the Board, requested the Board to move to Education Department to relieve him or to depute him, as per the procedure to the services of the Board. Accordingly vide

Letter No. 565 dated 17.02.1976 to the Joint Director Public Instruction (Schools), Board requested to send the petitioner on deputation. In response, the Joint Director Public Instruction wrote to Inspector of Schools, Sambalpur Circle to relieve the petitioner marking a copy to the Board, with usually query as to whether the Board is willing to take him under usual conditions of foreign service under Rule-2/2 or Orissa Service Code. Upon Board's consent, the petitioner was relieved on 01.03.1976 vide Office Order No.118 by the Head Master of G.C. High School, Rairakhol under whom the petitioner was servicing.

11. The petitioner has joined on 02.03.1976 as expert in Oriya on deputation, which continued from time to time till 31.07.1981. A letter No. 25/78-79/1036 dated 25.09.1981 of the Office or Accountant General calling upon Board to deposit leave salary and pension contribution in the Treasury for the entire period of foreign service of 5 years 51 months i.e., from 02.03.1976 to 31.07.1981. The letter dated 27.12.1982, permanently absorbing the petitioner in Boards Service with effect from 01.08.1981.

12. Thereafter, the petitioner was promoted to the post of Academic Officer Class-I (JB) on 25.09.1990 and retired on attaining the age of Superannuation of 60 years on 31.08.1993. Thereafter, the petitioner was paid pension for the entire

period of his service from 01.08.1981 to 31.08.1993 (10 years 1 month) computing the qualifying service up to the age of 58 years and was also paid all retiral benefits including unutilized leave salary of Rs.41,173/- vide Memo No.2420 (Estt.) dt. 18.04.1994 death-cum-retirement gratuity of Rs.19,800/-, G.LS amounting to Rs.1800/- and vide Memo No.568 dt. 29.01.1994 Rs. 450/- refund of his own contribution of Rs.17,926/-. Learned Counsel has also submitted that the petitioner joined Board's Service on 01.08.1981 and retired on 31.08.1993. His pension, as admissible up to the age of qualifying service up to 58 years was disbursed and all retiral benefits were also paid.

13. Learned Counsel for the Board has further clarified that during the period, he served on deputation and he was continuing in Government Service from 02.03.1976 to 31.07.1981, Board's Contribution was also deposited in Government Treasury, as required under the guidelines for employees on deputation joining from foreign service. The services of the petitioner from 31.07.1953 till 31.07.1981 was in Government Service, out of which he was in Board on deputation from foreign Service from 02.03.1976 to 31.07.1981. He was in Government service till he was permanently absorbed on 01.08.1981 in Board. As can be seen from Rule-44 (1)(iii) of the Orissa Civil Services (Pension) Rules, 1992, a Government Servant with

Contributory Provident Fund (CPF) benefits on permanent absorption in autonomous body, could opt to come under pension scheme, foregoing Government's share in contribution in Provident Fund contribution within one year from the date of his absorption in the autonomous body. In the instant case, the petitioner was absorbed on 01.08.1981 and admittedly he has not opted, as per the above stipulation. Obviously, it is deemed that he shall receive Contributory Provident Fund for the period he served in Government from the Government.

14. The relevant Provision in Rule-44 (1)(iii) of the Orissa Civil Services (Pension) Rules is extracted hereunder for better appreciation:

"44. Pension absorption in or under Autonomous bodies.

(i) Xxx xxx

(ii) xxxxxxxx

(iii) A Government servant with Contributory Provident Fund benefits on permanent absorption in an autonomous body will have the option either to receive Contributory Provident Fund benefits which have accrued to him from the Government and Start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share in contributory Provident Fund contributions with interest which will be paid to the concerned autonomous body by

the concerned Government Department. The option shall be exercised within one year from the date of such absorption. If no option is exercised within the stipulated period, employee shall be deemed to have opted to receive contributory Provident Fund benefit. The option once exercised shall be final."

15. Learned Counsel for the Board has further submitted that admittedly, in the instant case, from the date of absorption i.e. on 01.08.1981 within one year, the petitioner has not opted to come under qualifying service of the autonomous body by foregoing the Government's share in C.P.F. In fact, the petitioner himself has claimed and represented to Director Secondary Education on 22.07.1994 for sanction of Pension for the period of 28 years i.e., from 1953 to 1981. Moreover, the Government did not reject the prayer for grant of pension, rather it processed the representation. It appears, during course of pursuing for the pension for the period he worked in the State Government, the petitioner has also claimed for pension by moving to State Administrative Tribunal. Details of the case particulars and the result were not disclosed by the petitioner in the writ petition. Although he retired in 1993, for the first time, on 01.02.2011, he represented to the Board to pay the differential pension by including the period he served in the past, i.e., past services while calculating pension. The representation was not considered and the decision was

communicated on 14.09.2011 as he could claim pension for the said period from the Government. Thereafter, after long 6 years, he made another representation and continued to represent ventilating his grievances.

16.Learned Counsel further submitted that the Board of Secondary Education prior to amendment of its regulations in 1997 was following C.P.F. for its employees. Rule-44 (2) (i) of the Orissa Civil Services (Pension) Rules 1992 stipulates that in the event a Government Servant joins an autonomous body, the entire contribution under CPF made to the Government should be transferred and treated as opening balance in the autonomous body, if the employees joins later in an autonomous body. So long as the contribution is not transferred to the autonomous body, the liability of the share of the Government continues for the period of service in the Government. This seems exactly why, the petitioner pursued with the Government and unfortunately no material has been produced in this Court about the result of such persuasion and result of case said to have been filed in State Administrative Tribunal.

17.Learned Counsel contended that the contention of the Petitioner regarding W.P.(C) No.18242 of 2008 is not sustainable in law. It is submitted that the State had given its

part of pension to Sri Nayak, who is a similarly placed employee. In the Judgment dated 21.09.2010, this Court categorically held that the concession of the Board may not be treated as a precedent. Therefore, this writ petition is misconceived in the light of facts and circumstances narrated hereinabove and is liable to be dismissed.

IV. Analysis and Reasoning of the Court:

18. It is well-settled that salaries and pensions are due as a matter of right to employees, and, as the case maybe, to former employees who have served the State. Since, the petitioner rendered his services till superannuation as a government servant, his entitlement to the payment of salary is intrinsic to the right to life under Article 21 and to right to property which is recognized by Article 300A of the Constitution.

19. The Supreme Court in the case of *State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari*¹ observed that

"The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a

¹ Civil Appeal No. 399 of 2021 (Supreme Court)

matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State."

20. In *State of Kerala and others vs. V. Padmanabhan Nair*², the Supreme Court held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It is further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. The relevant paragraphs are as follows:

"The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i.e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite LP.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned

² (1985) 1 SCC 429

officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent's favour.

Unfortunately, such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant."

21. In ***Dr. Uma Agarwal v. State of U.P.***³, the Supreme Court held that:

"We have referred in sufficient detail to the Rules and instructions which prescribe the time- schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps atleast two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is

³ (1999) 3 SCC 438.

frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

22. It is unambiguously clear that by the time the Petitioner joined the Board services, provision for pension in respect of the Board services was not available. Hence, the initial period of the Board services spent by the Petitioner from 02.03.1976 to 31.07.1981 was treated as deputation from Government service and as per Office Order dated 24.12.1982 issued by the Opp. Party No. 3, the Petitioner was absorbed as a permanent employee of the Board. Subsequently, by virtue of the Board of Secondary Education (Amendment) Regulations, 1997, the Board employees who entitled to pension with retrospective application from 01.01.1982. With regards to the said, the Regulation 22 stipulates the period of qualifying service for the purpose of pension calculation in respect of employees of the Board. It is not in dispute that under the terms and conditions, the Board of Secondary Education remitted its pension contribution for the Petitioner till 31.07.1981 on the basis of calculation of rates of leave salary and pension contribution in respect of employees for deputation under Foreign Service.

However, it all got merged and redundant after incorporation of the provision for Pension by the Board of Secondary Education on introduction of the Board of Secondary Education (Amendment) Regulations, 1997.

23. Therefore, the petitioner has rightly contended that the petitioner having retired from Board services on reaching the age of superannuation effective from 31.08.1993, he became legitimately entitled to full pension from the Board by taking into account the entire service period including the past service of 23 years under the Government and 5 years in the Board on deputation besides 12 years confirmed service in the Board which is strictly construed under Regulation 22 of the 1997 Amendment Regulations. The Petitioner has been wrongly allowed to get pension for 10 years' service only in the Board's calculation i.e. till his reaching the age of 58 years.

24. In *S.K.Dua v. State of Haryana*⁴, the appellant therein was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998 on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commuted value of pension, leave encashment, gratuity, etc. They were withheld till the

⁴ 2008 (3) SCC 44

finalization of the disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at Paragraph 14 of the judgment, held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

25. Additionally, the Board is held to have discriminated against the petitioner, considering the fact that several similarly placed individuals have already been granted respite by this Court. Such discrimination by the Opposite Party No.3 against the

petitioner is impermissible. The Supreme Court in *B.J Akkra vs Government of India*⁵, has held that discrimination in the introduction of a benefit retrospectively or prospectively by fixing a cut-off date arbitrarily thereby driving a single homogenous class of petitioners into two groups and subjecting them to different treatment was held impermissible.

26. Moreover, the employees cannot be allowed to suffer because of inaction on the part of the employer without employee's fault. The employee is definitely entitled to get the payment as per the service conditions on due dates and/or in a given case within reasonable time. Had the employee received payment within time and/or on due dates, he could have utilised the same for various purposes. The case of the Petitioner seems to be one of the classic case of hostile discrimination. Even after repeated approaches by the Petitioner at his advanced age, neither has been visited with a positive response nor was the consolidated full pension as claimed by the Petitioner has been released so far in his favour.

27. Considering the analysis and precedents cited hereinabove, this Court is of the opinion that the Petitioner should be provided with the legitimate pension benefits. In view of the

⁵ (2006) 11 SCC 709

above, the instant Writ Petition filed by the Petitioner is allowed. No order as to costs.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 20th of September, 2022/B. Jhankar

