

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5439 of 2010

Sabal Mallik

....

Petitioner

Mr. G.N. Mishra, Advocate

-versus-

***Director, E.S.I. Scheme &
Another***

....

Opposite Parties

Mr. S.K. Pattnaik, AGA

CORAM: JUSTICE V. NARASINGH

**ORDER
12.09.2022**

Order No.

12.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the Opposite Parties.
3. The grievance of the petitioner who was working as a driver in the office of the Superintendent ESI Hospital, Brajrajnagar, is denial of disbursal of retirement benefits in terms of the Voluntary Retirement Scheme (VRS).
4. The undisputed facts which are borne out from the pleading is that the petitioner applied for voluntary retirement as per his application dated 06.08.2002 with effect from 15.11.2002.
 - (i) It is submitted by the learned counsel for the petitioner that during the pendency of consideration of his application scheme for voluntary retirement dated 27.01.2003 was floated and the petitioner again applied for the benefits under such VRS through the Superintendent-Opposite Party No.2.

(ii) It is submitted that notwithstanding his application to retire under the VRS the Opposite Party No.1-Director unilaterally passed an order dated 15.02.2003 directing for petitioner's retirement in terms of Rule 71(A) of the Service Code which is substantially the grievance of the petitioner.

5. Per contra learned AGA, Mr. S.N. Pattnaik relying on the recitals of the counter affidavit submits that by the time petitioner's application under the scheme was received the order retiring the petitioner in terms of Rule 71(A) has already been passed. Hence there is no scope to consider the plea of the petitioner under the VRS.

6. In support thereof learned counsel for the State relies on Annexure-C/1, the order passed by the Director dated 15.02.2003 by which the petitioner was allowed to retire from Government Service with the immediate effect.

The said order is also annexed as Annexure-2 and the prayer in the Writ Petition is to treat the same as one under the VRS.

7. At this stage, it is worthwhile to note the assertion of the State-Opposite Party in paragraph-4 of the Writ Petition.

“After allowing such retirement of the petitioner on 15.02.2003 a plain paper application of the petitioner for retirement under voluntary retirement scheme was received in this office on 20.02.2003 through the Superintendent, ESI Hospital, Brajrajnagar. However, since by that time the petitioner was already allowed to be retired, no further action was mandated on that application. Besides, the said application was not in proper form as prescribed under

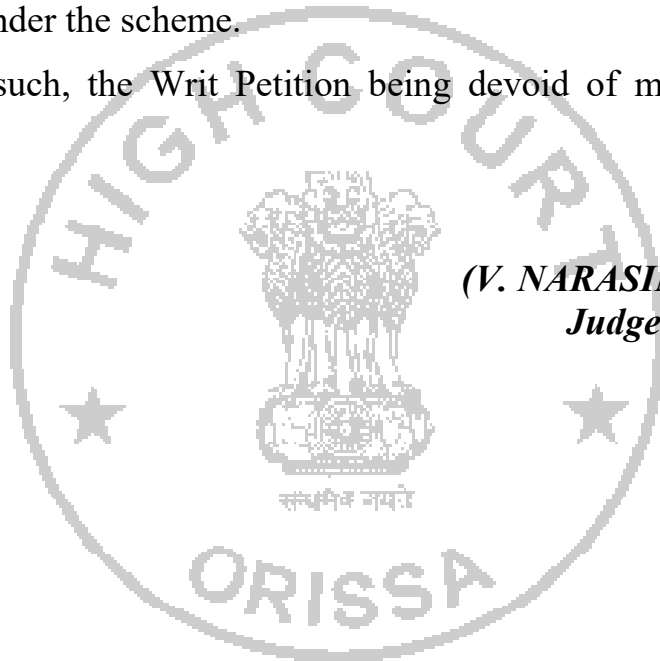
finance Department Resolution No.4481/F dated
27.01.2003.”

8. It is apt to state here that such stand of the State-Opposite Parties that after retirement of the petitioner on 15.02.2003 as per Rule 71(a) of the Service Code, plain paper application for retirement under the scheme was received by the ESI authority on 20.02.2003, has not been controverted.

9. In such view of the matter, this Court does not find any scope to interfere with the order of retirement as passed so as to treat it one under the scheme.

10. As such, the Writ Petition being devoid of merit stands rejected.

Ayesha



*(V. NARASINGH)
Judge*