

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 3563 of 2013

State of Odisha and Another

.....

Petitioners

Mr. S. Nayak, ASC

Vs.

Jagadish Nayak and Another

.....

Opposite Parties

*Mr. Sanjeev Udgata, Advocate
(O.P. No.1)*

CORAM:

**DR. JUSTICE B.R. SARANGI
MR. JUSTICE S.K. MISHRA**

ORDER

22.07.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Nayak, learned Addl. Standing Counsel for the State-Opposite Parties and Mr. S. Udgata, learned Counsel appearing for Opposite Party No.1.

3. Opposite Party No.1 filed O.A. No. 5(S) of 2011 seeking following reliefs:-

“i) To issue order/direction to the Respondent No.1 to quash/set aside the impugned punishment order No. 2174/I. dated 3.3.2011, Order No. 1154/dated 19.1.2001 and order No. 3584 dated 6.2.1969 (suspension order) issued by the director, Technical Education & Training, Orissa.

ii) To direct the Director, Technical Education & Training, Orissa, Cuttack to make payment my gratuity amount, unutilized E.L., commuted leave amount, Part final G.P.F., arrear pay and substance allowance of the applicant forcibly taken from the applicant on 30.06.1989 by the Principal, Jharsuguda Engg. School.

iii) To direct the Director, Technical Education & Training, Orissa, Cuttack to treat the period of suspension of the applicant as duty with full and allowances w.e.f. 6.2.89 to 30.11.97 with interest till date of payment.

iv) Pass any other order as deem fit and proper in circumstances of the case.”

4. The Tribunal, vide Order dated 19.03.2012, passed the

following order:-

“In view of the acquittal of the applicant in the G.R. Case no. 823/89 as per orders of CJM, Jharsuguda dtd. 19.12.2003 and dismissal of the appeal petition by the Hon’ble High Court in order dtd. 11.2.2011 in CRLLP no.57/2005, and in view of the fact that the relevant documents required for defence of the applicant were admittedly not supplied to him, the punishment orders vide orders no.2174/1 dtd. 3rd January/February, 2011 is quashed. (Ref. paragraph-19 of the decision of the Hon’ble Apex Court in the case of the State of A.P. Vs. N. Radhakrishanan, (1998)4 SCC (L&S). As the disciplinary proceeding related to 1990, (i.e. vide order no.6556 dtd. 5.5.20), and as the applicant who retired from service on 30.11.97, has already suffered enough, there is no ground to restore the proceeding to the defence stage or to direct the respondents to resume further inquiry after supply of required documents for defence. His period of suspension be treated as leave due and all related of the applicant, including unutilized leave, gratuity and commuted leave, GPF final withdrawal etc, pay and subsistence allowance be restored to the applicant within a period of three months from the date of receipt of a copy of these orders. Interest shall be paid to the applicant on such arrears of pension only for the period of delay in disbursement at the rate prescribed the SBI/ Reserve Bank of India on Savings Bank deposits for the delay caused in release of pensionary dues calculated from 11.04.2001, i.e. two months after disposal of the criminal appeal no.CRLLP no.57/2005 by the Hon’ble High Court as per the decision of the Hon’ble High Court in the case of Dhruba Charan Panda-vrs-State of Orissa, reported in 88(1999) CLT 637. Similarly, interest shall be paid on DCRG arrears as per Rule-49(5) of the OCS (Pension), Rules, 1992, at 7% per annum for delay in release of DCRG to be calculated from 11.2.2012 only, i.e. one year from the date of dismissal of the aforesaid criminal appeal.”

5. Mr. S. Nayak, learned Addl. Standing Counsel for the State- Opposite Parties contended that the Order passed by the Tribunal on 19.03.2012 in O.A. No. 5(S) of 2011 has to be quashed, as criminal case was initiated against the Opposite Party No.1 for the

selfsame allegation. Therefore, Opposite Party No.1 is not entitled to the benefits granted by the Tribunal.

6. Mr. S. Udgata, learned Counsel appearing for Opposite Party No.1 contended that this question has already been considered by the Tribunal, vide Order dated 19.03.2012, and in the meantime, the Petitioner has already retired from service w.e.f. 30.11.1997. As such, the Petitioner is now 85 years of age and is bed-ridden. If any step is now taken against the Opposite Party No.1 by the Authority, the same will cause prejudice to him. Therefore, he seeks for dismissal of the Writ Petition.

7. Having heard learned Counsel for the parties and after going through the records, this Court finds that earlier the Tribunal, vide Order dated 28.02.2006 passed in O.A. No. 2(S) of 2006, by observing that since the matter was pending for a long period and in spite of several orders, promptness was not shown for disbursement of retirement benefits to the applicant, though he retired from service on 31.11.1997, disposed of the Original Application by directing the Authorities to hear the appeal and dispose of the same within a period of six months. Though against the said Order, review petition was filed, but the same was dismissed. Against the said Order, the State preferred W.P.(C) No. 7531 of 2010, which was dismissed vide Order dated 06.12.2018, in view of the submission made by learned State Counsel that by efflux of time, the prayer made in the said Writ Petition has become infructuous. Therefore, after dismissal of the Writ Petition, so far as the proceeding is concerned, reached its finality. As a consequence thereof, Opposite Party No.1 is entitled to the benefit. Furthermore, the proceeding which was initiated against Opposite Party No.1 having been reached its finality, in view of

dismissal of W.P.(C) No. 7531 of 2010 and, as such, consequentially upon hearing the parties the Tribunal, vide Order dated 19.03.2012 passed in O.A. No. 5 (S) of 2011, directed the Petitioners-State to pay the legitimate dues of the Opposite Party No.1, this Court is not inclined to entertain this Writ Petition.

8. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/Ananta

