

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22148 of 2014

Bramhananda Sahoo & Ors.

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Petitioners

*Mr. V. Mohapatra,
Advocate*

Vs.

State of Odisha and Ors.

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

Mr. JUSTICE S. K. MISHRA

ORDER

24.06.2022

Order No.

11.

This matter is taken up through hybrid mode.

2. Heard Mr. V. Mohapatra, learned counsel for the petitioners and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department.

3. This writ petition has been filed challenging the order dated 14.02.2014 passed in Provisional No.198(C) of 2013, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has rejected the claim of arrear salary of deceased petitioner-Bramhananda Sahoo for the period from 29.12.1996 to 31.03.2000 as barred by limitation. During pendency of this writ petition, petitioner-Bramhananda Sahoo died and his legal representatives have been stepped into his shoes.

3. Mr. V. Mohapatra, learned counsel for the petitioners contended that though the authorities prevented the deceased petitioner from discharging his duty and thereafter fixed his salary for the period from 29.12.1996 to 31.03.2000 on notional basis, he is entitled to get the arrear salary.

4. Mr. S. Jena, learned Standing Counsel for School and

Mass Education Department, per contra, contended that since the deceased petitioner had not discharged his duty during the period from 29.12.1996 to 31.03.2000, he was not released with actual salary as due and admissible to him. As such, the salary has been fixed for the said period on notional basis, for which the deceased petitioner had approached the Tribunal by filing Provisional No.198(C) of 2013 claiming arrear salary much after ten years, i.e. on 30.05.2003. The Tribunal, after due adjudication, came to conclusion vide order dated 14.02.2019 that the claim made by the deceased petitioner is barred by limitation and rejected the same accordingly. Therefore, the order passed by the Tribunal is well justified, which does not warrant interference of this Court.

5. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the deceased petitioner joined as Assistant Teacher of Primary School on 01.09.1959. During the tenure of service, vide order dated 07.04.1994, as Asst. Teacher, he got promotion to the post of Headmaster and posted as such in Turintira Primary School. Since his date of birth was 22.03.1942, his due date of superannuation from service was 31.03.2000. But the District Inspector of Schools, Bhubaneswar, Khurda directed the petitioner to handover the charge of Headmaster to one Kailash Chandra Dixit, the senior most Assistant Teacher of the School on the ground that his date of birth being 22.03.1937, instead of 22.03.1942, he had already attained the age of superannuation and overstayed in service. Being aggrieved by his premature retirement, he represented to opposite parties no.1 and 2 and after examining the records, opposite

party no.1 by order dated 30.05.2003 decided that the correct date of birth of petitioner no.1 is 22.03.1942 and he should be allowed to retire from service on superannuation on 31.03.2000 and accordingly directed that the retirement benefits and other dues of the deceased petitioner shall be finalized on the basis of his last pay drawn as on 31.03.2000. Basing on the letter dated 30.05.2003, opposite party no.4 allowed periodical increments raising the deceased petitioner's pay from time to time up to 01.04.2000, but his arrear salary for the period from 29.12.1996 to 31.03.2000 was not drawn and disbursed in his favour.

7. As it appears, District Inspector of Schools, Bhubaneswar, vide letter dated 10.10.2006, recommended the case of the deceased petitioner to the Block Development Officer, Balipatna for payment of arrear salary for the period from 29.12.1996 to 31.03.2000. But fact remains, claiming such arrear salary for the aforesaid period for which he was prevented to discharge his duty on wrong premises, taking into account the date of birth as 22.03.1937, instead of 22.03.1942, he was not paid salary by the opposite parties. If the deceased petitioner was not allowed to discharge his duty by the opposite parties, he cannot be denied when subsequently the very same authority rectified his own mistake that the date of birth of the petitioner is 22.03.1942. Fixation of salary on notional basis cannot suffice the purpose as it has been admitted that he was deprived of by the opposite parties to discharge his duty. Therefore, he should be paid actual payment for the period from 29.12.1996 to 31.03.2000.

8. When the deceased petitioner approached the Tribunal in 2013, the Tribunal rejected his claim on the ground of

barred by limitation, as he had approached after ten years. But fact remains, the claim of the deceased petitioner is that his date of birth is 22.03.1942, as has been taken into consideration by the very same authority and construed it as 22.03.1942, by which he has been granted notional benefit for the period from 29.12.1996 to 31.03.2000.

9. In that view of the matter, the claim of the deceased petitioner cannot and could not have been denied by the authority. Therefore, the Tribunal has committed gross error in not extending the benefit to the deceased petitioner on the ground of limitation. More so, the District Inspector of Schools, Bhubaneswar, vide letter dated 10.10.2006, recommended the case of petitioner no.1 to the Block Development Officer, Balipatna for payment of arrear salary for the period from 29.12.1996 to 31.03.2000. Thereby, this Court is of the considered view that the deceased petitioner is entitled to get arrear salary for the period from 29.12.1996 to 31.03.2000, as the same has been notionally fixed. Thus actual payment should have been made to the deceased petitioner for the aforesaid period. Therefore, the order dated 14.02.2014 passed by the Tribunal in Provisional No.198(C) of 2013 rejecting the claim of the deceased petitioner on the ground of limitation cannot sustain in the eye of law and the same is liable to be quashed and is accordingly quashed. The opposite parties no.1 to 4 are directed to release the actual arrear salary of the deceased petitioner in favour of his legal representatives, who have been stepped into his shoes and substituted as petitioners no.2 to 5 in this writ petition, within a period of three months from the date of production/communication of this order, failing which the same shall carry interest @ 6% per annum from the date of

default till actual payment is made.

10. The writ petition is accordingly allowed.

11. Issue urgent certified copy as per fules.

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(DR. B.R. SARANGI)
JUDGE

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(S. K. MISHRA)
JUDGE

Alok/Ananta

