

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12775 of 2013

Rabindranath Nanda

....

Petitioner

Mr. Avijit Mishra, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S. Parida, Senior Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK**

**ORDER
05.07.2022**

Order No.

26. 1. The Petitioner has challenged an order dated 25th March 2011 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack (Tribunal) disposing of O.A. No.332 (C) of 2011 rejecting the Petitioner's prayer for a direction to the Opposite Parties to include the period during which the Petitioner served as Music Teacher for the purposes of pensionary benefits.
2. The background facts are that the Petitioner was appointed as a part time Music Teacher on a consolidated pay of Rs.500/- per month against an existing vacancy in the W.T.I. Unit of the Directorate of Teacher Education and SCERT, Orissa by an order dated 1st October, 1992. It is stated that the Petitioner kept requesting for regularization of his services. It appears that similarly persons filed O.A. No.789 of 1994 which was disposed of by the Tribunal by an order dated 25th April 1995 directing regularization. The SLP which was stated to have been filed against the said order was dismissed by the Supreme Court on 7th October,

1996. However, the fact remains that the Petitioner did not join those persons in going before the OAT .

3. As far as the Petitioner is concerned, a letter was written on 25th February 1999 by the Director of the Teacher Education to the Inspector of Schools, Cuttack Circle stating that the Petitioner's case may be considered for adjustment against a post of Music Teacher. In response thereto, an office order was issued on 8th March 2000, appointing the Petitioner as Junior Clerk in the Government Secondary Training School, Jagatsinghpur.

4. The Tribunal has noted that since the Petitioner was working as a Music Teacher only on part-time basis on a consolidated monthly remuneration and not against any substantive post, the period of service rendered by him as part time Music Teacher cannot be taken into account.

5. In response to the notice issued in the present petition, a counter affidavit has been filed referring to Rules 11 and 18 of the Orissa Civil Services (Pension) Rules, 1992 which read as under:

“ 11. Conditions of qualifying service. - Subject to the provisions hereinafter contained, the service of a Government servant shall qualify for pension if it conforms to the following three conditions, namely :

- (1) The service must be under Government;
- (2) The employment must be in a pensionable establishment/post and
- (3) The service must be paid by Government.

XXX

XXX

XXX

18. Conditions subject to which service qualifies. –

- (1) Service does not qualify for pension unless it is rendered in a pensionable establishment post.
- (2) The entire continuous temporary or officiating service under Government without interruption in the same post or any other post, shall count for the purpose of pension in respect of all categories of Government servants except in the following cases, namely:
 - (i) Period of service in a non-pensionable establishment;
 - (ii) Period of service in the work-charged establishment;
 - (iii) Period of service paid from contingencies;
 - (iv) Where the employee concerned resigns and is not again appointed to service under Government or is removed/dismissed from public service;
 - (v) A probationer who is discharged from service for failure to pass the prescribed test or examination;
 - (vi) Re-employed pensioner Government servants engaged on contract and Government servants not in whole time employment of Government;
 - (vii) Service paid from Local Fund or Trust Fund;
 - (viii) Service in an office paid by fees whether levied by law or under authority of the Government or by Commission; and
 - (ix) Service paid out of the grant in accordance with Law or Custom.”

6. It is pointed out that the engagement of the Petitioner as part time Music Teacher on a consolidated remuneration does not satisfy the conditions stipulated in the above Rules.

7. Having heard learned counsel for the parties, the Court is not persuaded that the Tribunal has committed any error in declining the Petitioner's prayer. Indeed, in terms of Rules 11 and 18 of the OCS (Pension) Rules, the engagement of the Petitioner on part time basis as Music Teacher would not count towards qualifying service for the purposes of pension.

8. Consequently, no ground is made out for interference with the impugned order of the Tribunal. Accordingly, the writ petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin

