

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 20808 of 2015

Dibakar Pattnaik

.....

Petitioner

Mr. S. Mohanty, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

13.04.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. The petitioner has filed this writ petition assailing the order dated 03.05.2012 passed in O.A. No. 1240 of 2020, by which the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar, by observing that OCS (Pension) Rules, 1992 is not applicable to the petitioner, as the benefit of contributory pension rules is applicable to him, disposed of the original application filed by the petitioner without interfering with the order passed by the authority.

3. Mr. S. Mohanty, learned counsel for the petitioner contended that though initially the petitioner was appointed on 17.10.1995, but he was brought over to the regular establishment on 10.11.2008. Therefore, the past service rendered by the petitioner should have taken into consideration by the tribunal for the purpose of pensionary benefits in terms of OCS (Pension) Rules, 1992, as the action taken by the authority, brining him to contributory pension rules by treating him as a regular employee w.e.f. 10.11.2008, does not have any justification.

4. Mr. A.K. Mishra, learned Addl. Government Advocate

contended that the petitioner, having come into regular establishment only on 10.11.2008, by that time new pension rules had come into force and, therefore, he has been extended with the benefit of contributory pension. Thereby, the tribunal is well justified in rejecting the claim of the petitioner to bring him to the old pension rules and, as such, the order of the tribunal does not warrant interference of this Court.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner had entered into service on 17.10.1995 in the public interest and in pursuance of the direction given by the apex Court in SLP No.21355-56/94, as a casual labour and appointed temporarily as Animal Keeper in time scale of pay Rs.750-12-870-EB-14-940 with usual dearness allowance, as admissible from time to time, without prejudice to the claim of his seniors as per the recommendation of the committee constituted vide office memo dated 15.09.1995. But the petitioner refused to accept such offer of the Government, as is evident from the letter dated 11.11.1995, which has been annexed as Annexure-B/1 to the counter affidavit and, as such, the same clearly indicates that the petitioner refused to receive the appointment order issued vide memo no.3021 dated 20.10.1995 and memo nos.1968 and 1963 dated 23.10.1995 of the Range Officer, Maintenance and Security as reported by the Range Officer, Sanctuary Management. Therefore, once the petitioner refused to accept the regular appointment in terms of Annexure-1 dated 17.10.1995, he had forgone his claim to be continued as regular employee. The petitioner was allowed to continue as casual labourer and his services were regularized only on

10.11.2008 and, accordingly, his service book was also opened. Thereby, the petitioner became regular employee with effect from the date he joined on regular establishment, i.e., 10.11.2008. Once the petitioner had joined on 10.11.2008 in the regular establishment i.e., after introduction of CPF Rules, as per the Finance Department memorandums dated 17.09.2005 and 13.07.2006, he has to be covered under the said notification only for the purpose of pension. Thereby, the claim of the petitioner, that he should be brought over to the old pension rules, cannot sustain in the eye of law, as he refused to join in the regular post, as is evident from Annexure-B/1 dated 11.11.1995 and, thereby, he has lost his right to claim the benefit under old pension rules.

6. In such view of the matter, this Court does not find any error apparent on the face of the order impugned passed by the tribunal so as to warrant interference with the same.

7. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Sukanta

(SAVITRI RATHO)
JUDGE