

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3728 of 2020

Amulya Kumar Behera & another **Petitioners**

Ms.Soma Patnaik, Advocate

-versus-

State of Odisha & others **Opp.parties**

Mr. R.N. Mishra, AGA for O.P. No.1

Mr. B.K. Dash, Advocate for O.P. Nos.2 and 3

CORAM:
JUSTICE M.S.SAHOO

ORDER
09.03.2022

Order No.

4. This matter is taken up through hybrid mode.

2. On 14.02.2022, the matter was heard at some length and the following order was passed :-

“Heard the learned counsel for the parties.

Learned counsel for the petitioners submits that the petitioners have retired from establishment of the Utkal University-opposite party nos.2 and 3 and are entitled for pension, as they have been regularized in their posts retrospectively with effect from 27.11.2004.

Mr. Dash, learned counsel for opposite party nos.2 and 3 submits that he has received instruction in the matter and a short adjournment may be given for filing counter affidavit.

List this matter on 09.03.2022 as prayed for. A copy of the counter affidavit that would be filed be served on the learned counsel for the petitioners.

3. The petitioners are aggrieved by the rejection of their claim for pension vide order dated 04.11.2019 (Annexure-4) issued by opposite party no.3-Registrar, Utkal University.

4. The reasons stated in the impugned order dated 04.11.2019 (Anexure-4), are quoted herein:

“1. Rule-3 (application) OCS (Pension and Commutation) Rule says (Pension rule shall apply to Government Servant appointed to Post and Services in connection with the affairs of the state which are born on pensionable Establishment but shall not apply to :

- a. Persons in Casual and daily rated employment.*
- b. Persons paid from contingencies.*
- c. Persons entitled to the benefit of CPF*
- d. Member of All India Services.*
- e. Persons Employed on Contract basis.*

2. They were not appointed in a pensionary Establishment with due recruitment procedure as prescribed in OURSP Rules, 1991.

3. Initially they were engaged by the Hostel Superintendent and paid Remuneration from the Hostel Contingency on daily wage basis. However after implementation of the scheme by the Court Order they were regularized retrospectively from 27.11.2004 and paid Pay Scale.

4. During 1990, when the OUFS came into force, as they were DLR Employees and paid from Hostels Contingencies, they had no eligibility to exercise option (GPF/CPF) as per statute 289.

Now therefore after careful consideration of the issue and above norms of the State Government it is found that the claim of the petitioner for consideration of sanction of Pensionary benefits under statute 290(4) of OUFS 1990 cannot be endorsed by the University, it is therefore rejected.”

5. It is submitted by the learned counsel for the petitioners that the order dated 04.11.2019 suffers from non-application of mind, inasmuch as the authorities have failed to take note of the office order no.34193 dated 16.11.2015 issued by the self-same authority (Annexure-1) by predecessors in same office, regularizing the services of the petitioners with effect from 27.11.2004 in the scale of pay 2550-55-2660-60-3200/- with D.P., D.A. and HRA etc as admissible to regular employees of the University.

It is submitted that the authorities have also failed to take note of the superannuation notice dated 25.01.2019 issued by the opposite party no.2 as at Annexure-2 as is done for regular employee.

6. It is submitted that even considering the period of regular service with effect from 27.11.2004 and the date of superannuation on attaining the age of 60 years on 07.01.2019 as notified by the authority, the period of service of the petitioners comes to 15 years enabling the petitioners concerned to be entitled for the pension in accordance with the Rules.

7. It is submitted that the observation of the authority that the petitioners "*were not appointed in a pensionary Establishment with due recruitment procedure as prescribed in OURSP Rules,1991*", is a complete misstatement as the matter stood settled by the decision of this Court in OJC No.4411 of 1997 and the subsequent orders passed by this Court and the authorities in obedience thereto have passed order as at Annexure-1.

8. The learned counsel for the opposite party nos.2 and 3 has obtained instruction (directed vide earlier order dated 14.02.2022) as to the implication of the earlier orders passed by the opposite party nos.2 and 3 as at Annexure-1 and the Annexure-2 series. It is submitted that the order as at Annexure-4 dated 04.11.2019, most likely, has not taken note of the earlier office orders issued by the self-same authority as at Annexures-1 and 2 series.

9. It is submitted that the persons were not appointed in a pensionary Establishment with due recruitment procedure as prescribed in OURSP Rules, 1991.

10. Such submission of the learned counsel for the opposite parties is liable to be rejected inasmuch, as the authorities themselves have issued order dated 16.11.2015 regularizing the services with effect from 27.11.2004 in the scale of pay of 2550-55-2660-60-3200/- with D.P., D.A. and HRA etc. as admissible to the regular employees of the University, in the posts of regular establishment of the University. Such approach of the authorities in passing the order dated 04.11.2019 contrary to their own earlier order dated 16.11.2015 (and similar orders) and the order dated 25.01.2019 (and similar orders) smacks of mala fide.

11. The non consideration of the earlier office order marked as Annexure-1, validly issued and signed by the Registrar of the University dated 16.11.2015 as per the order of the opposite party no.2-Vice Chancellor and also the subsequent order as at Annexure-2 issued by the Deputy Registrar as per the orders of the Vice Chancellor is at best inexplicable. The impugned order is based on

considerations not germane to the issue, the authorities having lost sight of their own earlier orders.

12. During course of hearing, it is submitted on behalf of the opposite party nos.2 and 3-University Authorities that given a chance, the authorities shall revisit the order dated 04.11.2019.

13. Learned counsel for the petitioners submits that she has no objection if the authorities are allowed to revisit the order dated 04.11.2019.

14. Having heard learned counsel for the parties, the order dated 04.11.2019 is set aside being contrary to the earlier orders passed by the University Authorities (opp.party nos.2 and 3) dated 16.11.2015 (and similar orders) and order dated 25.01.2019 (and similar orders).

15. It is observed that the petitioners shall make representation afresh for consideration of their individual cases for grant of pension, pursuant to their superannuation from the various establishments of the University by order dated 25.01.2019 issued by opposite party no.2 (Annexure-2) (and similar orders).

16. The authorities shall do well to consider the individual cases of the petitioners and pass appropriate order, as expeditiously as possible, preferably within a period of three months from the date of communication of the certified copy of this order along with all the relevant documents to be submitted by the petitioner.

17. The order that would be passed by the authorities shall be communicated to the petitioner within two weeks with proof of acknowledgement.

18. The writ petition is accordingly disposed of.

(M.S.Sahoo)
Judge

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