

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 7272 of 2017

State of Orissa and another

.....

Petitioners

Mr. S. N. Nayak, ASC

Vs.

Narottam Ragar and others

.....

Opposite Parties

Mr. A. Mishra, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

22.06.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S.N. Nayak, learned Additional Standing Counsel for the State-petitioners and Mr. A. Mishra, learned counsel for opposite party No.1.

3. The State functionaries being the petitioners have challenged the order dated 08.07.2016 passed by the State Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No. 2447 of 2015 and M.P. No. 736 of 2015, by which the tribunal directed that when no departmental proceeding or criminal proceeding was pending against the opposite party as on the date of his retirement or there was any legal impediment, the authorities are to settle the final pension and other retiral dues, including the DCRG, commuted value of pension in favour of the opposite party as per rule, within a period of two months from the date of receipt of copy of the order and pay statutory interest on the D.C.R.G amount as per rule 49 (5) of the OCS (Pension) rules, from the date of entitlement till actual date of payment.

4. Mr. S.N. Nayak, learned Additional Standing Counsel vehemently contended before this Court that opposite party no. 1 has been subjected to disciplinary proceeding. Therefore, the retirement benefit as claimed by him cannot be paid to him. Consequentially, the tribunal has committed gross error apparent on the face of the record by passing the

order directing to extend such benefit in favour of the opposite party no.1.

5. Mr. A. Mishra, learned counsel appearing for the opposite party no.1 contended that the tribunal is well justified by passing the order impugned dated 08.07.2016 by directing for extension of benefit in favour of the opposite party no.1, because by the time opposite party no.1 was made to retirement, neither any departmental proceeding nor criminal proceeding was pending against him. Therefore, he is entitled to get all the benefits as due and admissible to him, more particularly, when opposite party no.1 was retired on 30.04.2014 and the departmental proceeding was initiated against him on 09.03.2015 under Rule 15 & 17 of the OCS (CC&A) Rules, 1962, which is also not permissible. As such under misconception of fact and law, such proceeding was initiated against opposite party no.1 to cause harassment to him. Challenging such initiation of proceeding dated 09.03.2015, opposite party no.1 has already approached the tribunal by filing O.A. No. 341 of 2016, which has been transferred to this Court and renumbered as WPC (OA) No. 341 of 2016 and pending adjudication. In the said case, the tribunal had granted stay and by virtue of operation of stay, the opposite party no.1 is entitled to get the pensionary benefits as due and admissible to him, as by the time, he retired from service, no criminal or departmental proceeding was pending against him. To substantiate his contention, he relied upon the order passed by this Court dated 29.04.2022 in W.P.(C) No. 1738 of 2015 (*State of Orissa v. Sadananda Mishra and Ors*).

6. Having heard learned counsel for the parties and after going through the records, it appears that opposite party no.1 who was working as Assistant Horticulture Officer, retired from service on attaining the age of superannuation on 30.04.2014. By the time, he retired from service, neither any criminal case nor any departmental proceeding was pending against him. But a departmental proceeding was initiated on

09.03.2015 much after the retirement of opposite party no.1, under Rule 15 and 17 of the OCS (CC&A) Rules, 1962. As such, such initiation of proceeding itself is *void ab initio* and as such, the same is not maintainable because by that time he was no more in government employment. Therefore, opposite party no.1 challenged such initiation of departmental proceeding by filing O.A. No. 341 of 2016, which has been transferred to this Court after abolition of the tribunal and renumbered as WPC (OA) No. 341 of 2016, where the tribunal has granted the interim stay operation of the initiation of the proceeding on 09.03.2015 under Rule 15 & 17 of the OCS (CC&A) Rules, 1962. Thereby, if by the time opposite party no.1 has retired from service without visited with any criminal case or departmental proceeding, he is entitled to get the retiral dues as due and admissible to him in view of the ratio decided by this Court in ***State of Orissa v. Sadananda Mishra*** and others (W.P.(C) No. 1738 of 2015 disposed of on 29.04.2022), which has been passed referring to the judgment of the apex Court in ***Union of India v. K.V. Jankiraman***, AIR 1991 SC 2010. Thereby the tribunal having passed the order on 07.08.2016 to extend the retiral benefits to opposite party no.1, this Court finds no error in the said order so as to cause interference by this Court.

7. In view of the above, the writ petition merits no consideration and the same stands dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE