

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 3332 of 2018

Sridhar Dalai

.....

Petitioner

Mr. K. Swain, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. B.P. Tripathy, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

05.04.2022

Order No.

11.

This matter is taken up through hybrid mode.

2. Heard Mr. K. Swain, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Additional Government Advocate for the State opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 03.01.2018 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 2805 of 2013 under Annexure-8, by which the claim of the petitioner for bringing him to the fold of OCS (Pension) Rules, 1992 had been rejected.

4. Mr. K. Swain, learned counsel for the petitioner vehemently contended that the petitioner joined as Sub-Inspector of Police on 15.05.2005 and resigned from the said post on 15.10.2010 to join as Orissa Finance Service (I) (Junior Branch) on 18.10.2010. Now, after joining in Orissa Finance Service (I) (Junior Branch), he filed Original Application claiming that he should be brought into the fold of OCS (Pension) Rules, 1992, instead of being governed under new Pension Rules, 2005.

5. Mr. B.P. Tripathy, learned Additional Government Advocate contended that, it is the undisputed fact that the petitioner joined as S.I.

of Police on 15.05.2005 and resigned from the said post on 15.10.2010. Thereafter, he joined in Orissa Finance Service (I) (Junior Branch) on 18.10.2010. After joining in the Orissa Finance Service (I) (Junior Branch), he claimed that he should be brought into the fold of OCS (Pension) Rules, 1992 taking into consideration his past service rendered as S.I. of Police from 15.05.2005. But, that claim cannot be admissible to the petitioner, since by the time the petitioner joined as S.I. of Police, the new Pension Rules, 2005 had already come into force with effect from 01.01.2005. Thereby, the petitioner was well aware that he was joining under new Pension Rules, 2005 by the time he submitted the joining report as S.I. of Police on 15.05.2005. However, he resigned from the post from 15.10.2005 and subsequently joined in Orissa Finance Service (I) (Junior Branch) on 18.10.2010. Till 18.10.2010, he had never challenged the applicability of the new Pension Rules 2005 to his case, rather he kept silent. As per the Administrative Tribunal Act, if any cause of action had arisen for the petitioner, he could have approached the tribunal within a period of one year of such cause of action. In other words, if the petitioner had joined on 15.05.2005, the date of cause of action has to be counted from that date and as such one year period having been passed long back and the petitioner having not challenged the new Pension Rules, 2005, he cannot claim such benefit from 15.05.2005. Apart from the same, the original application was filed after he joined as Orissa Finance Service (I) (Junior Branch) on 18.10.2010, where he claimed the benefit of OCS (pension) Rules, 1992 instead of new Pension Rules, 2005. This Court has already settled the position with regard to the applicability of new Pension Rules, 2005 in the case of the employees, who have joined after 2005. Therefore, the tribunal is well justified by passing the order impugned, which does not warrant interference by this Court at this stage. Thereby the writ petition should be dismissed.

6. Having heard learned counsel for the parties and after going

through the records, it is admitted fact that the petitioner joined as S.I. of Police on 15.05.2005 and continued there till 15.10.2010. While serving as S.I. of Police, by getting due permission he appeared in the Odisha Civil Service Examination conducted by the OPSC and got selected. Thereafter, he joined in Orissa Finance Service (I) (Junior Branch) on 18.10.2010 vide Finance Department Notification No. 41850 dated 28.09.2010. The petitioner resigned from the former post of S.I. of Police and joined as OFS Officer on 18.10.2010. But he claims that taking into consideration his past service rendered as S.I. of Police with effect from 15.05.2005, he should be brought over to the old Pension Rules, 1992, instead of new Pension Rules, 2005. But fact remains that, when the petitioner joined on 15.05.2005 with eyes wide open that by that time the new Pension Rules, 2005 had come into force, he did not challenge such Rule at any point of time, rather he accepted the service condition as provided to him, subsequently, he cannot claim such benefit, when he joined as OFS-I (Junior Branch) on 18.10.2010, stating that his past service should be taken into account for bringing him to the fold of old Pension Rules, 1992. Much reliance has been placed by Mr. K. Swain, learned counsel for the petitioner to the judgment of this Court in the case of ***Shri Anand Das and others v. State of Orissa*** and others (W.P.(C) No. 15433 of 2012 decided on 24.04.2013). That case is factually different from that of the present one. In paragraph-16 of the judgment, it has been stated that the petitioners joined in their due assignments on 02.04.2005 by which date, the amended Rules were not existing. The said amended Rules, which were introduced by notifications dated 31.08.2007 and 17.09.2005, could not have been given retrospective effect by stating that they will come into operation from 01.01.2005, which is prior to the date, when the petitioners joined the new assignment. Needless to say that the post of Junior Stenographers in the establishment of Orissa High Court had been created and for that test was conducted on

11.12.2004 and 12.12.2004. the petitioners along with other candidates appeared in the recruitment examination and successful candidates in the said examination were called upon to appear in the computer test so as to find out their suitability for being selected for appointment as Junior Stenographs in the establishment of Orissa High Court. On 16.03.2005 on the basis of the marks secured, a final merit list was prepared following Rule 9 of the Orissa High Court (Appointment of Staff) Rules, 1963 and finally, Office Order was issued appointing 15 persons, which includes all the petitioners calling upon them to join in the new assignment on 02.04.2005. After such office orders, all the petitioners including Mr. Anand Dash joined in the establishment of Orissa High Court in regular scale of pay. On 17.09.2005, an amendment to Rule 3 of OCS (pension) Rules, 1992 was brought in by incorporating sub-rule (4) after sub-rule (3) of Rule 3. Notification dated 31.08.2007 was issued by the Government of Odisha amending General Provident Fund (Orissa) Rules, 1938 which was called as General Provident Fund (Orissa) Amendment Rules, 2007 by adding a proviso after the proviso to Rule 4. Therefore, amending the aforesaid Rule 3 of OCS (Pension) Rules, 1992 and subsequently adding another proviso to Rule 4 of the GPF (Orissa) Rules, 1938 rights, which have been accrued and vested with the petitioners under the old Rules, were taken away with effect from 01.01.2005. Thereby, this Court held that the right which has been accrued in favour of the petitioners, cannot be taken away subsequently.

7. Factually the present case is totally different from the case of ***Shri Anand Dash*** (supra) and as such the same is distinguishable. More so the petitioner, having resigned from the post of S.I. of Police on 15.10.2010 and joined as Orissa Finance Service (I) (Junior Branch) on 18.10.2010, the lien which was continuing in the earlier post had also been ceased by virtue of joining in the new post on 18.10.2010. Thereby, it is a fresh appointment and, as such, by that time the new

Pension Rules, 2005 had already come into existence. As such, on that basis, the petitioner cannot claim that he is entitled to get pensionary benefits in terms of OCS (Pension) Rules, 1992 and other benefits, as claimed in the original application itself. At best it can be said that the petitioner may be entitled to get the pay protection for the period he has rendered service under the government. If that benefit has already been extended to him, no other relief can be granted to the petitioner.

8. Thereby, this Court does not find any error apparent on the face of the order passed by the tribunal warranting interference by this Court. Consequentially, the writ petition merits no consideration and the same stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE