

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No. 6122 of 2021**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Dr. Krushna Chandra Jena *Petitioner*
.....
State of Odisha & Ors. *Opp. Parties*

-versus-

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Pitambar Acharya*
Sr. Advocate

-versus-

For Opp. Parties : *Mr. G.R. Mohapatra, ASC*
(for O.P. No.1)
Mr. Sanjeev Udgata, Adv.
(for O.Ps.2 & 3)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-02.08.2022

DATE OF JUDGMENT:-26.08.2022

Dr. S.K. Panigrahi, J.

1. The Petitioner through this writ petition seeks to challenge the rejection of his representation dated 15.09.2020 vide order No.3846/Est-III dated 19.11.2020 by the Opposite Party No.3/ Registrar, Sambalpur University, Sambalpur, without citing any proper and reasonable grounds and without going through the materials placed before it. The woes of

the Petitioner has been long and weary after his retirement from service.

I. Factual matrix of the case:

2. Shorn of unnecessary details, the factual matrix of the case in brief, is that the Petitioner on the basis of an open advertisement published by Sambalpur University and after facing a rigorous recruitment process conducted by the University he was selected for the post of Principal in which he served from 22.12.2004 to 11.05.2009. Subsequently, while continuing as such, again pursuant to another open advertisement published by the University for the post of Professor of Law and he was fulfilling the terms and conditions of the advertisement and other eligibility criteria as laid down in the said advertisement, he was selected to the said post in which he joined on 12.05.2009 and continued up to 30.06.2013 i.e. till the date of his superannuation. Therefore, the Petitioner has served for a total period of 8 years, 6 months and 9 days in Sambalpur University. Prior to joining in Sambalpur University, the Petitioner had served in affiliated law colleges under Utkal University and University Law College, Utkal University with effect from 05.07.1982 till 21.12.2004 i.e. for a total period of 22 years 5 months and 15 days.

3. Thereafter, the Petitioner was about to retire from the Sambalpur University he made early request to the Opposite Parties for grant of pension for the post retirement livelihood. However, the petitioner did not receive any response to his request. Subsequently, from 02.04.2013 to 17.07.2015 numerous correspondences done between the Petitioner and Opposite Parties wherein the Petitioner made further requests/representations to the Opposite Parties to sanction pensionary benefits as soon as possible. Further, he also requested to refer his case to the Chancellor giving detailed information for consideration of his case by the said authority. Frequent correspondences have also happened within the department of the Opposite Parties.
4. Thereafter, vide the Office Orders contained in letter no. 647 dated 23.06.2015 followed by letter No.UIV-09/2015/803/SG(HE) dated 05.08.2015 issued by the Special Secretary to the Chancellor, *inter alia*, rejected the representation of the Petitioner for sanction and payment of pension in his favour on the ground that the same is not permissible in terms of Clause 260(c) of Orissa Universities First Statutes, 1990. Moreover, the Registrar, Sambalpur University vide its letter dated 27.05.2014 addressed to the Addl. Secretary to the Chancellor asserted that the past service rendered by the Petitioner in unaided but affiliated

law colleges does not appear to be admissible as qualifying service under clause 260 of Statutes 1990 and Rule 32 of OCS Pension Rule, 1992. The cumulative service rendered by him in Utkal University and in Sambalpur University which does not exceed 10 years as contemplated under OCS(Pension) Rules and Clause 260 of Statutes 1990 for which the Petitioner cannot be entitled to pension.

5. Subsequently, the Petitioner being aggrieved by the arbitrary actions of the Opposite Parties vide letters dated 23.06.2015, 05.08.2015 and order dated 27.05.2014, he approached this Court in WP(C) No.19656 of 2015 in the matter of *Dr. Krushna Chandra Jena vs. State of Orissa and Ors*¹. This Court after hearing arguments from both the sides and perusing the documents placed on record, rendered a judgment on 14.10.2019 wherein it was observed that there was a requirement of reconsideration of the case of the Petitioner for pension by the competent authority as the Petitioner at the time of consideration of his case by the competent authority could not furnish proper details of the service and hence the Petitioner was directed to make a fresh representation before the Vice-Chancellor, Sambalpur University. In accordance with the order dated 14.10.2019 passed by this Court, the Petitioner immediately made a

¹ WP(C) 19656 of 2015.

representation before the Opposite Party No.2 on 23.10.2019 along with all supporting documents to consider his case for grant of pension from the date of his retirement from Sambalpur University. Thereafter, vide letter No.275/Estt-III dated 17.01.2020, the Registrar informed the Petitioner that Opposite Party No. 2 has heard the Petitioner's grievance on 16.01.2020 for grant of pensionary benefits and the same was under process as per Rule.

6. In accordance with the letter No.3108/Est-III dated 09.09.2020 issued by the Registrar, Sambalpur University, finally, the hearing took place on 15.09.2020, wherein the Petitioner placed his contentions and grievance before the Vice-Chancellor in presence of the Deputy Registrar. The Petitioner vide his representation submitted that his total period of service was 14 years 10 months and 2 days which included services rendered by him in Utkal University both as part time and whole-time lecturer for a period of 6 years, 3 months and 21 days and the services rendered by him in Sambalpur University for 8 years, 6 months and 11 days. The Petitioner further submitted a set of documents supporting his case for grant of pensionary benefits in his favour. The impugned order is based on the resolution of the syndicate dated 19.09.2020 vide item no 102. The impugned resolution states as follows:

“102. To consider the representation of Dr. Krushna Chandra Jena, Retd. Professor of Law submitted during his personal hearing before the Vice Chancellor on 15.09.2020.

RESOLVED as those are not full-time regular services, the representation is rejected.”

Being aggrieved of the same, the Petitioner has filed this Writ Petition.

II. Submissions advanced by the Petitioners:

7. Mr. Pitambar Acharya, learned Sr. Counsel appearing for the petitioner has submitted that the total period of service of the Petitioner is 22 years, 5 months, and 15 days. For the purpose of pension, the minimum requirement is 10 years of service, as per Rule 47 of the Orissa Civil Services (Pension) Rules, 1992. If the period of service in Utkal University and Sambalpur University is taken for consideration, the Petitioner has completed a total tenure of 14 years, 10 months and 2 days (6 years, 3 months and 21 days at Utkal University, and 8 years, 6 months and 11 days in Sambalpur University).
- (i) Learned Senior Counsel while citing the matter of *Dr. Krushna Chandra Jena vs. State of Orissa and Ors.* (supra) adjudicated by this Court, submitted that:

“9. For the Petitioner here retiring on attaining his normal age of superannuation on 30.06.2013, case of the petitioner undoubtedly comes under the above statute and also the amended rules. In the

circumstance, the period noted above, when the petitioner worked in the university law college, a constituent college of Utkal University cannot be ignored for the purpose of counting of period for pension.

10. Considering the rival contention of the parties and looking to the representation appended to the writ petition through several annexures and the facts narrated hereinabove, the Court finds the Petitioner though all through claimed that he had a long service under different law colleges at Bhubaneswar affiliated by Utkal University covering the period 18.01.1991 (AN) to 30.08.2004 (FN) but from the whole of the representation, involving the writ petition and the facts borne through the additional affidavit, this court nowhere finds the petitioner ever disclosing his continuance in 2 spells over 6 years in the constituent colleges of Utkal University except, as appears, petitioner for the first time is bringing out such fact through the document appended to the additional affidavit filed on 16.09.2019 during the pendency of the writ petition.

11. For the above disclosure, it appears that the aspect of petitioner's continuance in 2 spells in the constituent colleges of Utkal University is solitary material fact for consideration of case of the petitioner for his entitlement for pension. Be that as it may, for the disclosure of the above period of working in Indian University and for the provision at Statute 1990 clearly covering such cases for pension further if this period is taken into account along with period of service of the petitioner in Sambalpur University for

over 8 years, it appears, petitioner has qualified service of more than 10 years, thereby becomes entitled to pension. For the production of material to satisfy the above aspect at this stage this court observes, such aspect of this matter cannot be ignored while considering the case of the petitioner in the matter of pension. This Court here observes in the event that such material was available with the competent authority, then the impugned orders must go and petitioner be paid pension taking into account his working in the constituent law college in the Utkal University and the period spent in Sambalpur University, But, however, in the event petitioner's working for more than 6 years in the constituent college of Utkal University was not available for consideration, this court finds there is requirement of reconsideration of case of the petitioner for pension by the competent authority. For not providing such information previous to filing of the additional affidavit on 16.09.2019, this court keeping the orders at Annexure 1. 2 and 15 on hold for a period of three months, directs the petitioner to make fresh representation to the Vice Chancellor, Sambalpur University-Opposite Party No. 2 giving details of his period of service including that of his service in the constituent college of Utkal University along with supporting materials within a period of 2 weeks. In such event, the Vice Chancellor, Sambalpur University shall do well in reconsidering the question of entitlement of pension of the petitioner by giving opportunity of satisfaction and hearing to the

Petitioner and taking decision, as appropriate, within a period of two months thereafter."

- (ii) Proprio vigore, he further contended that though the Petitioner has served a considerable length of service in different Law Colleges of the State and fulfills the terms and conditions as prescribed by the OCS (Pension) Rules, 1992 to be considered for sanction and payment of pension as per the judgment dated 14.10.2019 rendered by this Court and is otherwise eligible to be covered under the said Pension Rules, yet the opposite parties ignoring the periods served by the Petitioner in different Law Colleges and in violation of the norms of the Statutes, 1990 have effectively knocked out the claim of the Petitioner. Moreover, the Supreme Court in catena of judgments has taken the past period of services rendered by an employee and has directed for sanction and payment of pension as per law in order to enable the employee for survival of the rest of his life. However, the opposite parties ignoring the said vital aspect have illegally rejected the lawful claim of the Petitioner thereby jeopardizing his valuable fundamental rights as enshrined in Article 14 of the Constitution of India. Therefore, the action of the opposite parties in rejecting the claim of the Petitioner has to be treated as bad, improper, illegal, unsustainable and unsupportable in the eye of law and the opposite parties may be directed to sanction and

pay the permissible pension to the Petitioner as per the OCS (Pension) Rules, 1992.

III. Submissions made by the Opposite Parties 2 & 3

8. Mr Sanjeev Udgata, learned counsel for the Opposite Party Nos. 2 and 3, has submitted that as admitted by the petitioner, his appointment as Principal (Reader Rank) in LR Law College, Sambalpur and Professor in PG Department, Sambalpur University was made pursuant to an open advertisement and selection and in all his posting, save and except, as Professor, in Sambalpur University he was appointed on a consolidated pay. Moreover, the appointment of petitioner in the unaided and affiliated college of University and as part time lecturer/lecturer in University Law College, Utkal University has not been made against any sanctioned post pursuant to any advertisement and process of selection following the mandate of Article 14 and 16 of the Constitution. If the wheel is rewinded, it reveals that the services of petitioner as lecturer in University Law College, Utkal University, Vani Vihar was contractual on a consolidated salary of Rs.10,000/-. Similarly, the appointment of the petitioner as Principal L.R. Law College, Sambalpur was also on a consolidated salary of Rs.15000/- as reflected in the letter of appointment.

- (i) He further submitted that the petitioner does not possess the qualifying service of ten years inasmuch as his whole time was not retained in public service, he was appointed temporarily on monthly consolidated wages basis for a limited time in non-pensionable, non-aided establishment, with break in service and neither his former employer nor was he paid by the University, the amount equivalent to pension and gratuity payable for the period of service rendered under such employer, hence he is not entitled to any pension from the university as per the relevant provision of the Odisha Civil Services (Pension) Rules, 1992 and Odisha Universities First Statutes, 1990.
- (ii) He further contended that the said appointment of the petitioner not being a fulltime regular service employee and not in consonance with the provision of OCS (Pension) Rules, 1992 Odisha University Statutes, Government of Odisha Notification, on due consideration of representation of petitioner in deference to the order passed by this Court, the representation of petitioner was placed before the Syndicate of the University by the then Vice Chancellor of the University which was rejected vide Syndicate Resolution dated 19.09.2020.

IV. Court's Reasoning and Analysis:

9. Before delving into the issue of concerned tenure of the petitioner which shall serve as qualifying service, it is pertinent to peruse the necessary provisions involved in the current matter. It is worthwhile to refer to Clause-260 of Orissa University First Statute, 1990.

"Clause 260 of the Orissa University First Statute 1990

260. Counting of past service

"The period of qualifying service rendered by an employee under any of the following institutions shall count for the purpose of gratuity and pension:

(a) State Government (b) Any Indian University (c) Any College affiliated to any University of the State and aided by the State Government (d) Board of Secondary Education, Orissa (e) Council of Higher Secondary Education, Orissa; (f) Any recognized institution of higher education and/or research aided by the State/Central Government....

Rule 47 of Orissa Civil Service (Pension) Rules, 1992

47(5)(i) *"In the case of a Government Servant retiring in accordance with the provisions of these rules before completion of the minimum qualifying service of ten years shall not be entitled for pension, but he shall be entitled to service gratuity to be paid at a uniform rate of half month's emoluments for every completed six monthly period of service."*
(Substituted vide Finance Department Notification No.24142/F., dtd.04.09.2015)

Rule 6(1) of the Odisha Aided Educational Institutions Employees Retirement Benefit Rules, 1981 (Inserted by Notification of Dept. of Higher Education dated 26th November, 2016)

6(1) "In computing the length of qualifying service of an employee retiring on or after the 1 day of April, 1982 from an aided educational institution, all previous services rendered both in any one or more than one aided educational institution(s) as well as in Government establishment, except those rendered prior to his attaining the age of 18 years, whether temporary, officiating or permanent, shall, subject to the conditions specified in sub-rules (2), (3), (4), and (5), be taken into account for the purpose of retirement benefits under these rules."

10. One fact which is not in dispute and both the parties have concurred that the petitioner has served 8 years, 6 months and 11 days in Sambalpur University and this tenure shall be considered as qualifying service which is short of one year and four months. Therefore, the issue at hand is with regards to the petitioner's service at University Law College, Bhubaneswar where he served for more than 6 years. Learned Counsel for the petitioner while contending for the summation of the period of his tenure in University Law College, Bhubaneswar while evaluating the qualifying service for his pension has relied on the case of ***Dr. Krushna Chandra Jena vs. State of Orissa and Ors.*** (supra) wherein it was held that:

“10. Considering the rival contention of the parties and looking to the representation appended to the writ petition through several annexures and the facts narrated hereinabove, the Court finds the Petitioner though all through claimed that he had a long service under different law colleges at Bhubaneswar affiliated by Utkal University covering the period 18.01.1991 (AN) to 30.08.2004 (FN) but from the whole of the representation, involving the writ petition and the facts borne through the additional affidavit, this court nowhere finds the petitioner ever disclosing his continuance in 2 spells over 6 years in the constituent colleges of Utkal University except, as appears, petitioner for the first time is bringing out such fact through the document appended to the additional affidavit filed on 16.09.2019 during the pendency of the writ petition.

11. For the above disclosure, it appears that the aspect of petitioner's continuance in 2 spells in the constituent colleges of Utkal University is solitary material fact for consideration of case of the petitioner for his entitlement for pension. Be that as it may, for the disclosure of the above period of working in Indian University and for the provision at Statute 1990 clearly covering such cases for pension further if this period is taken into account along with period of service of the petitioner in Sambalpur University for over 8 years, it appears, petitioner has qualified service of more than 10 years, thereby becomes entitled to pension. For the production of material to satisfy the above aspect at this stage this court observes, such aspect of this matter cannot be ignored while considering the case of the petitioner in the matter of pension. This Court

here observes in the event that such material was available with the competent authority, then the impugned orders must go and petitioner be paid pension taking into account his working in the constituent law college in the Utkal University and the period spent in Sambalpur University, But, however, in the event petitioner's working for more than 6 years in the constituent college of Utkal University was not available for consideration, this court finds there is requirement of reconsideration of case of the petitioner for pension by the competent authority. For not providing such information previous to filing of the additional affidavit on 16.09.2019, this court keeping the orders at Annexure 1, 2 and 15 on hold for a period of three months, directs the petitioner to make fresh representation to the Vice Chancellor, Sambalpur University-Opposite Party No. 2 giving details of his period of service including that of his service in the constituent college of Utkal University along with supporting materials within a period of 2 weeks. In such event, the Vice Chancellor, Sambalpur University shall do well in reconsidering the question of entitlement of pension of the petitioner by giving opportunity of satisfaction and hearing to the Petitioner and taking decision, as appropriate, within a period of two months thereafter."

11. From the above-mentioned paragraphs, it is clear that in **Dr. Krushna Chandra Jena** (supra), the petitioner had not disclosed his continuance in 2 spells over 6 years in the constituent colleges of Utkal University i.e. University Law College and he brought it out for the first time through the

document appended to the additional affidavit filed on 16.09.2019 during the pendency of the writ petition. Subsequently, this Court directed the petitioner to make fresh representation to the Vice-Chancellor, Sambalpur University-Opposite Party No. 2 giving details of his period of service including that of his service in the constituent college of Utkal University along with supporting materials. Opposite party No.2 has clarified that the appointment of petitioner in the **unaided** and affiliated college of University and as part time lecturer/lecturer in University Law College, Utkal University has not been made against any sanctioned post pursuant to any advertisement and selection following the mandate of Article 14 and 16 of the Constitution. Therefore, the inclusion of the petitioner's tenure in the University Law College for his qualifying service for pension shall be a violation of Clause 260 of the Orissa University First Statute 1990.

12. It is a settled position of law that an individual cannot claim the benefit of pension without completing the minimum qualifying service of 10 years which has been succinctly enunciated in the case of *P. Bandopadhyaya v. Union of India*², the Supreme Court has held that an individual cannot claim the benefit of pension without completing the

² 2019 (I) ILR - CUT- 641 (SC).

minimum qualifying service of 10 years (in accordance to the rules of the concerned state). The relevant paragraphs are as follows:

“8.2. It is the admitted position that the Appellants had not completed 10 years of service on the date of their absorption into VSNL, i.e. when they were deemed to have retired from the service of the Central Government. To receive pensionary benefits from the Government, a Government servant is required to put in a minimum ‘qualifying service’ as defined by Rule 3(q) of the CCS (Pension) Rules, 1972. According to Rule 3(q), ‘qualifying service’ means the service rendered while on duty or otherwise which shall be taken into account for the purpose of Pensions and Gratuities admissible under the CCS (Pension) Rules, 1972.

8.3. A conjoint reading of the statutory rules, i.e. Rule 37 with Rule 49 of the CCS (Pension) Rules, 1972, would make it abundantly clear that the Appellants were not entitled to pensionary benefits since admittedly they did not have the minimum qualifying service of 10 years, to make their service pensionable with the Central Government.”

13. When the question arises as to how certain provisions of the Pension Rules are to be understood, it would be appropriate to read the provision in its context which would mean reading the statute as a whole. The pension rules cannot be overlooked while taking a sympathetic approach towards

the claimant. In the case of *the State of Odisha vs Manju Naik*³, the Supreme Court iterated that:

“20. An employee becomes entitled to pension by stint of his long service for the employer and, therefore, it should be seen as a reward for toiling hard and long for the employer. The Pension Rules provide for a qualifying service of 10 years for such entitlement. When the question arises as to how certain provisions of the Pension Rules are to be understood, it would be appropriate to read the provision in its context which would mean reading the statute as a whole. In other words, a particular provision of the statute should be construed with reference to other provisions of the same statute so as to construe the enactment as a whole. It would also be necessary to avoid an interpretation which will involve conflict with two provisions of the same statute and effort should be made for harmonious construction. In other words, the provision of a Rule cannot be used to defeat another Rule unless it is impossible to effect reconciliation between them. Pension as already stated is earned by stint of continuity and longevity of service and minimum qualifying service should therefore be understood as the requirement for invalid pension as well. The Pension Rules can be harmoniously construed in this manner and in that event, there shall be no clash between different provisions in the said Rules.

21. The condition of qualifying service prescribed in the Pension Rules must be satisfied to become eligible for invalid pension and the arguments made to the contrary that invalid pension can be claimed under Rule 39 without satisfying the stipulated qualifying service mentioned in the same Rules, do not appeal to

³ 2020 (I) ILR - CUT-225 (SC)

us. The respondent's husband who had served for lesser years than the 10 years qualifying service, was found entitled by his employers to service gratuity only, because of his premature retirement on the ground of mental incapacitation and this is what is prescribed by the Pension Rules. The dues toward service gratuity was paid accordingly. The Pension Rules definitely envisaged that there could be a situation where an employee may not be eligible for pension benefits for not satisfying the prescribed qualifying service of 10 years. For those with less than 10 years' service, the Pension Rules provide for gratuity payment and therefore, it is difficult for us to conclude that for invalid pension, qualifying years of service, can be ignored."

14. In fact, it is a well settled position of law that the rule applicable in matters of determination of pension is that which exists at the time of retirement. In the case of *G. Sadasivan Nair v. Cochin University of Science & Technology*⁴, the Supreme Court observed that:

"11.1. The High Court relied on the decision of this Court in *Deokinandan Prasad v. State of Bihar*⁵, wherein it was held that the rule applicable in matters of determination of pension is that which is existing at the time of retirement. Similarly, in *State of A.P. v. Syed Yousuddin Ahmed*⁶, it was held that the emoluments forming a part of the pension payable to an employee shall be determined on the basis of the rule existing as on the date of retirement.

⁴ (2022) 4 SCC 404.

⁵ (1971) 2 SCC 330.

⁶ (1997) 7 SCC 24.

32. While we accept the settled position of law that the rule applicable in matters of determination of pension is that which exists at the time of retirement, we are unable to find any legal basis in the action of the respondent University of selectively allowing the benefit of Rule 25(a). The law, as recognized by this Court in **Deokinandan Prasad** (supra) and **Syed Yousuddin Ahmed** (supra) states that the pension payable to an employee on retirement shall be determined on the rules existing at the time of retirement. However, the law does not allow the employer to apply the rules differently in relation to persons who are similarly situated."

V. Conclusion:

15. In light of the above-mentioned facts and guided by the precedents cited hereinabove, this Court is not inclined to allow the petition of the Petitioner. The order No.3846/Est-III dated 19.11.2020 passed by the Opposite Party No.3/Registrar, Sambalpur University, Sambalpur rejecting the representation dated 15.09.2020 of the Petitioner is not to be interfered with.
16. This Writ Petition is dismissed. No order as to costs.

(Dr. S.K. Panigrahi)
Judge