

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 22984 of 2017

State of Odisha and others

.....

Petitioners

Mr. J. Patnaik, GA.

Vs.

Kalandi Charan Barik

.....

Opposite party

Mr. R.K. Bisoi, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

26.04.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. J.Patnaik, learned Government Advocate for the State-petitioners and Mr. R.K. Bisoi, learned counsel appearing for the opposite party.

3. The State-petitioners have filed this writ petition seeking to quash the order dated 20.07.2017 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 467 of 2016, by which the tribunal observed that since the opposite party has completed five years six months as work charged employee, he is entitled for gratuity as per Rule-15 of work.

4. Mr. J. Patnaik, learned Additional Government Advocate contended that the opposite party was brought to the work charged establishment with effect from 01.03.2009 and retired from service with effect from 31.08.2014. Therefore, he has rendered five years and six months as work charged employee and, as such, he is not entitled to gratuity as per Rule-15 of work. It is further contended that notification dated 19.01.2015 has been issued by the Government of Odisha in General Administration Department, wherein the amendment is made to the 'Odisha Work-charged

Employees (Appointment and Conditions of Service) Instruction, 1974, to the extent that in the “Odisha Work-charged Employees (Appointment and Conditions of Service) Instruction, 1974, for the figure “10” appearing in instruction 15 and the second proviso there under, the figure “5” shall be substituted. He further contended that the notification dated 19.01.2015 issued by the General Administration Department, has not been brought to the notice of the tribunal and thereby, such an error has been crept in the order of the tribunal, which requires interference by this Court.

5. Mr. R.K. Bisoi, learned counsel for the opposite party contended that since the opposite party has already worked for more than 5 years and 6 months as work charged employee, he is entitled to get the gratuity and, as such, the tribunal is well justified by passing the order impugned, which does not require interference by this Court, at this stage.

6. Having heard learned counsel for the parties and after going through the record, it appears that to regulate the service conditions of work charged employees, “Odisha Work-charged Employees (Appointment and Conditions of Service) Instruction, 1974, came into existence. Instruction-15 thereof, prescribes that a work charged employee who retire completing 10 years under the work charged establishment would be eligible for gratuity. However, such “10” year stipulation has been amended and reduced to “5” years by General Administration Department notification dated 19.01.2015. The opposite party had retired from service with effect from 31.08.2014, i.e. much prior to the amendment made by reducing the eligibility criteria to “5” years in place of “10” years. Neither the counsel appearing for the State nor the counsel appearing for opposite party had brought to the notice of the tribunal about the

notification dated 19.01.2015. As a consequence thereof, the tribunal has committed error by passing the order impugned

7. As the opposite party had retired from service on attaining the age of superannuation on 31.08.2014, the notification dated 19.01.2015, having the stipulation of completion of “5” years, cannot have any application to the case of the opposite party, rather, the opposite party’s case is covered under the pre-amended Instruction-15 of the Odisha Work-charged Employees (Appointment and Conditions of Service) Instruction, 1974, i.e. completion of “10” years. As such, the opposite party is not entitled to get the benefit of gratuity as directed by the tribunal.

8. In view of the above, since the tribunal has committed an error in the impugned order dated 20.07.2017 passed in O.A. No. 467 of 2016, the same is liable to be quashed and hereby quashed.

9. The writ petition is accordingly allowed. No order as to costs.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/Bichi