

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 8548 of 2012

Tankamani Rana

.....

Petitioner

*Mr. P.K. Pattanayak,
Advocate*

Vs.

State of Orissa & Others

.....

Opposite parties

Mr. S.N. Nayak, A.G.A.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

22.03.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. None appears for the petitioner at the time of call.
3. Heard Mr. S.N. Nayak, learned Additional Standing Counsel for the State.
4. The petitioner has filed this writ petition challenging the order dated 01.07.2009 passed in O.A. No.1611 of 2002, by which the State Administrative Tribunal, Bhubaneswar, dismissed the said O.A. holding that the period from 16.11.1976 to 30.04.1999 cannot be treated as period on leave to be counted for pension in view of the specified ambit of Rule 23 of the OCS (Pension) Rules, 1992, and that since the petitioner had never resumed duty after service of notice of resignation till the date of his retirement, there is also no scope for condonation of interruption in service as provided under Rule 36 of OCS (Pension) Rules, which is subject to discretion of the competent authority, and further by tendering resignation from service the petitioner has forfeited

his past service in terms of Rule 34 of OCS (Pension) Rules, 1992.

5. On perusal of the records, it appears that the petitioner was a Surveyor in the establishment of Asst. Soil Conservation Officer, Nuapada and he claims to have joined as a Surveyor on 28.11.1961. He remained on leave on medical ground with effect from 16.03.1976 and submitted his resignation on 15.11.1976. Thereafter, he has not made any communication or intimation to the concerned authority about acceptance or refusal of his letter of resignation till 21.11.2001. He contended that since his resignation was not accepted, he should be deemed to have continued in service till his normal date of retirement on 30.04.1999. Therefore, he claimed for superannuation pension under OCS (Pension) Rules, 1992 and also fixation of his pay as per ORSP Rules from time to time. Therefore, he approached the Tribunal by filing O.A. No.1611 of 2002 and the tribunal after hearing both the sides, came to a definite conclusion that since the petitioner remained unauthorized absent and tendered his resignation, the competent authority could have either accepted his notice of resignation in time or could have instituted a disciplinary proceeding for the said absence leading to his possible removal from service under Rule 72(2) of the Orissa Service Code. The tribunal held that the absence period from 16.11.1976 to 30.04.1999 cannot be treated as period of leave to be counted for pension, in view of the specific provisions contained in Rule 23 of the OCS (Pension) Rules, 1992, and since the petitioner had never resumed his duty after service of notice of resignation till the

date of his retirement, there is no provision to condone the interrupt period as provided under Rule 36 of the OCS (Pension) Rules, which is subject to the discretion of the competent authority and, as such, the competent authority has not taken any such decision to condone such absence period. Therefore, by tendering resignation from service, the petitioner has forfeited his past service in terms of the Rule 34 of OCS (Pension) Rules, 1992.

6. Therefore, the tribunal has not committed any error in passing the order impugned dated 01.07.2009 in O.A. No.1611 of 2002 so as to cause interference of this Court. Accordingly, the writ petition merits no consideration and the same is dismissed.

