IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8670 of 2022

Prasanna Kumar Sahoo* …. *Petitioner

Mr. S.K. Das, Adv.
On behalf of Mr. N. Nayak, Adv.

-versus-

State of Odisha & Ors.* …. *Opposite Parties

Mr. Biplab Mohanty, SC
(for S and ME Deptt.).

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER
23.12.2022

Order No.
08.

1. This matter is taken up through hybrid mode.

2. The Petitioner through the aforementioned Writ Petition has challenged the action of the opposite parties in not sanctioning the pension in his favour when he has rendered more than 25 years of service in different schools.

I. FACTUAL MATRIX OF THE CASE:

3. Shorn of unnecessary details, the factual matrix of the case in brief is that the petitioner was initially appointed as a Non formal education Supervisor and he continued in the

said post for a period of 4 years and while working as non formal education supervisor selected to be appointed as Primary School Teacher. The District Inspector of School, Athagarh pursuant to the order No. 229 dated 07.01.1989 issued the appointment letter vide letter No. 264 dated 16.01.1989 in the scale of pay of Rs.840-16-856-18-928 EB-20-1008-EB-22-1140-25-1240/- with admissible DA and DP.

4. Pursuant to the said appointment order dated 16.1.1989, the petitioner joined on 18.1.1989 as Asst. Teacher in Brahmanabasta UGME School and pursuant to the appointment of the present petitioner as a regular primary school teacher, service book was opened in his favour he continued in the said post for more than 25 years.

5. The petitioner in the year 1999 was transferred to Bishnupur UGME School and continued for a substantial period of time in that school and the said fact can well ascertained from the service book of the petitioner which reveals that the DI of School issued the transferred order vide order No- 1705 dated 14.6.1999. Thereafter, the present petitioner was transferred to different schools including Bishnupur, Panchagaon and Godarabanda Primary School and his last place of posting was Gobara Nodal UP School which comes under the purview of Block

Education Officer, Athagarh and he continued in the said school till the date of superannuation.

6. Unfortunately, the petitioner while continuing as Primary School Teacher and in the end of his service career suffered from mental illness and underwent treatment through different doctors and after 2013 he was not in a position to attend the schools and to take the classes. The District Medical Board issued the disability certificate wherein it has been clearly mentioned that petitioner is suffering from mental illness and it has been also categorically stated that the delinquent employee is suffering from 77% of disability. However, after superannuation has not received any kind of pensionary or gratuity benefits. On being aggrieved, the petitioner has filed this writ petition.

II. PETITIONERS' SUBMISSIONS:

7. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of their contentions:

8. As per the Orissa Pension Rules, 1992 sub Rule-47 (2)(a) clearly says that "in the case of a Govt. servant retiring in accordance with the provisions of these rules after completing qualifying service of 25 years shall be entitled for pension a 50% of the last emoluments drawn by him from the date of his retirement" and clause-b says that "in

case of a Govt. servant retiring before completion of 25 years of qualifying service but after completion of 10 years of service the amount of pension shall be proportionate to the amount of pension admissible under Clause-(a) of sub-Rule(2) and in no case the amount of pension shall be less than the minimum amount of pension of Rs. 3500/- or as shall be fixed by the Govt. from time to time and maximum up to 50% of highest pay and grade pay admissible to the Government employee.

9. The petitioner who suffered mental illness and already has put forth more than 25 years of service is entitled to pension, GPF, Gratuity and other retiral benefits but it is the misfortune of the present petitioner that till date neither he has received any single pie towards his final pension nor he has received the provisional pension more particularly when the statute provides that if an employee who has rendered more than 25 years of service is entitled for pension a 50% of the last emoluments drawn by him on the date of his retirement.

10. In the present case in hand, due to mental illness of the petitioner he has not taken any steps for voluntary retirement nor the Department has taken any steps to put an end in the service of the employee due to his disability or incapacity to discharge his duty.

11. The Hon'ble Apex Court in catena of decisions has time and again categorically held that pension is a right and the payment of it does not depend upon the discretion of the Govt. but is governed by the Rules and a Govt. servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any ones discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules.

III. SUBMISSIONS BY OPPOSITE PARTY NO.4:

12. Per *contra*, learned counsel for the Opp. party intently made the following submissions:

13. The petitioner was joined as Primary School teacher in Brahmanabasta UGME School on 18.01.1989 and subsequently transferred to Bishnupur UGME School vide order No. 3966 dated 20.07.1991 of District Inspector of Schools, Athagarh and joined in the school on 31.07.1991. Then he was transferred to Panchagaon UGME School vide order No. 2173 dated 14.07.1997 of the District Inspector of Schools, Athagarh and joined in Panchagaon UGME School on 30.08.1997 afternoon. On 17.06.1999 he

was again transferred to Bishnupur UGME School vide order No-1705 dated 14.06.1999 which was modified later on to join at Chasanara Primary School vide order No-1841 dated 25.06.1999 of the District Inspector of Schools, Athagarh and joined at Chasanara Primary School 8.06.1999. Further he was transferred to Paikinara UGME School vide order No-440 dated 24.02.2005 of District Inspector of Schools, Athagarh and joined at Paikanara UGME School and remained on leave.

14. On the last occasion he was transferred to Gobara Nodal UP School and joined on 16.10.2006 and performed his duties till 31.03.2007. After 30.03.2007 he remained absent from school and never attended his duties and nor reported before the then District Inspector of Schools, Athagarh at any point of time. It is revealed from the Service Book that his Service verified from 01.03.2005 to 31.03.2007 by the District Inspector of Schools, Athagarh.

15. He has submitted that from 01.04.2007 the petitioner remained absent from duty till 02.05.2007 and from 01.10.2007 to 01.08.2008. Further he joined the school on 02.08.2008 and continued his duty till 30.09.2008 and remained absent unauthorizedly without any information. Since as per service book his date of birth is 25.05.1960 and his date of superannuation was due on 31.05.2020. During

the span of 12 years of gap in service i.e. from 30.09.2008 till 31.05.2020, the petitioner neither attended the school nor reported to the then District Inspector of Schools, Athagarh at any point of time,

16. After taking into consideration the date of joining of the petitioner in service i.e. 18.01.1989 and his last service verification up to 31.03.2007 by the then District Inspector of Schools, Athagarh and the gross duty period of the petitioner comes to 18 years 02 months and thirteen days. Taking into consideration the date of birth of the petitioner i.e. 25.05.1960 and date of superannuation i.e. 31.05.2020 and he was absent unauthorizedly in his service without any information to the authorities from 31.03.2007 to 31.05.2020 which is 13 years 2 months for which he has neither performed his duty anywhere nor paid any salary. As per the Orissa service code if any employee remained absent beyond five years unauthorizedly it shall be presumed that he has abandoned the service. Further it has been held by the Supreme Court that long absence in service is remaining absent for a longer period for duty is a misconduct, it may amount to voluntary abandonment of service. Hence, he has voluntary abandoned his service w.e.f. 31.03.2007 for which he is not eligible for any retrial

benefits either as per TBA Rules, 1960 or OCS (CA Rules, 1992).

17. The Triple Benefit Scheme Rule, 1966 (TBS Rules, 1966) for the Non-Government Primary School Teachers was introduced with effect from 01.04.1964 prior to that there was no pension scheme for the Non-Government Primary Teachers. As per the TBS Rule the Non-Government Primary School teachers who retired prior to 31.03.1982 are governed under the said scheme, as such this scheme is not entitled in the present case of the petitioner. It is needless to mention here that even otherwise if the petitioner would have taken VRS instead of long unauthorised absence/ abandonment of his service, he could not have also sanctioned with the pension, because there was no provision for granting voluntary retirement to intended teachers who rendered less than 30 years of service. In the instant case the petitioner has only served for a period from 18.01.1989 to 31.03.2007 i.e. 18 Years 2 Months and abandoned his service, for which he is not eligible for any pensionary benefits.

18. He has submitted that the petitioner voluntarily abandoned his service with effect from 31.03.2007 due to the reason that 31.03.2007 he has neither his duty nor reported the then District Inspector of Schools, Athagarh

nor even made any representation/ communication to the authorities, at any point of time, but at a belated stage all on a sudden in the year 2022, he filed the aforesaid writ petition submitting a permanent disability certificate issued on 19.10.2013 with 77% of Mental illness for sanction of pension and other retiral benefits.

19. The Opposite Party has argued that be as it may, since the due date of superannuation of the petitioner was on 31.05.2020, if the petitioner or family of the petitioner could have managed to issue permanent disability on 19.10.2013 with 77% mental illness by the District Medical Board of Cuttack District, he/ they would have applied for voluntary retirement on incapacitation/ medical ground, which could have accepted by the authorities of the Government and would have sanctioned with pension on incapacitation ground as per Rule-39 of the Odisha Civil Services (Pension) Rules, 1992.

IV. Conclusion:

20. As such, the impugned advertisement is legal, fair and in consonance with the NCTE Regulations 2014. The Opposite Parties have not committed any illegality, nor have they promulgated the impugned advertisement in a manner which renders it discriminatory against anyone or

in discordance with the statutory provisions, the constitution or the present position of law.

21. It is well-settled that salaries and pensions are due as a matter of right to employees, and, as the case maybe, to former employees who have served the State. Since, the petitioner rendered his services till superannuation as a government servant, his entitlement to the payment of salary is intrinsic to the right to life under Article 21 and to right to property which is recognized by Article 300A of the Constitution.

22. The Supreme Court in the case of ***State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari***[1] observed that

> *"The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State."*

[1] Civil Appeal No. 399 of 2021 (Supreme Court)

23. In ***State of Kerala and others vs. V.Padmanabhan Nair***[2]***,*** the Supreme Court held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It was further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. The relevant paragraphs are as follows:

> *"The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i.e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite LP.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 1 86, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any*

[2] (1985) 1 SCC 429

> *justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent's favour.*
>
> *Unfortunately, such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant."*

24. In ***Dr.Uma Agarwal v. State of U.P.***[3], the Supreme Court held that:

> *"We have referred in sufficient detail to the Rules and instructions which prescribe the time- schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps atleast two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this*

[3] (1999) 3 SCC 438.

> *order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."*

25. However, it is well established by law that while allowing the pensionary benefits, the same has to be in compliance with the rules of the state. Learned Counsel for the Opposite Party has contended that He has submitted that from 01.04.2007 the petitioner remained absent from duty till 02.05.2007 and from 01.10.2007 to 01.08.2008. Further he joined the school on 02.08.2008 and continued his duty till 30.09.2008 and remained absent unauthorizedly without any information. Since as per service book his date of birth is 25.05.1960 and his date of superannuation was due on 31.05.2020. During the span of 12 years of gap in service i.e. from 30.09.2008 till 31.05.2020, the petitioner neither attended the school nor reported to the then District Inspector of Schools, Athagarh at any point of time,

26. After taking into consideration the date of joining of the petitioner in service i.e. 18.01.1989 and his last service verification up to 31.03.2007 by the then District Inspector of Schools, Athagarh and the gross duty period of the petitioner comes to 18 years 02 months and thirteen days. Taking into consideration the date of birth of the petitioner i.e. 25.05.1960 and date of superannuation i.e. 31.05.2020 and he was absent unauthorizedly in his service without any information to the authorities from 31.03.2007 to 31.05.2020 which is 13 years 2 months for which he has neither performed his duty anywhere nor paid any salary. As per the Orissa service code if any employee remained absent beyond five years unauthorizedly it shall be presumed that he has abandoned the service. Further it has been held by the Supreme Court that long absence in service is remaining absent for a longer period for duty is a misconduct, it may amount to voluntary abandonment of service. Hence, he has voluntary abandoned his service with effect from 31.03.2007 for which he is not eligible for any retrial benefits either as per TBA Rules, 1960 or OCS (CA Rules, 1992).

27. In the case of ***P. Bandopadhya v. Union of India***[4], the Supreme Court held that an individual cannot claim the benefit of pension without completing the 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."*

[4] 2019 (I) ILR - CUT- 641 (SC).

28. 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***[5]***,*** 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*

[5] 2020 (I) ILR - CUT-225 (SC)

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 us. The respondent's husband who had served for lesser years then 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."*

29. It is also trite in law that that interference by the Judiciary in a policy decision having financial or policy implications

and/or having a cascading effect is not at all warranted and justified.

30. In light of the aforesaid discussion and having regard to the present position of law, this Court is of the opinion that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.

31. The Writ Petition is, accordingly, dismissed.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar