A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.11162 of 2019

(An application under Articles 226 & 227 of the Constitution of India).

Bhagirathi Nayak .... ***Petitioner***

-versus-

Odisha State Civil Supply Corporation Ltd. and others .... ***Opposite Parties***

For Petitioner	:	***Mr. S. Mallik, Advocate***
For Opposite Parties	:	***Mr. D.Ch. Dhal, Advocate***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :07.09.2022
DATE OF JUDGMENT: 28.09.2022

V. Narasingh, J.

1. The petitioner working as Senior Sales Manager-cum-Godown Supervisor of the Opposite Party-Odisha State Civil Supplies Corporation Limited (herein after referred to as Corporation) retired on superannuation w.e.f. 30.11.2011 at Annexure-1.

2. Being aggrieved by the order dated 4.4.2015 at Annexure-7 directing for recovery of a sum of Rs.5,00,999/- towards

alleged shortage value of misappropriation of quintal **311.11** Kgs.of sugar from his retirement benefits, the communication of the District Manager of the Corporation, Khordha inter alia directing for adjustment of Rs.19,89,633.07/- at Annexure-11, the office order dated 28.03.2019 at Annexure-18 directing to treat the period of suspension from 17.10.2003 to 29.05.2006 as such and the office order dated 09.05.2019 adjusting unutilized earned leave for a period of 300 days towards outstanding amount of Rs.22,16,560.00/- at Annexure-19, the present Writ Petition has been filed.

3. It is apt to state here that this is the 4th journey of the petitioner to this court.

A. In as much as: WP(C) No. 13103/2007 the petitioner challenged the recovery shown for an amount of Rs.**19,89,633/-** in the LPC without any prior notice. The said Writ Petition was disposed of on 05.03.2008 directing to consider the representation of the petitioner.

B. Petitioner challenged the order of punishment dtd. 04.04.2015(Annexed as Annexure-7) in departmental proceeding on the ground that the proceedings cannot continue after retirement, in W.P.(C) No.8338 of 2015. This Court directed the petitioner to prefer appeal.

It is stated that the appeal so filed is still pending.

C. In WP(C) No.**23819 of 2017** the petitioner sought a direction for payment of retirement benefits. This court at the stage of admission disposed of the said writ petition directing the Corporation to take a decision on the representation of the petitioner within a period of 6 weeks.

It is submitted by the learned counsel for the petitioner that no decision yet has been taken on such representation.

3A. It is further submitted that CONTC No. 1627/2018 was also disposed of at the instance of the petitioner directing the Corporation to take a final decision and comply the order within a period of 3 months.

4. It is stated that in spite of the orders of this court referred to herein above no decision has been taken either in respect of the representation or the appeal.

4A. It is submitted by the learned counsel for the Corporation Mr. Dhal that in view of the admitted pendency of the representation and appeal, this Court ought not to entertain this Writ Petition in exercise of its jurisdiction under Article 226 of the Constitution of India.

4B. Per contra the learned counsel for the petitioner Mr. Mallik submits that pendency of the representation or the appeal sould not stand in the way of this Court entertaining the present W.P.(C) since the impugned orders being patently illegal and dehors the Odisha State Civil Supplies Corporation Employees Service Rules, 1993 (herein after referred to as "Rules 93").

5. It is the grievance of the petitioner that notwithstanding the glaring inaction of the Corporation as per order dated

09.05.2019 at Annexure-19 amount towards unutilised leave for a period of 300 days is directed to be adjusted towards an amount of alleged outstanding to the tune of Rs.22,16,560.00/-.

6. The principal ground of challenge is that the services of the petitioner is governed by the Rules 93. And, there is no provision in the said rules for continuance of departmental proceeding after retirement.

It is submitted that since admittedly the petitioner retired on **30.11.2011** and the orders in the departmental proceeding were passed on **04.04.2015** at Annexure-7 and on **28.03.2019** at Annexure-18 and on **09.03.2019** at Annexure-19, after superannuation, the said orders are a nullity and therefore basing on such orders the post retirement benefits and arrear salary due to the petitioner cannot be withheld.

7. The specific ground that there is no provision of law as per Rules 93 to continue the departmental proceeding after retirement has been taken in Para-7 of the Writ Petition which is quoted here under for convenience ready of reference;

> **x x x x x** *"There is no provision of law as per the employees' service rules to continue the departmental proceeding after retirement"* **x x x x x**

8. In response to such specific stand the Corporation has stated thus in its counter;

> x x x x x***"6.That the averments made by the petitioner in paragraph-7 of the writ***

petition the opposite parties have no comments.

That it is respectfully submitted that the Departmental Proceeding No. 10596 dated 27.11.2003 and No. 9050 dated 03.08.2007 (Revised) has been framed against the petitioner Sri Bhagirathi Nayak, Sr. Sales Manager-cum-Godown Supervisor by the Corporation Head Office, Bhubaneswar." x x x x x

9. To fortify his stand the petitioner has relied on the following judgments;

1- (2008) 3 SCC 44. (S.K. Dua Vrs. State of Haryana and another)
2- (1999) 3 SCC 666, (Bhagirathi Jena Vrs. Board of Director, O.S.F.C and others)
3- (2013) 12 SCC 210, (State of Jharkhand and others Vrs. Jitendra Kumar Srivastava and another)
4- AIR 2003 SC 2889 (Chandra Singh Vrs. State of Rajasthan)

10. On the touchstone of the law laid down in the above cases the action of the authorities have to be examined as to whether in the given circumstances keeping in view that admittedly the petitioner is governed by the Rules, 1993, a proceeding can be continued after retirement and **if the answer is no** then what relief the petitioner is entitled to.

11. From the order at Annexure-7 dtd. 04.04.2015, it can be seen that the Enquiry Officer-cum-Manager PDS of the Corporation submitted the enquiry report on 30.07.2012 that is admittedly after the retirement of the petitioner on 30.11.2011.

12. Annexure-18, the order dated 28.03.2019 treating the period of suspension from 17.10.2003 to 29.05.2006 as such, is consequential to the office order at Annexure-7 (04.04.2015).

13. In (1999) 3 SCC 666 (bhagirathi Jena vrs. BOD, OSFC) the Apex court has held that when the employee reached the age of superannuation and retired from service the employer had no disciplinary jurisdiction over him in **absence of Rules to the Contrary**. In Paragraph 3,6 & 7 the Apex court held thus:

> "3. The appellant was relieved on 1st July, 1975 by the Corporation "without prejudice to the claims of the Corporation." Thereafter the question arose in regard to the continuance of the disciplinary enquiry for the purpose of reduction of retiral benefits payable to the appellant. The appellant filed a writ petition in the High Court of Orissa contending that once the appellant had retired on 30.6.95, the disciplinary proceedings could not be continued even for the purpose of making reduction of the retiral benefits inasmuch as there were no statutory regulations made by the Corporation for such reduction of retiral benefits. The High Court of Orissa dismissed the writ petition by judgment dated 30.6.98. Thereafter the appellant has filed this appeal by special leave.
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> 6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry

nor was any provision made for continuance of the departmental enquiry after superannuation..

7. In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.06.95, there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

14. The Apex Court, in the case of Chandra Singh Vrs. State of Rajasthan reported in AIR 2003 SC 2889, in Paragraph no.39 have held as under:

"We also cannot accept the contention of Mr. Rao that in the case of Mata Deen Garg, the departmental proceedings could be kept pending despite the passing of the impugned order. The High Court had not passed any order in the departmental proceedings. It sought to invoke the jurisdiction which was conferred on the High Court and the State by reason of a statutory rule. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There must exist specific provision in the Pension Rules in terms whereof, whole or a part of the pension can be withheld or withdrawn wherefor a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such proceeding the High Court or the State cannot contend that the departmental proceedings against the appellant-Mata Deen Garg could continue."

(Emphasized)

Thus it is the settled position of law that once employee has superannuated, there is cessation of relationship between the employer and employee. Therefore in absence of any specific Rule as in the present case, it would not be permissible to continue the disciplinary proceeding after superannuation, even if the same was initiated during continuance of service.

15. Admittedly no provision is there in the Rules, 93 referred to herein above which envisages continuance of the departmental proceeding after the retirement of the incumbent. Nor the Odisha Civil Services (Classification Control and Appeal) Rules, 1962, which is applicable mutatis mutandis to disciplinary proceeding drawn up under the

Rules,93 provide for continuance of departmental proceeding post retirement.

15A. It is not in dispute that in the Rules 1993, there is no provision allowing the Corporation to continue with the disciplinary proceeding even after superannuation of an employee.

16. In the case at hand, admittedly the disciplinary proceeding was initiated during currency of the petitioner's employment under the corporation. Yet, Annexure-7 order of punishment directing recovery of Rs.5,00,999.00 was passed on 04.04.2015 and the order dt.18.09.2017 at Annexure-11 directing for adjustment of Rs.19,89,633.07/- and office order dated 28.03.2019 at Annexure-18 treating the period of suspension as such and office order dtd. 09.05.2019 at Annexure-19 so far as it relates to the adjustment of the amount of sanction of leave towards outstanding amount of Rs.22,16,560.00/- allegedly pending against the petitioner was also passed after the date of superannuation on **30.11.2011**.

17. Taking into consideration the ratio decided by the Hon'ble Apex Court in ***Bhagirathi Jena (supra)*** and ***Chandra Singh (Supra)***, this Court is of the considered view that in absence of any provision in the Rules, 1993, continuance of disciplinary proceeding after the retirement of the Petitioner is not sustainable in eye of law.

18. Therefore, it is reiterated that in absence of any such provision in Rules, 1993, the Opposite party Corporation has no legal authority to continue the disciplinary proceeding and to pass consequential orders.

19. As a result, the consequential impugned orders passed in the departmental proceeding at Annexure-7,11,18 and 19 so far as it relates to the adjustment of the amount on sanction of leave towards outstanding amount of Rs.22,16,560.00/- pending against the petitioner are hereby quashed.

20. Retiral benefits are due to the petitioner post the date of his superannuation on 30.11.2011 and the same has not been paid till date. Law is no longer res integra that "interest" is "compensation" to be paid for withholding the amount, to which a pensioner is otherwise entitled to.

21. In State of Karnataka V. Padmanabhan Nair reported in AIR 1985 SC 356, the Apex Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

22. In S.K. Dua vrs. State of Haryana reported in (2008) 3 SCC 44, the Apex Court held as under;

> *"11. Xxx xxx In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rule occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on*

that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. Xxxx."

23. In view of the factual matrix of the case at hand and applying the law laid down as above, it is clear that the petitioner cannot be deprived from getting his legitimate claim of interst on delayed payment of his retiral benefits, on the ground of pendency of departmental proceeding which is ex-facie not maintainable and the delay is solely attributable to the Opposite Parties. Therefore the petitioner is entitled to get interest on the delayed payment of retiral dues.

24. Therefore, the Opposite Parties are directed to pay retirement benefits and other arrear dues of the petitioner along with interest @6% from 01.12.2011 (Since he was allowed to retire on 30.11.2011) within a period of four months from the date of receipt/production of copy of this judgment failing which the petitioner shall be entitled to interest @9% from 01.12.2011 till such payment.

25. The W.P.(C) is accordingly allowed.

26. No costs.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 28th of September, 2022/Santoshi