

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1738 of 2015

State of Orissa

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Petitioner

*Mr.A.K. Mishra, Additional
Government Advocate*

Vs.

Sadananda Mishra & Ors.

.....

Opposite parties

Mr. A. Mishra, Advocate

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

29.04.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State and Mr. A. Mishra, learned counsel for opposite party no.1.

3. The petitioner-State has filed this writ petition to quash the order dated 06.08.2014 under Annexure-3 passed in O.A. No.364 of 2014, by which the Odisha Administrative Tribunal, Bhubaneswar has directed the petitioner to sanction and disburse the final pension along with retiral benefits including the DCRG as due and admissible to opposite party no.1 within a period of six months from the date of receipt

of the copy of the order and also directed that the DCRG payable to opposite party no.1 shall carry @ 7% per annum with effect from 01.11.2006 till the date of actual payment.

4. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-petitioner contended that since a criminal proceeding was pending against opposite party no.1 at the time of retirement on 31.10.2005, the order dated 06.08.2014 so passed by the tribunal in O.A. No.364 of 2014 cannot sustain in the eye of law and seeks for quashing of the same.

5. Mr. A. Mishra, learned counsel for opposite party no.1 vehemently contended that admittedly, opposite party no.1 has retired from service on 31.10.2005 and at the relevant point of time neither departmental proceeding nor any criminal proceeding was pending against opposite party no.1. Therefore, as per Rule-66 of the OCS (Pension) Rules, 1992, opposite party no.1 is entitled to get pensionary benefits as due and admissible to him in accordance with law.

6. Having heard learned counsel for the parties and after going through the records, it appears that opposite party no.1 retired from service on

31.10.2005, as Chief Engineer, Department of Water Resources, Odisha. But fact remains, by the time he retired from service, no disciplinary proceeding was initiated or pending against him. Though FIR in Berhampur Vigilance P.S. Case No.22/2001 was registered on 30.06.2001 and charge-sheet in the said case was filed on 10.09.2004, cognizance of the said case was taken on 18.01.2010 by the Special Judge, Vigilance, Bhawanipatna. Similarly, FIR in Berhampur Vigilance P.S. Case No.41 of 2001 was registered on 25.09.2001 and charge-sheet in the said case was submitted on 14.06.2004, but cognizance of offences was taken by the learned Special Judge (Vigilance), Jaypore in the said case, on being transferred) on 27.10.2006. Though opposite party no.1 retired from service on 31.10.2005 and was visited with two vigilance cases bearing Berhampur Vigilance P.S. Case Nos.22/2001 and 41/2001 and in both the cases, cognizance of the offences was taken on 18.01.2010 and 27.10.2006, much after retirement of opposite party no.1 from service on 31.10.2005, it is construed that at the time of retirement of opposite party no.1, no criminal proceeding was pending before any forum. Therefore, in view of judgment of the apex Court in ***Union of India v. K.V. Jankiraman***, AIR 1991 SC 2010, the petitioner is entitled to get the benefit.

7. In that view of the matter, this Court does not find any infirmity in the order dated 06.08.2014 passed by the Orissa Administrative Tribunal in O.A. No.364 of 2014. Therefore, the writ petition merits no consideration and the same is dismissed.

Alok /sukanta

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(**DR. B.R. SARANGI**)
JUDGE

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(**SAVITRI RATHO**)
JUDGE

