IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.460 of 2016

Akshaya Kumar Sahoo .... ***Appellant***
Mr. S. K. Sarangi, Senior Advocate
-versus-
M/s. Oil India Limited, Uttar Pradesh and others .... ***Respondents***
Mr. Debraj Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
15.11.2022

Order No.

13. 1. The challenge in the present appeal is to the judgment dated 6th April, 2016 passed by the learned Single Judge dismissing W.P.(C) No.14033 of 2010 filed by the present Appellant in which he had sought for directions to the Opposite Party-Oil India Limited (OIL) to consider paying the Appellant pension and other retiral benefits by taking his period of service to be from 9th June, 1980 till 5th August, 1999 and further that OIL should be directed to pay him proportionate pension considering that he had completed more than fifteen years and less than twenty years of service with OIL.

2. The aforementioned writ petition was the third round of litigation concerning the Appellant's claims against the OIL. In the first round, the Appellant having opted for voluntary retirement from service (VRS), which resulted in his services being terminated with effect from 5th August, 1999 and with the Appellant changing his mind and wanting to withdraw from the

VRS, which was not permitted, he filed W.P.(C) No.12506 of 2000, which was dismissed by this Court on 29th April, 2002. The special leave petition (SLP) filed against the said decision was also dismissed by the Supreme Court of India on 9th January, 2003.

3. As far as the second round of litigation is concerned, this concerned the Appellant's plea for regularization. He filed W.P.(C) No.9537 of 2003 for directions to OIL to treat his period of service between 9th June, 1980 and 2nd January, 1982 as regular service. This was because on 9th June 1980, the Appellant had been appointed in Burmah Oil Company purely on temporary basis as Clerk-cum-Typist and while working as such, applied for the post of Telex Operator in OIL for which he was selected and appointed on regular basis in OIL on 3rd January, 1982. Burmah Oil Company was taken over by the OIL on 14th October, 1981. The Appellant claimed that he was a part of the Burmah Oil India Pension Fund.

4. The Appellant's plea for regularization of the above period of service was negatived by this Court by dismissal of W.P.(C) No.9537 of 2003 on 12th November, 2009. This Court held that the period of service rendered by the Appellant between 9th June, 1980 and 2nd January, 1982 was purely temporary and *ad hoc* and, therefore, he was not entitled for regularization for this period.

5. The third round of litigation saw the Appellant filing W.P.(C) No.14033 of 2010 in this Court praying for the reliefs as noticed hereinbefore. The learned Single Judge while considering the plea

for proportionate pension referred to Clauses 11 and 12 of the Oil India Pension Fund, which read as under:

> "PART-IV:- BENEFITS
>
> 11. A former employee shall be entitled to receive normal pension as hereinafter defined if as on the date of his retirement-
>
> (i) he had attained the pension age;
>
> (ii) he had completed not less than 20 years of service; and
>
> (iii) he was a member of the Oil India Limited, Staff Provident Fund or of the Oil India Limited Employees' Provident Fund maintained by the Company and his membership of such fund or funds was continues for not less than 10 years or his membership of such fund or funds together with his membership of the Burmah Oil-(India) Provident Fund or provident & Insurance Fund (India) Recognized or of both funds was continuous for not less than 10 years. "Normal Pension" for the purpose of the Rule represents a yearly sum equal to the Basic figure.
>
> 12. A former employee who is not entitled to normal pension under these Rules shall entitled to receive a proportionate pension provided as on the date of retirement-
>
> (i) he had attained the pension age;
>
> (ii) he had completed less than 20 years but more than 15 years of service; and
>
> (iii) he had otherwise qualified for a normal pension under the provision of Rule-II hereof.
>
> The amount of the proportionate pension shall be a yearly sum equal to the sum proportion of the Basic figure applicable to the beneficiary as the period of service, calculated to the nearest months, bears to 20 years."

6. As noticed by the learned Single Judge, for the purposes of proportionate pension, certain conditions in Rule 12 had to be cumulatively fulfilled. While Appellant fulfilled the conditions in Rule 12 (i) and Rule 12 (ii), he did not fulfill the condition under Rule 12 (iii) viz., that he was otherwise qualified for a normal pension under Rule 11. In order to qualify for normal pension, in terms of Rule 11 (iii) of the Oil India Pension Fund, the Appellant had to be a Member of both the Burmah Oil-(India) Provident Fund as well as the Oil India Limited Employees' Provident Fund continuously for not less than ten years. Here, the learned Single Judge found that there was a clean break in his employment and he was not given the benefit of carrying forward his membership of the Burmah Oil- (India) Provident Fund since his appointment in the OIL as Telex Operator in Grade-III with effect from 2nd January, 1982 was a fresh appointment. The terms and conditions of the appointment itself made it clear that the erstwhile temporary appointment stood terminated on 1st January, 1982.

7. This Court has heard the submissions of Mr. S.K. Sarangi, learned Senior Counsel appearing the Appellant and Mr. Debraj Mohanty, learned counsel appearing for the OIL and has also considered the impugned judgment of the learned Single Judge in some detail.

8. Although, it is sought to be contended by Mr. Sarangi that the Appellant's case for proportionate pension ought to have been considered by the learned Single Judge by taking into account his membership of the Burmah Oil-(India) Provident Fund, the fact remains that the appointment with Burmah Oil Company between

9th June, 1980 and 1st January, 1982 was purely temporary and *ad hoc* and was not carried forward when the Appellant got appointed in OIL with effect from 2nd January, 1982. In other words, it was a clean break and the appointment under OIL with effect from 2nd January, 1982 was a fresh appointment. Under the VRS, there was no condition of proportionate pension. The attempt by the Appellant to withdraw from the VRS having also failed, there was no occasion for his plea for proportionate pension under the Oil India Pension Fund Rules to be considered.

9. In that view of the matter, the Court is unable to find any error having been committed by the learned Single Judge in declining the reliefs prayed for by the Appellant. There is no merit in the present appeal and it is dismissed as such. If there are any benefits to which the Appellant is entitled to and have not yet been released so far to him on account of the pendency of the present appeal, that should be released to him without any further delay and in any event, not later than four weeks from today.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda