

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 587 of 2019

Kunjabihari Patra

....

Appellant

Mrs. A. Patnaik, Advocate

-versus-

Union of India and others

....

Respondents

None

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

05.09.2022

Order No.

02. 1. This appeal is directed against an order dated 24th October 2019, passed by the learned Single Judge dismissing the W.P.(C) No.17482 of 2007 filed by this present Appellant.
2. In the said writ petition, the Petitioner had sought for a direction to the Homeopathy Research Institute to treat the period of his absence from 20th December, 1995 to 16th May, 2005 as included in his service for the purposes of pension.
3. The background facts are that the Appellant was appointed as a Ward boy in the Clinical Research Unit in Homeopathy at Puri by an order dated 12th January 1989. He was subsequently transferred to Jaipur, Rajasthan by an order dated 4th December, 1995. He was relieved for that purpose on 19th December, 1995 from his services at Puri.

4. Aggrieved by the transfer order, the Appellant filed OJC No.2650 of 1996 in this Court. The said writ petition was disposed of by an order dated 2nd April, 1996 with a direction that if the Appellant filed a representation before the Director, it would be disposed of as expeditiously as possible.

5. Pursuant thereto, the Appellant made a representation, which was rejected by a reasoned order. The Appellant then again filed OJC No.6202 of 1996, challenging the rejection order dated 21st May, 1996. The said writ petition was again disposed of with a direction that the Appellant would not be transferred to Jaipur since he was a low-paid employee and further that the Opposite Party should consider his case for regularization during the period when he remained absent. The Appellant then filed a further representation. An order dated 12th November, 2007 was passed thereon treating the period from 20th December, 1995 to 16th May, 2005 as 'dies non' being approved by the Minister, Health and Family Welfare Department. It was observed in the said order that the said period would not be counted for pensionary benefits.

6. The above order was challenged in W.P.(C) No.17482 of 2007. The learned Single Judge has in the impugned order dismissing the said writ petition noted that at no point in time, was there any interim order in favour of the Petitioner during the pendency of the writ petitions he had filed. In the meanwhile, he was allowed to continue in Puri on 17th May, 2005 prior to the disposal of OJC No.6202 of 1996 on 16th November, 2005. Therefore, he continued to remain absent from 20th December, 1995 to 16th May, 2005.

7. The learned Single Judge referred to Rule 12 of the Central Civil Services (Leave) Rules 1972, which clearly specifies that no government servant would be granted to leave of any kind for a continuous period exceeding five years. The learned Single Judge came to the conclusion that the entire period of the Appellant's absence from service, i.e., 20th December, 1995 to 16th May, 2005 was unauthorized and that had an implication on salary, retiral benefits including gratuity and pension. With the period being treated as 'dies non', it could not be counted for the purposes of pension. The learned Single Judge referred to decisions of certain other High Courts in this regard.

8. Having heard learned counsel for the Appellant and having perused the impugned order of the learned Single Judge, the Court is unable to be persuaded to come to a different conclusion in the matter. No ground has been made out before this Court to interfere with the impugned order of the learned Single Judge which is a well-reasoned one.

9. Consequently, the Court is not persuaded to interfere with the matter and the writ appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge