

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25381 of 2022

Biswaranjan Mohapatra

....

Petitioner

Mr. P.K. Bhuyan, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. B.Pr. Tripathy, A.G.A

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

29.11.2022

Order No.

06.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner and learned counsel for the State. Perused the record as well as documents annexed to the writ petition.
3. The present writ petition has been filed by the petitioner with a prayer for a direction to the Opposite Parties to issue the relieve order in favour of the petitioner after acceptance of voluntary retirement of the petitioner at the earliest. Further, it has been prayed to impose exemplary punishment for not issuing of relieve order of the petitioner. The petitioner has also prayed for a direction to the Opposite Parties to relieve the petitioner from Government service after acceptance of voluntary retirement communicated vide letter dated 09.02.2018.
4. It is submitted by learned counsel for the petitioner that the

petitioner was working as a Laboratory Technician till he became eligible to avail benefit of voluntary retirement. Learned counsel for the petitioner further submits that although the application of the petitioner for voluntary retirement was submitted on 21.12.2012, however, the same was not accepted by Opposite Party No.3, the appointing authority, and the voluntary retirement application was kept pending for a long time. Thereafter, the petitioner approached the Odisha Administrative Tribunal, Cuttack Bench by filing O.A. No.1499 of 2014, which was subsequently transferred to Bhubaneswar Bench and renumbered as O.A. No.2321 of 2015. Ultimately, the OAT adjudicated the O.A. filed by the petitioner and disposed of the same and directed the opposite parties to consider the prayer of the petitioner and treat the period of service of the petitioner from 01.07.2010 to 20.03.2013 as qualifying service vide order dated 18.05.2017. Thereafter the order passed by the Tribunal challenged before this court. This court finally disposed of the matter and the order passed by the Tribunal was confirmed finally dispute was set at rest by the order passed by this Court and the writ petition preferred by the State was dismissed. Finally, voluntary retirement application was accepted vide order No.742 dated 09.02.2018 with retrospective effect from 20.03.2013 A.N.

5. It is further submitted by learned counsel for the petitioner that despite acceptance of the voluntary retirement, the authorities have not issued relive order. He further submits that due to inaction of the opposite parties, the petitioner has not received the retiral dues and pensionary benefits as due and admissible. Being aggrieved by such action, the petitioner approached the Opposite Party Nos.1 and 3 by filing representation dated 31.12.2019 under Annexure-3. It is stated by learned counsel for the petitioner that no decision has been taken

on such representation as of now. On an earlier occasion, the petitioner approached this Court by filing a writ petition bearing W.P.(C) No.15632 of 2020 and this Court disposed of the matter at the stage of admission by directing the opposite parties to consider the representation of the petitioner relating to relieve order vide Annexure-10 of the writ petition. It is further stated that although the order of this Court was received by the opposite parties, however, till date no relieve order has been issued in favour of the petitioner which compelled the petitioner to file a Contempt Petition No.5418 of 2020, which was also disposed of by this court directing the authorities to carry out the direction of this court in writ Petition bearing W.P.(C) No.15632 of 2020 within one month. Thereafter the order was not carried out which again compelled the petitioner to file 2nd Contempt Petition vide CONTC No.2481 of 2021 for giving effect to the order passed by this Court in W.P.(C) No.15632 of 2020. It is further submitted that 2nd Contempt Petition was also disposed of on an erroneous contention considering the order dated 17.06.2021, which was produced by learned counsel for the State before this Court on 21.09.2022. Taking such order into consideration, this Court disposed of the Contempt Petition by observing that the representation of the petitioner under Annexure-10 has already been disposed of and the contempt proceeding was dropped.

6. In the aforesaid context, learned counsel for the petitioner further contends that the order passed by this Court has not been fully complied with by the authorities and the representation under Annexure-10 has not been dealt with and disposed of by passing a reasoned order as has been directed by this Court.

7. Learned counsel for the petitioner finally submits that to get legitimate dues, which the petitioner is entitled to like other employees, the petitioner is being made to run from pillar to post and he is being subjected to harassment by the Opposite Parties for all these years.

8. Learned Additional Government Advocate, on the other hand, submits that pursuant to the order passed by the Tribunal as well as by this Court, the voluntary retirement has already been accepted. Further referring to letter dated 17.06.2021 under Annexure-7, learned Additional Government Advocate submits that the retirement benefits like GIS of Rs.2700/-, unutilized leave amounting to Rs.1,59,408/- and provisional gratuity amounting to Rs.2,18,174 have been paid to the petitioner.

9. So far as provisional pension is concerned, it is submitted by the petitioner that the petitioner is eligible to get provisional pension to the tune of Rs.10,055/- which has already been sanctioned but the same has not been withdrawn by the petitioner due to non-submission of non-employment certificate by the petitioner / pensioner as per Rule-303 of OTC Volume-I. Further the very same letter reveals that the voluntary retirement of the petitioner has already been accepted by the authorities with retrospective effect from the date 20.03.2013 pursuant to order dated 18.05.2017 passed by the OAT, Bhubaneswar in O.A. No.2321 of 2015 and the order of this Court dated 09.11.2017 passed in W.P.(C) No.21839 of 2017.

10. It is further contended by Mr. Tripathy, learned Additional Government Advocate that the petitioner has already received the retiral benefits w.e.f. 20th of March, 2013 under the O.C.S. (Pension) Rules, 1992. Therefore, the question of issuance relieve order at this

stage does not arise at all for consideration.

11. In such view of the matter, learned counsel for the petitioner submits that the present writ petition is devoid of merit and the same deserves to be dismissed.

12. Having heard leaned counsel for the parties and upon careful consideration of the materials placed before this Court, this Court observes that the voluntary retirement of the petitioner has already been accepted by the authorities vide their letter No.742 dated 09.02.2018 with retrospective effect i.e. from 20.03.2013 pursuant to the orders passed by Tribunal as well as this Court. With regard to sanction and disbursement of retiral dues and pensionary benefits, from the letter of the Opposite Party No.1 dated 17.06.2021 under Annexure-7, it appears that some of the benefits have already been given to the petitioner. However, pensionary benefit has not yet been calculated and paid to the petitioner.

13. At this juncture, learned counsel for the petitioner emphatically submits that once voluntary retirement was accepted by the Opposite Parties, they are duty bound to issue relieve order. However, in the case of the petitioner, the Opposite Parties have not issued any relieve order specifying the date from which the petitioner was relieved from duty. In the said context, learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of ***Power Finance Corporation Ltd. vrs. Pramod Kumar Bhatia*** ; reported in (1997) 4 SCC 280 and ***Shambhu Murari Sinha vrs. Project and Development India Ltd. and others*** : reported in (2002) 3 SCC 437. He also relies up a couple of judgments of this Court i.e. ***Ajit Kumar Das vrs. State of Orissa and others*** : reported in 2008(Supplementary) Vol-I, OLR-697 and in the case of

Satyanarayan Pattanai, vrs. M.D., Orissa Handloom Weavers Co-operative Society Ltd. and others : reported in ***2010(2) ILR-CUT 726***. It is further stated by learned counsel for the petitioner that issuance of relieve order is very much essential for the petitioner and issued to the Opposite Parties to send a copy of the relieve order which would enable him to receive other financial benefits.

14. In reply to such submissions, leaned counsel for the State submits that issuance of relieve order is not necessary and the same is not supported by any letter and that the petitioner has filed a representation stating therein for issuance of relieve order and the same is pending before the Superintending Engineer, Public Health Circle, Bhubaneswar (Opposite Party No.3), which is annexed to the writ petition at Annexure-3 dated 31.12.2019. However, on perusal Annexure-3 dated 31.12.2019, this court observes that the petitioner has not elaborated and put forth the point and be directed to decide in the present lease.

15. In view of the aforesaid analysis and keeping in view the factual background of the present case and submissions made by learned counsel for the petitioner that this Court deems it proper to dispose of the writ petition, at the stage of admission, by directing the petitioner to file a fresh representation taking all the grounds along with supporting documents and judgments relied upon in support of his contention within a period of two weeks from today. In the event, such representation is filed, the Opposite Party No.1 is directed to decide the same in the light of the judgments referred to by the petitioner and the representation of the petitioner shall be disposed of in accordance with law within a period of six weeks from the date of filing of such representation by passing speaking and reasoned order.

Any decision taken on the same shall be communicated to the Petitioner within a period of two week thereafter.

16. With the aforesaid observation/direction, the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

Jagabandhu

