

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 31875 of 2020

State of Odisha and others

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Petitioners

Mr. A.K. Mishra, AGA.

Vs.

Kishore Kumar Pradhan and others

.....

Opposite parties

Mr. S. N. Patnaik, Advocate (O.P.1)

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

25.04.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-petitioners and Mr. S.N. Patnaik, learned counsel appearing for the opposite party No.1.

3. The State-petitioners have filed this writ petition challenging the order dated 10.01.2019 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No. 2064 of 2014, by which the tribunal observed that that since no criminal case or departmental proceeding was pending against opposite party no.1 at the time of retirement, it will not be proper as per law to withheld his pensionary benefits, and as such, the Pension Sanctioning Authority or even the petitioner no.5, in whose office opposite party no.1 was last working prior to his retirement, did not bother to file a counter affidavit. Accordingly, the tribunal allowed the original application and directed the present petitioners to draw and disburse all pending retiral dues of opposite party no.1 within a period of four months from the date of receipt of the order. The tribunal further directed that opposite party no.1 is entitled to statutory interest upon delayed payment of DCRG as per Rule-49 of OCS (Pension) Rules,

1992, admissible interest on his GPF accumulation and interest at market rate from the date of one year of his retirement, till the actual drawal and disbursal of pending dues.

4. Mr. A.K. Mishra, learned Additional Government Advocate for the State-petitioners, vehemently contended that the State-petitioners had not filed any counter before the Tribunal, but on the basis of direction issued on 29.01.2018 regarding the statement of criminal/departmental proceedings against the opposite party no.1, a letter from D.F.O. Sambalpur was submitted, wherein it had been reiterated that opposite party no.1 had not handed over charge of Town Section of Town Range of Sambalpur Forest Division, specially the store articles, U.D. case materials consisting of valuable timber, seized vehicles under his possession, FDA account, FIR Book, departmental receipt Book jointly operated pass books and cheque books of VSS under FDA, Sambalpur South Division. It was also contended that NDC from petitioner no.4 office was fraudulently shown to have been issued to petitioner no.5, the Divisional Forest Officer, Jharsuguda, on the basis of which the pension papers of opposite party no.1 was initiated. This matter was verified from the D.F.O., who also corroborated the facts. It was further contended that though a written complaint in the form of F.I.R. was lodged by the D.F.O., Sambalpur Forest Division-petitioner no.4 against opposite party no.1, no investigation had been done by the police for which a fresh FIR was lodged against opposite party no.1, vide letter of petitioner no.4 dated 11.04.2018.

5. Mr. S.N. Patnaik, learned counsel appearing for opposite party no.1, on the contrary contended that by the time opposite party no.1 was superannuated from service, neither criminal case, nor departmental proceeding was pending against him and, as such, he is

entitled to get the retiral benefits as due and admissible to him. So far as the allegation, which has been now made at this stage is an after thought and, as such, after retirement of opposite party no.1, many allegations have been made by way of communication of letters made by the D.F.O., Sambalpur. More so, while making such allegations nothing has been placed on record with regard to the action taken thereon. As per OCS (Pension) Rules, 1992, there is no bar to initiate a proceeding against the opposite party no.1. But till his retirement and even after his retirement also neither departmental proceeding, nor any criminal proceeding has been initiated against the opposite party no.1. Therefore, the withholding of pension and retiral benefits, cannot sustain in the eye of 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 attaining the age of superannuation and also entitled to get the pensionary as well as retiral benefits. He has already been paid the provisional pension, but the regular pension and other retiral benefits have not been extended, for which he approached the Tribunal in O.A. No. 2064 of 2014.

7. Rule-7 (1) of the OCS (Pension) Rules, 1992 reads as follows:-

7. Right of Government to Withhold or Withdraw Pension-

(1) The Government reserve to themselves the right of withholding a pension or gratuity, or both either in full or in part, or withdrawing a pension in full or in part. whether permanently or for specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence in duty during the period of his service including service rendered on re-employment after retirement:

Provided that the Odisha Public Service Commission shall be consulted before any final orders are passed:

Provided further that when a part of pension is withheld /

withdrawn, the amount of such pension shall not be reduced below the amount of minimum limit.

Similarly Rule-7 (2) (c) of OCS (Pension) Rules, 1992 reads as follows:-

“No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.”

8. As it appears from the records placed before this Court, that pursuant to the clarification submitted by petitioner no.4 on 28.05.2018, no investigation had been done in pursuance of his letter dated 29.05.2014 to the local police, for which he filed fresh FIR on 11.04.2018 relating to incidents involving the applicant, which took place on or prior to 31.05.2011. Since no criminal case or departmental proceeding was pending against opposite party no.1 at the time of retirement, this Court does not feel any justification in withholding the pensionary and retiral benefits of the opposite party no.1. Thereby, the consequential order has to be followed with regard to grant of pending retiral dues in favour of the opposite party no.1.

9. In view of the above, this Court does not find any error apparent on the face of the order of the tribunal to interfere with the same. The writ petition merits no consideration and the same is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE