

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 445 of 2018

Lokanath Mohapatra

.....

Petitioner

Mr. U.C. Mohapatra, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

13.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. U.C. Mohapatra, learned Counsel for the Petitioner and Mr. A.K. Mishra, learned Additional Government Advocate for the State.

3. The petitioner who was retired as a MPHS (M) on 30.06.1994 has filed this Writ Petition claiming revised pension in view of the notice issued by the authority published in the newspaper under Annexure-3.

4. Mr. U.C. Mohapatra, learned Counsel for the Petitioner contended that in view of the notice issued by the authority, namely Director Public Health, Orissa, which clearly indicates that MPHS (M) retired prior to 31.03.2010 are entitled to get 50% of the minimum of the pay band plus G.P., i.e. Rs.9,300/- + G.P. Rs.4200/-, i.e. 6750/- per month + T.I. for full qualifying service w.e.f. from 01.04.2010. It is contended that the petitioner was getting less pension than what has been directed to be fixed in the notice itself. Therefore, he seeks for revision of pension and as such he has retired prior to 31.03.2010. Thereby, he is entitled to get such

benefit. Reliance has also been placed to the letter dated 08.05.2014 issued by the Deputy Secretary to Government addressed to the Director, Public Health Services, wherein it has been stated that pension of all the MPHS (M), who retired prior to 31.03.2010 may be enhanced 50% of the minimum pay band plus grade pay, i.e. Rs.9300/- + Grade Pay Rs. 4200/-, i.e. Rs. 6750/- per month plus T.I. for full qualifying service w.e.f. 01.04.2010. Therefore, relying upon the letter dated 08.05.2014 and also the notice issued under Annexure-3, since the petitioner retired from service with effect from 30.06.1994, he claims that his pension should be revised and he should be granted the benefits as has been notified. Due to non extension of such benefits, he has approached the tribunal by filing OA. No. 445 of 2018 claiming such benefits as has been extended to similarly situated persons.

5. Pursuant to the notice issued, the Opposite Party No.4 filed his counter affidavit, where reliance has been placed to the letter dated 20.03.2017 issued by the Under Secretary to Government, Health and Family Welfare Department to the Director, Health Services Orissa, which indicates that the employees retired during the period from 20.12.1997 to 30.03.2010 have been provided with pension on re-fixation and prior to 20.12.1997, the cadre was neither restructured nor MHPS (M) or MPHS (F) uniformity existed. Hence there is no justification to extend such benefit who retired prior to that date. Fixation of such cut off date dated 20.12.1997 to 30.03.2010, the petitioner is aggrieved and contended that in view of the letter already issued under Annexure-2 and notification issued under Annexure-3, where a right has been accrued in favour of the petitioner to get revised pension, that right cannot be and could not be taken away by the letter subsequently

issued on 20.03.2017 denying the benefit of revised pension as he has retired prior to 30.03.2010. Reliance also been placed to the judgment of the apex Court in the case of ***State of Rajasthan and others v. Mahendranath Sharma***, Civil Appeal No. 1123 of 2015 arising out of SLP (C) No. 321 of 2015 disposed of 01.07.2015, where the apex Court held that all pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised pay scale of the post from which pensioner had retired. Accordingly it is contended that, the petitioner having received the pension less than 50% and putting a cut off date in the letter dated 20.03.2017 denying such benefit is arbitrary, unreasonable and contrary to the provisions of law and, it is also contended that the petitioner may be permitted to assail the letter dated 20.03.2017, by which the right which has been accrued in favour of the petitioner pursuant to the letter under Annexure-2 dated 08.05.2014 and subsequent notification issued under Annexure-3 have been taken away.

6. In that view of the matter the Writ Petition stands disposed of granting liberty to the petitioner to assail the order dated 20.03.2017, if he is so advised.

(DR. B.R. SARANGI)
JUDGE

Arun