

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3537 of 2016

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Batakrishna Parida

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.D.N.Pattanaik-1 &
N.S.Panda.

For Opp. Parties : Addl. Government Advocate
Mr. R.N. Mishra.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संस्थानिक न्यायो

Date of Hearing:28.07.2022 and Date of Order: 04.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D.N. Pattanaik-1, learned counsel for the Petitioner and Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following relief:-

“(i) The impugned order dated 20.07.2016 passed by Respondent No.1 under Annexure-10 may be quashed as it is ghastly illegal and improper.

(ii) *May direct the respondents to regularize the service book with immediate effect and release the final pension with retiral benefits with antedated effect i.e. from the date of retirement with interest.*

(iii) *May direct the respondents to grant final pension with all emoluments, on the basis of 20 years undisputed qualifying service.*

(iv) *To pass such other order(s) as deem fit and proper”.*

4. Mr. Pattanaik-1, learned counsel for the Petitioner submitted that the Petitioner was initially appointed as a Forest Guard, where he joined on 18.01.1963. He further submitted that while so continuing as a Forest Guard, the Petitioner was promoted to the post of Forester, where he joined on 17.02.1972 and the said promotion was confirmed w.e.f. 30.12.1977 vide order dated 24.02.1979 under Annexure-1.

5. It is submitted that while continuing as a Forester when the Petitioner vide order dated 12.08.1983 under Annexure-2 was put under transfer, he was relieved by the Office of Divisional Forest Officer, Rairangapur on 05.10.1983.

6. It is submitted that by the time the order of transfer under Annexure-2 was passed on 12.08.1983, the petitioner was continuing on leave w.e.f. 01.06.1983.

7. It is further submitted that because of the illness of his wife, the Petitioner could not join in his place of transfer and he was forced to extend his leave for the better treatment of his wife. But it is submitted that the Petitioner ultimately lost his wife and because of his remaining on leave for more than four years, he could not even provide marriage to his only daughter. However, it is submitted that after recovery from all his sorrows, the Petitioner submitted

his joining report on 07.04.1988 before the Opposite Party No.4 i.e. the place to which he was transferred vide order under Annexure-2.

8. Mr. Pattnaik-1 submitted that since the Petitioner remained on leave w.e.f. 01.06.1983 and could not join in his place of transfer even though he was relieved on 05.10.1983, the joining report submitted on 7.4.1988 before Opposite Party No.4 was not accepted and in the alternate vide letter dated 14.04.1988 under Annexure-4, the said opposite party No.4 requested the P.C.C.F, Odisha with a copy to Conservator of Forest, Working Plan Circle, Cuttack to give a posting to the petitioner under the conservator of Forest of the said Working Plan, Circle.

9. Mr. Pattnaik-1 submitted that thereafter the Petitioner was neither given a fresh posting nor his joining was accepted. It is further submitted that the Petitioner in the meantime though approached the authorities seeking acceptance of his joining, but the same was never acted upon and the Petitioner attained the age of superannuation on 31.05.1995.

10. It is submitted that because of the inaction on the part of the opposite parties, the Petitioner even though submitted his joining on 7.4.1988, but he was never allowed to join nor any fresh order of posting was issued in terms of Annexure-4.

11. It is also submitted that at no point of time till attaining the age of superannuation on 31.05.1995, the Petitioner was issued with any notice directing him to join nor any proceeding was also initiated for such alleged remaining on leave w.e.f. 01.06.1983. The Petitioner

accordingly moved an application on 19.06.1999 before the Opposite Party No.2 with a prayer to regularize his service and to grant all retrial benefits as due and admissible in his favour.

12. Mr. Pattanaik-1 further submitted that vide letter dated 19.06.2007 under Annexure-6, the Opposite Party No.3 requested the Petitioner to furnish various documents for onward submission of the same to the Accountant General (A & E) Orissa for final withdrawal of G.P.F amount. The petitioner was also requested to submit the required pension papers.

13. It is further submitted that vide letter dated 28.11.2007, the Opposite Party No.3 moved the P.C.C.F, Odisha with a request to issue necessary instruction to sanction the leave of the petitioner from 06.10.1983 to 31.08.1995 for the purpose of preparing the pension papers.

14. Mr.Pattanaik-1 further submitted that vide office order dated 23.05.2008 though the leave was sanctioned, but vide office order dated 30.04.2010 under Annexure-8, some modification was made to the earlier order passed on 23.05.2008. But it is submitted that the leave of the petitioner from 01.06.1983 to 31.08.1995 was sanctioned. It is also submitted that in the interregnum, the Petitioner approached the learned Tribunal in O.A. No.658(C)/2008 with a prayer to direct the opposite parties to sanction his final pension and other retirement benefits. Pursuant to the interim order passed by the learned Tribunal, provisional pension was also sanctioned in his favour. But when Accountant General (A & E), Orissa raised objection with regard to such sanction of provisional pension, learned

Tribunal disposed of the matter vide order dated 28.08.2015 with the following order:-

“Be that as it may when no action has been taken and the provisional pension has been sanctioned in his favour as per direction of the learned Tribunal and the Principal Accountant General (A & E) Orissa vide his letter at Annexure-E has raised objection with regard to sanction of provisional pension, the respondent authority is directed to take appropriate action on the objection raised by the Principal Accountant General (A&E) Orissa and thereafter proceed to finalize the pension and other pensionary benefit, as due and admissible to him, after regularizing his service for the period he remained unauthorized absent as per rule and such action be taken within a period of one month from the date of receipt of a copy of this order”.

15. It is submitted that the Opposite Party No.1 without proper appreciation of the Petitioner's claim vis-à-vis the order passed by the learned Tribunal in its order under Annexure-9 rejected the claim of the petitioner for sanction of unauthorized leave as well as the pension vide the impugned order dated 20.07.2016 under Annexure-10.

16. It is submitted that the Opposite Party No.1 by treating the petitioner to have absconded from his service, held that the petitioner is not entitled to get pension under any of the provisions of the OCS (Pension) Rules, 1992. In the said order it was also indicated that the Petitioner since remained on leave for more than five years, after careful consideration, the said leave was not sanctioned by the Government.

17. Mr. Pattnaik-1 accordingly submitted that since the Petitioner after remaining on leave w.e.f. 01.06.1983 submitted his joining on 7.4.1988 as reflected in Annexure-4, the period of leave cannot be taken as more

than five years and the Opposite Party No.1 without proper appreciation of the same, held to the contrary while passing the impugned order under Annexure-10.

18. Mr. Pattanaik-1 also submitted that since at no point of time, the Petitioner was ever issued with a notice directing him to join nor any proceeding was ever initiated till his attaining the age of superannuation on 31.05.1995 for his alleged remaining on leave for more than 5 years i.e. w.e.f. 1.6.1983, the opposite party No.1 should not have held the petitioner to have absconded from his service and accordingly not entitled to get the pension and other pensionary benefits.

19. Making all these submissions, Mr.Pattnaik-1 prayed for interference of this Court in the impugned order.

20. Mr. R. N. Mishra, learned Additional Government Advocate made his submission basing on the stand taken in the counter affidavit. It is submitted that since the petitioner remained on leave w.e.f. 1.6.1983 to 31.08.1995, in view of the provision contained under Rule-72 (1) of the Orissa Service Code, he is not entitled for sanction of the said leave as the said leave exceeds five years.

21. Mr. Mishra further submitted that though pursuant to the order passed by the learned Tribunal on 09.04.2008 in O.A. No.698(C) of 2008, the Petitioner was sanctioned with provisional pension, but when Accountant General, Orissa in his letter dated 18.01.2011 raised objection by referring to Rule-72(1) of the Orissa Service Code, the said provisional pension was stopped.

22. Mr. Mishra accordingly submitted that since the Petitioner remained on leave w.e.f. 01.06.1983 to

31.08.1995 his claim for sanction of the leave and consequential sanction of pension has been rightly rejected by the Opposite Party No.1 vide impugned order under Annexure-10.

23. Heard learned counsel for the Parties.

24. Perused the materials available on record. This Court after going through the same finds that the Petitioner even though remained on leave w.e.f. 1.6.1983, but after recovering from the same, he submitted his joining on 7.4.1988. The said joining of the petitioner is also indicated in the communication made by the opposite party No.4 in its letter dated 14.04.1988 address to P.C.C.F, Orissa. Therefore, the period of leave of the petitioner cannot be treated beyond 7.4.1988 and if it will be calculated from 1.6.1983, it is less than 5 years. Hence as per the considered view of this Court, the said period of leave being less than 5 years, the provision contained under Rule 72(1) of the Orissa Service Code is not applicable and the Opposite Party No.1 has erred in holding so in the impugned order. This Court further finds that pursuant to the order passed by the learned Tribunal on 9.4.2008 in O.A. NO.658(C) of 2008 vide Annexure-6, the Petitioner was sanctioned with the provisional pension. Only because the Accountant General, Orissa vide letter dated 01.11.2011 under Annexure-D raised objection to such sanction, relying on the provision of Rule-72(1) of the Orissa Service Code, the provisional pension earlier sanctioned in favour of the Petitioner was stopped. From the said action of the opposite party, it is quite apparent that the opposite parties are not taking the case of the petitioner a case covered Rule 72(1) of the Orissa Service Code. The communication

issued under Annexures-6, 7 and 8 also shows that the opposite parties are in the process to sanction the leave as well as pensionary benefits in favour of the Petitioner. But the said fact was never taken into consideration by the Opposite Party No.1 while passing the impugned order under Annexure-10. This Court also find that since for the alleged leave of the petitioner from 1.6.1983 to 7.4.1988, and even till 31.5.1995, the petitioner at no point of time has been issued with any notice directing him to join nor any proceeding has been initiated for such alleged leave, the Petitioner as per the considered view of this Court is deemed to be in his service till his superannuation which fell due on 31.05.1995.

25. Therefore, this Court after going through the materials available on record and the submissions made by the learned counsel for the Parties find that the Opposite Party No.1 without proper appreciation of the petitioner's claim vis-à-vis the communications made by the self-same opposite parties under Annexures-4, 6 and 8 has illegally rejected the petitioner's claim vide the impugned order dated 20.07.2016 under Annexure-10.

26. Therefore, this Court has no hesitation in quashing the said order and the said order is hereby quashed. While quashing the said order, this Court directs the Opposite Party No.1 to sanction the leave so sanctioned vide office order dated 30.04.2010 under Annexure-8. This Court further directs the Opposite Party No.1 to sanction the pension and pensionary benefits as due and admissible in favour of the petitioner treating his period of service from 18.01.1963 to 31.05.1995 or in the worst scenario from 18.01.1963 to 31.05.1983. This Court further directs that

pending final sanction of pension and pensionary benefits, the provisional pension as has been allowed in favour of the petitioner in terms of the order dated 9.4.2008 of the learned Tribunal in O.A. No.658(C) of 2008 be sanctioned in favour of the Petitioner forthwith. The entire exercise with regard to sanction of pension and pensionary benefit be also completed within a period of four months from the date of receipt of this order.

9. With the aforesaid observations and directions, the WPC(OA) stands disposed of. There shall be no order as to costs.

Orissa High Court, Cuttack
Dated the 4th of August, 2022/Subrat

(Biraja Prasanna Satapathy)
Judge

