

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4594 of 2015 & WPC(OAC) No.3670 of 2017

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

.....

Rabindra Kumar Patel

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner

:M/s. S.K. Swain, Advocate

For Opp. Parties

:M/s. D.K. Mohanty,
Addl. Standing Counsel

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 22.12.2022 and Date of Order: 03.01.2023

Biraja Prasanna Satapathy, J.

Since the prayer made in both the writ petitions are consequential to each other and parties are same, both the writ petitions were heard analogously and disposed of by the present common order.

2. W.P.C(OAC) No.4594 of 2015 was filed by the petitioner with the following prayer.

“to direct the Respondent NO.2 to treat/hold the applicant retired from service from 19.11.2006 i.e. after expiry of statutory 03 (three) months from the date of his application/notice dated 18.08.2006 under Annexure-2 series, and sanction/release all his pension and pensionary benefits from 19.11.06 with all the arrears, payable to him in this regard and in this premises of facts, accordingly the Respondent NO.4 be also directed to do his all statutory works in respect of sanction and release of pension and pensionary benefits of the applicant and the whole exercise by the Respondent No.2 & 4 in this regard be directed to be completed within a time limit to be specified by this Hon’ble Tribunal in the interest of justice.

(ii) To pass any other order/orders as deem fit and proper for granting complete relief to the applicant in the present facts and circumstances of the case in the interest of justice.

2.1. It is contended that the VRS application of the petitioner submitted in accordance with the provision contained under Rule 42 of the OCS Pension Rules, 1992 under Annexure-2, was neither accepted nor was refused at any point of time and therefore, in view of the provision contained under Rule 42 of the Rules, the VRS application submitted by the petitioner on 18.8.2006 should be treated as deemed acceptance by the Opposite Party No.2. In spite of such deemed acceptance, when the petitioner was not extended with the benefit of pension and other pensionary benefits as due and admissible, the Petitioner filed W.P.C(OAC) No.4594 of 2015. But subsequently and during pendency of the matter, when by treating the petitioner to have been remained on unauthorized absence, a proceeding was initiated against him on 06.10.2017, the petitioner challenged the same in the connected W.P.C(OAC)

No.3670 of 2017. The prayer made in WPC (OAC) No.3670 of 2017 is quoted hereunder.

“To quash the memorandum of respondent no.1 dated 06.10.2017 under Annexure-10 initiating a disciplinary proceeding against the applicant holding the same as without jurisdiction and not sustainable in law.

To pass any other order/orders as deemed fit and proper for granting complete relief to the applicant in the present facts and circumstances of the case in the interest of justice.”

2.2. Learned counsel for the Petitioner contended that since the VRS application submitted on 18.08.2006 under Annexure-2 in W.P.C(OAC) No.4594 of 2015 was never rejected, in view of the clear provision contained under Rule 42 of the OCS Pension Rules, it has to be held as deemed acceptance by the authority concerned. Therefore, there was no occasion on the part of the Petitioner in joining the service after expiry of the period of three months from the date of submission of his VRS. It is also contended that in view of such deemed provision, it has to be held that the VRS application submitted by the petitioner on 18.08.2006 is deemed to have been accepted w.e.f 19.11.2006. Accordingly, the proceeding initiated against the petitioner vide Annexure-10 which is the subject matter in WPC (OAC) NO.3670 of 2017 is not permissible and liable to be quashed by this Court. It is also contended that the authority concerned in order to get away with their

lacunae in not passing any order on the VRS application intentionally and deliberately initiated the proceeding on 06.10.2017 on the ground that the petitioner has remained on unauthorized leave.

2.3. It is also contended that by the time the petitioner submitted his VRS application, he had already completed more than 23 years of service and accordingly in view of his eligibility to get the benefit of pension, he submitted the VRS application on 18.08.2006. But the authority concerned never took any action in either accepting the same or rejecting the same. Therefore, in view of the deeming provision contained under Rule 42 of the OCS Pension Rules, the same should be treated as deemed acceptance w.e.f 19.11.2006 and on that ground only the proceeding initiated against the petitioner by citing him as unauthorized absence is not maintainable.

3. Mr. D.K. Mohanty, learned Additional Standing Counsel on the other hand made his submission basing on the stand taken in both the writ petitions.

It is contended that the VRS application submitted on 18.08.2006 vide Annexure-1 was never received by the Opposite Party no.2 who is competent to deal with the same and accordingly it cannot be treated to have been duly submitted. It is also contended that the VRS application was not in the

prescribed format and in view of that, no order was passed on the same. In absence of the acceptance of the VRS application since the petitioner never resumed his duty, the proceeding has been rightly initiated by showing the petitioner as unauthorized absent. However, it is contended that the petitioner in the meantime on attaining the age of superannuation was superannuated from his service with effect from 30.06.2021. The Petitioner has also been sanctioned with the provisional pension vide order dated 04.04.2022 of the District Fisheries Officer, Sundargarh. Therefore, it is contended that since the petitioner has been allowed to superannuate from his service w.e.f 30.06.2021 with sanction of provisional pension in his favour, the question of acceptance of his VRS application does not arise and the prayer made in that regard has become infructuous.

3.1. It is also contended that if the petitioner will accept his retirement which has been allowed in his favour w.e.f 30.06.2021, without insisting on the acceptance of his VRS application which is the subject-matter of W.P.(C) No.4594 of 2015, the said authority will think of continuing with the proceeding initiated against the petitioner vide memorandum dated 06.10.2017.

4. Taking into account the submission of the learned counsel for the State and the fact that the Petitioner has been

allowed to superannuate from his service w.e.f 30.06.2021 with sanction of provisional pension in his favour, Mr. S.K. Swain, learned counsel for the Petitioner submitted that in view of such changed scenario, the petitioner will not press WPC(OAC) No.4994 of 2015, if the proceeding against the Petitioner initiated on 06.10.2017 under Annexure-10 to WPC (OAC) No.3670 of 2017 is interfered with by this Court.

5. I have heard Mr. S.K. Swain, learned counsel appearing for the Petitioner and Mr. D.K. Mohanty, learned Additional Standing Counsel appearing for the State-Opposite Parties in both the cases and on their consent, both the Writ Petitions are disposed of at the stage of admission.

6. Having heard learned counsel for the parties and taking into account the materials available on record, this Court finds that the VRS application of the Petitioner dated 18.08.2006 was submitted before Opposite Party No.2 through proper channel vide Annexure-2 in WPC (OAC) No.4594 of 2015. The VRS application was also duly forwarded by the District Fishery Officer cum CEO, FFDA, Sundargarh to the Opposite Party no.2 vide his letter dated 24.08.2006 under Annexure-3. Therefore, the stand taken by the learned State Counsel that the VRS application since has not been received by Opposite Party No.2, there is no question of its acceptance is not legally sustainable.

Not only that, there is no prescribed format provided for submission of such VRS application and on that ground also, the VRS application of the petitioner was never rejected. Since this Court finds that the VRS application dated 18.08.2006 has been duly communicated to Opposite Party No.2 and no decision was taken thereon in view of the deeming provision contained under Rule 42 of the OCS Pension Rules in normal course it would have treated as deemed acceptance. However, taking into account the peculiarity of this case and the fact that the petitioner was allowed to superannuate from his service on 30.06.2021 with sanction of provisional pension in his favour, this Court in view of the submission of Mr. S. K. Swain, learned counsel appearing for the Petitioner, permits the petitioner to withdraw WPC (OAC)No.4594 of 2015.

6.1 However, in view of the such peculiarity, and taking into account the sufferings of the Petitioner, this Court is inclined to quash the proceeding, so initiated against the Petitioner on 06.10.2017 under Annexure-10 to WPC (OAC) No.3670 of 2017. However, while quashing the proceeding so initiated against the Petitioner, this Court directs the Opposite Party No.2 to treat the qualifying service of the petitioner from the date of his initial joining till 19.11.2006 and sanction him with the retiral benefits as due and admissible. The entire exercise shall be completed

within a period of three months from the date of receipt of this order.

7 Both the Writ Petitions are disposed of with the aforesaid observations and directions.

8. Photocopy of this order be placed in the connected cases.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 3rd January, 2023/sangita

