

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3189 of 2015

Sankar Prasad Nayak

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

12.08.2022

Order No

9.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. L.K.Mohanty, learned counsel for Petitioner and Mr. N.Prusty, learned Standing Counsel for the State-Opposite Parties.

3. The Petitioner is aggrieved by order dated 20.02.2008 passed by the Inspector of School, Jagatsinghpur under Annexure-6 and consequential order passed on 28.02.2014 under Annexure-9.

4. It is submitted that the petitioner entered into service as an Asst. Teacher on 16.08.1967 and in the service book his date of birth was reflected as 01.07.1950 under Annexure-2.

5. It is submitted that while the Petitioner was so continuing he was issued with a notice by the Headmaster of the School under Annexure-5 indicating therein that the petitioner has tampered the date of birth as 1.7.1945 in place of 1.7.1950.

6. It is further submitted that on receipt of said notice under Annexure-5 though the petitioner submitted a reply on 08.02.2008, but the opposite party No.3 passed the impugned

order on 20.02.2008 under Annexure-6 by rejecting the prayer of the petitioner.

7. It is further submitted that subsequently while forwarding the pension paper under Annexure-9 a sum of Rs.6,68,572/- was directed to be recovered from the original petitioner for his overstaying in service for the period from 1.7.2003 to 28.2.2008.

8. It is submitted that prior to taking such action in superannuating the petitioner from his service w.e.f. 30.06.2003, even though the petitioner was issued with a notice under Annexure-5, but the show cause letter issued by the Board of Secondary Education on 29.01.2008 as indicated in Annexure-6 was never provided to the petitioner. Not only that even though the petitioner submitted his reply on 08.02.2008, but without affording a personal hearing and reasonable opportunity of hearing to the petitioner, the impugned order was passed only on 20.02.2008 under Annexure-6. In the said order, nothing was indicated regarding recovery of any amount from the original petitioner. Subsequently while issuing the sanction order for sanction of the provisional pension under Annexure-9 an amount of Rs.6,68,572/- was directed to be recovered for the period, the original petitioner overstayed in his service i.e. from 01.07.2003 to 28.02.2008.

9. It is submitted that prior to taking such action for recovery, no notice was ever issued to the original petitioner.

10. Making all such submissions, Mr. Mohanty, learned counsel for the Petitioner prayed for interference of this Court in the said order.

11. Mr. Prusty, learned Standing Counsel for the State on the other hand submitted that even though the petitioner joined in his service on 16.08.1967 and in the service book his date of birth was indicated as 01.07.1950, but in the year 2008 when

verifying the service book some discrepancy was found, the Board was intimated to verify the same.

12. It is further submitted that the Board in his letter dated 29.01.2008 intimated the opposite Party No.3 that the date of birth of the Petitioner is 1.07.1945 and not 01.07.1950.

13. It is also submitted that on receipt of the said letter, the opposite party No.3 vide Annexure-4 requested the Headmaster of the School to issue a show cause and the Headmaster on receipt of the same issued the same to the petitioner on Annexure-5.

14. It is accordingly submitted that in view of the letter issued by the Board, it was found that the date of birth of the petitioner is 01.07.1945 and not 01.07.1950. Accordingly, he was superannuated from his service w.e.f. 30.06.2003. It is also submitted that no illegality has been committed by the Opposite Party No.3 in superannuating the petitioner from his service w.e.f. 30.06.2003 as the Petitioner has manipulated his date of birth. It is also submitted that since the Petitioner illegally continued in his service till 20.02.2008, he is liable to refund the amount he received for the period 1.7.2003 to 28.02.2008.

15. Heard learned counsel for the Parties.

16. Perused the materials available on record. This Court after going through the same find that the letter issued by the Board on 29.01.2008 basing on which Annexures-4 & 5 were issued, was never provided to the petitioner at any point of time and the said fact was also not indicated either in Annexure-4 or in Annexure-5.

17. Since the original petitioner at no point of time was given an opportunity to dispute the said letter issued by the Board, the said letter should not have been taken into

consideration by the opposite party No.3. While perusal the impugned order at Annexure-6, this Court further finds that the show cause was issued to the petitioner on 04.02.2008 and the original petitioner submitted his reply on 08.02.2008 and the impugned order was passed on 20.02.2008 without affording any reasonable opportunity of hearing to the petitioner lest giving a personal hearing.

18. Since the petitioner entered into service on 16.08.1967, the action taken by the Opposite Party No.3 after 41 years of his service and that too without giving a reasonable opportunity of hearing is prima-facie illegal. Not only that in the said order under Annexure-6, nothing was indicated to recover any amount for the period the original petitioner overstayed in service. Subsequently without providing any opportunity and while sanctioning the provisional pension in favour of the original petitioner, the amount drawn by the original petitioner for rendering his service till 20.02.2008 from July, 2003, was directed to be recovered.

18. Since this Court finds that prior to directing for recovery of the amount, the petitioner was never given an opportunity, the action of the opposite party No.3 in directing for such recovery is also illegal on the ground of non-compliance of the principle of natural justice. Not only that for the period July, 2003 to February, 2008, the original petitioner has discharged his duty.

19. Therefore, this Court finds that since the original petitioner has discharged his duty for the period 01.07.2003 to 20.02.2008, no recovery is permissible in the eye of law.

20. Therefore, this Court is inclined to quash the direction of the opposite party No.3 to recover a sum of Rs.6,68,572/- from the retiral benefit of the original pensioner. While quashing the same, this Court directs the Opposite Party No.3 to sanction all

retiral benefits as due and admissible to the original petitioner in favour of the substituted petitioner. The substituted petitioner who happens to be the wife of the deceased employee be also sanctioned with the original family pension. The entire exercise be completed by the Opposite Party No.3 within a period of three months from the date of receipt of this order.

21. Accordingly, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

