

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No. 799 of 2015

**Sudhal Chandra Haribhakta Petitioner
Behera**

-versus-

State of Odisha & Ors. Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
27.07.2022**

Order No

03.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. S.C. Pani, learned counsel for the Petitioner and Mr. Samal, learned Standing Counsel appearing for the Opp. Parties.
3. The Petitioner has filed the present writ Petition challenging the order dtd.18.12.2006 passed by O.P. No. 1 under Annexure-10, wherein the prayer of the Petitioner to treat the period from 26.08.1992 to 05.06.1994 as duty and for extension of the financial benefit was not acceded to.
4. Mr. Pani, leaned counsel for the Petitioner submitted that while continuing under suspension, the Petitioner vide order dtd.12.08.1992 under Annexure-1 was reinstated in his service i.e. Head Master, Bhanjkia High School.

5. It is submitted that vide another order issued on 12.08.1992 under Annexure-2, the Petitioner was transferred and posted as Head Master, Nuagaon High School vice Sri Sripati Mahanta.

6. It is submitted that pursuant to the order issued under Annexure-2 though the said Sripati Mhanaty joined in the Petitioner's school on 20.08.2012, but the Petitioner was never relieved from the school and accordingly he could not join in his place of transfer.

7. It is submitted that pursuant to the order issued by the then Inspector of School, Mayurbhanj Circle on 07.05.1994 under Annexure-3, the Petitioner was relieved and joined in his place of transfer on 06.06.1994.

8. Mr. Pani, learned counsel for the Petitioner submitted that since the Petitioner in terms of order under Annexure-2 was not relieved, he could not join in his place of transfer and could join only on 06.06.1994 basing on the order issued on 07.05.1994 under Annexure-3. It is accordingly submitted that the Petitioner is entitled for regularization of the period from 26.08.1992 to 05.06.1994 and is also entitled to get all the service and financial benefits for the said period.

9. It is submitted that O.P. No. 1 without proper appreciation of the Petitioner's claim, passed the impugned order under Annexure-10 with a direction on the Inspector of School to regularize the said period by sanctioning leave as due and admissible.

10. Mr. Samal, learned counsel appearing for the Opp. Parties on the other hand submitted that pursuant to the order issued under Annexure-2 on 12.08.1992, though the other teacher joined in the Petitioner's School on 20.08.1992, but the Petitioner never get

himself relieved and never joined in his place of transfer. It is also submitted that the aforesaid conduct of the Petitioner is very much reflected in the letter dtd.07.05.1994 under Annexure-3.

11. Mr. Samal further submitted that basing on the order passed by this Court on 25.07.1994 in OJC No. 3621 of 1994 Inspector of Schools-O.P. No. 3 conducted an inquiry and vide his order dtd.01.03.1995 under Annexure04, he found that the Petitioner never joined in his place of transfer pursuant to order dtd.12.08.1992 nor he was prevented from such joining by anybody. While passing such order on 01.03.1995, O.P. No. 3 also directed to treat the period from 26.08.1992 to 05.06/1994 as leave due and admissible.

12. Mr. Samal accordingly submitted that since the Petitioner never joined in his place of transfer pursuant to order dtd.12.08.1992 under Annexure-2 and he joined only on 06.06.1994, his claim to get the financial benefit from 26.08.1992 to 05.06.1994 is not justified and O.P. No. 1 has rightly passed the impugned order on 18.12.2006 under Annexure-10 in directing to treat the said period as leave due and admissible.

13. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that no document has been filed by the Petitioner in support of his stand that he was not relieved from his parent school pursuant to the order dtd.12.08.1992 under Annexure-2 nor any document has been filed showing that the Petitioner was prevented from his joining in his place of transfer.

14. This Court also finds that pursuant to the order passed by this Court on 25.07.1994 in OJC No. 3621 of 1994, O.P. No. 3 conducted an enquiry and found that the non-joining of the Petitioner in his place of transfer is without any reason or basis. The said order passed by O.P. No. 3 on 01.03.1995 under Annexure-4 was also never challenged by the Petitioner.

15. Therefore, this Court finds no illegality or irregularity in the impugned order passed by O.P. No. 1 on 18.12.2006 under Annexure-10. While not inclined to interfere with the matter, this Court directs the Opp. Party No. 3 to regularize the period of service of the Petitioner from 26.08.1992 to 05.06.1994 as directed by O.P. No. 1 in its order under Annexure-10.

16. Since it is submitted that the Petitioner has already retired from his service w.e.f.31.03.1999 and because of non-regularization of the aforesaid period the Petitioner is not getting final pension and other pensionary benefits, the O.P. No. 3 is directed to comply with the direction issued by O.P. No. 1 in its order dtd.18.12.2006 under Annexure-10 within a period of three (3) months from the date of receipt of this order. This Court further directs that after such compliance or the direction, the Petitioner be released with all his retiral dues as due and admissible within a further period of three (3) months from the date of receipt of this order.

17. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Sneha