

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C.(OAC) No.1528 of 2016

Digambar Patra

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

2.8.2022

Order No

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. G.R. Sethi, learned counsel for the petitioner and Mr. Balabantaray, learned Standing Counsel for the Opp. parties.
3. The Petitioners is aggrieved by the order dated 14.8.2015 passed by Opp. party No.1 under Annexure-5 wherein the petitioner has been held as not entitled to get pension/family pension on the ground that the petitioner's period of engagement is less than 10 years. It is submitted that the order was passed basing on the order passed by the learned Tribunal on 8.5.2015 under Annexure-4 in O.A. No.1028 of 2008. In the said order, learned Tribunal passed the following order.

"Keeping in view the above observation of the Hon'ble Court, we feel tht the above judgment is fully applicable to the temporary Collection Moharirs, the applicant and there is no reason to discriminate them. However, this being a policy decision we are not inclined to issue any direction to render such benefit to the applicant, but direct the Govt-respondents to take a policy decision to make the Collection Moharirs like the applicant,

eligible for minimum pension taking so much of their service which they have rendered as Collection Moharir to add to their qualifying service. Such decision be taken within a period of two months from the date of receipt of a copy of this order and in the event the decision goes in favour of the applicant, he be extended with the benefit of minimum pension with effect from the date of his retirement. Accordingly, the O.A. is disposed of.”

4. Mr. G.R. Sethi, learned counsel for the petitioner submitted that subsequent to that order passed under Annexure-4, learned tribunal in O.A. No.668 (C) of 2008 vide order dated 25.4.2016 passed the following order.

“7. Accordingly, the O.A is allowed and the respondent authorities are directed to add so much of service rendered by the applicant in the NMR establishment with the service rendered by him in the regular establishment to make him eligible for minimum pension and accordingly pension be fixed and be paid to him with effect from the date of his retirement. Consequential action of the respondents to recover the amount of provisional pension which has been paid to him is illegal and accordingly quashed. The entire exercise be completed, within a period of three months from the date of receipt of a copy of this order.

5. It is submitted that the order passed by the learned Tribunal on 25.4.2016 in O.A. NO.668(C) of 2008 was challenged by the State-Opp. Parties before this Court in W.P.(C) NO.32910 of 2011 and this Court basing on the order passed by this Court in another Writ Petition i.e. W.P.(C) No.3100 of 2017 has not inclined to entertain the said writ petition and dismissed the same. It is also submitted at the Bar that the order passed by the learned Tribunal in O.A.

No.668(C) of 2008 has been complied with in the meantime.

6. Mr. Sethi, learned counsel for the petitioner accordingly submitted that in view of subsequent order passed by the learned Tribunal on 25.4.2016 which has been confirmed by this Court and the extension of benefit following that order, the impugned order passed by Opp. party No.1 under Annexure-5 needs interference of this Court.

7. Mr. Balabantaray, learned Standing Counsel on the other hand submitted that the learned Tribunal in the case of the petitioner directed the opp. parties to take a policy decision to make the Collection Moharirs like the petitioner eligible for minimum pension taking so much of their services which they have rendered as Collection Peon to add to their qualifying service. In consideration of that, opp. party no.1 rightly rejected the petitioner's claim vide order under Annexure-5 and no illegality has been committed by passing such an order.

5. Heard learned counsel for the parties. Perused the materials available on record and the order produced by Mr. Sethi passed by the learned Tribunal on 25.4.2016 in O.A. No. 668(C) of 2008.

6. Learned Tribunal in its order dated 25.4.2016 while allowing the prayer held that the service rendered by the petitioner in the NMR establishment will be added to his qualifying service in order to make eligible

to the petitioner therein to get the minimum pension. As per the considered view of this Court, the said order having been implemented by the State-Opp. parties, the petitioner also stands in the similar footing and his claim needs reconsideration by Opp. Party No.1.

7. Therefore, this Court while quashing under Annexure-5, direct Opp. party No.1 to take a fresh decision on the petitioner's claim within a period of two months from the date of receipt of this order with observation that while taking such a decision, opp. party No.1 shall follow the direction contained in order dated 25.4.2016 passed in OA NO.668(C) of 2008 and the confirmation of the same by this Court as well as the order passed by this Court on 4.9.2017 in W.P.(C) NO.3100 of 2017.

7. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

sangita