

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No. 3864 of 2016

Durga Prasad Seth

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

17.08.2022

Order No

01.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. S.P. Swain, learned counsel for the Petitioner, Mr. M.K. Balabantaray, learned Standing counsel appearing for the State-Opp. Parties and Mr. S.K. Patra, learned counsel appearing for Principal Accountant General-O.P. No. 5.

3. Originally, the case was filed in the Tribunal in Original Application No.3864 of 2016. On being transferred to this Court, the same has been registered as W.P.C.(OAC) No.3864 of 2016. The petition involves the following prayer:

“In view of the facts and submissions mentioned in para- (6) above the applicant prays for the following relief(s):

- a) Admit the original Application.*
- b) After hearing the case from the counsel of the applicant, quash the order No. 365 dated 29.06.2016 passed by the Respondent No. 5 vide Annexure-7.*

- c) *Direct the Respondents to deduct the G.P.F. Subscription of the applicant vide G.P.F. A/c. 68052 PW(O).*
- d) *And pass an order(s) direct(s) as this Hon'ble Tribunal deem fit and proper."*

4. Background involving the case is that the applicant earlier working as Gram Panchayat Secretary. While the Petitioner was continuing as such, by office order dated 01.06.1994 of the Government in Panchayati Raj Department, the petitioner was promoted to the post of V.L.W. w.e.f. 03.06.2009 and by the time of filing of the Original Application, the petitioner was continuing as an Executive Officer. While the petitioner was continuing as an Executive Officer, State Government issued a notification dated 17.09.2005 introducing a new restructured defined contribution pension scheme for the new entrants in the State Government service with effect from 01.01.2005. While matter stood above, there arose some doubt in the matter of implementation of such circular, clarification appears to have been issued to all Departments of the Government vide intimation dated 04.04.2007 indicating therein that the cases of employees would be governed in terms of OCS Pension Rule, 1992 and existing GPF(O) Rules. It is pursuant to such developments, petitioner was provided with G.P.F. number and the petitioner was continued to be a G.P.F. subscriber. It is while the matter stood thus, the opposite party no.5 issued a letter dated 12.01.2015 thereby cancelling the G.P.F. Account number in respect of the employees, who are continuing on contractual basis prior to 01.01.2005. Petitioner being aggrieved by such direction of the opposite party No. 5, preferred the Original Application involved herein. On entertaining the Original Application, it appears by interim order the Tribunal stayed the

operation of the instruction vide Annexure-7 so far as the applicant is concerned.

5. Mr. Swain, learned counsel appearing for the petitioner on reiteration of the factual background indicated hereinabove giving reference to the documents appended here to further taking support of the judgment of the Tribunal in Original Application No.98 of 2015 disposed of on 19.5.2017 confirmed by this Court in the case of *State of Odisha & Others Vs. Sanjulata Sethy & Others* in disposal of W.P.(C).No.22057 of 2019 and further being affirmed by Hon'ble Apex Court, attempted to justify the claim involved herein. Mr. Swain, learned counsel further also submitted that in another development involving a judgment in similar situation being carried up to Hon'ble Apex Court, the Hon'ble Apex Court in disposal of a batch of SLPs including Special Leave Petition (C).No.23578 of 2012 and dismissal of the State's plea vide batch of review cases including Review Petition (C) No. 2038 of 2013. Mr. Swain further taking support of this judgment also to the case at hand, claimed above judgment also taken care of in the disposal of Original Application No.98 of 2015.

6. Learned Standing Counsel appearing for the State taking this Court to the reason assigned in the counter affidavit in justification of the impugned order however did not dispute the position of law involving very same issue not only decided by the Tribunal in the above Original Application but also decided through the decision in Special Leave Petition (C).No.23578 of 2012 and Review Petition (C) No. 2038 of 2013.

7. Since the claim made here based on settled position of law, without entering into the factual aspect, this Court simply observes

the Finance Department orders herein also impugned in the Original Application No.98 of 2015. The Tribunal after taking all the factual aspects involved herein and further taking into the developments through the above SLP(C) and the Review settling the position in disposal of Original Application No.98 of 2015, has come to hold the orders at Annexure-7 also being impugned herein were set aside. For there is no dispute with regard to the position of law on this aspect and as has already been settled through the above judgment, this Court sets aside the orders at Annexure-7 and allows the application directing to maintain the position of the petitioner so far it relates to continuance in the G.P.F. Scheme from the date of his regularization.

8. The writ petition succeeds.

(Biraja Prasanna Satapathy)
Judge

Sneha