

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C. (OAC) No.2623 of 2015

Biresk Kumar Pattnaik

....

Petitioner

Mr. B.K. Nayak, Advocate

-versus-

State of Odisha & Others

....

Opposite Parties

Mr. P.K. Mohanty, ASC

CORAM:

JUSTICE M.S. RAMAN

ORDER

08.08.2022

Order No.

20.

1. This matter is taken up through virtual/physical mode.
2. The Original Application No. 2623 of 2015 was filed before the State Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAC) No. 2623 of 2015.
3. Heard Mr. B.K. Nayak, counsel for the Petitioner and Mr. P.K. Mohanty, Additional Standing Counsel for the Opposite Parties.
4. The case of the Petitioner is that being appointed as a Job Contract Amin under Consolidation Officer, Nimapara w.e.f. 8th March, 1978, he was brought over to regular establishment under Tahasildar, Nimapara and appointed as Collection Moharir on 21st December, 2000. He got retired from service on attaining the age of superannuation w.e.f. 28th February, 2013. The grievance of the Petitioner in the present writ petition is that the entire period of service he rendered in the Job Contract Establishment is not given due consideration and, therefore, the Petitioner has urged that said period should have been counted for the purpose of pension.

5. Mr. B.K. Nayak, counsel for the Petitioner referred to Single Bench decisions of this Court in the cases of *Kanhu Charan Nayak Vrs. State of Odisha & Others in WPC(OAC) No. 2614 of 2007* disposed of on 4th January, 2022, *Jagannath Prusty and Others Vrs. State of Odisha & Others in WPC(OAC) No. 607 of 2009* disposed of on 12th January, 2022, *Jadumani Parida Vrs. State of Odisha in WPC (OAC) No. 1919 of 2008*, disposed of on Order dated 18th January, 2022, *Basanta Kumar Das Vrs. State of Odisha & Others in WPC (OAC) No. 270 of 2015* disposed of on 16th February, 2022 and *Bhagabat Barik vrs. State of Odisha & Others in WPC(OAC) No. 767 of 2015* disposed of on 6th May, 2022. He also placed reliance on Order dated 9th April, 2014 passed by Division Bench of this Court in the case of *State of Odisha & Others Vrs. Nityananda Biswal in WP(C) No. 14244 of 2006* which was affirmed by the Hon'ble Supreme Court of India in the case of *State of Odisha Vrs. Nityananda Biswal, SLP(C) CC No. 12573 of 2015* and submitted that the case of the present Petitioner is identical to the said cases inasmuch as the petitioner, namely Nityananda Biswal, in the said case, was also engaged in Job Contract Establishment and his services in the Job Contact Establishment was directed to be considered for the purpose of pension.

6. *Per contra*, Mr. Prasanna Kumar Mohanty, Additional Standing Counsel submitted that from the pleading of the petitioner it is apparent that he got retired on attaining age of superannuation on 28th February, 2013, by which date the Odisha Pension Rules, 1977 was repealed and replaced by the

Odisha Civil Service (Pension) Rules, 1992 which was made effective from 01.04.1992 and, therefore, the decisions relied on by the counsel for the petitioner which followed the Order dated 21.10.1994 passed by the learned Odisha Administrative Tribunal in T.A. No.11 of 1993 has no application to the present context as in the said case before the learned Tribunal the employee got retired from Government Service on 31.08.1988, *i.e.*, much prior to implementation of the Odisha Civil Service (Pension) Rules, 1992. The learned Additional Standing Counsel furnished a copy of Judgment dated 19th April, 2022 rendered by Single Bench of this Court in the case of *Judhistir Padhy Vrs. State of Odisha & Others*, WPC(OAC) No. 2276 of 2012.

The relevant observations of this Court in the said case, *Judhistir Padhy Vrs. State of Odisha & Others*, WPC(OAC) No. 2276 of 2012, as relied upon by Mr. Mohanty, learned Additional Standing Counsel is extracted herein below:

“10. From the above narration, it becomes evident that there are conflicting Division Bench judgments of this Court on the issue at hand. While the judgment passed in OJC No. 2147 of 1991 and W.P.(C) No.11503 of 2003 lay down that only so much of the service rendered under job contract establishment shall be reckoned as would be necessary for qualifying service for pension, the other Division Bench judgments have referred to the order of the 11 Tribunal passed in T.A. No. 11/1993 and O.A. No. 3020 (C) of 2003, both of which have since been confirmed by the apex Court. It therefore becomes imperative to examine the order passed in T.A. No. 11 of 1993 and O.A. No. 3020(C) of 2003 because the same form the foundation of all the other subsequent judgments referred to hereinbefore.

11. *In so far as the T.A. No. 11 of 1993 is concerned, the same was filed by one Bhagaban Pattanayak, who was appointed as an Amin on 01.12.1955 in Ganjam-Koraput Major Settlement in the job contract establishment. He continued as such till 27.08.1964 when he was brought under the regular establishment. He retired from Government Service on 31.08.1988 on reaching the age of superannuation. He approached the learned Tribunal with the grievance that the period under job contract establishment should be taken into account for the purpose of pension and other pensionary benefits. Learned Tribunal on a reference to Rule 23 of the Orissa Pension Rules, held that there is no mention therein about a job contract employee being subsequently brought to the regular establishment. It was further held that if an incumbent is appointed in the job contract establishment and retired from service as such, he being paid from contingencies, the period of such service shall not qualify for pension. As such, the learned Tribunal held that for those job contract employees who have been brought over to the regular establishment, the pension rules does not prohibit counting of past services rendered in the job contract establishment. Thereafter relying upon sub-rule(3) of Rule 23, learned Tribunal held that there is ample power of the Government notwithstanding the restrictions made in Rule 23(1) to order the periods rendered under the work charged establishment or the periods in which an employee is paid from the contingencies from being counted towards pension and pensionary benefits. Learned Tribunal though referred to the decision of this Court in OJC No. 2147 of 1991, yet directed the authorities to count the past services rendered by the petitioner in job contract establishment towards pension and pensionary benefits. As already stated, the aforesaid judgment of the Tribunal was challenged by the State before the Hon'ble Supreme Court in SLP (C) No. 13916 of 1995, but the same was dismissed vide order dated 17.07.1995.*

In so far as the order passed in O.A. No. 3020(C) of 2003 is concerned, learned Tribunal allowed the prayer of the petitioner entirely relying upon its earlier order passed in T.A. No. 11 of 1993. The said order, as already stated, was also challenged by the State before

this Court in W.P.(C) No. 14244 of 2006, which was dismissed vide order dated 09.04.2014 and thereafter before the Hon'ble Supreme Court in Special Leave to Appeal (C) CC No. 12573 of 2015, which was also dismissed vide order dated 13.07.2015 on the grounds of delay as well as on merits.

12. *What is relevant to note is that in T.A. No. 11/1993, learned Tribunal relied upon Rule-23 of the extant Rules that is, Odisha Pension Rules 1977 (in short, the 1977 Rules). Of course by the time of passing of the order that is, 12.04.1994 the 1977 Rules had already been repealed upon coming into force of the new Rules that is, Odisha Civil Services (Pension) Rules, 1992 (in short, the 1992 Rules) w.e.f. 01.04.1992. Rule 116(1) of the 1992 Rules is relevant in this regard, and is therefore quoted herein below:*

“116. Repeal and Saving.—

- (1) On the commencement of these Rules, the Odisha Pension Rules, 1977, and orders including Office Memorandum issued thereunder and in force immediately before such commencement shall cease to operate.*
- (2) Notwithstanding such cessation—*
 - (a) xxx*
 - (b) xxx*
 - (c) any case which pertains to the sanction of pension to a Government servant who had retired before the commencement of these rules and is pending before such commencement shall be disposed of in accordance with the provisions of the old rules as if these rules had not been made;”*

As already stated, the applicant in TA No. 11 of 1993 was an employee who retired from government service on 31.08.1988 that is, prior to coming into force of the 1992 Rules and therefore his claim for pension was governed under the 1977 Rules, which the learned Tribunal appears to have relied upon.

In so far as the order passed by the Tribunal in OA NO. 3020 (c) of 2003 is concerned, it is not forthcoming from the order passed therein as to when the concerned employee had retired. Nevertheless, the Tribunal passed the order entirely relying upon the order passed in TA No. 11 of 1993.

At this stage, it must be pointed out that in the case at hand, the petitioner retired from government service on 31.05.2012 and hence, his case is to be considered as per the 1992 Rules.

13. *It is also relevant to note that originally there was no provision in the 1992 Rules specifically governing the case of a job-contract employee who had been subsequently brought over to the regular establishment. However, an amendment was effected on 01.09.2001 to the said Rules, whereby, sub-rule-(6) was inserted in Rule 18 vide notification no. 45865/F dated 01.09.2001. Sub-rule (6) reads as follows:*

“18. Conditions subject to which service qualifies.—

xx xx xx

- (6) Notwithstanding anything contained in clause (i) & (iii) of sub-rule (2), a person who is initially appointed in a job contract establishment and is subsequently brought over to the post created under regular / pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular establishment as would render him eligible for pensionary benefits.”*

Thus, a specific provision was enacted to govern the cases of such employees. From the language employed in sub-rule (6) it is evident that the decision of this Court in OJC No. 2147 of 1991 was followed in toto by the Government. In fact, the very words used by this Court in the aforesaid decision appear to have been employed in the amended sub-rule.

Such being the factual position, it is evident that the order passed by the Tribunal in TA No. 11 of 1993 and followed in OA No. 3020 (c) of 2003 can have no application whatsoever to the case at hand.

All the other judgments of this Court referred to hereinbefore passed subsequently have referred to the order of the Tribunal in T.A. No. 11 of 1993 and O.A. No. 3020(C) of 2003 as confirmed by the apex Court, but as stated above, the petitioner in the instant case being governed by the provisions of the 1992 Rules, the said judgments cannot be applied to the case at hand as it would be de hors sub-rule (6) of Rule-18 as quoted hereinbefore.”

Mr. Prasanna Kumar Mohanty, Additional Standing Counsel, submitted that in *Judhistir Padhy Vrs. State of Odisha & Others*, WPC(OAC) No. 2276 of 2012 this Court declined to accede to the claim for counting the entire period of service in the job contract establishment towards pension and pensionary benefits having regard to the provision under sub-rule (6) of Rule 18 of the Odisha Civil Service (Pension) Rules, 1992 and urged to dismiss the present case being akin to above case.

7. Having held that as per the sub-rule (6) of Rule 18 only so much of the job contract service period shall be added to the period of qualifying service in regular establishment as would render the employee eligible for pension, this Court in the aforesaid case being *Judhistir (supra)* considered the hardship and made the following observation:

“13. ***

The fact that the judgments referred to hereinbefore were rendered without reference to the sub-rule (6) of Rule 18 of the 1992 Rules do not appear to have been agitated by the Government before this Court or the apex Court at any point of time. As a result, a peculiar position has emerged in that several employees have been granted the benefit of counting of their entire past services while others like the petitioner, who stand on similar footing, are deprived of such benefit. Undoubtedly, this would cause great hardship to such

employees. While this Court is fully conscious of the legal position that no direction can be issued de hors the statutory provision, yet fact remains that the statute also confers upon the Government wide powers to undo any hardship caused by any of its provisions, namely, the power of relaxation of the provisions under certain circumstances. The 1992 Rules contains a provision to such effect, i.e. Rule 114, which reads as follows:

‘114. Power to relax.—

Where the Governor is satisfied that the operation of any of the provisions of these rules causes undue hardship in any particular case, he may, by order, for reasons to be recorded in writing, dispense with or relax the requirements of the said provision to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order of relaxation shall be made except with the prior consultation of the Finance Department.’ ”

8. Faced with above situation, it is noticed that the later Single Bench decision [*Judhistir Padhy Vrs. State of Odisha & Others, WPC(OAC) No. 2276 of 2012*] has distinguished the earlier co-ordinate Bench decision by taking into consideration the distinguishing feature that by the date of superannuation of the employee, Rule 116 of the Odisha Civil Service (Pension) Rules, 1992 has come into force; and observed that the latter rule is made applicable to the fact-situation; and the provisions were not brought to the notice of earlier co-ordinate Benches of this Court.

It may be beneficial to take note of the following observation made by the Full Bench (five-Judges) of the

Hon'ble Gujarat High Court rendered in the case of *State of Gujarat Vrs. Gordhandas Keshavji Gandhi*, 1961 SCC OnLine Guj 15 = AIR 1962 Guj 128 (FB) = (1962) 3 GLR 269 :

“13. The rule that a Court should follow the decision of another Court of co-ordinate Jurisdiction is subject however to several exceptions which have been dealt with in Salmond's Juris prudence, 11th Edn. at pages 199 to 217.

- 1. A decision ceases to be binding if a statute or statutory rule inconsistent with it is subsequently enacted, or if it is reserved or overruled by a higher Court.*
- 2. A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute.*
- 3. A precedent loses its binding force if the court that decided it overlooked an inconsistent decision of a higher Court.*
- 4. A Court is not bound by its own previous decisions that are in conflict with one another. If the new decision is in conflict with the old, it is given per incuriam and is not binding on a later Court.*

Although the later Court is not bound by the decision so given per incuriam, this does not mean that it is bound by the first case. Perhaps in strict logic the first case should be binding, since it should never have been departed from, and was only departed from per incuriam. However, this is not the rule. The rule is that where there are previous inconsistent decisions of its own the Court is free to follow either. It can follow the earlier, but equally, if it thinks fit, it can follow the later.

- 5. Precedents sub silentio, are not regarded as authoritative. A decision passes sub silentio when the particular point of law involved in the decision is not perceived by the Court or present to its mind.*
- 6. Decisions of equally divided Courts are not considered binding.”*

The Hon'ble Supreme Court has enunciated the following principles in *Union of India v. Arulmozhi Iniarasu*, (2011) 7 SCC 397 = (2011) 2 SCC (L&S) 267 = 2011 SCC OnLine SC 899:

“Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. Ref.: Bharat Petroleum Corpn. Ltd. Vrs. NR Vairamani, (2004) 8 SCC 579; Sarva Shramik Sanghatana (KV), Mumbai Vrs. State of Maharashtra, (2008) 1 SCC 494; and Bhuwalka Steel Industries Limited Vrs. Bombay Iron & Steel Labour Board, (2010) 2 SCC 273J.”

The Hon'ble Supreme Court in *Inbasegaran & Anr vs S. Natarajan*, (2015) 11 SCC 12 laid down as follows:

“30. It is well settled that the ratio of any decision must be understood in the background of the facts of that case. The following words of Lord Denning in the matter of applying precedence have been locus classicus.

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

In *Islamic Academy of Education Vrs. State of Karnataka*, (2003) 6 SCC 697 it is succinctly held that the Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the Constitutional or relevant statutory provisions *vis-a-vis* its earlier decisions on which reliance has been placed.

9. With the above perspective, since the petitioner retired from Government Service on 28th February, 2013, much after introduction of the Odisha Civil Service (Pension) Rules, 1992 came into force, and in view of the fact that the repealed Odisha Pension Rules, 1977 is not applicable to the present context, it is desired that the Government may take a decision keeping in view the observation made in the foregoing paragraphs within a period of three months from the date of production of certified copy of this order by the petitioner along with relevant material particulars. Needless to observe that the authority may take into consideration the fact that several employees have been extended the desired benefit by taking into account the services rendered under the Job Contract Establishment for the purpose of pensionary benefits and keep in view the provisions of Rule 18(6) read with Rule 114 of the Odisha Civil Service (Pension) Rules, 1992.

With the aforesaid observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Laxmikant

