

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.504 of 2014

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

.....

Gopinath Paltasingh

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. S.N. Pattanaik, Advocate

For Opp. Parties : M/s. N.K. Praharaj,
Standing Counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 10.5.2022 & Date of Order: 13.7.2022

Biraja Prasanna Satapathy, J.

1. Heard Mr.S.N. Pattanaik, learned counsel for the petitioner and Mr. N.K. Praharaj, learned Standing Counsel appearing for the State-Opp. Parties.

2. This Writ Petition has been filed with the following prayer.

XXX

XXX

XXX

i. To direct the Respondents to pay, sanction, disburse and release the regular pension, DCRG, commuted Value of Pension and arrear in pension to the applicant within a stipulated time period including the pension under different revised pay rules treating him a a retired Govt. employee w.e.f 28.2.2013.

ii. To direct the respondent to pay interest on the unpaid amount on different heads as mentioned above from the date of entitlement till the actual payment made by the authorities.

iii. To grant any relief/reliefs as deemed fit and proper.

3. It is submitted that petitioner was appointed as Surveillance Worker vide order dated 13.8.1974. Pursuant to the said order, the petitioner joined on 14.8.1974 under Annexure-1. It is submitted that while continuing as such and basing on some false allegation, the petitioner was placed under suspension w.e.f 2.4.1978 vide office order dated 7.4.1978. It is submitted that subsequently the petitioner though was reinstated in service, but was again placed under suspension and a proceeding was initiated against him vide Annexure-7. It is submitted that in the said proceeding the petitioner when was issued with the order of punishment, he preferred an appeal under Annexure-8. It is further submitted that because of the order of suspension and initiation of proceeding when the pay fixation of the petitioner was not made, the petitioner approached the

authorities and on the interference of the Office of Chief Minister, the proposal was sent to the Director, Health Services, vide letter dated 23.8.1988 under Annexure-9. It is further submitted that subsequently when vide order dated 27.6.1996 under Annexure-10, the petitioner was put under transfer from Themera PHC to Kuntura PHC, on the ground of illness, the petitioner remained on leave. It is further submitted that after recovery from his illness, though the petitioner submitted his joining report to the Medical Officer, PHC, Themera under Annexure-11, but he was not allowed to join. The petitioner subsequently moved the CDMO, Sambalpur on 12.12.1996 under Annexure-12 with a prayer to cancel his order of transfer so issued on 27.6.1996 and to allow him to continue in PHC, Themra. It is submitted that in spite of such application, no action was taken and the petitioner at no point of time was intimated to join. It is submitted that because of such inaction, petitioner remained out of service w.e.f 13.11.1996. It is also submitted that in the meantime, the petitioner also attained the age of superannuation which fell due on 28.2.2013.

4. Mr. Pattanaik, learned counsel for the petitioner submitted that since at no point of time, the petitioner was issued with any notice alleging non-joining or remaining on leave without any application nor any proceeding was initiated in terms of the provision contained under Rule 72 of the Orissa Service Code, it is to be held that the petitioner was continuing in his service till his retirement which fell due on 28.2.2013. Since no proceeding was ever initiated

against the petitioner as provided under Rule 82 of the Orissa Service Code, it is to be deemed that the petitioner was continuing in his service till his superannuation and entitled to get all service and financial benefits. Mr. Pattanaik, in support of his aforesaid claim relied on a decision in the case of **Laxmipriya Nayak Vs. State of Odisha & Others** passed in OA No.2402 of 2014 by the learned Tribunal. Mr. Pattnaiak also relied on a decision of this Court in the case of **Karunakar Behera Vs. State of Orissa and Others** reported in **2017 (1) ILR Cuttack-906** and a decision of this Court rendered in **W.P.C(OA) No.125 of 2019 dated 17.3.2022**. It is accordingly submitted that the prayer made in the writ petition be allowed by this Court with a proper direction.

5. Mr. N.K. Praharaj, learned Standing Counsel on the other hand made his submission relying on the stand taken in the counter affidavit. It is submitted that pursuant to the order passed on 29.6.1996, the petitioner never joined in his place of transfer and remained on leave. Though it is alleged that he submitted his joining after recovery on 13.11.1996 before the Medical Officer, PHC, Themera and subsequently moved the CDMO, Sambalpur on 12.12.1996 with a prayer to allow him to continue in PHC, Themera, but the petitioner never took any step after making such application under Annexures-11 & 12. After remaining silent for more than 20 years, the present Writ petition was filed with a prayer to treat him as a deemed employee till his retirement on 28.2.2013 and to extent him all service and financial benefit.

6. Mr. N.K. Praharaj in support of his stand also relied on a decision of the Hon'ble Apex Court reported in the case of **C. Jacob Vs. Director of Geology and Mining and Another reported in (2008) (2) S.C.C (L & S) 961**. Mr. Praharaj also relied on a decision of the Hon'ble Apex Court in the case of **Vijay S. Sathaye Vs. Indian Airlines and Others** reported in **(2014) 1 S.C.C (L & S) 760**. It is also submitted that since the petitioner at no point of time took any step when his joining as alleged was not accepted nor his prayer was considered as made on 29.6.1996, the present Writ Petition after more than 20 years, is not maintainable. Accordingly Mr. Praharaj prayed that the prayer made in the Writ Petition be rejected.

7. Heard learned counsel for the parties.

8. It is not disputed that after submission of the documents under Annexure-11 on 13.11.1996 and on 12.12.1996 under Annexure-12, the petitioner never took any step and he remained silent till the present Writ Petition was filed in the year 2014. The petitioner never moved the authority for redressal of his grievances as made in the Writ Petition after 1996. Since the petitioner has not approached the authorities prior to approaching this Court, this Court is not inclined to entertain the Writ Petition. The decisions relied on by the learned counsel for the Petitioner is not applicable to the facts of the present case. Accordingly, this Court is not inclined to allow the grievance made in the Writ Petition and the same is accordingly dismissed.

9. However, it is observed that if any application is filed for grant of any benefit within a period of 4 weeks hence before Opp. Party No.1, the Opp. Party No.1 shall take a lawful decision on the same by giving an opportunity of personal hearing to the petitioner. It is observed that this Court has not expressed any opinion on the merits of any such claim. The Opp. Party No.1 is free to take his own decision on merit within a period of three months from the date of receipt of such representations.

10. With the aforesaid observation and direction, the writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 13th of July, 2022/sangita

