

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). Nos. 6353, 734, 1784, 1785, 2027, 5007, 6712 & 6714 of 2022 and 25152, 25155, 25822, 27270, 27411, 27414, 28627, 29717, 30673, 30680, 30682, 30684, 30685, 32060, 32062, 32444, 32986, 33358, 33381, 33383, 33386, 33388, 34037, 34040, 34187, 34248, 34250, 34251, 34252, 34825, 35299, 35301, 35924, 36587, 36590, 39045, 40167 & 40176 of 2021

In W.P.(C) No.6353 of 2022

Madhusudan Naik

....

Petitioner

-versus-

State of Odisha and Ors.

....

Opp. Parties

Advocates appeared in the case:

For Petitioner

:

Mr. Sameer Kumar Das, Adv.

Mr. P.K. Behera, Adv.

Mr. N. Jena

-versus-

For Opp. Parties

:

*Mr. Biplaba Mohanty, SC
(for O.P.1/ S & ME Deptt.)*

Mr. B. Routray, Adv.

(for O.Ps.2 & 3)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-06.09.2022

DATE OF JUDGMENT:-26.09.2022

Dr. S.K. Panigrahi, J.

1. Since all the above-mentioned Writ Petitions involved common question of fact and law, the same were heard

together and being disposed of by this common judgment. This Court also felt it apposite to decide W.P.(C) No.6353 of 2022 first and whatever outcome of the said Writ Petition, the same will be covered to other connected Writ Petitions mentioned hereinabove.

I. Facts of the case:

2. The Petitioner, in this Writ Petition, challenges arbitrary and discriminatory action of the Opposite Party No.2/ Board of Secondary Education, Odisha, Cuttack and 3, President, Board of Secondary Education, Odisha, Cuttack in the matter of payment of pension and other retiral dues up to the service rendered by him till the age of 58 years instead of his actual serving period which is upto 60 years. He also seeks for a direction from this Court to the Opposite Parties to revise his pension and other pensionary benefit including gratuity by calculating his entire qualifying service for the purpose which is up to 60 years of age and to pay the differential arrears within a stipulated period as his claim is squarely covered by the ratio decided in W.P.(C) No.13035 of 2019 disposed of on 07.11.2019 and the order passed in W.A. No. 509 of 2019 and batch cases dated 03.12.2020. The said order was also challenged before the Apex Court by the BSE, Orissa. The Apex Court also vide order dated

02.03.2021 of in SLP(C) Nos. 3555-3604 of 2021 was pleased to dismiss the same. The Petitioner prays for similar relief as the facts in the present case are quite identical to the cases narrated above.

II. Submissions of the Petitioner:

3. Learned counsel for the Petitioner submits that the Petitioner had joined as a L.D. Assistant on 03.01.1967 in Board of Secondary Education, Odisha, Cuttack. As per the Board Regulation, the Petitioner retired from service on attaining the age of 60 years on 31.03.2005 as his date of birth is 16.03.1945. However, the petitioner's service period was counted up to the age of 58 years even though he worked till the attainment of 60 years of age. He further submits that similarly situated persons have been considered reckoning till the age of 60 and extended the aforesaid benefits based on the aforesaid orders of this Court as well as the Supreme Court. But the Petitioner has been deprived of such benefits by the Board authority. Hence, the Petitioner is constrained to approach this, Court for similar relief.
4. He further submits that since the claim of the Petitioner is squarely covered by the ratio decided in W.P.(C) No.13035 of 2019 disposed of on 07.11.2019 which was under appeal

before the Division Bench vide W.A. No. 509 of 2019 and batch cases and the order dated 03.12.2020 passed therein accepted similar contentions of the present petitioners in the instant Writ petition. Further, the matter travelled up to Supreme Court vide SLP(C) Nos. 3555- 3604 of 2021 and was dismissed by order dated 02.03.2021. Hence the present Writ Petition could be disposed of in the light of the said orders and the Opposite Parties may be directed to revise his pension and other pensionary benefit including gratuity by calculating his entire qualifying service for the purpose up to 60 years of age and to pay the differential arrears within a stipulated period.

III. Submissions by School and Mass Education:

5. Learned Standing Counsel for the Department of School and Mass Education submitted that he has no objection, if these matters are disposed of in the light of the orders as stated supra.
6. For better appreciation of facts and law, it is appropriate to quote the aforementioned orders of the High Court as well as the Supreme Court:

Order dated 07.11.2019 passed by the Single Bench of this Court in W.P.(C) No.13035 of 2019 is as follows:

*"I.A. No. 13560 of 2019
04 07.11.2019- Heard Mr. S.K. Das, learned counsel for
the petitioner and Mr. B.K. Mohanty on behalf of Mr.*

S.S. Rao, learned counsel for the Board of Secondary Education, Odisha.

*The petitioner files this application for modification of order dated 11.09.2019, in which this Court directed to consider the case of the petitioner in the light of the judgment passed by this Court in **Parsuram Behera v. President, Board of Secondary Education, Orissa**, 109 (2010) CLT 673, as well as order dated 20.04.2010 passed in W.P.(C) No. 15855 of 2006 (**Chakradhar Behera v. Board of Secondary Education, Odisha**), by quashing the order of rejection of his claim in Annexure-4 dated 12.07.2019, challenging which the writ application has been filed. Perused the record. Since this matter is analogous to W.P.(C) No. 12884 of 2019, for the reasons stated in order no.5 dated 14.10.2019 passed therein, the order dated 11.09.2019 passed in W.P.(C) No. 13035 of 2019 is recalled and a fresh order is passed today by quashing Annexure-5 dated 12.07.2019.*

Accordingly, the I.A. stands disposed of.

Sd/-

WP(C) No. 13035 of 2019

05 07.11.2019- Heard Mr. S.K. Das, learned counsel for the petitioner and Mr. B.K. Mohanty on behalf of Mr. S.S. Rao, learned counsel for the Board of Secondary Education, Odisha.

*The limited grievance of the petitioner is that though he was retired at the age of 60 years, his pensionary benefit has been calculated upto the age of 58 years. As it seems the case of the petitioner is squarely covered by the order of this Court rendered in the case of **Parsuram Behera v. President, Board of Secondary Education, Orissa**, 109 (2010) CLT 673, wherein this Court held that the pensionary benefit should be calculated taking into account the entire period of service, i.e., upto 60 years.*

Similar view has also been taken in subsequent order dated 20.04.2010 passed in W.P.(C) No. 15855 of 2006

(Chakradhar Behera v. Board of Secondary Education, Odisha). Accordingly, the benefits have already been extended to similarly situated persons working under the Board of Secondary Education, Odisha. Therefore, there is no valid and justifiable reason not to extend such benefits to the petitioner.

In the above view of the matter, the order dated 12.07.2019 in Annexure-5 is quashed and the opposite parties are directed to grant the benefits, as due and admissible to the petitioner, in terms of the aforesaid orders.

The writ petition thus stands disposed of. Issue urgent certified copy as per rules.

Sd/-“

Order dated 03.12.2020 passed by the Division of this Court in W.A. No.509 of 2019 and batch of W.As. is as follows:

“10. 03.12.2020 W.A. Nos. 509, 405, 466, 467, 468, 491, 492, 493, 494, 495, 496, 497, 498, 499, 502, 505, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 559, 560, 592 of 2019 and W.A. Nos. 7, 8, 9, 10, 11, 12, 13, 14, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 204 and 559 of 2020.

These matters are taken up through video conferencing.

2. Heard learned counsel for the appellants as well as learned counsel for the respondents.

3. Since all these Writ Appeals involve common question of fact and law, the same are taken up together and disposed of by this common order.

4. For better appreciation, Writ Appeal No. 509 of 2019 is taken as the leading case. The said Writ Appeal has been filed by the appellant-Board of Secondary Education, Orissa, challenging the order dated 07.11.2019 passed in W.P.(C) No. 13035 of 2019, wherein the learned Single Judge has directed

that the pensionary benefit of the respondent should be calculated taking into account the entire period of service, i.e. up to 60 years instead of 58 years.

5. Learned counsel for the appellant-Board of Secondary Education Orissa, submitted that while passing the orders in the case of *Parsuram Behera v. President, Board of Secondary Education, Orissa*, reported in 109 (2010 CLT 673 and in the case of *Chakradhar Behera v. Board of Secondary Education, Odisha* (W.P.(C) No. 15855 of 2006 decided on 20.04.2010), the Division Bench of this Court has not taken into consideration the notification issued on 05.03.1997 wherein amendment was made to the Regulation in exercise of the powers conferred under Section 21 of the Orissa Secondary Education W.A. No. 509 of 2019 Act, 1953. The said regulation is called as Board of Secondary Education Orissa (Amendment) Regulation, 1997. Pursuant to such amendment, pension was introduced so far as the employees of the Board are concerned. Regulation 21 provided for calculation of qualifying period for the purpose of pension, which articulates as follows:-

"21. Notwithstanding the age of superannuation, the period of qualifying service of employees other than the class IV employees up to the time when they complete 58 years of age shall be taken into consideration to determine the quantum of their pension, family pension or commutation of pension. In the case of class IV employees the period of service up to the age of superannuation shall be reckoned for the purpose."

According to him, in view of such regulation the qualifying service is counted till the employee attains 58 years of age for grant of pension. In spite of such provision, without interfering with the said regulation, the Division Bench as well as the Single

Bench has passed the order, which are liable to be interfered with.

6. Learned counsel for the respondents on the other hand supported the impugned order passed by single bench and also relied on the decision of the division bench of this Court as referred above. According to them since all the materials have been considered by this Court while passing the impugned orders, the same need not be interfered with. According to them, Regulation 20 (1) of the said regulation is very specific which provides as follows:-

“20 (1) Every employee retiring on or after the 1st day of January, 1982 shall be entitled either to the benefit of the pension including commutation of pension, gratuity and family pension as applicable to the State Government employees under the provisions of the Orissa Civil Service (Pension) Rules, 1992 and the Orissa Civil Services (Commutation of Pension) Rules, 1993 or to the benefit of contributory provident-cum-gratuity provided in this chapter, as he may opt.”

In view of the above, since Orissa Civil Service Pension Rules, 1992 is applicable to the employees of the Board, therefore, the impugned order need not be interfered with. In support of their contention, they cited a decision in the case of ***Professor Subash Chandra Mishra v. OUAT*** (W.P.(C) No. 13552 of 2006 decided on 08.03.2007, which has been affirmed by the Apex Court in ***Civil Appeal No. 1226 of 2008*** vide order dated 19.04.2017, wherein a similar issue was raised and this Court directed to count the service till the age of 60 years for calculation of pension instead of 58 years.

7. The case of the respondent as the petitioner in W.P.(C) No. 13035 of 2019 is that, he entered into the Board of Secondary Education service on 05.12.1969 and while continuing in the Board's service he made

to retire attaining the age of superannuation at 60 years of age on 31.12.2009. The Board of Secondary Education, Odisha is guided by the Odisha Secondary Education Act, 1953. The Board of Secondary Education Orissa formulated its own regulations pursuant to the power conferred under section 21 of the Secondary Education Act to govern the administration of the Board. On 05.03.1997, Regulation of the Board of Secondary Education was amended introducing the benefit of pension under Section IV of the regulation. Regulation 21 of the amended regulation stipulated that notwithstanding the actual age of superannuation, the period of qualifying service up to the time when they complete 58 years of age shall be taken into consideration to determine the quantum of their pension, family pension or commutation of pension. Accordingly though the petitioner was retired on 31.12.2009 on attaining the age of 60 years, however the qualifying service was counted till 31.12.2007, when he attained the age of 58 years. According to the petitioner, though Orissa Pension Rules is applicable to the employees of the Board and there is no such type of stipulation, however, in an arbitrary, whimsical and illegal manner two years of service rendered by him was not taken into account for calculating the qualifying service towards pension. Being aggrieved by such regulation, numbers of similarly situated persons moved this Court in various writ petitions in the year 2004 and 2006. This Court ultimately directed the authorities to calculate the service up to 60 years of age. After such issue was settled by this Court, the petitioner approached the President of the Board of Secondary Education, Orissa in his representation dated 19.11.2018 for calculation of his pension counting his service up to the age of 60 years. However the President of the Board in his letter dated 12.07.2019 rejected the claim

of the petitioner. The said order was challenged by the petitioner in W.P.(C) No. 13035 of 2019.

8. This Court taking into consideration earlier order of this Court in the case of *Parsuram Behera (supra)* and *Chakradhar Behera (supra)*, quashed the rejection order and directed to grant the benefit as due and admissible to the petitioner in terms of the aforesaid orders. Admittedly such orders have not been challenged in the higher forum and as such the same still holds the field.

9. Numbers of writ petitions were also filed challenging such decision of the Board in the year 2019 and 2020 by the present respondents. The common grievance raised in all such writ petition was that their pensionary benefits have been calculated up to the age of 58, though they continuously served and retired at the age of 60. In those writ petitions, similar orders were passed by the Single Bench, which are under challenge in the present Writ Appeals.

10. On perusal of the order passed in *Parsuram Behera (supra)* and in *Chakradhar Behera (supra)* it is evident that Clause-21 of the Notification dated 5th March, 1997, was also brought to the notice of this Court. However this Court taking into consideration of Regulation 3 (ii) of Chapter XII of the Board's Regulation wherein the age of retirement of the officers has been prescribed as 60 years, directed the opposite parties to calculate the entire service period for the purpose of pension.

11. Chapter-XIII prescribes Contributory Provident-cum-Gratuity Rules. This Rule called as the Board of Secondary Education, Orissa Retirement Benefit Rules, which came into force with effect from 1st April, 1978. Rule-3 prescribes for Application of Rules and clause (ii) of the Rule prescribes that the date of retirement of an employee of the Board is the date on which he or she attains

the age of 60 years. Such retirement age still holds the field. Thereafter in exercise of the powers conferred under Section 21 of the Orissa Secondary Education Act, 1953, on 05.03.1997 the amendment to the Board's Regulation came into force in the name and style of Board of Secondary Education 6 Orissa (Amendment) Regulations, 1997 providing Pension to the employees of the Board. In Rule-20 (1) it has been indicated the applicability of Orissa Civil Service (Pension) Rules, 1992 so far as the Board Employees are concerned.

12. Retiring Pension has been provided under Rule 41 of Orissa Civil Service (Pension) Rules, 1992 to the following extent:-

*"41. **Retiring Pension**- (1) At any time after attaining the age of fifty years or completion of thirty years of qualifying service as the case may be, a Government servant-*

(a) may retire from service, or

(b) may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that-

(a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

(b) the appointing authority where decides to take recourse to this sub-rule he shall also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three month's pay and allowances in lieu of such notice:

Provided further that where the Government servant giving notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule.

(2) (a) A Government servant referred to in clause (a) of the first proviso to sub-rule (1) may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor.

(b) On receipt of a request under clause (a) the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if he is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of part of his pension before the expiry of the period of notice of three months.

(3) For the purpose of this rule the expression 'appointing authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

(4) (i) The qualifying service as on the date of intended retirement of the Government servant retiring under clause (a) of sub-rule (1) shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirtythree years and it does not take him beyond the date of superannuation.

(ii) The weightage of five years shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under clause (b) of sub-rule (1).

(5) The pension and retirement gratuity of the Government servant retiring under clause (a) of sub-rule (I), shall be based on the emoluments as specified under rule 48 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for the purposes of calculating pension and gratuity.

(6) The provisions in this rule are in addition to those prescribed in rule 71 of the Odisha Service Code."

13. In the case of **Parsuram Behera** (supra) the Division Bench of this Court observed as follows:-

"After receiving notice, opposite parties have entered appearance. On instruction, it is submitted that as per Regulation 3 (ii) of Chapter XIII of the Board's Regulation, the age of retirement of the officers is 60 years. Further it appears, according to Regulation-6 of Chapter XII of the Board's Regulation, the petitioner was made to retire w.e.f. 30.04.2004 on attaining the age of superannuation, i.e. 60 years. Fact remains, the petitioner has served till he attained 60 years.

In view of the aforesaid facts and circumstances and the clear position as enunciated in Regulation 3 (ii) of Chapter XIII, this Court feels that there is no reason as to why the pension of the petitioner shall not be calculated taking the entire period of service rendered by him, according to the Board's Regulations referred to supra. Accordingly, we dispose of this writ petition directing the opposite party authorities to calculate the pension treating the qualifying service rendered by him."

14. Regulation-20 of Amended Regulation 1997 clearly stipulated that Orissa Civil Service (Pension) Rule, 1992 is applicable to the employees of the Board. However, Regulation-21 is in contradiction of Regulation 20 which has already taken note of applicability of Pension Rules to the employees of the Board. Basing on the contradictory Regulation-21, the Board has computed the qualifying period of service up to the age of 58 years for determination of the quantum of pension, which is not sustainable in the eye of law and the same has been impliedly set aside by the Division Bench of this Court in the case of **Parsuram Behera** (supra) and **Chakradhar Behera** (supra). The other questions, which were raised by the appellant-Board were never raised nor dealt with in the impugned orders. Thus, this Court is not inclined to go into those questions, in these writ appeals.

15. Considering the submission and observations made hereinabove, this Court is of the opinion that the Single Bench has rightly passed the impugned orders and there is no error apparent on the face of such orders to be interfered with by this Court.

All the writ appeals stand dismissed accordingly.

Sd/-

Sd/-“

The order dated 02.03.2021 passed by the Hon'ble Supreme Court in SLP(C) Nos. 3555- 3604 of 2021 is as follows:

“Upon hearing the counsel the Court made the following Order

Similar matter are dismissed in Orissa University of Agri. & Technology vs. Shiva Dutta Sharma (Civil Appeal Nos.1225 and 1226 of 2008 decided on 19th April, 2017)

Mr. Dushyant Dave, learned senior counsel appearing on behalf of the petitioner has raised certain points. The question of law is kept open.

*However, the special leave petitions are dismissed following the earlier order in **Orissa University of Agri. & Technology vs. Shiva Dutta Sharma**.*

Pending application, if any, stands disposed of accordingly.”

IV. Court's Reasoning and Order:

7. A bare perusal of the records and the orders of the High Court and the Supreme Court as quoted above, it appears that the case of the Petitioner is squarely covered by the aforesaid orders as the present Petitioner and the Petitioner there in W.P.(C) No.13035 of 2019 were working in the

same establishment i.e. in Board of Secondary Education, Odisha and the grievance of the Petitioner in W.P.(C) No.13035 of 2019 was that though he was retired at the age of 60 years, his pensionary benefit has been calculated upto the age of 58 years. Moreover, the order dated 07.11.2019 passed in favour of the Petitioner in W.P.(C) No.13035 of 2019 has been affirmed by the Division Bench of this Court as well as the Supreme Court. Therefore, as the benefit has already been granted to similarly situated employees serving under the same establishment i.e. the Board of Secondary Education, Odisha, there is no reason why the same benefit should not be granted to the present Petitioner.

8. In such view of the matter, the Writ Petition filed by the Petitioner is disposed of being allowed.
9. Consequently, all the above-mentioned Writ Petitions are disposed of being allowed. However, the authorities shall examine the facts and circumstances of the present Writ Petitions in the light of the orders of this Court and the Supreme Court meticulously and if the ratio decided therein is squarely covered by the cases of the Petitioners, they shall consider the Petitioners' cases as expeditiously as

possible preferably within a period of three months from the date of production of a copy of this judgment.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 26th September, 2022/B. Jhankar*

