

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No.2237 OF 2016

Sujit Kumar Tahal

.....

Petitioner

Mr. A.K. Chhatoj, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

08.08.2022

Order No.

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This matter is taken up by video conferencing mode.

2. Heard learned counsel appearing for the parties.
3. The petitioner has filed this writ petition seeking to declare the OCS (Pension) Rules, 1992 as amended in the year 2005, and Odisha GPF Rules, 1938 are not applicable to him, and further seeks to declare that he is governed under pre-amended OCS (Pension) Rules and Odisha GPF Rules from the date of his joining in Government service.
4. Mr. A.K. Chhatoj, learned counsel for the petitioner contended that the petitioner joined as Assistant Engineer (Civil) on 08.06.2005 being duly selected and recommended by the OPSC in pursuance of advertisement no.11 of 2003-04 as against the vacancy notified in the year 2003-04. Thereafter, the Finance

Department amended OCS (Pension) Rules, 1992, which came into force with effect from 01.01.2005 vide notification dated 17.09.2005, as a result of which, the new contribution pension scheme has been made applicable to the petitioner though he was appointed and joined on 08.06.2005 against the vacancies occurred in the year 2003, i.e., prior to amendment of pension Rules. Thereby, it is contended that the petitioner should be extended with the benefits as per the pre-amended Rules.

5. Mr. S.N. Nayak, learned Standing Counsel for the State contended that the petitioner having joined in service on 08.06.2005, i.e., after the amendment of the OCS (Pension) Rules, 1992, his appointment will be governed by the amended OCS (Pension) Rules, 2005 and Odisha GPF Rules, 1938 are governed by the new rules, not by the old Rules.

6. Having heard learned counsel for the parties and after going through the records, the sole question arises for consideration by this Court is that if the petitioner was appointed against the vacancy occurred in the year 2003 pursuant to the advertisement issued in the year 2003-04, even though he joined after the OCS (Pension) Rules, 2005 came into force, whether he will be governed by the old pension rules or the amended OCS (Pension) Rules, 2005. This question has already been considered by this Court in the case of *Anand Dash v. State of Odisha*, 2014 (Supp.-I) OLR 754. In that case, this Court, held that

when recruitment process was started in the year 2004 and the petitioners joined their new assignments on 02.04.2005, by which date, the old OCS (Pension) Rules, 1992 and Odisha GPF Rules, 1938 were governing the field and the amended OCS (Pension) Rules, 2005 came into effect by way of notifications dated 31.08.2007 and 17.09.2005, could not have been given retrospective effect by stating that they will come into operation from 01.01.2005. It was further held that the amendments brought to the General Provident Fund (Orissa) Rules, 1938 and the Orissa Civil Service (Pension) Rules, 1992 will not apply to the petitioners, who will be governed by the said Rules as it existed on the date of their joining in service prior to the amendments brought into those Rules. The judgment of this Court in *Anand Dash* (supra), was also challenged before the apex Court in SLP (C) No.35462-35464 of 2014 and vide order dated 09.03.2018, the appeals preferred by the State were dismissed. Consequentially, the benefit has been extended to the petitioners therein.

7. Applying the above decisions to the present case, in which the petitioner joined in service on 08.06.2005, when old OCS (Pension) Rules, 1992 and GPF (Orissa) rules, 1938 were governing the field, the amended Pension Rules, 2005 which came into force on being notified on 31.08.2007 and 17.09.2005, which was after his joining in service, are not applicable to the petitioner and, as such, he was appointed against the

vacancy occurred in the year 2003. In view of such position, no other view can be taken by this Court at this stage debarring the petitioner to get the benefit of pre-amended rules, which are applicable to him. Therefore, this Court directs the authority to extend the benefits of pre-amended OCS (Pension) Rules, 1992 and Odisha GPF Rules, 1938 in favour of the petitioner within a period of three months from the date of communication of this order.

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

Issue urgent certified copy as per rules.

Alok

