IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.4119 of 2014

Sujata Samantaray .... **Petitioner**

-versus-

The Superintendent, SCB Medical College & Hospital, Cuttack & Anr. .... **Opposite Parties**

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
06.05.2022

Order No

01. **1.** This matter is taken up through Hybrid Mode.

2. Heard Mr. R.N. Nayak, learned counsel for the Petitioner, Mr. Praharaj, learned standing counsel for the State-Opp. Parties and Mr. S.K. Patra, leaned counsel appearing for O.P. No.2.

3. Originally, the case was filed in the Tribunal in Original Application No.3953 of 2014. On being transferred to this Court, the same has been registered as W.P.C.(OAC) No.3953 of 2014. The petition involves the following prayer:

> *"Under the facts and circumstances stated in Para-6 above this Hon'ble Tribunal may graciously be pleased to quash the direction of the Respondent No.2 issued to the Respondent No.1 in Annexure-6 and allow the applicant to continue under the existing G.P.F.(O) Rules."*

4. Background involving the case is that the applicant being a Staff Nurse was selected in a duly constituted selection committee and accordingly appointed as Staff Nurse on contractual basis. While the petitioner was continuing as such, subsequently he was regularized in 2011. By the time of filing of the Original Application, the petitioner was continuing as a regular employee. While the petitioner was continuing as a contractual Staff Nurse, 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 after such clarification is issued, the Director Health Services, Odisha vide letter dated 20.09.2011 issued instruction to all Chief District Medical Officers of the State directing therein for deduction of G.P.F. deduction of the staff under their control and those who were appointed on contractual basis prior to 01.01.2005 and brought over on regular basis after 01.01.2005. 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.2 issued a letter dated 05.10.2014 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. 2, 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-6 so far as the applicant is concerned.

5. Mr. Nayak, 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. Nayak, 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. Nayak 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-6 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-6 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 her regularization.

8. The writ petition succeeds.

Issue urgent certified copy as per rules.

(Biraja Prasanna Satapathy)
Judge

Sneha