

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1198 of 2016

Benudhar Sarangi

....

Petitioner

-versus-

State Of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

05.12.2022

Order No

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. S.N. Das, learned counsel for the Petitioner and Mr. D.K. Mohanty, learned Addl. Standing Counsel appearing for the Opp. Parties.
3. The present writ petition has been filed seeking direction on the O.P. No. 2 to sanction and disburse the pension and other pensionary benefits in favour of the Petitioner since 31.08.2012.
4. A counter affidavit has been filed by O.P. Nos.1 & 2 inter alia taking the following stand:-

“Sri Benudhar Sarangi has entered in to Govt. service on 30.10.1972 as Special Cholera Worker at Madhyakhanda PHC, Dist-Puri. Thereafter he was transferred to Filaria Survey Unit, Phulbani vide order No. 687 dt.22.01.1981 of Dy. Director of Health Services (Filaria) Odisha as L.D.C & joined at there on 01.05.1981 (Relieved from Phulbani on 30.04.1981 AN) as recorded in his Original Service Book. Then he was transferred on promotion as Senior Clerk & posted as such in NFCCP Unit, Bhubaneswar vide order No. 868 dt. 22.09.1994 of Dy. Director of Health Services (Filaria), Odisha & relieved from 31.10.1994 AN vide order No. 2027 dt.31.10.1994 of Asst. District Medical Officer, Phulbani & reported for duty as Senior Clerk on 07.11.1994 FN in NFCCP Unit, Bhubaneswar. After that he has

been reverted to the post of Jr. Clerk & posted at Filaria Survey Unit, Phulbani vide Order No. 0698 dt. 08.05.1995 of Dy. Director of Health Services (Filaria) (C) & relieved from NFCP Unit, Bhubaneswar vide Order No. 347 dt. 09.05.1995 An of Health Officer, I/c NFCP Unit, Bhubaneswar.

Then Sri Sarangi was promoted to the post of Asst. Store Keeper and posted at NFCP Unit Bhubaneswar vide Order No. 1293 dt. 12.10.1995 of Dy. Director of Health Services (Filaria) (O) & joined as such in NFCP Unit, on 13.10.1995 FN & continued in the said post till he proceeded on leave from 07.12.2004. The fact of the case is to release of pension in favour of the application since 31.08.2012 till date with all other service benefits along with the interest. But the claim of the applicant is not maintainable due to following reason:

Actually Sri Benudhar Sarangi had submitted a leave application on dt.07.12.2004 wherein he had requested the Health Officer, BMC for leave for the period from 08.12.2004 to 10.12.2004 due to the illness of his mother, but not for his self illness as stated in this para i.e. for his L.S.S (Lumer Spinal Stenosis). A photocopy of his leave application, dt.07.12.2004 is enclosed herewith as Annexure-“A”. No further application in connection with extension of leave has been received from him either by post or by person as intimated by the City Health Officer, BMC vide his Letter No. 118, dt.08.04.2005. A copy of said letter is enclosed herewith as Annexure-“B”. After that he had been directed to join in his duty forthwith, falling which disciplinary action will be taken against him as deemed proper vide Letter No. 12, dt.13.01.2005 of the Health Officer, BMC. A copy of the said letter is enclosed herewith as Annexure-“C”.

Further another Letter bearing No. 279(2) dt.10.10.2005 of the Health Officer, BMC was sent to Sri Sarangi in his permanent address by Regd. Post as well as in his local address at Bhubaneswar by Special messenger for joining in duty, but the said letter was not sent in his permanent native village address but the same has been returned back with the remark of the postal authority as Not Found" - Annexure: "D".

Thereafter the Health Officer, BMC, Bhubaneswar was instructed to frame draft charges against Sri Benudhar Sarangi vide this Directorate Letter No. 212 dated 23.05.2006 and accordingly the City Health Officer, BMC drawn draft charges against Sri Sarangi and submitted the same before the Dy. Director of Health Services vide his office Order No. 232 dated 07.05.2007. The photocopies of the above two letters are enclosed herewith as Annexure-“E & F” Then on 12.03.2008 a notice was published in the daily newspaper “The SAMAJ” in the name of Sri Sarangi mentioning his permanent address in connection with his unauthorized absence from duty w.e.f. 11.12.2004 & with a direction to resume duties within 15 days

from the publication of said notice, falling which action as deem proper shall be initiated against him. A photocopy of the said notice is enclosed herewith Annexure- "G". The said notice was sent to Sri Sarangi in his home address by Regd. Post with AD vide this Directorate Letter No. 111 dated 20.03.2008. A copy of the said Letter is enclosed herewith as Annexure- "H". But Sri Sarangi did not respond to such notice & the above said Letter of this Directorate was returned back with a postal remark that, "Addressee is not residing at Gunthuni", the native village of the applicant. A copy of the said Postal remark is enclosed herewith as Annexure- "I".

Thereafter the City Health Officer, BMC& In-Charge the NFCP Unit, Bhubaneswar had been asked to inform about the joining of Sri Sarangi in his duty. In reply the City Health Officer has intimated that the applicant had not joined in his duty bill 12.04.2010 vide his Letter No. 23 dated 12.04.2010. A copy of the said Letter is enclosed herewith as Annexure- "J".

Once again Sri Sarangi had been directed to resume duties within 07 days from the date of receipt of a letter of the It. DHS (Filaria), Orissa bearing No. 161 dated 19.04.2010. A photocopy of the said Letter is enclosed herewith as Annexure- "K". The said letter was sent to him by Regd. Post but the same was return back with a postal remark that Addressee was absent. The said remark of the postal Authority is enclosed herewith as Annexure- "L".

Thereafter that Jt. DHS (Filaria), Orissa has proposed to hold an enquiry against Sri Benudhar Sarangi vide his L.No. 280 dt.26.06.2010 and the same had also been sent to Sri Sarangi vide this Office Memo No. 281 dt.26.06.2010 by Regd. Post with AD. In Order to give another chance to Sri Sarangi to ventilate his grievances before the authority. But Sri Sarangi did not respond to the said letter and that was returned back with a postal remark that the addressee is not residing at Gunthuni. The copy of the said Letter along with the remarks of the postal authority are enclosed herewith as Annexure- "M" Series.

Thereafter the Jt. DHS (NVBDCP), Odisha, Bhubaneswar vide his Office Memo No.135 dt.23.02.2012 had sent to the applicant in Odia language to attend before the authority within 15 days and receive the proposed enquiry report to give his views, otherwise disciplinary action will be taken against him expartee. The said notice was published in the daily local newspaper "The SAMAJ" on dated 28.02.2012. A photocopy of the said notice along with the paper cutting are enclosed herewith in Annexure- "N" Series. But the applicant Sri Saranagi had not resume his duty or not reported before the authority even after publication of the above said letter notice on 28.02.2012.

Lastly the authority was compelled to terminate to Sri Sarangi with immediate effect vide Order No. 302 dt. 26.05.2012, as he had remained absent more than 5 years unauthorizedly. The period of absence w.e.f 01.12.2004 is treated as loss of pay. The said order had communicated to Sri Sarangi vide this Office Memo No. 303 dt.26.05.2012 by Regd. Post. But the same is returned back with a postal remarks that, addressee is not residing at Gunthuni. A photocopy of the said letter along with the remarks of the postal authority are enclosed herewith in Annexure- "O" Series.

That the applicant had been intimated /given opportunity in more than one occasion to defend his case but he had failed to avail such opportunities. In the interest of Public service, the authority had intimated to Sri Sarangi to join in duty in different Phase manner and also have adequate opportunity for defend his case as indicated above Paras, but he couldn't join in his duty or submitted a single reply before the authority.

In this regard, no communication was received by this Directorate either by Sri Sarangi or by any.

No representation has been received by this Directorate by Sri Sarangi or through his office i.e. City Health Officer, BMC I/C NFCP Unit, Bhubaneswar.

Although Sri Benudhar Sarangi has given adequate opportunity to resume his duty and failed to do so, the authority has no other way to terminate his service as per the existing Rules.

In view of the facts stated above, it is made clear that the case has no merit and liable to be dismissed."

5. In view of the stand taken in the counter affidavit this Court finds that the Petitioner in spite of several opportunity did not join in his post and accordingly in view of such conduct of the Petitioner, he is not entitled to get the benefit as prayed for in the writ petition.

6. The writ petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Sneha