

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.3202 of 2013

Pranabandhu Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

01.08.2022

Order No

03.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel for the Petitioner and learned counsel for the Opposite Parties.

3. This Writ Petition has been filed to quash the order of A.G Odisha rejecting the final pension and directing for reduction of the same in terms of circular dated 15.5.97 as after his retirement from Government service at the time of fixation of pension, the A.G(A & E), Odisha had raised objection saying that the pay protection in the year, 1996 has been given to the applicant wrongly and the job contract period has not been recorded in the service book for which recovery be made in respect of the wrong fixation from the petitioner.

4. It is submitted that the petitioner joined as a temporary Amin in Settlement Office, Dhenkanal. Pursuant to the scheme framed by

the State Government, he was considered suitable in the DPC held on 22.01.1990. His service was regularized and he was appointed in the post of Estt. Amin and he joined in the said post on 22.01.1990 in Settlement Office and accordingly his pay scale was revised with usual increment of Rs.370/- per year. The petitioner was promoted to the post of Inspector as per the decision of the DPC held on 02.02.2005. The petitioner retired from service after attaining the age of superannuation on 31.01.2008 and his last pay at that time was Rs.10792/-. After implementation of the fifth pay commission, the pay of the petitioner was re-fixed at Rs.9790/- vide Officer No.VIII/46/09 dt.4.6.2009. On superannuation when the pension papers were submitted to Opposite Party No.5 for final pension, Opposite Party No.5 returned the same saying that the pay protection was given to the petitioner wrongly in the year 1996 and the job contract period has not been recorded in the service book with a stipulation that recovery has to be made from the petitioner for wrong fixation from the petitioner. Therefore, the petitioner has prayed to pay the final pension as per his last pay drawn within a period of three months.

5. The Opposite Parties have filed the counter stating therein that under the Scheme framed by the State Government, pursuant to the judgment dated 24.4.1996 of the Hon'le Supreme Court in Civil Appeal No.407/93, the petitioner was absorbed in regular establishment and posted as an Amin under opp. party No.4 who joined in that post on 12.10.1977 and his pay has been stepped up with that of his junior Sri Pranabandhu Behera Munsarim and fixed at Rs.3200/- in the scale of pay of Rs.2750-70-3800-75-4400. The pension papers of the Petitioner has been returned by Opposite Party No.6 with objection that the pay of the applicant is to be re-

fixed with effect from 9.10.1996 at the minimum pay band as per F.D Resolution No.22764 date.15.5.1997 and the excess payment be recovered from the pay and allowance of the Petitioner. The stepping up of pay and his regularization in service has been allowed prior to issuance of F.D. Resolution dt.15.5.97 which has no retrospective effect.

6. Going through the decisions of the Tribunal in O.A. NO.1016 of 1991 disposed of on 16.3.1999, O.A. No.2250 (C) of 09 decided on 29.8.2011, O.A. NO.2077(C) of 2012 decided on 28.11.2013, O.A.No.86(C) of 2014 and O.A. No.553(C) of 2014 disposed of on 5.9.2017 wherein it has been clearly held that the services of the applicants regularized prior to Finance Department Resolution dt.15.5.97 will be governed by old rules and circulars and not by the guidelines of F.D Resolution dt.15.5.97, and their pay has been rightly protected at the time of bring over them to regular establishment, I am of the clear opinion that the present case of the Petitioner is similar to those cases.

7. In the result, the order of the A.G. Odisha rejecting the final pension and directing for reduction of the same in terms of circular dated 15.5.1997 stands quashed. The final pension of the Petitioner be refixed as per his last pay drawn within a period of three months from the date of receipt of a copy of this order.

8. The Writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

sangita