

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.2283 of 2017

Kishore Chandra Mishra **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
01.12.2022

Order No
06.

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

2. The present writ petition has been filed challenging the order dtd.27.07.2017 passed by the Govt.-O.P. No. 1, wherein the prayer of the Petitioner for sanction and disbursement of the salary for the period 31.03.2001 to 31.07.2003 has been rejected.

2.1. It is the case of the Petitioner that the Petitioner was initially appointed as a Junior Clerk in Govt. Girls' High School, Raj-
Nilagiri under the provision of OCS (Rehabilitation Assistance) Rules, 1990 vide order under Annexure-1.

2.2. The Petitioner while so continuing and without any reason he was retrenched from his service vide order dtd.31.03.2001 under Annexure-2. Subsequently, the Petitioner was reinstated in his

service vide order dtd.31.07.2003 under Annexure-3. It is contended that one Sri Sontosh Kumar Hota, who is also similarly situated as like the Petitioner and was retrenched on similar grounds, approached the learned Tribunal in O.A. No. 1019 of 2004. Learned Tribunal vide its order dtd.07.05.2008 under Annexure-4 disposed of the said Original Application inter alia with the following order:-

“Looking at the circumstance of the case and the status of a rehabilitation assistance appointee I take that the appointment of the applicant in the first instance was to a regular post and cannot be treated as provisional. Further Annexure-2 order to the extent it relates to the applicant is quashed. The applicant be paid salary due to him for the period from 21.4.01 to 3.8.03 for the reason that the respondents have kept the applicant deprived of continuance in service in complete disobedience of the orders of the Tribunal. His future increment be allowed after treating his period as duty for all purposes. The order of the Tribunal be implemented within a period of two months from the date of receipt of a copy of this order. With the above orders the O.A. is disposed of.”

2.3. It is contended that the order passed by the learned Tribunal under Annexure-4 was challenged by the State-Opp. Parties before this Court in W.P.(C) No. 11247 of 2009. This Court vide its order dt.15.07.2015 under Annexure-5 dismissed the writ petition filed by the State-Opp. Parties with passing of the following order:-

“Under the above circumstances and the findings arrived at we have no hesitation to uphold the direction of the learned Orissa Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar vide Annexure-1.

Before parting with the case, since the Opp. party has been made to suffer unnecessarily, forced to face litigation one after another, we award cost of Rs.5,000/- (Rupees Five Thousand) which amount be paid by the petitioners (State authorities) to the Opp. party within a period of two weeks hence. We further direct the petitioners to carry out the direction of the learned Orissa Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar vide Annexure-1 as early as possible preferably within a period of three weeks from the date of communication of this order and to release all such benefits along with interest @ 7% per annum from the date of entitlement of Opp. party till the date of payment which amount also be paid within a further period of two weeks thereafter.”

2.4. It is contended that after dismissal of the matter by this Court with the above said order, O.P. No. 1 vide letter dtd.15.09.2015 under Annexure-11 requested O.P. No. 2 to furnish the financial implication to implement the orders of the Hon’ble Court in the case of rest similarly situated 106 nos. of employees, who had been retrenched due to abolition of N.F.E. scheme and subsequently appointed as Junior Clerks by the Department. Basing on the said request made by O.P. No. 1, O.P. No. 4 vide his letter dtd.02.11.2015 under Annexure-8 submitted the financial implication in respect of 7 nos. of similarly situated employees,

which includes the Petitioner also. In spite of such furnishing of the information by the O.P. No. 4, when no further action was taken to pay the salary of the Petitioner for the period in question, the Petitioner approached the learned Tribunal in O.A. No. 1608 of 2016. Learned Tribunal vide its order dtd.29.08.2016 under Annexure-7 disposed of the said Original Application with a direction on the O.P. No. 1 to consider the grievance of the Petitioner as made in his representation under Annexure-6 therein.

But on the face of compliance of the claim of the Petitioner in O.A. No. 1019 of 2004, the claim of the Petitioner was illegally rejected vide the impugned order dtd.27.07.2017 under Annexure-10. Hence the present writ petition.

3. It is the main contention of the learned counsel for the Petitioner that basing on the order passed in the case of Sri Santosh Kumar Hota in O.A. No. 1019 of 2004, which was upheld by this Court in its order dtd.15.07.2015 in W.P.(C) No. 11247 of 2009, O.P. No. 1 sought for clarification from O.P. No. 2 to furnish the financial implication to implement the claim of similarly situated 106 nos. of retrenched employees. On receipt of such request though O.P. No. 4 vide his letter dtd.02.11.2015 under Annexure-8 furnished the financial implication for extension of the benefit of salary for the retrenched period in favour of the Petitioner and 6 (six) other

employees, the said request was never proceeded further and accordingly the Petitioner claiming extension of the benefit approached the learned Tribunal in O.A. No. 1608 of 2016.

3.1. Learned Tribunal vide its order under Annexure-7 though directed the O.P. No. 1 to consider the claim of the Petitioner with an observation that while considering the claim, parity is to be maintained if the claim of the applicant is similar to Sri Santosh Kumar Hota, Petitioner in O.A. No. 1019 of 2004, but O.P. No. 1 without proper appreciation of the Petitioner's claim and the extension of the benefit in favour of the above said Santosh Kumar Hota, rejected the claim vide the impugned order at Annexure-10. It is also contended that similar direction issued by the learned Tribunal in the case of Kamal Lochan Dora in O.A. No. 98 of 2016 has been implemented by the O.P. No. 2 vide his order dtd.01.02.2022 under Annexure-13 series. Not only Santosh Kumar Hota and Kamal Lochan Dora, were extended with the benefit, but also benefit has been extended in favour of one Pratap Chandra Dash, Petitioner in O.A. No. 1972(C) of 2005. Accordingly, it is contended that since Petitioner is similarly situated, benefit of salary for the period in question is required to be paid with quashing of the impugned order at Annexure-10.

4. Mr. N.N. Satapathy, learned Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit. It is contended that even though learned Tribunal in its order under Annexure-7 directed for maintenance of parity with that of the claim of Sri Santosh Kumar Hota, but while considering the said claim, it was found that the Petitioner is not similarly situated. Accordingly, his claim has been rightly rejected vide order under Annexure-10. It is contended that since in the case of Sri Santosh Kumar Hota, his termination was stayed by the learned Tribunal in its order dtd.25.04.2001 in O.A. No. 518 of 2001, the benefit of salary for the retrenched period was extended in his favour. Since no stay was operating in the case of the present Petitioner, he cannot be treated as similarly situated to that of Sri Santosh Kumar Hota. Hence no illegality or irregularity has been committed by the O.P. No. 1 in rejecting the claim of the Petitioner vide order under Annexure-10.

5. I have heard Mr. Manas Pati, learned counsel for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties. With the consent of the Parties, the matter was finally heard and disposed of at the stage of admission.

6. This Court after going through the materials available on record finds that even though the Petitioner was appointed under the

provisions of Rehabilitation Assistance Scheme vide order under Anenxure-1, but by taking his appointment made under the NFE Scheme, he was retrenched vide order under Annexure-2. Subsequently, the Petitioner was reinstated in his service vide order dtd.31.07.2003 under Annexure-3 along with similarly situated persons. This Court also finds that not only the Petitioner Sri Santosh Kumar Hota in O.A. No. 1019 of 2004 was extended with the benefit of salary for the period he remained under retrenchment, but also the Petitioner in O.A. No. 98 of 2016 Kamal Lochan Dora as well as the Petitioner in O.A. No. 1972(C) of 2005 Sri Prakash Chandra Dash have also been extended with the financial benefit for the period they remained out of employment due to the illegal retrenchment.

7. Since this Court finds that the Petitioner is similarly situated as like Sri Santosh Kumar Hota and Sri Kamal Lochan Dora as well as Sri Prakah Chandra Dash, the rejection of the Petitioner's claim as per the considered view of this Court is not legally sustainable. Therefore, this Court has got no hesitation in quashing the order under Annexure-10 and while quashing the same this Court directs the Opp. Party No. 4 to sanction and disburse the salary of the Petitioner for the period from 31.03.2001 to 31.07.2003 within a period of three (3) months from the date of receipt of this order.

8. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha

