

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 3381 of 2017

Ankura Charan Mohanty

.....

Petitioner

None

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. R.C. Patnaik, SC, S&ME Deptt

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

09.09.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. None appears for the Petitioner at the time of call. Heard Mr. R.C. Patnaik, learned Standing Counsel for School & Mass Education Department. Perused the record.

3. The Petitioner has filed this Writ Petition seeking to direct the opposite parties to include the earlier part of service from 12.10.1983 to 14.09.1992 rendered under Panchayat High School, Betada under D.E.O., Bhadrak as qualifying service in view of Rule- 6(1) of Orissa Aided Educational Institutions Retirement Benefit Rules, 1981 for the purpose of all service and pensionary benefits (including arrear salary) and thereby getting approved of his post in accordance with the instructions/ letters of the Government dated 08.07.1981 and to contemporary related judgment of this Court in OJC No. 1622 of 1991 and OJC No. 1623 of 1991 and release arrear revised and current pension within a time frame.

4. The Petitioner has pleaded in the writ petition that he has

retired as a Peon of Panchayat High School, Betada under DEO, Bhadrak and therefore, to include the period of service from 12.10.1983 to 14.09.1992 as qualifying service for the purpose of all service and pensionary benefits as per Government instruction dated 08.07.1981 in view of Rule- 6(1) of Orissa Aided Educational Institutions Retirement Benefit Rules, 1981 and accordingly to revise the pay and pension within the time stipulated.

5. Mr. R.C. Patnaik, learned Standing Counsel for School & Mass Education Department contended that the petitioner is not entitled to get the relief as claimed in this application and contended that relief which has been sought after the retirement of the petitioner is not admissible to him and, as such, the writ petition is liable to be dismissed in limine.

6. Having heard learned Standing Counsel for School & Mass Education Department and after going through the record, it appears that the petitioner was appointed as 3rd peon of Panchayat High School, Betada and the said post was approved w.e.f. 25.09.1992 vide order No. 38644 dated 15.10.1992 of the Director Secondary Education Odisha, in pursuance of Govt. Order No. 15535/E dated 27.03.1992, Communicated vide the Memo No. 6813 dated 18.11.1992 of the Opposite Party No. 3. The Panchayat High School, Betada was came in to G.I.A fold w.e.f 01.03.1972 and taken over by the Govt. w.e.f 07.06.1994. The Staffing pattern of Non Govt. Secondary Schools of the State was came in to force w.e.f. 01.07.1981, wherein it has been defined about the applicability of the 3rd peon post of the School. The Petitioner claims to have been appointed as 3rd peon of Panchayat High School, Betada on 12.10.1983 i.e. after the School came in to G.I.A

fold, but the said appointment has not established yet and not found valid one. However on verification of the records and material facts available then, the Govt. decided to approve the appointment of the petitioner from 25.09.1992 which was communicated to the applicant by Opposite Party No. 3 and as such, the petitioner has accepted the same without any objection. Therefore, the petitioner cannot claim the benefit after retirement with effect from the initial date of appointment, i.e. 12.10.1983. The petitioner had filed the OJC No. 6561 of 1998, which was disposed by this Court on 24.09.2007 and while deciding the matter this Court without expressing any opinion on the merit of the case granted liberty to the Opposite Party No.2 to decide the same strictly in accordance with law. The Opposite Party No.2 decided the matter by approving the appointment of the petitioner from 25.09.1992 in accordance with law. The order of this Court was complied with and accordingly the contempt application was dropped on 26.07.2011.

7. Therefore, the inclusion of the period from 12.10.1983 to 14.09.1992 for qualifying service cannot be justified as the petitioner has accepted the terms and conditions of his approved post with effect from 25.09.1992. Therefore, after retirement he cannot claim for grant of benefit from the date of initial appointment. Thus, the writ petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun