

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OAC) No.1739 of 2012

Jogeswar Deep

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
20.10.2022

Order No

- 2.** **1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. P.K.Behera, learned counsel appearing for the Petitioner and Mr. A.P.Das, learned Addl. Standing Counsel for the State-Opposite Parties.
- 3.** It is submitted that the Petitioner entered into service job contract establishment and even though he was eligible to continue till attaining the age of 60 years, but when he was issued with the notice of retirement, making him to retire at the age of 58 years vide order dated 25.03.2010 under Annexure-1, the Petitioner challenging the same approached the learned Tribunal in O.A No.915(C)/2010.
- 4.** It is submitted that the learned Tribunal vide order dated 31.03.2010 disposed of the said Original Application by holding that the Petitioner is eligible to continue up to 60 years.
- 5.** It is submitted that pursuant to the said order passed by the learned Tribunal on 31.03.2010, the Petitioner vide order dated 17.09.2010 under Annexure-2, though was allowed to continue till attaining the age of 60 years i.e. till 31.03.2012, but

in the said order it was indicated that the period of service from 01.04.2010 till the rejoining of the petitioner shall count towards the job contract service but without any financial benefit.

6. It is submitted that since the Petitioner was eligible to continue up to 60 years and the said prayer was also allowed by the learned Tribunal while deciding the matter in O.A No.915(C)/2010, the stipulation contained in the order under Annexure-2 that the Petitioner will not be entitled to get the financial benefit from 01.04.2010 till his joining pursuant to the said order is not just and proper as the Petitioner without any fault of his own was kept out of employment for the said period.

7. Even though notice of the writ petition was issued by the learned Tribunal on 06.05.2016, but no counter affidavit has been filed. However, learned Addl. Standing Counsel submitted that since the Petitioner did not discharge his duty for the period in question, the Petitioner is not entitled to get the salary for the said period.

8. Having heard learned counsel for the Parties and taking into account the order passed by the learned Tribunal on 31.03.2010, this Court is of the opinion that the Petitioner on being allowed to continue till his attaining the age of 60 years should have been allowed the salary for the break period i.e. 1.4.2010 till his joining pursuant to the order at Annexure-2.

9. Therefore, this Court while holding so directs the Opposite Party No.2 to take effective steps for release of the salary of the Petitioner as due and admissible for the period from 01.04.2010 till his joining in terms of the order at Annexure-2. The said salary be drawn and disbursed in favour of the Petitioner within a period of two months from the date of receipt of this order. However, it is observed that this order will not be treated as a precedent in any other case of similar nature.

10. With the aforesaid observation and direction, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

