

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.1438 of 2013

Rabinarayan Mohanty

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Petitioner

-versus-

State of Odisha & Others

• • • •

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

26.08.2022

Order No

07.

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

2. Heard Mr. P.K. Mohanty, learned counsel for the Petitioner and Mr. YSP Babu, learned AGA appearing for the State-Opp. Parties.

3. The Petitioner has filed the present writ Petition challenging the communication issued by the Finance Department-O.P. No. 5 on 14.02.2007 and with a prayer to direct the Opp. Parties to sanction and release the pensionary benefits as due and admissible in favour of the Petitioner.

4. It is submitted that the Petitioner was initially appointed as an Overseer in the Work Department and posted as such in the Office of Superintending Engineer, Central Circle, Bhubaneswar vide Order dtd.30.06.1964. It is submitted that subsequently the Petitioner was promoted to the post of Assistant Engineer vide order dtd.21.02.1966 and he continued in the said office.

5. Learned counsel for the Petitioner submitted that the Petitioner when was allowed to continue in the Department till 27.10.1970 and thereafter he was deputed to serve in Nagaland Pulp and Paper Company Ltd., which is a Govt. of India undertaking. Subsequently the Petitioner was absorbed in the said Company vide notification dtd.25.01.1977 of the Govt. in the Work Department. It is submitted that vide notification dtd.19.09.1992 under Annexure-1 the Petitioner was treated to have retired from Govt. service from the date of his absorption in the said Company i.e. 25.01.1977.

6. Mr. Mohanty, learned counsel for the Petitioner submitted that after his retirement ultimately in the year 2001, he moved the O.P. No. 1 for sanction of his pensionary benefits as he was allowed to retire from Govt. service w.e.f. 25.01.1977. It is submitted that vide communication dtd.26.04.2003 O.P. No. 3 submitted the pension papers of the Petitioner before the Govt.-O.P. No. 1. In spite of such submission of pension papers when no action was taken the Petitioner moved O.P. No. 1 on 31.10.2007 under Annexure-3 and subsequently on 08.01.2009 under Annexure-4.

7. It is submitted that as no action was taken on such claim of the Petitioner the Petitioner moved O.P. No. 2 on 04.01.2012 under Annexure-5. But it is submitted that in between vide letter dtd.27.03.2007 O.P. No. 4 requested O.P. No. 1 to dispose of the Petitioner's claim in accordance with Rule 68(1) of the OCS (Pension) rules, 1977.

8. Rule 68(1) of the OCS (Pension) Rules, 1977 reads as follows:-

“A government servant who is deputed or transferred to service under a body-corporate owned or controlled by Government or whose services are lent to such a body may, in

the event of permanent absorption in service under the body be deemed to have retired from Government Service from the date of such absorption and be allowed by the Government, a retirement benefit in respect of his previous pensionable service rendered under Government. The retirement benefit shall be an amount equal to what Government would have contributed excluding interest had he been on Contributory Provident Fund term under Government together with simple interest thereon at two percent per annum for the period of his pensionable service and this be credited to his Contributory Provident Fund Account with the said body as an opening balance on the date of permanent absorption and the Government's liability in respect of his pensionable service under them treated as extinguished by this payment."

9. It is submitted that in spite of various communication issued under Annexure-7 to 10, when the Petitioner's claim was not finalized, he filed the present writ Petition with the prayer to direct the Opp. Parties to sanction pension and other pensionary benefits in his favour. It is submitted that in the counter filed by the O.P. No. 4 when the communication dtd.14.02.2017 was brought to the notice of the Petitioner, he amended the writ Petition with a prayer to challenge the said communication dtd.14.02.2007 of the Finance Department-O.P. No. 5.

10. It is submitted that in the said communication a plea has been taken that since the Petitioner resigned from his service on 25.01.1977 and subsequently he was absorbed permanently in the aforesaid company, he is not eligible and entitled to get the benefit of pension under OCS (Pension) rules, 1992.

11. Mr. Mohanty, learned counsel for the Petitioner submitted that the said communication of the Finance Department under

Annexure-12 is contrary to the notification issued by the Govt.-O.P. No. 1 on 19.09.1992 under Annexure-1. It is also submitted that since the Petitioner was allowed to retire from Govt. service vide the said notification under Annexure-1 and the Petitioner by the time he was allowed to retire w.e.f.25.01.1977 had completed more than 10 years of service, the Petitioner is eligible and entitled to get the pension and other pensionary benefits as due and admissible.

12. It is also submitted that in view of such notification issued under Annexure-1 the pension papers of the Petitioner were also forwarded to O.P. No. 4 as reflected in the communication issued by O.P. No. 4 on 31.05.1985. It is accordingly submitted that since the Petitioner was allowed to retire from service as reflected under Annexure-1, his claim for sanction of pension and pensionary benefits was not only entertained, but also forwarded for such sanction.

13. It is also submitted that the impugned communication dtd.14.02.2007 since was never communicated to the Petitioner nor by O.P. No. 4 the Petitioner had no occasion to challenge the same prior to making the amendment, which was allowed by this Court vide order dtd.12.05.2022.

14. Making all such submission Mr. Mohanty, learned counsel for the Petitioner submitted that appropriate order be passed by directing Opp. Parties to sanction pension and pensionary benefits in favour of the Petitioner as provided under Rule 68 of the Odisha (Pension) rules, 1977. It is also submitted that provision of OCS (CCA) rules, 1992 is not applicable to the case of the Petitioner as he was allowed to retire w.e.f.25.01.1977.

15. Mr. YSP Babu, learned AGA appearing for the Opp. Parties on the other hand made his submission basing on the counter filed by O.P. No. 1. It is the main contention of the O.P. No. 1 that since the Petitioner tendered his resignation from Govt. service, which was accepted on 25.01.1977, in view of the provision contained under Rule 34 of the OCS (Pension) Rules, 1992, the Petitioner is not eligible and entitled to get the benefit of pension. Even though a counter is filed by O.P. No. 4, but nobody is there to submit on behalf of the said Opp. Party. But as revealed from the said counter, request was made to consider the case of the Petitioner in terms of Rule 68 of OCS (Pension) Rules, 1977.

16. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner admittedly while continuing under O.P. No. 1, he was deputed to work in Nagaland Pulp and Paper Company Ltd., which is a Govt. of India undertaking after 27.10.1970. Subsequently when the Petitioner was absorbed in the said Company w.e.f. 25.01.1977 vide notification dtd.19.09.1992 under Annexure-1, the Petitioner was allowed to retire from Govt. service w.e.f. 25.01.1977. The said notification under Annexure-1 was never modified and cancelled. Taking into account the fact that the Petitioner was allowed to retire from service, his pension papers were also processed by O.P. Nos. 1 & 2.

17. This Court further finds that O.P. No. 4 in the counter also stated about the stand taken by O.P. No. 1 in his letter No.2359 dtd.23.01.1984. In the said letter O.P. No. 1 while referring the name of the Petitioner indicated that the pensionary benefits of the Petitioner be considered in terms of Rule 68 of the OCS (Pension)

rules, 1977. This Court further finds that vide letter dtd.31.05.1985 annexed to the counter filed by O.P. No. 4, O.P. No. 1 was also requested to send the pension papers and service book of the Petitioner as the same is not traceable in the office.

18. All and sudden O.P. No. 5 issued the communication on 14.02.2007 under Annexure-12 by advising O.P. No. 4 to close the chapter as the Petitioner is not entitled to get the benefit of pension on the ground that he having tendered his resignation on 25.01.1977 and accordingly as per OCS (Pension) Rule, 1992 he is not entitled to get the benefit of pension.

19. This Court further finds that vide Annexure-2 the pension papers of the Petitioner was again submitted to the Govt. by O.P. No. 2 and vide letter under Annexure-6. O.P. No. 4 while returning back the pension papers requested O.P. No. 1 to take steps in accordance with the provision contained under Rule 68(1) of the OCS (Pension) Rule, 1977.

20. This Court finds that even though a stand has been taken in the impugned communication dtd.14.02.2007 that the Petitioner tendered his resignation on 25.01.1977 and thereafter was absorbed in the company in question, but none of the Opp. Parties filed the said document showing the tendering of the resignation by the Petitioner on 25.01.1977. Not only that the said stand of the Opp. Parties is contrary to notification issued dtd.19.09.1992 under Annexure-1 and the said notification was never cancelled and modified with passing of a fresh order.

21. Therefore, this Court after considering the submission made by learned counsel appearing for the Parties and after going through

the documents available in the case record came to a conclusion that in view of the notification issued under Annexure-1, the Petitioner is eligible and entitled to get the benefit of pension in terms of the provision contained under rule 68(1) of the OCS (Pension) rules, 1977.

22. Since the Petitioner was allowed to retire w.e.f.25.01.1977 as reflected in the notification dtd.19.09.1992 under Annexure-1, his case is to be considered in accordance with the provision of OCS (Pension) rules, 1977 and not under the provision of OCS (Pension) rule, 1992. O.P. No. 5 while issuing the impugned communication dtd.14.02.2007 is illegally referred the provision of OCS (Pension) Rule, 1992 as applicable to the claim of the Petitioner.

23. Therefore, this Court has got no hesitation in quashing the said communication dtd.14.02.2007 issued by O.P. No. 5 under Annexure-12. While quashing the same, this Court directs the Opp. Parties to consider the claim of the Petitioner for sanction of pension and other pensionary benefits strictly in accordance with the provision contained under Rule 68(1) of the OCS (Pension) Rule, 1977. This Court directs the Opp. Parties to complete the exercise within a period of four (4) months from the date of receipt of this order. Consequentially, the financial benefits on such consideration of the matter be also sanctioned and released in favour of the Petitioner within the aforesaid time period.

25. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)

Sneha

Judge

