

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) NO.2455 OF 2013

Dr.Hemendra Narayan Das

....

Petitioner

Mr.S.Behera, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.S.P.Panda, AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

10.3.2022

Order

No.

01.

1. Heard learned counsel for the Parties.

2. The Writ Petition involves the following prayer :-

“Under the circumstances, it is humbly prayed that this Hon’ble Tribunal may graciously be pleased to direct the Respondents to grant interest on the unutilized leave salary @ 22% p.a. or at the prevailing Bank rate as for no fault of the applicant the amount has not been disbursed in time and delayed for about six years;

And further be pleased to direct the Respondents to grant all cost of litigation and damages amounting to Rs.50,000/-;

And further direct that responsibility may be fixed on the defaulting officer for whom the applicant is suffering;

Or pass such other order(s)/direction(s) as may be deemed fit and proper in the interest of justice ; and

And allow the application with cost.”

3. Mr.Behera, learned counsel for the Petitioner submitted that once the Petitioner was retired on 30.6.2006, his due including entitlement towards unutilized leave salary was already determined on the date of his retirement. Mr. Behera contended that there should

not have been any delay in releasing the admitted entitlement of the Petitioner. It is further contended that even assuming there was some official requirement and dealings, it is after the sanction order at Annexure-1, when the amount already determined, the entitlement of the Petitioner was likely to be sent to the Petitioner and such an order came into existence on 16.8.2008 but there has been no release of the amount even after such development. Finally the admitted entitlement towards unutilized leave salary was released but much after it became due only on 16.4.2013. It is in the above background and for unnecessary delay by the State Authority involving release of the admitted dues for no fault of the Petitioner, the Petitioner claims interest @ 22% on the arrear from the date of filing this Application.

4. Counter has been filed by the Director, Higher Education. Referring to the document at Annexure-A/2 to the counter affidavit, Mr.Panda, learned Additional Government Advocate submitted that situation arose in releasing the amount involved only after collection of all information from the Petitioner by virtue of Annexure-A/2 issued on 16.4.2013. Further referring to the averments in Paragraph-5 of the counter affidavit, Mr.Panda also submitted that there was delay on account of some reasons assigned therein inasmuch as their correspondences to the Board of Secondary

Education in due time but not attended. Further there is also delay on account of application of the ORSP Rule (College Teachers Rules), 2010, which came into existence in 2010. Pending release of such dues and there was thus necessity for re-calculation as such.

5. Considering the rival contentions of the Parties, this Court finds, there is a clear Rule governing both the Parties making entitlement of leave salary before six months of superannuation of a person. Even the Rules become clear for entering into calculation of all entitlements of a retired employee even involving pension at least six months prior to the date of superannuation. There is no denial on the entitlement of the Petitioner towards leave encashment. There is also no denial in the existence of approval of the Competent Authority on the entitlement of the Petitioner appearing at Annexure-1. Even assuming there was no response by the Board of Secondary Education to avoid delay in paying the dues to the Petitioner for no fault of the Petitioner.

6. In the above background and for clear Rule making a superannuated employee entitled to the benefit involved on his superannuation, such issue should have been resolved with all promptitude, if necessary by engaging services of Special Messenger. This Court is not satisfied with the delay explained by the State Authority in releasing the entitlement of a person

superannuating in 2006 in 2013. For the opinion of this Court, there was wrongful withholding of the admitted entitlement of a retired employee and he is thus entitled to receive interest. This Court accordingly observes, the Petitioner is entitled to interest on such wrongful withholding of the admitted entitlement. As a consequence, this Court directs payment of interest at least @ 5% on the entitlement of the Petitioner towards unutilized leave salary from the date of entitlement till the date of payment. The entire calculation shall be made within a period of one and half months and released in favour of the Petitioner within seven days thereafter. Failure of releasing the same within the time target, the Petitioner will be entitled interest @ 10% per annum beyond the target period till the date of release. If the State Authority comes to observe, there is financial suffering of the State on account of delay practice adopted by its own Officers, it is open to the State Authority to recover such amount involved from such employee by initiating appropriate proceeding.

7. With the above order, the Writ Application stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout