

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2800 of 2013

Gangadhar Martha

....

Petitioner(s)

Mr. D.N. Rath,
Advocate

-versus-

Director, Elementary Education

....

Opposite Party(s)

Mr. R.K. Samal,
Standing Counsel

**CORAM:
JUSTICE BISWANATH RATH**

**JUDGMENT
08.04.2022**

Order No.

03.

1. Hearing of this matter is undertaken for the same being transferred from the State Administrative Tribunal to this Court on closure of such establishment.
2. This application involves a challenge by a superannuated Teacher involving Annexure-7 an order of the competent authority giving direction in the matter of examining the entitlement of the Petitioner and taking steps for recovery.
3. This application involves the following relief:-

“Relief(s) sought:-

In view of the facts mention in paragraph-6 above, the applicant prays for the following relief(s).

Under the above circumstances, it is therefore, humbly prayed that this Hon’ble Tribunal be graciously plead to quash the order passed by the opposite party no.3 bearing No.32961 dated 20.06.2013 vide Annexure-7 to the writ application and be pleased to direct the opposite party no.2 to re-submit

the pension paper and service book of the petitioner to the opposite party no.3 and the Hon'ble Tribunal be pleased direct the opposite party no.3 to sanction/approve the financial pension of the petitioner taking into account the last pay drawn by the petitioner on the date of his superannuation and to release the final pension in favour of the petitioner without any further delay.”

4. Short background involved in this case is that Petitioner being an untrained graduate was appointed as a Primary School Teacher on 29.01.1980 vide Annexure-1. Consequent upon which, the Petitioner joined on 31.01.1980. While the Petitioner was continuing as such, the State Government through the Secretary, Education & Youth Services Department issued a communication on 25.08.1982 bringing therein a scope for providing the scale attached to the Trained Matric Post w.e.f. the date of issuance of the said resolution/communication, particularly to the untrained persons but having higher qualification and continuing as teacher in Primary, M.E., High Schools against the Trained Matric Posts and enjoying salary of Rs.225/- per month. By operation of this resolution, the Petitioner's scale was fixed to the Trained Matric scale w.e.f. 25.08.1982. For the subsequent revision in the scale of pay by virtue of the Orissa Revised Pay of Rule, 1998 the Petitioner's scale was revised to Rs.3600-100-5600 w.e.f. 1.01.1996 by issuing communication dated 16.11.2001 at Annexure-3. For the taking effect of the next revision in the ORSP Rules, 2008 the Petitioner's scale was again revised w.e.f. 1.01.2006 with the scale of pay of Rs.5200-20,200/- with grade pay of Rs.2200/-. While working as such the Petitioner was superannuated on 31.12.2010. It is, after almost three years on 20.06.2013 issuing an order at Annexure-7

impugned herein, the Control of Accounts communicated the District Inspector of Schools, Nayagarh that since the teacher involved was not a trained, his case may be examined for entitlement for the Trained Matric Scale of pay and excess amount drawn, if any including unutilized leave salary may be suggested for recovery from the gratuity amount.

5. Being aggrieved by this order Mr. Rath, learned counsel for the Petitioner taking this Court to the pleadings and the development indicated hereinabove involving the entitlements of the Petitioner to the Trained Matric Scale of pay after 25.08.1982, contended that the entitlement indicated hereinabove was made by virtue of a resolution of the competent authority at the relevant point of time and further since the Petitioner had been allowed to superannuate since 31.12.2010, there was no scope for issuing such direction. Further while issuing the direction at Annexure-7, no opportunity was also given to the Petitioner to satisfy the authority regarding his entitlements. Again referring to the provision at Rule 7(2) (b)(II) of the Odisha Civil Service Pension Rules, 1992 Mr. Rath, learned counsel for the Petitioner contended that assuming that there was any reason to proceed against the Petitioner involving any such entitlement, but as the Petitioner is already superannuated, for the provision indicated hereinabove there was no scope for initiating any proceeding for recovery involved after the period of limitation prescribed therein. Mr. Rath, learned counsel for the Petitioner also takes help of the decision in the case of ***P. Satyanarayana Patro Vrs. Odisha Power Transmission Corporation Limited***, as reported in **2009 Vol.I OLR, 989** and contended that this decision has direct application to the case of the Petitioner. It is, in the process Mr.

Rath, learned counsel for the Petitioner requested this Court for interfering in the impugned order at Annexure-7 and passing appropriate order. Mr. Rath, learned counsel for the Petitioner also referring to a decision of the Division Bench of this Court in the case of ***Lambodhara Panda Vrs. State of Orissa and others*** in O.J.C. No.12807 of 2001 contended that in similar situation involving a different person this Court has already deprecated such action of the competent authority in allowing the writ petition.

6. Mr. Samal, learned Standing Counsel for the School & Mass Education Department in his opposition while not disputing the facts and the developments taken place indicated hereinabove and also taken place till 31.12.2010, however taking this Court to the observation in the order at Annexure-7, made an attempt to justify the impugned order. Mr. Samal, learned Standing Counsel contended that there is force in such communication and for there is wrong entitlement made in favour of the Petitioner requested this Court not to interfere in such orders. Further for the involvement of financial issues, Mr. Samal, learned Standing Counsel contended that in the event this Court interferes in the impugned order, there will be financial loss to the State exchequer. In the process, Mr. Samal, learned Standing Counsel attempted to establish the action of the State-Authorities and also attempted for dismissal of the application involved.

7. Considering the rival contentions of the parties this Court finds, undisputed fact remains; the Petitioner was an untrained graduate Primary School Teacher. It is, while the Petitioner completed two & half years of service, the State Government in its

wisdom had brought a resolution/communication dated 25.08.1982.

Clause (iv)(v) therein reads as follows:

“(iv) Untrained persons having higher qualification already continuing as teacher in Primary, M.E., High Schools against trained matric posts and enjoying fixed salary of Rs.225/- P.M. will also get the scale prescribed for trained matriculates with effect from the date of issue of this resolution and they may continue against the posts in the above scale of pay if they like.

(v) This resolution will take effect from the date of issue.

Order :- Ordered that the Resolution be published in the next issue of the Orissa Gazettee for general information.

Ordered also that the copies of the resolution be forwarded to all Departments of Government/All Heads of Departments all concerned.”

There is, however, no denial to the bringing in such resolution and its operationalization.

8. Further, the ordering portion therein also makes it clear that the resolution involved will be effected from the date of issuance of such resolution and the resolution was also directed to be published in the next issue of Orissa Gazette for general information. Further after the Gazette notification is brought, not only the Petitioner has been brought to the regular scale attached to Trained Matric School teacher w.e.f.15.12.1982, but there has also been several revisions in the scale of pay of the Petitioner. It also further becomes clear that the Petitioner has been allowed to superannuate on his attaining the age of superannuation on 31.12.2010. This Court here observes, in

the event the State Authorities were in a different mind to disentitle the Petitioner from the Trained Matric Scale of pay, nothing prevented the competent authority to at least initiate such proceeding during continuance of the Petitioner in service. Law has been well settled that after retirement of a person, there will be no master and servant relationship between the employee and the employee. Further, looking to the provision at Rule 7(2) (b)(II) of the Odisha Civil Service Pension Rules, 1992 this Court finds, recovery of this nature if involves the proceeding required to be initiated at least within 3 years from the date of detection of wrong entitlement, if any. This Court while finding the provision protects the interest of the Petitioner and opposes the move of the State Authorities, again also finds the Petitioner was made entitled to the Trained Matric Scale of pay since 25.08.1982 and the action of the State Authorities vide Annexure-7 for being initiated on 20.06.2013 almost after three decades, was otherwise also not permissible in the eye of law. This Court here also finds, the case of the Petitioner also gets support of the judgments referred to hereinabove.

It is, in the circumstance, this Court finds, the order at Annexure-7 is not sustainable in the eye of law. While setting aside the same, this Court directs, as the Petitioner has already been superannuated since 2010, in the event any entitlement of the Petitioner is withheld in the guise of Annexure-7, all such entitlement shall be released in favour of the Petitioner with interest @6% per annum allthrough, by completing such exercise within a period of one month from the date of order of this Court.

9. The WPC(OAC) succeeds, but in the circumstance, there is no order as to costs.

(Biswanath Rath)
Judge

Ayaskanta Jena

