

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37375 OF 2020

(An application under Articles 226 and 227 of the Constitution of India)

Rudra Prasad Sharma ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. L.K.Mohanty,
Advocate

-versus-

For Opposite Parties : Mr.P.K.Panda, S.C.
(S & M E Deptt.)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

01.11.2022.

Sashikanta Mishra,J. The Petitioner was appointed as an Asst. Teacher of Primary School as per order dated 24th July, 1967 passed by the then District Inspector of Schools, Koraput. He was granted pay revision as per ORSP

Rules, 1974. While continuing as such, he remained on leave on medical ground from 1st July, 1977 till 16th December, 2005 being under treatment. After recovery from his illness, he submitted his joining report to the Block Development Officer, Koraput on 1st February, 2006, but the same was not accepted and forwarded to the District Inspector of Schools, Koraput to take a decision. The Petitioner claims to have approached the authorities time and again for acceptance of his joining report and ultimately, by letter dated 31st March, 2006 the D.I. of Schools, Koraput requested the Director, Elementary Education, Odisha (Opposite Party No.2) to consider acceptance of the joining of the Petitioner under Rule 72 of the Odisha Service Code and for issuing necessary instructions there under. No action was taken in the matter. In the mean time, the Petitioner attained the age of superannuation from service w.e.f. 31st May, 2008. He submitted representations time and again including a representation addressed to the Secretary to Government in School and Mass Education

Department (Opposite Party No.1) on 15th November, 2016, who, by order dated 12th January, 2017 directed the Director to examine the representation and to take a decision within one month. The Director submitted a report vide letter dated 3rd December, 2019 to the Secretary requesting to take a decision as the Petitioner had remained on leave from 1st July, 1977 till his joining in the year 2006. The Block Education Officer, Koraput (Opposite Party No.4) also by letter dated 27th September, 2019 submitted information regarding the Petitioner to the Director for his consideration regarding grant of pension to the Petitioner as per the Orissa Civil Services (Pension) Rules, 1992 (for short "Pension Rules"). Initially, challenging the inaction of the authorities, the Petitioner approached this Court in the present Writ Petition, but it being brought on record by the Opposite Party-authorities in their counter that a disciplinary proceeding was initiated against him in which an order of termination of service was passed, the Petitioner was permitted to amend the Writ Petition

to incorporate such facts therein. It is stated that the Petitioner had completed 10 years of service and is therefore, entitled to pension as per Pension Rules, 1992. It is further stated that the Petitioner having retired w.e.f. 31st May, 2008, no proceeding could have been initiated against him by the Inspector of Schools and more over the order of termination of his service retrospectively w.e.f. 1st July, 1977 is not permissible in law. The Petitioner therefore, prays for the following reliefs:-

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to issue notice to the Opp. Parties calling upon them to file show cause as to why a direction for quashing of initiation of proceeding by Opp. Party No.4 dated 27.6.2011 under Annexure-10 which has been issued in gross violation of Rule7 (2) of OCS (Pension Rules) 1992 may kindly be quashed/set aside. Consequently, the order of punishment dated 18.4.2012 under Annexure-11 as well as consequential order passed by Opp. Party No.4 dated 20.6.2013 may kindly be quashed and to grant/release pension and pensionary benefits in favour of the petitioner with effect from 1.6.2008, counting the period of service from 24.7.1967 to 31.5.2008 and after hearing the parties be pleased to direct

the Opp. Parties to release pension and pensionary benefits in favour of the Petitioner with effect from 1.6.2008 counting the period of service from 24.7.1967 to 31.5.2008; within a date to be fixed by this Hon'ble Court."

2. In the counter affidavit filed by the Opposite Party No.4, it is stated that the Petitioner rendered active service from 24th July, 1967 to 27th December, 1976. He remained unauthorizedly absent from 28th December, 1976 to 30th May, 1977. Thereafter, he again worked as a teacher from 31st May, 1977 to 30th June, 1977 where after he remained unauthorizedly absent from his duty from 1st July, 1977 onwards. He decided to join in duty after 28 years and obtained a fitness certificate. Since the Petitioner was unauthorizedly absent for more than five years, he was required to be removed from service as per Rule 72 of the Odisha Service Code. Therefore, basing on the decision taken by the Government, a Disciplinary proceeding was initiated against the Petitioner vide Memorandum dated 27th June, 2011. The Petitioner submitted his statement of defence on 12th August,

2011 enclosing two medical certificates. On conclusion of the Disciplinary Proceeding, the Disciplinary Authority took a decision to remove the Petitioner from service w.e.f. 1st July, 1977 i.e. the date from which he remained unauthorizedly absent from his duty. The Petitioner thereafter remained silent till 5th November, 2016 and submitted a representation to the Opposite Party No.1 on 5th January, 2016 and thereafter filed the present case for pension, to which he is not eligible. It is further stated that the Petitioner was not on medical leave but had absconded from service from 1st July, 1977 and no leave application was submitted by him. It is also stated that the Petitioner has not rendered even 10 years of qualifying service.

3. The Petitioner has filed a rejoinder to the counter wherein the facts averred in the Writ petition have been reiterated. It is further stated that no Disciplinary Proceeding was initiated as per Rule 72(2) of the Odisha Service Code till the date of retirement of the Petitioner. Since the Petitioner had attained the age of

superannuation, he must be deemed to have retired from service and therefore, action could only be taken against him as per Rule 7 of the Pension Rules, but not under Rule 72 of the Odisha Service Code. It is further stated that on receipt of the order of dismissal dated 16th April, 2012 the Petitioner filed an appeal (representation) before the Director, but no order was passed thereon. It is also stated that the Petitioner approached the Opposite Party No.1 on 5th November, 2016 but to no avail.

4. Heard Mr. L.K.Mohanty, learned counsel for the Petitioner and Mr. P.K. Panda, learned Standing Counsel for the School and Mass Education Department.

5. Mr. Mohanty contends that the impugned order of punishment dated 18th April, 2012 is entirely illegal as the initiation of the proceeding itself under Annexure-10 was not permissible in the eye of law. The Petitioner having attained the age of superannuation must be deemed to have retired from service w.e.f. 31st May,

2008 and therefore, the then District Inspector of Schools, Koraput had no jurisdiction/competence to initiate the Departmental Proceeding against him under the Rules. At best, action could have been contemplated in due time under Rule 7(2)(b) of the OCS Pension Rules, 1992. It is further contended by Mr. Mohanty that law prohibits passing of an order of removal of service of an employee with retrospective effect. In view of such illegality, the Petitioner must be held eligible to pension under the Rules. It is also submitted that the Petitioner has rendered the minimum qualifying service of 10 years under the Government.

6. Per contra, Mr. Panda contends that the Petitioner had willfully abandoned the service after less than 10 years of active service and therefore, he is not eligible to any relief whatsoever. Further, he having remained unauthorizedly absent beyond five years, the authorities were well within their right to take action against him as contemplated under Rule 72(2) of the

Odisha Service Code. That apart, the Petitioner never challenged the non-acceptance of his joining report at the relevant time nor initiation of Disciplinary Proceeding against him, rather he participated therein by submitting his written statement of defence. Further, the Petitioner seeks to challenge the order of removal from service, which was passed in the year 2012. On the above grounds, it is argued that the Writ Petition is devoid of any merit.

7. It has been stated in the counter affidavit that the Petitioner was in active service from 24th July, 1967 to 27th December, 1976 whereupon he remained unauthorizedly absent from 28th December, 1976 to 30th May, 1977. He again worked from 31st May, 1976 to 30th July, 1976 and remained unauthorizedly absent from 1st July, 1977 onwards. He claims to have been prevented from joining in his duties because of his illness. There is no evidence of any leave application supported by any medical document being submitted by him to the concerned authorities at the relevant

time. Be that as it may, he sought to rejoin in his service by submitting his joining report on 1st June, 2006. Rule 72 (1) and (2) of the Odisha Service Code provides as under:-

“72 (1) No Government servant shall be granted leave of any kind for a continuous period exceeding five years.

(2) Where a Government servant does not resume duty after remaining on leave for a continuous period of five years, or where a government servant after the expiry of his leave remains absent from duty otherwise than on foreign service or on account of suspension, for any period which together within the period of the leave granted to him exceeds five years, he shall unless Government in view of the exceptional circumstances of the case otherwise determine, be removed from service after following the procedure laid down in the Odisha Civil Services (Classifications, Control and Appeal) Rules, 1962”.

8. Therefore, it was open to the authorities to take action against the Petitioner as contemplated under the aforementioned rule i.e. by initiating disciplinary proceeding under Rule 15 of the OCS CCA Rules, 1962. The authorities do not appear to have taken any action in this regard till the year 2011, when the

Petitioner had already crossed the age of superannuation. However, this Court, being a Court of equity is also required to see the conduct of the petitioner who has approached the Court seeking relief. The Petitioner's joining report dated 1st February, 2006 not being accepted, he should have challenged the same before the appropriate forum at the relevant time. Instead, he appears to have submitted some representations on which no concrete decision was taken even till he had attained the age of superannuation. At that stage also the Petitioner did not think it fit to challenge the so called inaction of the authorities in responding to his representations. Interestingly, the Petitioner filed the Writ Petition on 23rd December, 2020 without mentioning anything about the final order of punishment passed in the Disciplinary Proceeding, but only sought for a direction to the authorities to release his pension and other retirement benefits. Significantly, in the rejoinder filed by the Petitioner he admits to have received the order of dismissal dated 16th April, 2015 and of filing an

appeal before the Director on 10th May, 2012 followed by representation before the Opposite Party No.1 on 5th November, 2016. Even considering the said date i.e., 5th November, 2016, there is an inordinate delay of more than four years in approaching this Court that too without disclosing all the relevant facts. The Petitioner has not whispered a word to explain as to what stopped him from approaching the Court for all these years. The above, coupled with the very conduct of the Petitioner in not approaching this Court with clean hands makes him ineligible to get any relief much less the relief claimed by him from this Court.

9. For the foregoing reasons therefore, this Court has no hesitation in holding that the Petitioner is not entitled to the relief claimed by him for which the Writ Petition is dismissed.

.....
Sashikanta Mishra,
Judge

Ashok Kumar Behera





