

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.1082 of 2017

Durga Charan Sahoo

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

28.09.2022

Order No

- 02.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. K.K. Dash, learned counsel for the Petitioner and Mr. M.K. Balabantaray, learned Standing Counsel appearing for the Opp. Parties.
3. The present writ Petition has been filed with the following prayer:-

“In view of the averments made in paragraph-6, this Hon'ble Tribunal be pleased to pass the following order: -

- (i) *To pass appropriate order directing the Respondents to release all the pensionary benefits including his gratuity, unutilised leave salary, full pension and other pecuniary service benefits as admissible to him in view of the ratio passed in Civil Appeal No.6770 of 2013 reported in AIR 2013 SC.....*
- (ii) *To pass appropriate order directing the Respondents to consider his representation dated 08.11.2016 under Annexure-8*
- (iii) *And pass any other order/orders as deemed fit and proper for granting complete relief to the applicant in the present facts and circumstances of the case in the interest of justice.”*

4. It is submitted that even though the Petitioner has been retired since 28.02.2011, but all this retiral benefits has been withheld due to pendency of the Vigilance Proceeding in Balasore Vigilance P.S. Case No.62 of 2007 pending before the learned Special Judge, Vigilance, Balasore.

5. Mr. Dash, learned counsel for the Petitioner submitted that in the decision of the Hon'ble Apex Court reported in the case of ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.*** reported in ***(2013) 12 SCC 210***, it has been held that withholding of retirement benefit during pendency of the Disciplinary/Criminal Proceeding in absence of any specific rules cannot be made.

6. Mr. Dash further submitted that seeking extension of the benefit after due consideration of the matter in the light of the aforesaid Judgment though the Petitioner has moved the O.P. No. 1 under Annexure-8, but no decision has been taken on the same till date.

7. Mr. Balabantaray, learned Standing Counsel on the other hand submitted that in view of the pendency of the Vigilance Proceeding the Petitioner is not entitled to get the retiral benefit unless and until the said Vigilance Proceeding is disposed of.

8. Having heard learned counsel for the Parties and taking into account the fact that the claim of the Petitioner as made in Annexure-8 is pending consideration before O.P. No.1, this Court directs the said Opp. Party to take a lawful decision on the same within a period of two (2) months from the date of receipt of this order.

9. It is further observed that while taking such a decision, O.P. No. 1 shall take into consideration the ratio decided by the Hon'ble

Apex Court in the above noted case. It is also observed that on such consideration if the Petitioner is found eligible to get the benefit appropriate action also be taken for release of the benefit. The entire exercise shall be completed within a period of three (3) months from the date of receipt of this order.

10. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Sneha

