

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1376 of 2019

Madhab Chandra Mohapatra ***Petitioner***
Mr.Amiya Ku. Chhatoi, Advocate

-versus-

State of Odisha and others ***Opposite Parties***
Mr.P.C.Das, A.S.C .

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.04.2022

Order No.

07.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and the learned Additional Standing Counsel.
3. Perused the documents filed in the writ application.
4. The present application which was initially filed before the learned Tribunal with the following prayer:

“In view of the facts mentioned in the foregoing paragraphs, the applicant prays for the following relief(s):

- i) The Hon’ble Tribunal may be pleased to quash the letter dated 20.03.2019 as at Annexure-12 and direct the respondents to disburse provisional pension from February, 2019 onwards to the applicant forthwith.
 - ii) The Hon’ble Tribunal may be further pleased to direct the respondents to sanction and disburse final pension and other retiral benefits in favour of the applicant within a time stipulated.
 - iii) The Hon’ble Tribunal be pleased to pass such other order/orders as is deemed fit and proper under the facts and circumstances of the case.”
3. It is submitted by the learned counsel for the Petitioner that the

Petitioner was initially engaged with effect from 13.09.1985. While continuing as such, his service was regularised by order dated 24.07.2010 under Annexure-3 which was issued by the Joint Secretary to the Government. Thereafter a suggestion was given to the Government indicating that the service of the Petitioner would be regularised with effect from 09.09.1985 along with many other similarly situated persons. Further on perusal of Annexure-4 i.e. letter dated 19.11.2010 which was issued by the Director of Agriculture & Food Production, Odisha to the Deputy Director including the Ranges reveals that the Government accepted regularisation of service of the Petitioner as Junior Clerk with effect from 29.02.1992. It is further submitted by the learned counsel for the Petitioner that the decision to regularize the service of the Petitioner with effect from 29.02.1992 was challenged before the Orissa Administrative Tribunal by filing O.A. No.1263 of 2012 and by order dated 01.10.2012 the Orissa Administrative Tribunal after hearing the counsel for the parties disposed of the original application remanding the matter to the Government for passing appropriate order by settling the case of seniority within a stipulated period of time.

4. After the matter was remanded the Director of Agriculture & Food Production, Odisha vide letter dated 14.06.2012 accepted the fact that the initial date of entry into Government service would be counted with effect from 13.09.1985. However, while stating that the Director has also indicated that the interruption period as mentioned in the said letter dated 14.06.2012 are treated to be as Non-qualifying service and will not be counted towards his pension Basing on that the learned counsel for the Petitioner submits that the Petitioner's service has been regularisd with effect from 13.09.1985 with a rider that the period as indicated in the letter shall not be

considered for the purpose of calculation of pensionary benefit of the Petitioner.

5. It is further submitted by the learned counsel for the Petitioner that pursuant to the order of regularisation the Petitioner who was working as Junior Clerk has been given promotion to the post of Senior Clerk and thereafter he was transferred and posted in the new place of posting and he was also allowed the scale of pay attached to the senior Clerk vide order dated 18.06.2011. While working as such the Petitioner has retired from service on attaining the age of superannuation with effect from 30.04.21018. After his retirement the Petitioner submitted pension papers for sanction of pension with effect from 01.05.2018.

6. While considering the pensionary benefit of the Petitioner, again the authority despite the date of regularization of the Petitioner and taking into account the date of regularisation as 24.07.2010 i.e. the date on which the order of regularization was passed under Annexure-3 as the date of regularization of the petitioner's service, the authorities were not inclined to sanction and disburse the pensionary benefit in favour of the Petitioner. It is further submitted by the learned counsel for the Petitioner that the Petitioner was not even getting provisional pension.

7. Accordingly, once again the Petitioner along with other batch of employees approached the Orissa Administrative Tribunal for pensionary benefit. All those matters were taken up together and by order dated 12.12.2017 the original applications were disposed of by the Tribunal and the Tribunal while allowing original application quashed the order dated 02.09.2013 and 11.09.2013. It was further directed that the petitioner is entitled to get all financial benefit as per order dated 24.07.2010. Thereafter the Petitioner approached the

Opposite Parties for his pensionary benefit. However, the same has not been considered by the authority taking the ground that since the order of regularization is dated 24.07.2010 and the Petitioner has retired from service on attaining the age of superannuation on 30.04.2017, as such the Petitioner has not completed 10 years of qualifying service for pensionary benefit, the Petitioner is not entitled to get any pensionary benefit. Finally the petitioner was compelled to file the present original application before the Tribunal. After abolition of the Tribunal the matter was transferred to this Court and was renumbered as WPC(OA) No.1376 of 2019.

7. Having heard learned counsel for the parties, this Court is of the considered view that in view of the materials available on record, the entry of the Petitioner into Government service which has been accepted as the date of regularization for the purpose of pensionary benefit as has been indicated in the order passed by the Tribunal dated 12.12.2017. It appears that the authority has probably misconstrued the direction contained in paragraph-12 of the Tribunal's order wherein it has been stated that the Petitioner is entitled for all pensionary benefit as per regulation dated 24.07.2010. While issuing direction, the Tribunal has clearly indicated that the Petitioner is entitled to all service benefits which obviously includes his pensionary benefit. So while referring to order dated 24.07.2010 the Tribunal intended to refer to the formal order of regularisation passed by the authority. However, the same has been subsequently interpreted and the authority has accepted the date of entry into Government service of the Petitioner will be counted with effect from 13.09.1985, the same remained intact and unassailed. In such view of the matter this Court is of the confirmed view that the order impugned dated 20.03.2019 under Annexure-12 is clearly

unsustainable in law and accordingly the same deserves to be set aside and the same is hereby set aside.

8. Further, the authorities are directed to calculate the pensionary benefit of the Petitioner by taking into consideration the order under Annexure-3 as well as under Annexure-6 and the date of entry of the Petitioner into Government service i.e. 13.09.1985. Accordingly, the pensionary benefit payable to the Petitioner as due and admissible to the Petitioner in accordance with law be sanctioned and disbursed in his favour within a period of one month from the date of production of copy of this order.

9. With the aforesaid observation the writ application stands disposed of.

RKS

