IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.07 of 2019

Nilakantha Behera .... **Petitioner**

-versus-

State of Odisha & Ors. .... **Opposite Parties**

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
25.01.2023

Order No
04.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. Nihal Rath, learned counsel on behalf of Mr. R.K. Bisoi, learned counsel appearing for the Petitioner and Mr. D.K. Mohanty, learned Addl. Standing Counsel appearing for the Opp. Parties.

3. The present writ petition has been filed challenging the notice dtd.15.12.2018 issued by the O.P. No. 2 under Annexure-5, wherein the Petitioner was directed to deposit a sum of Rs. 3,03,938/- (Rupees Three lakh three thousand nine hundred thirty eight) i.e. the deficit amount.

4. Learned counsel for the Petitioner contended that the Petitioner while working as a Head Clerk, retired from his service on 30.04.2018 vide order under Annexure-1. Subsequently, after his retirement the impugned notice was issued by directing him to deposit the amount in question without initiating any proceeding and without giving any opportunity of hearing to the Petitioner. It is also contended that the said direction has been issued basing on some audit objections. It is accordingly contended that since no proceeding was ever initiated to determine the liability as against the Petitioner, the direction issued in the impugned notice is not sustainable in the eye of law.

5. Even though notice of the writ petition was issued by the Tribunal with passing of an interim order on 07.01.2019, but in spite of several opportunities no counter affidavit has been filed. However, Mr. D.K. Mohanty, learned ASC contended that since subsequent to the retirement of the Petitioner it was found that the Petitioner is liable to deposit the amount in question a notice under Annexure-5 has been issued and without depositing the said amount the present writ petition has been filed.

6. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that while issuing Annexure-5, no reference has been made as to how the amount in question was determined and making the Petitioner liable to pay the same. Therefore, this Court is of the view that without initiating a proceeding with due determination of the amount, no recovery can be made by issuing Annexure-5 to the writ petition. It is also the settled position that basing on audit objection no recovery can be effected.

7. Therefore, this Court is inclined to quash the notice dtd.15.12.2018 issued under Annexure-5. While quashing the same, this Court directs the O.P. No. 2 to take effective step for sanction and disburse the retiral benefits of the Petitioner as due and admissible. However, this order will not preclude the O.P. No. 2 to determine the recoverable amount by initiating proceeding, if it is permissible in the eye of law.

8. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha