IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22238, 22239 & 22240 of 2020

(Under Articles 226 and 227 of the Constitution of India)

W.P.(C) No.22238/2020

Rankanidhi Nayak .... ***Petitioner***

-versus-

State of Odisha and others .... ***Opposite Parties***

W.P.(C) No.22239/2020

Dhruba Charan Kar .... ***Petitioner***

-versus-

State of Odisha and others .... ***Opposite Parties***

W.P.(C) No.22240/2020

Rashmi Rekha Pradhan .... ***Petitioner***

-versus-

State of Odisha and others .... ***Opposite Parties***

Advocate(s) appeared in this case:-

For Petitioners	:	Mr.Suvashish Pattanaik, Advocate *(In all three writ petitions)*
For Opposite Parties	:	Mr. D. Mohanty, AGA *(In W.P.(C)Nos.22238 & 22239 of 2020)* Ms.B.L.Tripathy, ASC *(In W.P.(C) No.22240 of 2020)*

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
2nd December 2024

B.P. Routray, J.

1. Heard Mr. Pattanaik, learned counsel for the Petitioners, Mr.Mohanty, learned Additional Government Advocate for the State in W.P.(C) Nos.22238 and 22239 of 2020 and Ms.B.L.Tripathy, learned Additional Standing Counsel for the State in W.P.(C) No.22240 of 2020.

2. All the Petitioners have prayed for common relief to grant them the benefits of Old Pension Rule, i.e., as per the provisions of the Orissa Civil Services (Pension) Rules, 1992 and the benefits of General Provident Fund (Orissa) Rules, 1938.

3. The undisputed facts in all the cases remain that the Petitioners were selected in a due process of selection as Statistical Investigator, pursuant to the Advertisement No.848 dated 15.04.1999 (Annexure-1). Their names found place as per the merit list dated 12.10.1999 (Annexure-2). However, they were not given appointment. Then they approached the Orissa Administrative Tribunal (OAT) and by virtue of the order of the OAT, they got appointment on 20.06.2006 (Annexure-4), but on contractual basis. Then the Petitioners again approached the Tribunal and the Tribunal subsequently directed to give the Petitioners as members of the cadre in regular post and to record their seniority as per the merit list. Then the Petitioners were given regular appointment by order dated 14.05.2013 (Annexure-6).

4. The Petitioners now pray that since their selection is pursuant to the advertisement dated 15.05.1999, i.e., much prior to coming into force of new pension scheme, their appointment to the posts should be treated in pensionable establishment to count their services as pensionable job.

5. The law is well settled in the case of ***Anand Dash Vs. State of Orissa 2014(I)ILR-CUT 459***. It is observed in the said decision as follows:-

> "xxx xxx xxx xxx xxx
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> In a large number of cases, the Hon'ble Apex Court has categorically laid down that the right of an employee, which accrued in his favour on the date of appointment, cannot be taken away by the amending provisions of the Rules concerning the service with retrospective effect. An employee, while entering into service, is subjected to the condition of service as on the date, when he joins. Affright given to such employee under the provision of any Act or Rules governing the employment, if taken away by amending such Rules with retrospective effect, the same would be violative of Articles 14 & 16 of the Constitution and it would amount to an arbitrary and unreasonable action.
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> In the case at hand, as already stated above, all the petitioners joined in their due assignments on 02.04.2005 by which date, the amended Rules were not existing. The said amended Rules, which were introduced by Notification dated 31.08.2007 and come into operation from 01.01.2005, which is prior to the date, when the petitioners joined in their new assignments.

We are, therefore, of the considered view that the said amendments brought to the General Provident Fund (Orissa) Rules, 1938 and the Orissa Civil Service (Pension) Rules, 1992 will not apply to the petitioners, who will be governed by the said Rules as it existed on the date of their joining in service prior to the amendments brought into those Rules."

6. Further Government of Orissa in General Administration Department issued a Circular on 19.07.2017 (Annexure-7) stating as follows:-

"And whereas, considering the ground exhibited in the litigations, it is now opined by the Law Department that, "where advertisements have been made for regular posts prior to coming into force of 2013 Rules and the conditions of such advertisements remain unaltered till the recruitment process is complete, appointments to such posts should be made as per the relevant recruitment rules without treating them as contractual under the provisions of 2013 Rules."

Therefore, after careful consideration, Government have been pleased to relax the provisions of sub-rule (2) of rule 5 of both the Contractual Rules, 2013 by invoking the powers conferred under the relaxation provisions prescribed under both these Rules so as to allow those appointments, pursuant to the advertisement made for regular appointment prior to commencement of both these Contractual Rules but subsequently not converted to contractual appointment by way of re-advertisement as on regular basis.

All earlier instructions/ clarifications issued on the issue stand modified to the above extent. This has been concurred in by the Finance Department."

7. In view of the admitted facts stated above and the principles of law discussed, it is concluded that the case of the Petitioners are governed by the principles decided in the case of ***Anand Dash (supra).***

8. Accordingly, the writ petitions are allowed and order dated 19.03.2020 under Annexure-9 is quashed. The Opposite Parties are directed to govern the service condition of the Petitioners as per the provisions of Old General Provident Fund (Orissa) Rules, 1938 as well as the Orissa Civil Services (Pension) Rules, 1962 as stood it was on the date of advertisement, i.e. on 15.04.1999. However, no such past financial and other benefits shall be given to the Petitioners except for counting the services of the Petitioners for pensionary benefits.

9. All the writ petitions are accordingly disposed of.

(B.P. Routray)
Judge

Himansu/P.A.

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