



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.9460 of 2024

**Govind Nag**

.....

**Petitioner**

Represented By Adv. -  
Jaminikanta Das

-versus-

**1) State Of Odisha**

.....

**Opposite Parties**

2) The Registrar, Cooperative  
Societies

Represented By Adv. -  
S.Das, AGA

**CORAM:**

**THE HON'BLE MR. JUSTICE ADITYA KUMAR  
MOHAPATRA**

**ORDER**

**26.04.2024**

**Order No.**

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
  2. Heard learned counsel for the petitioner as well as learned Additional Government Advocate appearing for the State-Opposite Parties. Perused the writ petition as well as documents annexed in the Writ Petition.
  3. Considering the urgency of the matter that the Petitioner is likely to contest in the election for which the last date of filing of the nomination is 26.04.2024, this matter is being taken up for hearing and is being disposed of at the stage of admission.
  4. The present Writ Petition has been filed by the Petitioner with the following prayer :

*“Under the facts and circumstances stated in the foregoing paragraphs, Your Lordship may admit the writ petition, call for records and be pleased to issue RULE NISI calling upon the Opp.parties as to why;*

*(A) The petitioner's application for voluntary retirement from Governmental post of SARCS shall not be accepted by the Opposite parties i.e. 1 and 2;*



*(B) As to why it shall not be so directed to release the petitioner's post retiral dues like Gratuity, Leave salary, benefits of 7th Pay scale on Revision, commutation of pension and all other financial benefits to which the petitioner is entitled as per Rules including Revised pension from month to month;*

*(C) As to why any other or further order(s)/direction(s) shall not be issued to afford complete relief to the petitioner;*

*In the event the Opp.parties fail to show cause or show insufficient cause the Rule may be made absolute;*

*And/or pass any other order/orders, direction/ directions as this Hon'ble Court deems fit and proper for the ends of justice."*

5. Learned counsel for the Petitioner submitted that the present Petitioner was initially appointed as Inspector of Cooperative Society on 12.11.1996 under the Govt. of Odisha. Thereafter, he has been transferred to different places and he has been discharging his duties to the utmost satisfaction of the higher authorities. In course of his employment, the petitioner was given promotion to the post of Sub-Assistant Registrar Cooperative Societies. Learned counsel for the Petitioner further contended that in course of his employment, no disciplinary proceeding or any criminal proceeding was initiated against the Petitioner. It is also contended that the Petitioner is suffering from Chronic Kidney Disease (CKD) ailment and his son is suffering from mental ailments. As such the Petitioner decided to leave the govt. service and accordingly submitted his application for retirement from service voluntarily on 14.12.2023 before the Opposite Party No.2. It was also contended that although such application was accepted by the competent authority, however, no decision has been taken in the meantime.

6. In course of his argument, learned counsel for the Petitioner drawing attention of this Court to the provision contained in Rule-42(2) of the Odisha Civil Service Pension Rules, 1992 submitted before this Court that the same provides that in the event any government



employee tenders his application for voluntary retirement the same has to be either accepted or rejected specifically within a period of three months from the date of such submission, and in the event no decision is taken or communicated to the petitioner within the aforesaid period of three months, then it will be deemed that the same has been accepted by the authority. By applying the aforesaid provisions to the facts of the present case, learned counsel for the Petitioner further contended that in the case of the Petitioner although the application is pending for more than three months, no decision has been communicated by the Opposite Party Nos.1 and 2. In such view of the matter, learned counsel for the Petitioner submitted that the application for voluntary retirement submitted by the Petitioner on 14.12.2023 under Annexure-1 shall be deemed to have been accepted by the authorities. As such it was prayed that the Opposite Parties be directed to take necessary follow up action to terminate the service of the petitioner forthwith. It was contended that the Petitioner is interested in contesting the election for which today i.e. 26.04.2024 is the last date for filing nomination papers before the Election Officer.

7. Learned Additional Government Advocate on the other hand contended that the petitioner has been implicated in a vigilance case bearing Cuttack Vigilance P.S. Case No.12/17 dated 27.04.2017 which is stated to be pending now. He further contended that the Petitioner is on bail pursuant to order passed by the Hon'ble Apex Court in Special Leave to Appeal (Criminal) Case No.3606 of 2018 vide order dated 19.04.2018. Further, it was contended vide order dated 19.04.2018, the Hon'ble Supreme Court has protected the Petitioner from arrest till filing of the charge sheet. In the aforesaid factual background, learned Additional Government Advocate submitted that the authorities are not bound to accept the application for voluntary retirement submitted by the Petitioner during the pendency of the aforesaid vigilance case.



8. In reply to the aforesaid contention, learned counsel for the Petitioner submitted that although the Petitioner has been implicated in the above noted vigilance case, no charge sheet has been filed in the meantime. Further, referring to the provisions contained in the OCS(Pension) Rules, 1992, learned counsel for the Petitioner submitted that unless a charge sheet is filed, legally it cannot be construed that a proceeding is pending against the petitioner. In the aforesaid context, learned counsel for the Petitioner referred to the provisions contained in Rule-7 of OCS (Pension) Rules, 1992. Further, referring to Rule-7 explanation-(b), learned counsel for the Petitioner submitted that in the case of criminal proceeding, the judicial proceeding shall be deemed to be instituted from the date on which the learned Magistrate takes cognizance. The aforesaid rule has been interpreted by a Division Bench of this Court by a judgment dated 06.05.2022 in ***State of Odisha and Ors. v. Sushanta Chandra Sahoo and Ors.*** bearing **W.P.(C) No. 14718 OF 2015**, wherein the Division Bench while interpreting has categorically held that in the event a criminal case is pending against the government officer, the same shall be construed to have deemed to be pending from the date the cognizance is taken by the learned Magistrate. In such view of the matter, learned counsel for the Petitioner submitted that since the charge sheet has not yet been filed and no cognizance has been taken by the learned Magistrate having jurisdiction over the subject matter of dispute, it cannot be construed that a judicial proceeding is pending against the present Petitioner. Therefore, it was contended that no proceeding is pending against the Petitioner. As such, the Opposite Parties should have accepted the application of the Petitioner for voluntary retirement from service.

9. Learned counsel for the Petitioner also referred to the provisions contained in Rule 42(2) of the Odisha Pension Rules, 1992. Further referring to proviso appended to Rule 42(2), learned counsel for the



Petitioner submitted that where the Appointing Authority does not refuse to grant of permission for retirement before expiry of the period specified in the proviso to the note under the aforesaid rule, the retirement shall become effective from the date of expiry of said period. He further contended that in Rule 42 (1) of the OCS (Pension) Rules, 1992, a government employee who has completed 20 years of service, may by giving a notice of not less than three months in writing to the Appointing Authority, retire from service voluntarily. He further contended that although Rule 42(2) speaks of acceptance of such notice by the Appointing Authority, however, such Rule 42(2) is subject to proviso specifically provided therein. The proviso which has been discussed hereinabove provides that unless the permission is specifically refused within the time granted in the notice given by the govt. employee, it will be deemed that the same has been accepted from the date of expiry of the notice period. Referring to the notice in the present case learned counsel for the Petitioner submitted that in the present case the notice was given by the petitioner on 19.12.2023 under Annexure-1 to the Registrar of Cooperative Societies, Odisha, Bhubaneswar who is the competent authority and also the appointing authority of the Petitioner. It was also contended that such notice has been received on 20.12.2023 as is evident from the endorsement on such letter under Annexure-1 to the writ application. Further, referring to the notice, learned counsel for the Petitioner submitted that the same reveals a three months notice was given to the appointing authority to accept or refuse the voluntary retirement of the Petitioner, however, no action has been taken, more specifically the same has not been refused within the aforesaid three months period which expires on 20.03.2024. Therefore, by applying the proviso to Rule 42 (2), learned counsel for the Petitioner submitted that, it is to be deemed that the VRS application of the Petitioner has been accepted w.e.f. 20.03.2024.



10. Having heard the learned counsels appearing for the respective parties, on a careful examination of the pleadings in the writ application as well as documents annexed to the writ application, this Court observes that in the present matter there are only two issues which require for adjudication. First is the interpretation of the provisions of rule 42(2) with regard to deemed acceptance of the VRS application of the Petitioner and the Second issue is as to whether a vigilance case is pending against the present Petitioner. With regard to the first issue, this Court observes that proviso contained in Rule-42(2) is very clear. Under the proviso to Rule-42, the Petitioner is required to give a notice by providing minimum three months time to the appointing authority for rejecting his application for voluntary retirement. In the event no communication has been given to the Petitioner rejecting his application under the proviso contained in Rule-42(2), it will be deemed that the same has been accepted by the authority. Therefore, by taking into consideration the application under Annexure-1 to the writ application, this Court is of the considered view that the notice having been accepted by the Opposite Party No.2 on 20.12.2023, the three months period expires on 20.03.2024. Since no communication has been received by the Petitioner either from Opposite Party No.1 or Opposite Party No.2. By applying the deeming provision, the retirement of the Petitioner should have been accepted on completion of notice period of three months which comes to end on 20.03.2024. Admittedly, the Petitioner has not received any intimation rejecting his application for voluntary retirement prior to the expiry of the notice period of three months.

11. So far the second issue is concerned, this Court observes that the application has not admittedly been accepted and no decision has been taken. Learned Additional Government Advocate further referring the para-wise comment attached to the instruction dated 25.04.2024,



particularly referring to para-5 of the para-wise comment, submitted before this Court that under Rule-42(2) and the note appended thereto, the Govt. is the competent authority to consider the voluntary retirement from govt. service of the employees who are having any pending case. In para-1 and para-6 it has also been stated that a vigilance case is pending against the present Petitioner. It has also been stated in the said para-wise comment that before taking a final decision on the VRS application the procedural formalities are to be complied with by the Opposite Parties with regard to the pending vigilance cases against the Petitioner. In course of his submission, learned Additional Government Advocate also referred to the letter dated 20.12.2023 under Annexure-2 to the writ application which is a letter written by the Registrar Cooperative Societies, Odisha to the Commissioner-cum-Secretary to the Govt., Cooperation Dept. In the context of proposal for consideration of voluntary retirement of the present Petitioner. Further, referring to the aforesaid letter under Annexure-2, learned Additional Government Advocate submitted that case of the Petitioner has already been recommended to the Govt. for consideration of his case for voluntary retirement from service. Awaiting instruction from the Govt. no decision has been taken by the appointing authority i.e. the Registrar Cooperative Societies, Odisha.

12. On a careful analysis of the factual as well as legal position, this Court observes that there is no impediment under Rule-42(2) of the OCS (Pension) Rules for acceptance of the application of the Petitioner for voluntary retirement from service and on a careful analysis of the factual background involved in the present writ application, it appears that the case of the Petitioner satisfies the requirement of the proviso contained in Rule 42(2) of the OCS (Pension) Rules, 1992. With regard to the pendency of the vigilance case, this Court examines the provisions contained in Rule-7 of the OCS (Pension) Rules, 1992. On a



careful scrutiny of the explanation to Rule-7(2) it appears that the same provides for crime for which it will be deemed that a judicial proceeding has been instituted against the Delinquent Govt. Officer. Explanation-(b) to Rule 7 (2) reads as follows:-

*“(b) judicial proceedings shall be deemed to be instituted,-*

*(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made; and*

*(ii) in the case of civil proceedings, on the date of presentation of the plaint in the Court.”*

13. The aforesaid provision in Explanation-(b) to Rule 7 (2) has been taken note of in a judgment of a Division Bench of this Court in **Sushanta Chandra Sahoo**'s case (supra) wherein the Division Bench has categorically held that since the no cognizance has been taken it cannot be presumed that the proceeding is pending against the Petitioner in that case and accordingly, it was directed that all retirement benefits be released in favour of the Petitioner as no judicial proceeding pending against the Petitioner. By applying the law laid down by the Hon'ble Division Bench in **Sushanta Chandra Sahoo**'s case (supra), and taking into consideration the fact that in the present case no charge sheet has been filed and no cognizance has been taken by the learned Magistrate having jurisdiction over the subject matter of dispute, this Court is of the considered view that in the present case it will be deemed that no judicial proceeding is pending against the present petitioner. Therefore, mere implication of the Petitioner's name in the vigilance case could not stand in the way of accepting the petitioner's application for voluntary retirement.

14. In view of the facts and circumstances narrated hereinabove and on a careful analysis of the legal position as has been narrated in the aforesaid paragraphs, this Court is of the considered view that there exists no legal impediment in accepting the VRS application of the





present petitioner under Annexure-1 to the writ application. Further, considering the fact that the Opposite Parties have not rejected the application under Annexure-1 submitted by the petitioner by giving a notice of not less than three months, and by applying the proviso to Rule-42(2) of the OCS (Pension) Rules, 1992, this Court is of the considered view that it will be deemed that the VRS application of the Petitioner has been accepted with effect from completion of three months notice i.e. 20.03.2024. In such view of the matter, this Court has no hesitation in allowing the present writ application. Further, it is directed that the Opposite Party Nos.1 & 2 shall do well to accept the VRS application of the Petitioner under Annexure-1 w.e.f. 20.03.2024 and take necessary follow up steps for calculation, sanction & disbursal the retiral benefits, financial benefits as well as pensionary benefits as is due and admissible to the Petitioner within a period of two months from the date of communication of a certified copy of this order.

15. With the aforesaid observation/direction, the writ petition is disposed of.

16. Urgent certified copy of this order be granted on proper application in course of the day.

**( A.K. Mohapatra )**  
**Judge**

Anil