

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4066 of 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950.

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Sangram Keshari **Petitioner**
Mohanty

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s.S.S. Das, S. Jena, R.P.
Dalai, K. Mohanty, S.K. Samal,
S.P. Nath & S.D. Routray

For Opp. Parties : M/s. S.K. Samal,
Addl. Government Advocate

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

सत्यमेव जयते

Date of Hearing:23.11.2023 and Date of Judgment:23.11.2023

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel appearing for the Parties.
3. The Petitioner has filed the present Writ Petition *inter alia* with the following prayer: -

“(i) Admit the writ petition.

(ii) Call for the records.

(iii) Issue Rule Nisi calling upon the opposite parties, particularly, opposite party No.3 to show cause as to why the Memorandum of Charge dated 20.02.2013 under Annexure-4 shall not be quashed and be declared as invalid and inoperative in the eye of law.

(iv) If the opposite parties do not show cause or show insufficient cause, issue a writ in the nature of certiorari or any other appropriate writ/writs and order/orders, quashing the Memorandum of Charge dated 20.02.2013 under Annexure-4 and further be pleased to declare the same as invalid and inoperative in the eye of law inasmuch as contrary to the Orissa Education (Recruitment and Conditions of Service and Teachers and Members of the Staff of Aided Educational Institutions) Rule, 1974 and Orissa Aided Educational Institutions' Employees Retirement Benefit Rules, 1981;

(v) Issue a writ in the nature of Mandamus or any other appropriate writ/writs, order/orders, direction/directions directing the opposite parties to extend the pensionary benefit in favour of the petitioner keeping in view the date of superannuation of the petitioner in terms of Rules, 1974 and 1981 within a reasonable time to be stipulated by this Hon'ble Court".

4. Learned counsel for the Petitioner contended that the Petitioner while continuing as a Reader in English in S.G. College, Kanikapada, a proceeding was initiated against him at the instance of Sub-Collector-cum-President of the Governing Body of the College in terms of the provision contained under Rule-22 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (in short Rules) on 20.02.2013 under Annexure-4.

4.1. It is contended that even though the proceeding was initiated against the Petitioner while he was in

service with service of the charges on 20.02.2013 under Annexure-4, but the said proceeding was never finalized till the petitioner attained the age of superannuation on 31.08.2015.

4.2. It is contended that since the proceeding was not finalized during the tenure of the Petitioner and there is no provision under Rule-22 of the aforesaid 1974 Rules to continue with the proceeding after retirement, the proceeding so initiated against the Petitioner under Annexure-4 is liable to be quashed as it cannot continue after the retirement of the Petitioner.

4.3. In support of his aforesaid submission, Mr. Routray, learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court in Civil Appeal No.2101/1999 (**Bhagirathi Jena vs. Board of Directors, O.S.F.C. and Ors.**). Hon'ble Apex Court in Paragraphs-6, 7 & 9 of the said judgment has held as follows:-

"6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

7. In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it

must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

9. The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payable to the appellant during the period he was kept under suspension and upto the date of superannuation. Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him after deducting the suspension allowance that was paid to him during the abovesaid period”.

4.4. Mr. Routray, learned counsel also relied on another decision of the Hon’ble Apex Court so passed in Civil Appeal No.5848-49 of 2014 (***Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board***) . Hon’ble Apex Court in Para-4, 7 & 9 of the Judgement has held as follows:-

4. The learned counsel for the appellant contended that the disciplinary proceeding was not completed for more than three years and in the absence of any provision in the Regulations providing for continuation of disciplinary proceedings after retirement of the employee, the respondents could not continue the disciplinary proceeding against the appellant after his superannuation. It is his further contention that the High Court has failed to appreciate the law laid down by this Court in similar circumstances in the decision reported in Bhagirathi Jena vs. Board of Directors, O.S.F.C. and Others [(1999) 3 SCC 666] and for the said reason the impugned order is liable to be set aside.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

9. *Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits”.*

4.5. Mr. Routray, learned counsel for the Petitioner also relied on another decision of this court so reported in **2020(I)OLR-535**, this Court in Para-4 of the said judgment has held as follows:-

“4. Considering the rival contentions of the parties, this Court finds that admittedly the disciplinary proceeding has been initiated after petitioner has been prematurely superannuated. Law has been settled holding that no proceeding can be initiated after the superannuation of an employee unless there is any specific rule in that regard governing the employer or employee. From the pleadings and submissions of the respective advocates, this Court finds opposite party is not in a position to demonstrate any provision involving the parties to undertake disciplinary proceeding after superannuation of the employee takes place. Further for the cessation of the employer and employee relationship after the premature superannuation of the petitioner this Court is also of the view that no disciplinary proceeding can be initiated after the superannuation of an employee”.

4.6. Placing reliance on the aforesaid decisions and the fact that there is no provision under Rule-22 of the Rules to continue with the proceeding after retirement of the Petitioner, learned counsel for the Petitioner contended that the proceeding so initiated against the Petitioner under Annexure-4 is liable to be quashed.

5. Even though notice of the writ petition has been issued since 19.05.2016, but no counter affidavit has been filed. However, Mr. Samal, learned Addl. Government Advocate for the State fairly contended that there is no provision under Rule-22 of the 1974 Rules or under the provisions contained under The

Odisha Aided Educational Institution's Employees Retirement Benefits Rules, 1981 in allowing the authority to continue with the proceeding after retirement of the concerned employee.

6. Having heard learned counsel for the Parties and after going through the materials produced before this Court and the decisions relied on by the learned counsel for the Petitioner, this Court is of the view that the proceeding against the Petitioner since could not be completed prior to his superannuation which fell due on 31.08.2015, the proceeding cannot continue in absence of any provision to that effect either under the 1974 Rules or under the 1981 Rules.

6.1. Therefore, placing reliance on the decision as cited (supra), this Court is inclined to quash the proceeding dtd.20.02.2013 so initiated against the Petitioner under Annexure-4. While quashing the same, this Court directs Opposite Party No.2 to take effective steps for sanction of pension and other pensionary benefits as due and admissible in favour of the Petitioner within a period of three (3) months from the date of receipt of this order.

7. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge