
(2022) 10 OHC CK 0095

In the Orissa High Court

Case No : Writ Petition Civil (OAC) No.3445 Of 2016

Ahalya Dei

APPELLANT

Vs

State of Odisha & Others

RESPONDENT

Date of Decision : 19-10-2022

Acts Referred:

Administrative Tribunals? Act, 1985 — Section 19

Citation : (2022) 10 OHC CK 0095

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : S.K. Das, N.N. Satapathy

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J.

1. Heard Mr. Samir Kumar Das, learned counsel appearing for the petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the State-Opp. Parties.

2. The present writ petition has been filed with the following prayer.

"To quash the order dated 16.4.2015 under Annexure-6 and further direct the respondents to release her pension and pensionary benefits of the applicant like Gratuity, Leave Salary, GPF including unpaid arrear salary of the applicant for the period 1.11.2007 to 31.5.2013 within a stipulated period and deem fit and proper."

3. It is submitted that the petitioner while working as a Primary School Teacher in Badadanda Primary School, she was deployed work as such in Mathasahi Primary School vide order dated 28.9.2007 of the then D.I of School Anandapur. It is submitted that the said order of deployment passed on 28.9.2007 was challenged by the petitioner before the learned Tribunal in O.A. No.2562(C) of 2007. Learned counsel for the petitioner submitted that the said Original

Application in O.A. 2562(C) of 2007 was disposed of vide order dated 31.10.2017 with a direction on the Director, Elementary Education to treat the averment made in the O.A as her representation and pass appropriate order within a period of 15 days from the date of receipt of the order. It is submitted that while passing such order and disposing the matter vide order dated 31.10.2007, learned Tribunal directed for maintenance of status quo. Learned counsel for the petitioner submitted that by virtue of the said order dated 31.10.2007, the petitioner was allowed to continue in her place of posting i.e. Badadanda Primary School. Learned counsel for the petitioner further submitted that while so continuing, when the claim of the petitioner as directed by the learned Tribunal, was rejected vide order dated 12.11.2008, the petitioner challenging the same, once again approached the learned Tribunal in O.A. No.2910(C) of 2008.

4. It is submitted that learned Tribunal while issuing notice of the matter vide order dated 8.12.2008 passed an interim order to the effect that the petitioner be allowed to continue in her present place of posting.

Learned counsel for the petitioner submitted that pursuant to the order passed by the learned Tribunal on 31.10.2007 in O.A. NO.2562(C) of 2007 and the order dated 8.12.2008 passed in O.A. No.2910 (C) of 2008 under Annexure-3, the petitioner continued as a Primary School Teacher in Badadanda Primary School. It is further submitted that during pendency of the matter in O.A. No.2910(C) of 2008, the petitioner was allowed to retire from her service on attaining the age of superannuation on 31.05.2013 vide order under Annexure-1.

5. Learned counsel for the petitioner submitted that even though the petitioner was allowed to continue in terms of the interim order passed by the learned Tribunal as stated hereinabove in Badadanda Primary School and was allowed to retire on attaining the age of superannuation w.e.f 31.5.2013, but when her salary for the period from 1.11.2007 till her retirement was not paid nor her retiral benefits were released after her retirement, the petitioner filed O.A. No.1382(C) of 2014 before the learned Tribunal. It is submitted that the said Original Application was disposed of vide order dated 20.1.2015 under Annexure-5 with a direction on Opp. Party NO.3 to take a decision on the petitioner's claim with regard to release of the arrear salary from 1.11.2007 till her retirement and the retiral benefits as due and admissible.

6. Learned counsel for the petitioner submitted that Opp. Party No.3 without considering the fact that the petitioner continued as a Primary School Teacher in Badadanda Primary School in terms of the order passed by the learned Tribunal on 31.10.2007 and subsequent order passed on 8.12.2008, rejected the prayer of the petitioner with regard to her claim for arrear salary from 1.11.2007 till her retirement on 31.5.2013 vide the impugned order dated 16.4.2015 under Annexure-6. It is submitted that in the said impugned order though it was indicated that the provisional pension and pensionary benefits as admissible has been sanctioned and paid to the petitioner, but the petitioner save and except

the provisional pension, has not been sanctioned with any pensionary benefit due to non-regularization of her service for the period from 1.11.2007 till her retirement on 31.5.2013.

7. Learned counsel for the petitioner accordingly submitted that since the petitioner in terms of the order passed by the learned Tribunal on 31.10.2007 and 8.12.2008 was allowed to continue as a Primary School Teacher in Badadanda Primary School till her retirement on 31.5.2013, the petitioner is entitled to get salary for the period from 1.11.2007 to 31.5.2013 as well as the retiral benefits as due and admissible.

8. Mr. Satapathy, learned Standing Counsel on the other hand made his submission basing on the stand taken by Opp. Party No.3 in his counter.

9. It is submitted that the petitioner was relieved from her duties as Primary School Teacher of Badadanda Primary School on 31.10.2007 and after such relieve, the petitioner never joined in her original place of posting at Mathasahi Primary School. It is submitted that since the petitioner was relieved from her duties on 31.10.2007 from Badadanda Primary School and she never joined, after being relieved, in Mathasahi Primary School till her retirement on 31.5.2013, the petitioner is not eligible and entitled to get the salary for the said period. It is also submitted that unless and until the period from 1.11.2007 till 31.05.2013 is regularized, the petitioner is not eligible and entitled to get her retiral benefits. But it is submitted that after her retirement on 31.5.2013, the petitioner is getting the provisional pension.

10. This Court after going through the stand taken by the petitioner and the opp. Party No.3, directed Opp. Party No.3 to file an affidavit by producing the Attendance Register of Badadanda Primary School from the month of November onwards vide order dated 26.8.2022. Pursuant to the said order, Opp. Party No.3 filed an affidavit and produced the Attendance Register of the said School before this Court on 23.9.2022. In the affidavit, it is submitted that the petitioner though was relieved from Badadanda Primary School on 31.10.2007, but she forcefully signed in the Attendance Register upto 1.12.2008 and the said fact is also reflected in the Attendance Register of the school produced by Opp. Party No.3 along with his affidavit dated 23.9.2022.

11. In view of the affidavit filed by Opp. Party No.3 on 23.9.2022, learned Standing Counsel submitted that since the petitioner has not attended the school even though admitting that she has signed in the Attendance Register up to 1.12.2008, the petitioner is not entitled to get her salary from 2.12.2008 till her retirement on 31.5.2013.

12. On being queried by this Court about such factual dispute, learned counsel for the petitioner failed to produce any document showing her continuance in Badadanda Primary School beyond 1.12.2008. But learned counsel for the petitioner fairly submitted that even though admitting the stand of the opp. Party no.3, that the petitioner never attended her duty in Badadanda Primary School

after 1.12.2008 nor she joined in Mathasani Primary School w.e.f 2.12.2008, but the petitioner was allowed to retire from her service on attaining the age of superannuation w.e.f 31.5.2013 by showing her as an Assistant Teacher at Mathasahi Primary School under Annexure-1.

13. It is accordingly submitted that since the petitioner was allowed to retire on attaining the age of superannuation w.e.f 31.5.2013 and for such alleged negligence on the part of the petitioner in not joining in her duty w.e.f 01.11.2007 till her retirement on 31.5.2013, no notice was ever issued by the opp. Parties directing her to resume her duty nor any proceeding was ever initiated, the petitioner is eligible for regularization of the said period of service. But it is fairly submitted by the learned counsel for the petitioner that the petitioner in view of such disputed fact will not claim any salary for the period from 2.12.2008 till 31.5.2013, if the entire period from 1.11.2007 to 31.5.2013 will be regularized and the petitioner will be sanctioned with her retiral benefits.

14. Learned Counsel for the petitioner further submitted that even though the petitioner has retired from service w.e.f 31.5.2013 but save and except the provisional pension, the petitioner is going without the retiral benefits and thereby she is suffering immensely.

15. Heard learned counsel for the parties. Perused the materials available on record.

16. This Court after going through the same finds that even though the petitioner is shown relieved from Badadanda Primary School on 31.10.2007, but in view of the fact that she was allowed to sign in the attendance register of Badadanda Primary School upto 1.12.2008, it cannot be said that the petitioner was relieved from Badadanda Primary School on 31.10.2007. The petitioner is accordingly eligible and entitled to get her salary for the period from 1.11.2007 till 30.11.2008. This Court while holding so directs opp. Party no.3 to release the salary of the petitioner as due and admissible for the period from 1.11.2007 to 30.11.2008. This Court further direct opp. Party no.3 to regularize the entire period of service of the petitioner from 1.11.2007 to 31.5.2013 and take step for sanction of the retiral benefits of the petitioner as due and admissible on such regularization of the period of service, as directed hereinabove. This Court directs opp. Party no.3 to complete the entire exercise within a period of three months from the date of receipt of this order.

17. The Writ Petition is disposed of with the aforesaid observation and direction..

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