
(2015) 09 OHC CK 0038
In the Orissa High Court
Case No : Writ Petition (C) No. 131 of 2009

Benudhar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 2 ILR (Ori) 1157 : (2016) LabIC 588

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Advocate : Prafulla Kumar Mohapatra and S.K. Nath, for the Appellant

Final Decision : Dismissed

Judgement

C.R. Dash, J—Whether the teacher of a non-government fully aided high school, who had resigned from service when the school was not a pensionable establishment, is entitled to pension under the provisions of the Orissa Aided Educational Institutions Employees' Retirement Benefits Rules, 1981 ("1981 Rules" for short) is the sole question that arises for consideration in the present writ petition.

2. The petitioner, in this case, impugns the order dated 15.11.2008 passed by the then Inspector of Schools, Mayurbhanj Circle, Baripada vide Annexure-7, rejecting the claim of his pension on different grounds. The petitioner was working as a teacher in Kaptipada Girls High School in the district of Mayurbhanj. He entered into service on 01.11.1960 and resigned from service on 19.12.1970. The "1981 Rules" came into force w.e.f. 01.04.1982. Admittedly, a teacher, who has rendered minimum 10 (ten) years of service is entitled to minimum pension under the 1981 Rules. After coming into force of the aforesaid Rules, the petitioner claimed pension in accordance with the provisions of Rule 8 (2)(a) of the 1981 Rules, as he had already rendered service for more than 10 years by the date of his resignation on 19.12.1970.

3. Learned counsel for the petitioner submits that the petitioner is entitled to pension in view of the decision of this Court in Civil Appeal No. 73 of 1992 and O.J.C. No. 6344 of 1994. It is further submitted that, Hon"ble Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 having held that no artificial discrimination can be made for grant of liberalized pension between one homogeneous class, the benefit of pension is to be granted to the petitioner.

4. Opposite party Nos. 1, 2 and 3 have filed their counter, denying the claim of the petitioner. It is specifically averred by the opposite parties that the ratio in the cases of Civil Appeal No. 73 of 1992, O.J.C. No. 6344 of 1994 and D.S. Nakra and others vrs. Union of India (supra) does not apply to the facts of the present case. It is the specific case of the opposite parties that the petitioner having resigned from service when the school in question was not a pensionable establishment, and 1981 Rules having come into force subsequently, he is not entitled to any pension.

5. In the case of D.S. Nakara and others vrs. Union of India (supra), the following points were raised for consideration.

"Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ("1972 Rules" for short) form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's one feet."

Taking into consideration the facts and submission advanced by the parties, Hon"ble Supreme Court held that, no artificial discrimination can be made for grant of liberalized pension between one homogeneous class. In the aforesaid case, the action of the Union Government revising the pension of a group of pensioners fixing a cut off date discriminating other pensioners who had retired before the cut off date, was an issue. The fact and ratio of the said case has no application so far as the present petitioner's claim is concerned.

6. So far as O.J.C. No. 6344 of 1994 is concerned, the petitioner, who was a retired primary school teacher and was superannuated by attaining the 58th years of age, had raised his grievance that he is entitled to be retained in service till 60th year and since he has retired long since, he is entitled to enhancement of pension by notionally increasing his service period by two years or till

15.03.1986, whichever is earlier, in accordance with the judgment of the Hon'ble Supreme Court in Nand Kishore Nayak Vs. State of Orissa and another, AIR 1991 SC 1724 : (1991) LabIC 1527 : (1991) 2 SCC 698 Supp . He further claimed that he is entitled to family pension under the provisions of the Orissa Aided Educational Institutions (Nongovernment Fully Aided Primary School Teachers) Retirement Benefit Rules, 1986 ("1986 Rules" for short), which came into force w.e.f. 1st September, 1988.

Taking into consideration the grievance of the petitioner and the assertions of the opposite parties, this Court held that the petitioner is entitled to the relief of notional enhancement of his service by two years and recalculation of the pension on such basis, as has been held by the Hon'ble Supreme Court in Nand Kishore Nayak vrs. State of Orissa and another (supra).

7. So far as grant of pension and family pension under the 1986 Rules is concerned, this Court in Civil Review No. 73 of 1992 arising out of O.J.C. No. 1781 of 1989 had already held that primary school teachers, who retired from service before the relevant rules coming into force, are entitled to the benefit of pension mentioned in 1986 Rules, though they have retired prior to the rules came into force. Relying on the ratio of the Civil Review No. 73 of 1992, this Court in O.J.C. No. 6344 of 1994 allowed the prayer of the petitioner. However, the facts in Civil Review No. 73 of 1992, O.J.C. No. 6344 of 1994 and the case of Nand Kishore Nayak (supra) are different. Those facts relate to retirement of primary school teachers, who are governed under a different rules, i.e. 1986 Rules. Claim in the aforesaid cases was also different from the present petitioner. Therefore, the ratios of the aforesaid cases, as relied upon by the learned counsel for the petitioner have no application to the facts of the present case.

8. In the present case, the petitioner has admittedly resigned from service. The resignation of the petitioner was also accepted by the authorities vide Resolution No. 61, dated 19.12.1970 of the Managing Committee of Kaptipada Girls High School (Annexure - A/3 to the Counter Affidavit). Admittedly, when the petitioner resigned from service, Kaptipada Girls High School was not a pensionable establishment. Benefit of pension came to be introduced by 1981 Rules only. It is to be seen whether a person, who has resigned from service can be equated with a person, who has retired on superannuation. Irrespective of the date of retirement, the benefit of 1986 Rules has been granted to the primary school teachers as per the decision in Civil Review No. 73 of 1992. I have to see, whether there lies any difference between "resignation" and "retirement on superannuation".

Hon'ble Supreme Court, in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, AIR 1978 SC 694 : (1978) 37 FLR 16 : (1978) 1 LLJ 492 : (1978) 2 SCC 301 : (1978) 3 SCR 12 , has fixed the meaning of "resignation", as the term "resignation" has not been defined in any Service Rules. It has been held thus in paragraphs 24, 25 & 26 of the judgment :--

"24. "Resignation" in the Dictionary sense, means the spontaneous relinquishment of one's own right. This is conveyed by the maxim : Resignation est jura propria spontanea refutatio (See Earl Jowitt's Dictionary of English Law). In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office, or to "lose hold of" the office (cf. Shorter Oxford Dictionary); and to "lose hold of office", implies to "detach", "unfasten", "undo or untie the binding knot or link" which holds one to the office and the obligations and privileges that go with it.

25. In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (see, e.g. American Jurisprudence, 2nd Edition, Volume 15A, page 80) although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting asunder from the office. Indeed, the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same event.

26. From the above dissertation, it emerges that a complete and effective act of resigning office is one which severs the link of the resignor with his office and terminate its tenure. In the context of Art. 217(I), this test assumes the character of a decisive test, because the expression "resign his office" - the construction of which is under consideration - occurs in a Proviso which excepts or qualifies the substantive clause fixing the office tenure of a Judge up to the age of 62 years."

Further, Hon'ble Supreme Court in the case of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, AIR 1990 SC 1808 : (1991) 61 FLR 329 : (1990) 3 JT 300 : (1991) 1 LLJ 39 : (1990) 2 SCALE 153 : (1990) 4 SCC 27 : (1990) 3 SCR 523 : (1990) 3 SLJ 105 : (1990) 2 UJ 438 has explained the meaning of the term "resign" and "retirement" in different Dictionaries as under :--

7. From the aforesaid dictionary meanings it becomes clear that when an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to sever his relationship with his employer and thereby put an end to the contract or service....."

Again, Hon'ble Supreme Court in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., (2005) 107 FLR 1062 : (2005) 12 JT 465 : (2005) 8 SCC 314 : (2005) SCC(L&S) 1119 : (2006) 1 SLJ 423 of the judgment, has held thus :--

"12. Now, let us consider the controversy on merits. The term "resignation" has not been defined in the Service Rules. According to the dictionary meaning,

however, "resignation" means spontaneous relinquishment of one's own right. It is conveyed by the Latin maxim *Resignatio est juris propii spontanea refutation*. (Resignation is a spontaneous relinquishment of one's own right.) In relation to an office, resignation connotes the act of giving up or relinquishing the office. "To relinquish an office" means "to cease to hold the office" or "to leave the job" or "to leave the position". "To cease to hold office" or "to lose hold of the office" implies to "detach", "unfasten", "undo" or "untie" "the binding knot or link" which holds one to the office and the obligations and privileges that go with it.

13. In *Union of India v. Gopal Chandra Misra*, (1) this Court held that a complete and effective act of resigning an office is one which severs the link of the resignor with his office and terminates its tenure.

14. In *Balaram Gupta v. Union of India*, (2) this Court reiterated the principle in *Gopal Chandra Misra* and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servants."

(1) *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, AIR 1978 SC 694 : (1978) 37 FLR 16 : (1978) 1 LLJ 492 : (1978) 2 SCC 301 : (1978) 3 SCR 12

(2) *Balram Gupta Vs. Union of India (UOI) and Anr*, AIR 1987 SC 2354 : (1987) 3 JT 480 : (1988) LabIC 46 : (1987) 2 LLJ 541 : (1987) 2 SCALE 521 : (1987) 1 SCC 228 Supp : (1987) SCC 228 Supp : (1987) 3 SCR 1173 : (1988) 1 SLJ 79 : (1987) 2 UJ 746 .

9. From the aforesaid decisions, it is clear that the petitioner severed his link with the employer and put an end to his service by resigning voluntarily on 19.12.1970, when Kaptipada Girls High School was not a pensionable establishment. Subsequently, after about a decade the 1981 Rules came into force. True it is that, this Court has held that those teachers, who have retired even earlier to the 1986 Rules came into force, shall also get the benefit of pension prospectively. But the present petitioner having resigned from service cannot be equated with the person or a teacher who has retired from service on superannuation. Therefore, the petitioner is not entitled to any pension under the 1981 Rules.

10. Viewed otherwise from the perspective of the 1981 Rules, Rule 4 provides for eligibility for pension. The Rule reads thus :--

"4. Subject to the conditions in other rules under this Chapter, an employee shall be, eligible for pension or gratuity, as the case may be;

(1) on retirement by reason of his attaining the age of superannuation, or

(2) on voluntary retirement or retirement by the appointing authority after completion of thirty years of qualifying service or the age of fifty years; or

(3) on retirement before the superannuation on medical certificate of permanent

incapacity for further service; or

(4) on termination of service due to the abolition of the post; or

(5) on closure of the College or school, as the case may be, due to withdrawal of recognition of the said College or School or other causes."

From the above Rule, it is clear that nowhere it has provided for pension to a person, who has resigned from service when the institution was not a pensionable establishment.

Viewed from this angle also, the petitioner is not entitled to any pension, as he has resigned from service much prior to coming into force of the 1981 Rules and his resignation cannot be equated with retirement, as discussed supra.

11. In the result, the writ petition is accordingly dismissed.