

(2004) 04 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11109 of 2000

Birabar Baral and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Retirement Benefit Rules, 1986 — Rule 8

Citation : (2004) 2 OLR 55

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.K. Mohapatra, for the Appellant; Standing Counsel for School and Mass Education Department, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioners were admittedly serving as Primary School Teachers in different fully aided primary schools. While the matter stood thus, by virtue of a notification issued on 9.7.1999, the Management of some of the primary schools were taken over by the Government with effect from 5.9.1989. In consonance with the said notification, the schools, where petitioners 9 to 15 were serving were taken over and they became Government employees. The relief sought for in this writ application being part of the service benefit, the writ application filed by petitioners 9 to 15 cannot be entertained before this Court. Being confronted with the said legal problem, learned Counsel for the petitioners confined this writ application to petitioners 1 to 8 only.

2. According to the learned Counsel for the petitioners a Notification was issued on 12.3.1986 introducing the Orissa Aided Educational Institutions? (Non-Government Fully Aided Primary School Teachers?) Retirement Benefit Rules, 1986. The said Rules came into force with effect from 1st day of April, 1985. Rule 8 of the said Rules reads as follows:

An employee shall be eligible for pension or gratuity and death-cum-retirement

gratuity at the rates admissible to his counterpart in State Government service.

3. Admittedly, petitioners 1 to 8 retired much after 1985. In other words, they were in service when the aforesaid Retirement Rules came into force. According to the learned Counsel for the petitioners in consonance with the said Rule, they were entitled to pension, gratuity and death-cum-retirement gratuity at the rates admissible to their counterparts in the State Government Service.

4. On 14.11.2000, this Court on being satisfied that the petitioners have a prima facie case directed to issue notice to the opposite parties directing that the case will be disposed of at the admission stage. Accordingly, services of notice on opposite parties 1 to 6 were validly made. When the matter was listed on 20.11.2003 at the request of the learned Senior Standing Counsel for the School and Mass Education Department another copy of the writ petition was served on him to enable him to obtain instruction and to file counter affidavit. Thereafter, the matter was listed on 15.12.2003. Mr. R. Behera, learned Counsel appearing for the State prayed to list the matter on 19.1.2004 so as to enable the opposite parties to file counter affidavit. The matter was again listed on 19.1.2004. On the said date Mr. Sarangi learned Senior Standing Counsel for the School and Mass Education Department again requested to adjourn the case till 27.1.2004 so as to enable him to get instruction. With much reluctance the matter was adjourned as a last chance. On 29.1.2004 at the request of the learned Counsel for the petitioners the matter was once again adjourned to 12.2.2004. Even on 12.2.2004 no counter affidavit was filed on behalf of the State. but the learned Counsel for the opposite parties submitted that counter affidavit was necessary for effectual adjudication. Taking into consideration the submission made, a liberal view was taken, and this Court again adjourned the matter observing as follows:

Let the counter affidavit be filed by opposite parties 1 and 2 specifically indicating therein why the benefits granted to the Government pensioners by virtue of Annexure-1, i.e. Office Memo dated 12th May, 1999 shall not be extended to the petitioners, who are the retired Primary School Teachers, by virtue of the Orissa Aided Educational Institutions? (Non-Government Fully Aided Primary School Teachers?) Retirement Benefit Rules, 1986, specifically Rule 8 of the same.

As a last chance, put up this matter on 2nd March, 2004.

5. The matter is in today's list and is taken up for hearing. Today also learned Additional Standing Counsel for the Department once again prays for time which is strongly objected to by the learned Counsel for the petitioners on the ground that the petitioners have retired from service since long and are spending their days under stringent financial difficulties due to non-payment of retirement benefits.

6. It appears that a counter affidavit has been filed by opposite party No. 3 which is not only vague but also there is no denial with regard to the entitlement of the

petitioners to the retirement benefits. The said counter affidavit was sworn to by the District Inspector of Schools, Cuttack Education District. Needless to say that in the counter affidavit, it is admitted that so far as the teachers whose services have been taken over by the Government are concerned, are entitled to receive pension. It is further averred that as per the Rules and Clause-9 of the Resolution passed by the School and Mass Education Department dated 9.7.1999 (Annexure-4), all Treasury Officers/Special Treasury Officers and Sub-Treasury and Pension Paying Public Sector Banks have been authorized to pay pension/family pension at the revised rates to the teachers whose services were taken over. The said averments however, shall be applicable only to petitioners 9 to 15.

7. So far as petitioners 1 to 8 are concerned, in view of the fact that no counter affidavit has been filed by the Department though time was granted on several occasions, it appears, the opposite parties did not dispute any of the averments made in the writ application and the reliefs sought by the said petitioners. In the absence of any counter affidavit, I am constrained to accept the averments made in the writ application, applying the principle of non-traverse.

8. Admittedly, the Orissa Aided Educational Institutions? (Non-Government Fully Aided Primary School Teachers") Retirement Benefit Rules, 1986 came into force with effect from 1st April, 1985. All the petitioners except Petitioner No. 1 have retired after the said date. In consonance with Rule 8 of the said Rules an employee who is in service in an aided educational institution shall be eligible to receive pension or gratuity and death-cum-retirement gratuity at the rates admissible to his counterparts in State Government service. No counter affidavit has been filed by the State Government denying the fact that such benefits shall not be made available to the petitioners 1 to 8. In the absence of such averments, I accept the cases of petitioners 1 to 8 are covered by the said Rules.

9. Accordingly, I allow this Writ Application so far as the cases of petitioners No. 1 to 8 are concerned and dismiss the same so far as other petitioners are concerned. I direct the opposite parties to pay pension and death-cum-retirement gratuity to petitioners 1 to 8 at the rate admissible to their counterparts in the State Government service. Accordingly, the said petitioners are directed to submit their pension papers and other materials before opposite party No. 3 who shall scrutinize the same and take steps for disbursement of their pension and other retirement benefits keeping in mind Rule 8 as well as Office Memorandum dated 12.5.1999 (Annexure-5). The entire exercise shall be completed within a period of six months from the date of communication of this order.

10. Before parting, I am constrained to mention that due to inaction of the opposite parties, who failed to file counter affidavit and/or to obtain instruction in spite of the fact that this Court was liberal in granting time to them, not only the Court's proceedings were stalled but also the petitioners who are poor teachers and retired from service since long were subjected to insurmountable hardship. I hope that in future, the opposite parties shall be more vigilant and take steps for

filing counter affidavit in time.

11. A copy of this order shall be communicated to the Secretary, Education Department, Orissa, Bhubaneswar.