
(2010) 04 OHC CK 0001

In the Orissa High Court

Case No : Writ Petition (Civil) No. 3167 of 2003

Debendranath Parida

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Orissa Municipal Rules, 1953 — Rule 416

Citation : (2011) 1 OLR 538 Supp

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu, J.—Petitioner was an erstwhile Headmaster of a school run by the Bhubaneswar Municipal Corporation. He has filed this writ petition, inter alia, praying to quash the order dated 6th March, 2003 intimating him that on attaining the age of superannuation as on 8th March, 2003, he is going to retire from municipal service with effect from 31st March, 2003 as per the provisions of Rule 416 of the Orissa Municipal Rules. The petitioner also challenges the order of suspension dated 2nd July, 2002 suspending him from service. According to the petitioner, in course of suspension, he should not have been retired from service.

2. Bereft of unnecessary details, the facts, which are necessary for effectual adjudication of inter se controversies are as follows :-

Petitioner, who was a Trained Graduate, was selected and appointed as an Assistant Teacher in a school run by Bhubaneswar Municipal Corporation, in short, "Corporation" on 2nd November, 1969. It is submitted that being satisfied with his performances, on 7th September, 1983 he was promoted to the post of Headmaster. In course of his service, he was transferred to different High Schools managed by the Corporation. During his service period, it is alleged, certain difference of opinion arose between him and the authorities of the Corporation with regard to administrative bottleneck created in smooth functioning of the school, which took a political turn. The petitioner at the

instance of the authorities, it is submitted, was subjected to harassment and humiliation and faced frequent transfers from one school to the other. Petitioner also, it appears, became a target of wrath of staff members of the school, as he insisted in maintaining discipline in the school and pointed out the irregularities and illegalities of the staff. While matter stood thus, the petitioner was again transferred to Kapila Prasad High School. Assailing the said order of transfer, he approached this Court in OJC No. 4550 of 2002. The opposite parties appeared before this Court and filed their counter affidavits. During pendency of the said writ application, it is alleged, the petitioner was suspended from service. The order of suspension was never served upon the petitioner. The grievance of the petitioner is that though he was put under suspension and more than six months elapsed, neither charges were framed against him nor departmental proceeding was initiated. During the continuance of suspension, the impugned letter was issued intimating him that he would retire from service on attaining the age of compulsory retirement. Being aggrieved by the said communication, the petitioner has approached this Court.

3. According to the petitioner, the service rules applicable to the Government employees are also applicable to the employees of the Corporation. In consonance with the circular dated 1.12.1945 (Annexure-4) issued under O.C.S. (C.C.A.) Rules, 1962, an employee who is under suspension on charge of misconduct should not be permitted to retire on his reaching the date of compulsory retirement, but he should be retained in service until the enquiry into the charges is conducted and final order is passed thereon by the competent authorities. The petitioner having been put under suspension with effect from 2.7.2002, it is stated, the authorities acted illegally and with material irregularity in superannuating him without disposing of the disciplinary proceeding. Further, it is submitted that the order of suspension passed towards the fag end of the service without granting any opportunity was also unjustified. That apart, after suspending the petitioner without any justifiable reasons in the year 2002, neither charge was framed nor disciplinary proceeding was initiated against the petitioner till 2003 when he was superannuated. Such action, it is stated, is grossly irregular and illegally. In short, according to the petitioner, the authorities being enraged by the fact that the petitioner had approached this Court assailing the order of transfer, suspended him and without any rhyme or reason and without initiating any departmental proceeding or framing charges, issued the impugned order of superannuation, which is otherwise unjust and illegal and it is a fit case where the same should be quashed.

4. Though notice has been issued, no counter affidavit has been filed by the Corporation.

5. In course of hearing, learned counsel for the petitioner strenuously took this Court to the pleadings as well as the documents annexed. The only ground on which the order dated 6.3.2003 superannuating the petitioner from service with effect from 31.3.2003 is assailed is that during pendency of the disciplinary

proceeding, the authorities acted illegally and with material irregularity in issuing such an order. The order under Annexure-1 has been issued in consonance with the provisions of Rule 416 of the Orissa Municipal Rules. The said rule reads as follows :

416. The date of retirement on superannuation of a Municipal employee in superior and inferior service is the date on which he/she attains the age of fifty-eight years and sixty years respectively subject to the condition that a review shall be conducted in respect of municipal employees in superior service by the concerned Municipal Council on completion of the fifty fifth years age in order to determine whether he/she should be allowed to remain in service up to date of completion of the age of fifty-eight years or retired on completing the age of fifty-five years in public interest.

Provided that a municipal employee may retire from service at any time after completing thirty years of qualifying service or on attaining the age of fifty years by giving a notice in writing to the concerned Municipal Council at least three months before the date on which he/she wishes to retire or by giving the said notice to the said Municipal Council before such shorter period as the concerned Municipal Council may allow in any case. It shall be open to the concerned Municipal Council to withhold permission to an employee who seeks to retire under this rule, if he/ she is under suspension or if enquiries against him/her are in progress. The concerned Municipal Council may also require a municipal employee to retire in public interest at anytime after he/she has completed thirty years of qualifying service or attains the age of fifty years, by giving a notice in writing to a Municipal employee at least three months before the date on which he/she is required to retire or by giving three months pay and allowances in lieu of such notice.

6. According to the petitioner, in consonance with the notification dated 1.12.1945 issued by the State Government, he should not have been retired as he was under suspension, but then perusal of the said circular reveals that only if an employee was put under suspension on the charge of misconduct, he should not be permitted to retire, which otherwise means that though an employee in usual course retires on attaining the age of superannuation, he will be deemed to be continuing in-service only with regard to the disciplinary proceeding. In other words, the disciplinary proceeding shall not come to an end only because the delinquent officer has retired from service on attaining the age of superannuation. Such a circular was issued in order to protect the financial involvement and other injuries caused to the State Government due to the latches or overt-acts, if any, committed by the delinquent officer. In course of hearing, it further appears that by office order dated 29th June, 2009 (Annexure-14), the Corporation has revoked the order suspending the petitioner with effect from 30th March, 2003 consequent upon attaining his normal age of superannuation under Rule 416 of the Orissa Municipal Rules. A perusal of the said order thus makes it clear that the order of suspension no longer exists.

7. Admittedly, no charges have been framed against the petitioner nor any disciplinary proceeding was initiated. Before initiation of the contemplated proceeding, the petitioner attained his date of superannuation. Consequently, by order dated 6.5.2003, he was made to retire from service with effect from 31st March, 2003 in consonance with Rule 416 of the Rules quoted supra. Further, it appears that the order of suspension was also recalled by the Corporation. Thus, this Court finds that the prayer made by the petitioner to quash the order of suspension no longer exists. So far as the order of superannuation is concerned, as neither charges were framed nor any disciplinary proceeding was initiated, the authorities had a right to superannuate the petitioner from service on attaining the age of superannuation in consonance with Rule 416 of the Orissa Municipal Rules. Thus, this Court finds no infirmity or illegality in the impugned order and declines to interfere with the same. It is needless to state that as the order of suspension has been revoked, the petitioner is entitled to his remuneration strictly in accordance with law.

8. With the aforesaid observation and direction, the writ petition is disposed of.

B.N. Mahapatra, J.

9. I agree.