

(2024) 07 OHC CK 0056

In the Orissa High Court

Case No : Writ Petition (C) No. 1807 Of 2009

Dr. Niranjan Lenka

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 15-07-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Odisha Education Act, 1969 — Section 4(a), 4(b), 7C

Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 — Rule 6

Citation : (2024) 07 OHC CK 0056

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Sameer Kumar Das, S.K. Mishra, S.N. Pattnaik

Final Decision : Partly Allowed

Judgement

Sashikanta Mishra, J

1. The petitioner has approached this Court with the following prayer:

"Under the above circumstances, it is therefore humbly prayed that the Hon'ble Court may graciously be pleased to issue a writ in the nature of Mandamus or any other appropriate writ/writs, direction/directions to the opp.party no. 1 and 2 to grant the selection grade/Reader scale of pay to the petitioner with effect from 1.11.1989 and to grant differential arrear salary to the petitioner forthwith.

And further the Hon'ble Court be pleased to direct the Opp.Parties to fix the pension of the petitioner on such fixation of pay and grant him the pension and pensionary benefits by counting his entire period of service from 15.9.1966 to 31.7, 1999 in different institutions as per Rule 6 of the 1981 Rules and the Government Resolution dated: 10.4.1997.

And further the Hon'ble Court be pleased to direct the opp.party to calculate the arrear and pay the same to the petitioner, within a stipulated period,

And if the opposite parties fail to show cause or show cause insufficient or false causes make the said Rule absolute.

And further be pleased to issue any other writ/writs pas any other order/orders as this Hon'ble Court may deem fit and proper.

And pass such other order/orders as deems fit and proper

And allow this writ petition.

And for this act of kindness the petitioner, shall, as in duty bound, ever pray."

2. The brief facts of the case are that the petitioner was appointed as a trained graduate teacher in Kakatpur High School under the control of Inspector of Schools, Puri Circle on 15.09.1996. The said school was a Government High School. The petitioner was transferred to different Government High Schools subsequently under the jurisdiction of Inspector Schools, Puri till 16.08.1973.

He having acquired M.A. M.Ed qualification during such period of service, was selected by the State Selection Board and appointed as Lecturer in Education in Government Training College, Bolangir, where he joined on 18.08.1973 by resigning from his former post. The said institution was a non-government aided institution. He was thereafter transferred to DAV College, Titlagarh, Salepur College, Salepur and finally to Kendrapara (Autonomous) College, Kendrapara, from where he retired on 31.07.1999 on attaining the age of superannuation.

The petitioner's case is that he was not granted full pension and his service was counted only for the period from 01.11.1976 to 31.07.199, during which he served in non-government aided colleges. Full pension was denied to him on the ground that he had not completed the qualifying period of service of 33 years. It is the further case of the petitioner that his pay was fixed in the selection grade scale of pay from 18.08.1989. He had approached this Court earlier in W.P.(C) No. 3068 of 2004, which was disposed of on 29.03.2004 by the following order:-

"This writ application was filed with two prayers - first being for grant selection grade/Reader's scale of pay to the petitioner, and secondly for grant of pension counting his service from 1966 to 1999. Learned counsel for the petitioner does not press the first prayer as the petitioner has retired from service in the meantime.

2. The grievance of the petitioner is that though he has retired from service since 1999, the authorities have not taken the entire service rendered by him into consideration for the purpose of computing his pension and pensionary benefits. It is stated that the petitioner has submitted a representation to the Director, Opp. party no.2, vide Annexure-6 since 1.7.2001 but no action is being taken by opposite party no.2 thereon till date.

3. Without expressing any opinion with regard to the merit of the contentions raised by the petitioner, I dispose of this wit petition directing opp.party no.2 to dispose of the petitioner's representation, vide Annexure-6, if the same is still

pending with him as expeditiously as possible preferably within three weeks from the date of communication of this order. While disposing of the said representation, opposite party no.2 will consider the resolution of the Government, vide Annexure-5. The order be communicated to opp. party no.2 at the cost of the petitioner.”

(Emphasis added)

3. Despite such order, the petitioner claims that he having Ph.D qualification is entitled to get Reader Scale of Pay on completion of 13 years of qualifying service i.e. from 01.11.1989. His representations submitted to the authorities have not been disposed as yet. As such, he has approached this Court seeking the relief as mentioned above.

4. Counter affidavit has been filed by the State-opposite parties (opposite party Nos. 1 and 2) stating that the period of service rendered by the petitioner in different Government High Schools from 15.09.1966 to 16.08.1973 cannot be considered for the purpose of pension in view of the provision under Rule-6 of the Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 (in short “1981 Rules”). Further, in view of the amended provision under sub-Section 4(a), 4(b) of Section 7(C) of the Odisha Education Act, 1969 grant-in-aid has been provided to large number of Lecturers/Readers by deducting five years of initial service. The petitioner’s initial date of joining in non-government aided college being 01.11.1976 he availed senior scale Lecturer pay from 01.01.1986 but he is required to contribute 21 years of service to avail the reader scale of pay. Further, because of his Ph.D. qualification he is to be given relaxation of three years and as such, is entitled to the benefit of Reader Scale of Pay from 01.11.1994. This depends on submission of proposal from the Principal concerned and subject to verification of antecedents. As regards the counting of service of the previous period, the same is not tenable. Because of his failure to obtain concurrence of the OPSC the petitioner was adjusted against the direct payment post in non-government aided colleges. As per Section-6 of 1981 Rules, the period rendered under non-government aided institution shall only be counted for the purpose of pension in case of his absorption in any organization under the control of State Government. The petitioner’s case is therefore, reverse to the situation contemplated under Rule-6.

A separate counter affidavit has been filed by the Deputy Controller of Accounts (opposite party No.3) stating therein that the re-fixation of pension depends on the decision taken by the State Government. The petitioner has been issued pension payment order basing on the order of sanction of the Director, Higher Education.

5. Heard Mr. S.K. Das, learned counsel for the petitioner and Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State.

6. Mr. Das would submit that the petitioner does not press the first part of the first prayer i.e., grant of senior scale of pay as he has already received the same.

In so far as the Reader Scale of Pay is concerned, the petitioner's case is squarely covered by the ratio laid down in the judgment of this Court rendered in the case of Dr. Ashok Mohanty vs. State of Odisha W.P.(C) No. 16151 of 2019 disposed of on 17.05.2024. As regards the prayer for counting the previous service under the State Government for grant of pension, Mr. Das would argue that even otherwise the petitioner had completed 10 years of service under the State Government before joining the non-government aided institution, which makes him eligible to receive minimum pension as per the Rules.

7. Mr. S.N. Pattnaik, learned Addl. Government Advocate on the other hand would argue that Rule-6 of the 1981 rules contemplates the reverse situation, where an employee of a non-government aided institution is subsequently absorbed in a Government establishment. The petitioner's case is reverse, which is not contemplated under the Rules. As regards the claim for grant of Reader Scale of Pay, Mr. Pattnaik fairly submits that the judgment of this Court in Dr. Ashok Mohanty (supra) has not been set aside or interfered with by the higher forum till date.

8. Before delving into the merits of the rival contentions, this Court finds it apt to refer to the order passed by this Court in the earlier writ application filed by the petitioner as quoted hereinbefore. It seems the petitioner had approached this Court with the self same prayer as in the present writ application. The first part of the prayer, i.e., grant of Selection Pay/Reader Scale of Pay was specifically not-pressed by the petitioner as he had retired from service in the meantime. The question is, having withdrawn such prayer by way of not pressing it, is it open to the petitioner to claim the same again in the subsequent writ application. The answer to this question can only be in the negative. This Court is therefore, not inclined to consider the prayer for grant of reader scale of pay in the present writ application.

9. However, having regard to the fact that notwithstanding the above order, the petitioner has been paid the benefit of Senior Lecturer scale of pay with effect from 01.01.1986 and the State Government in its counter has not seriously disputed his claim for grant of Reader Scale of Pay w.e.f. 01.11.1994, it is for the State Government to take a decision in the matter, if necessary by referring to the judgment of this Court in Dr. Ashok Mohanty (supra). This Court however, makes it clear that in view of the withdrawal of such prayer by the petitioner in earlier writ application, this Court refrains itself from issuing any mandamus to the authorities in this regard.

10. Coming to the prayer for counting of the past service rendered by the petitioner in Govt. High Schools it would be useful to refer to Rule-6 of 1981 Rules, which is quoted hereinbelow:

"6. (1) In computing the length of qualifying service of an employee retiring on or after the 1st day of April, 1982, all previous services except those rendered prior to his attaining the age of eighteen years, whether temporary, officiating or

permanent either in one or more than one recognised educational institutions, shall, subject to the conditions specified in Sub-rules (2), (3), (4) and (5), be taken into account for the purpose retirement benefits under these rules.

(2) Notwithstanding any change in the pattern of grant-in-aid to an institution under Rule 3, an employee serving in that institution will not lose the period of his service in that institution merely because of change in the pattern of grant-in-aid

(3) War Service or Military Service rendered by an employee shall count as service qualifying for pension to the extent permissible under the rules and order applicable to the State Government employees

(4) All leaves except extraordinary leave (ie leave without pay) count for pension)

Provided that in the case of extraordinary leave the appropriate authority may, at the time of sanctioning such leave, allow the period of the leave count as qualifying service for pension if such leave is granted to an employee-

(i) on medical certificate, or

(ii) due to his inability to join or rejoin on duty on account of civil commission, or

(iii) for prosecuting higher scientific and technical studies.

(5) Suspension allowed to stand specific penalty, overstay of joining time or leave not subsequently regularised and periods of breaks shall not be reckoned as qualifying service"

A bare reading of this provision would make is clear that the case of the petitioner is indeed reverse to what has been contemplated under the Rules, inasmuch as the petitioner after having served in different government establishments resigned from his service and joined non-government aided educational institutions. To such extent therefore, this Court is of the considered view that Rule-6 has no application to the case of the petitioner. However, admittedly, the petitioner served in different Government High Schools from 15.09.1966 to 16.08.1973 and after a day's break he joined another government establishment i.e., Government Training College, Bolangir, where he worked from 18.08.1973 to 31.10.1976. Therefore, the total period of service rendered by the petitioner in Government establishments is more than 10 years, not accounting for the one day break. Such being the situation, Rule 47(2)(b) of the Orissa Civil Services (Pension) Rules, 1992, which is quoted below would come into play, which provides for grant of minimum pension to an employee who has rendered ten years qualifying service.

"47. Amount of Pension-

2(a) xx xx xx

(b) In case of a Government Servant retiring before completion of twenty five years of qualifying service, but after completion of ten years of service, the

amount of pension shall be proportionate to the amount of pension admissible under clause(a) of sub-rule (2) and in no case the amount of pension shall be less than the minimum amount of pension of Rs.3500/- or as shall be fixed by Government from time to time and maximum up to 50% of the highest Pay and Grade Pay admissible to the Government employee w.e.f. dtd.01.12.2008.

Provided that in case of Judicial Officers of the State retiring before completion of twenty years of qualifying service, but after completion of ten years of service, the amount of pension shall be proportionate to the amount of pension admissible under clause(a) of sub-rule (2) and in no case the amount of pension shall be less than the minimum amount of pension of Rs.3500/- or as shall be fixed by the Government from time to time and maximum up to 50% of the highest pay admissible to the State Judicial Officer w.e.f. dtd. 01.01.2006. (substituted vide Finance Department Notification No.24142/F., dtd.04.09.2015)”

11. Thus, from a conspectus of the analysis of facts and law made hereinbefore, this Court holds that in view of the withdrawal of the self-same relief by the petitioner in the earlier writ application filed by him he is not entitled to any relief in respect of his claim for grant of Reader Scale of Pay. As regards the counting of past service rendered under the Government establishments, this Court holds that he would be entitled to minimum pension having rendered ten years qualifying service.

12. In the result, the writ application is partly allowed. The opposite party authorities are directed to compute the minimum pension payable to the petitioner for the period of service rendered under the Government establishments and to disburse the same in his favour as early as possible, preferably within two months from today.

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