
(2019) 01 OHC CK 0073

In the Orissa High Court

Case No : Writ Petition (Civil) No. 15472 Of 2007

Dr. Sankar Prasad Bhuyna

APPELLANT

Vs

Utkal University And Others

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 19(1)(f), 31(1), 32, 226, 227, 300A, 309, 311

Citation : (2019) 01 OHC CK 0073

Hon'ble Judges : Dr. B. R. Sarangi, J

Bench : Single Bench

Advocate : R.K. Rath, R.P. Kar, A.N. Ray, N. Paikray, B.P. Mohanty, P. Rath, N.R. Rout, P.K. Mishra, D. Panda, D.Mohapatra, M. Mohapatra

Final Decision : Allowed

Judgement

DR. B.R. SARANGI, J

1. The petitioner, who was working as Faculty in the Department of Zoology of Utkal University and retired as Professor, has filed this application to

quash the order dated 16.12.2002 reverting him to the post of Reader with retrospective effect, and consequential rejection of the appeal as well as

representation of the petitioner by the Chancellor vide orders dated 15.02.2003 and 26.02.2007 in Annexure-11 Annexure-12(B) respectively.

2. The factual matrix of the case, in hand, is that the petitioner was appointed temporarily as Professor of Zoology against the Lien vacancy of Dr.

(Mrs) P. Mohanty-Hejmadi up to 15.07.1998 in the P.G. Department of Zoology, Utkal University in the scale of pay of Rs.4500-7300/-pursuant to

the decision of the Syndicate and subsequent order of the Vice-Chancellor, after following regular process of selection, in response to which he joined

on 29.11.1997. The petitioner was directed to hold the office as whole-time Director of Academic Staff College, Utkal University temporarily,

pursuant to order of the Vice-Chancellor dated 29.06.1998 (which was communicated by the Registrar vide office order dated 17.07.1998), as a

consequence of which he held such post with effect from 30.06.1998 in addition to the post of Professor of Zoology in the P.G. Department.

Consequent upon joining of Dr.(Mrs)P. Mohanty-Hejmadi, the petitioner was reverted to his parent post, as Reader of Zoology, with effect from

01.07.1998 while working as whole-time Director of Academic Staff College. But the said order of reversion dated 10.08.1998 of the petitioner to the

post of Reader was withdrawn, vide order dated 26.04.2000, and consequentially, he was holding the post of Professor of Zoology.

2.1 On 18.05.2000, the Registrar addressed a letter to the Principal Secretary to Chancellor regarding regularization of the petitioner against the

existing vacancy of Professor in the P.G. Department of Zoology, in order to enable him to receive pensionary benefits. In the said letter, it was

suggested that since the post held by the petitioner, i.e., Director of Academic Staff College is a scheme post sponsored by the University Grants

Commission, the same was not eligible for pensionary benefit and since the said post was at par with that of Professor, the petitioner may be allowed

to be transferred to the P.G. Department of Zoology against the post of Professor lying vacant on the retirement of Dr. D.R. Naik w.e.f. 30.06.1998

in order to enable him to avail pensionary benefits. Consequentially, the petitioner was repatriated from the post of Director of Academic Staff College

to his former post of Professor, P.G. Department of Zoology against the existing vacancy caused on the retirement of Dr.(Mrs) P. Mohanty-Hejmadi,

pursuant to the order of the Vice-Chancellor dated 30.05.2000 on the basis of the telephonic discussion with the Principal Secretary to the Chancellor.

Accordingly, the petitioner was directed to resume his duty in the P.G. Department of Zoology as Professor on or before 31.05.2000. The petitioner

joined in the said post on 31.05.2000 and he was also retired from the post of Professor of Zoology on the very same day dated 31.05.2000 (A.N) on

attaining the age of superannuation. He was also allowed to draw his salary as Professor P.G. Department of Zoology pursuant to order dated

08.11.2000.

2.2 When the matter stood thus, the petitioner was reverted to the post of Reader vide letter dated 16.12.2002 and all office orders designating him as Professor stood modified as Reader and he was allowed to draw salary, pensionary dues accordingly as per the order of the Chancellor and subsequent order of the Vice-Chancellor after more than two and half years of his retirement as Professor. As against the said order of reversion, the petitioner preferred appeal on 24.12.2002 before the Chancellor for review of his order and to restore status quo as on 01.07.1998 giving him personal hearing. But the Chancellor, vide order dated 15.02.2003, rejected the appeal. The petitioner again filed a representation on 27.05.2006 for personal hearing, but the same was also rejected vide order dated 26.02.2007. Hence this application.

3. Mr. R.K. Rath, learned Senior Counsel appearing along with Mr. R.P. Kar, learned counsel for the petitioner contended that the petitioner, having retired from the post of Professor, could not have been reverted to the post of Reader after two and half years with retrospective effect. The retrospective change of service condition is not permissible in view of the fact that a right had already been accrued in favour of the petitioner and that vested right should not have been taken away by an administrative order without affording opportunity of hearing to the petitioner. It is further contended that once the petitioner was repatriated from the post of Director, Academic Staff College and allowed to hold his former post of Professor, P.G. Department of Zoology against an existing vacancy created due to retirement of Dr.P.Mohanty-Hejmadi, pursuant to order dated 30.05.2000, and the same having been acted upon by the petitioner by joining in the said post on 31.05.2000, and he having been superannuated from service on 31.05.2000 on attaining the age of superannuation, he could not have been reverted to the post of Reader and extended with the benefits available to the said post, after two and half years on 16.12.2002, though on the last date of his retirement he was holding the post of Professor and was entitled to get the benefits of the said post. To substantiate his contentions, he has relied upon *Deokinandan Prasad v. The State of Bihar*, 1971(2) SCC 330; *Chairman, Railway Board v. C.R. Rangadhamaiah*, (1997) 6 SCC 623; *J.S. Yadav v. State of Uttar Pradesh*, (2011) 6 SCC 570; *State of Jharkhand and others v. Jitendra Kumar Srivastava*, AIR 2013 SC 3383; and *Ramadhar Pandey v. State of U.P.*, 1993 Supp(3) SCC 35.

4. This Court vide order dated 04.01.2008 issued notice to the opposite parties, pursuant to which Mr. D. Mohapatra and associates entered

appearance for opposite parties no.1 and 2 by filing vakalatnama on 27.03.2008, but till date no counter affidavit has been filed on their behalf. None

has entered appearance for opposite party no.3. Mr. Mohapatra, learned counsel appearing for opposite parties no. 1 & 2 seeks time to file counter

affidavit. This being an old case of the year 2007, this Court is not inclined to grant further time, accordingly proceeded to decide the same finally.

5. Mr. D. Mohapatra, learned counsel appearing for opposite parties no.1 and 2 argued with vehemence justifying the order passed by the authority

concerned and contended that no illegality or irregularity has been committed by the authority in passing the order impugned.

6. Having heard Mr. R.K. Rath, learned Senior Counsel appearing along with Mr. R.P. Kar, learned counsel for the petitioner and Mr. D. Mohapatra,

learned counsel for opposite parties no.1 and 2, since it is an old case of the year 2007, the matter is being disposed of at the stage of admission with

the consent of learned counsel for the parties on the basis of the pleadings available on record.

7. The facts narrated above are undisputed. But the fact remains, when the petitioner was discharging his duty as Director of Academic Staff College

was repatriated to the post of Professor of Zoology by office order dated 30.05.2000 and in terms of the same he resumed his duty on 31.05.2000 and

he retired from service on that date as Professor of Zoology on attaining the age of superannuation. But on 16.12.2002, after a lapse of two and half

years of his retirement, he was communicated with a letter stating, inter alia, that the office order issued under memo dated 30.05.2000 wherein he

was allowed to be repatriated to his former post of Professor of Zoology against the then vacancy caused due to retirement of Dr.(Mrs) P. Mohanty-

Hejmadi stood cancelled and all office orders issued earlier designating the petitioner as Professor stood modified as Reader and as a result thereof,

the petitioner was reverted to his former post of Reader with retrospective effect, i.e., from 31.05.2000. Since the petitioner, by the time the impugned

order dated 16.12.2002 was passed, had already retired from service as Professor of Zoology, he was entitled to get all benefits as due and admissible

in accordance with law, as a right had already been accrued in his favour by retiring him from service as Professor, Zoology. In the event the

authority decided to revert the petitioner back to the post of Reader, then opportunity of hearing to the petitioner, which is the minimum requirement of law, was to be given. But nothing has been placed on record to indicate that there was compliance of principles of natural justice so far as reversion of the petitioner to the post of Reader is concerned.

8. In addition to the above finding, it is also revealed that reversion of the petitioner to the post of Reader from Professor and that too retrospectively, which is not permissible under law, seriously affects the service conditions.

9. In C.R. Rangadhamaiah (supra) the apex Court held that even amending the rules the retrospective rejection of pensionary benefits is not permissible and such action is violative of Articles 31(1) and 19(1)(f) and is also violative of rights guaranteed under Articles 14 and 16 of the

Constitution of India. The paragraph-11 of the judgment, wherein the relevant questions have been framed by the Constitutional Bench of the apex

Court, reads as under:-

“11. On the basis of the said decision of the Full Bench of the Tribunal, other Benches of the Tribunal at Bangalore, Hyderabad, Allahabad, Jabalpur, Jaipur, Madras and Ernakulam have passed orders giving relief on the same grounds. These appeals and special leave petitions have been filed against the decision of the

Full Bench and those other Benches of the Tribunal. Some of these matters were placed before a Bench of three learned Judges of this Court on 28-3-1995 on which

date the following order was passed:

“Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by rules made under the proviso to Article 309 or by an Act made under that article, and which of

them and to what extent.”

Answering to the above questions, the apex Court in paragraphs-20, 22 and 24 of the judgment held as follows:-

“20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of

retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or

availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

22. In *State of Gujarat v. Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] decided by a Constitution Bench of the Court, the

question was whether the status of ex-ministerial employees who had been allocated to the Panchayat service as Secretaries, Officers and Servants of Gram and

Nagar Panchayats under the Gujarat Panchayat Act, 1961 as government servants could be extinguished by making retrospective amendment of the said Act in 1978.

Striking down the said amendment on the ground that it offended Articles 311 and 14 of the Constitution, this Court said: (SCC p. 62, para 52)

“52. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but

since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can

be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights

of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated

back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained

twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable

and a negation of history.”

24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had

been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said

expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of

taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and

16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* , *B.S. Yadav* and *Raman Lal*

Keshav Lal Soni .â??

10. In *Deokinandan Prasad* (supra), the Constitutional Bench of the apex Court held that pension is not to be treated as a bounty payable on the sweet

will and pleasure of the Government and the right to pension is a valuable right vesting in a Government servant and as such the same has been

considered as property under pre-amended Constitution of Article-31(1) and after amendment in Article 300-A which provides persons not to be

deprived of property save by authority of law. In paragraph-30 of the said judgment the apex Court held as follows:-

â??30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in

Bhagwant Singh v. Union of India [AIR 1962 Punj 503] . It was held that such a right constitutes â??propertyâ? and any interference will be a breach of Article 31(1)

of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This

decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. Letters Patent Bench in its decision in *Union*

of India v. Bhagwant Singh [ILR 1965 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public

servant on his retirement is â??propertyâ? within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law

and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as â??

property? cannot

possibly undergo such mutation at the whim of a particular person or authority.?

Similar view has also been taken in Jitendra Kumar Srivastava (supra), in paragraphs-8, 12 and 14 whereof the apex Court held as

follows:-

8. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due

process of law as per the provisions of Article 300A of the Constitution of India.

12. Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in Deokinandan Prasad v. State of Bihar (1971) 2

SCC 330 : (AIR 1971 SC 1409), as is apparent from the following discussion: (Paras 28 to 34 of AIR)

29. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the

Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already

adverted to earlier and we now proceed to consider the same.

14. Article 300A of the Constitution of India reads as under:

300A. Persons not to be deprived of property save by authority of law. "No person shall be deprived of his property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of

this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to

take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.?

11. Considering the factual matrix of the case in C.R. Rangadhamaiah (supra), the apex Court in paragraph-30 of the said judgment observed as

follows:-

30. The respondents in these cases are employees who had retired after 1-1-1973 and before 5-12-1988. As per Rule 2301 of the Indian Railway Establishment

Code they are entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. At that time the said rule prescribed that

running allowance limited to a maximum of 75% of the other emoluments should be taken into account for the purpose of calculation of average emoluments for

computation of pension and other retiral benefits. The said right of the respondent-employees to have their pension computed on the basis of their average

emoluments being thus calculated is being taken away by the amendments introduced in Rule 2544 by the impugned notifications dated 5-12-1988 inasmuch as the

maximum limit has been reduced from 75% to 45% for the period from 1-1-1973 to 31-3-1979 and to 55% from 1-4-1979 onwards. As a result the amount of pension

payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

Thereby, the apex Court came to the conclusion in paragraph-33 of the judgment which reads thus:-

33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given

retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and

arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired

from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

12. While considering the power of the Court, the apex Court in the case of J.S. Yadav (supra) held in paragraph-25 as follows:-

25. In Union of India v. Tushar Ranjan Mohanty [(1994) 5 SCC 450 : 1994 SCC (L&S) 1118 : (1994) 27 ATC 892] this Court declared the amendment with

retrospective operation as ultra vires as it takes away the vested rights of the petitioners therein and thus, was unreasonable, arbitrary and violative of Articles

and 16 of the Constitution. While deciding the said case, this Court placed very heavy reliance on the judgment in *P.D. Aggarwal v. State of U.P.* [(1987) 3 SCC 622 :

1987 SCC (L&S) 310 : (1987) 4 ATC 272 : AIR 1987 SC 1676] wherein this Court has held as under: (SCC p. 639, para 18)

“18. The Government has the power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and

not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution.”

13. As the opposite parties, despite adequate opportunity having been given, have not filed their counter affidavit even after long lapse of 10 years,

applying the doctrine of non-traverse, this Court proceeded with the matter. Therefore, taking into consideration the observation made by the apex

Court in *Ramadhar Pandey* (supra), this Court proceeded with the matter.

14. In view of the facts and law discussed above, there is no iota of doubt that the petitioner, after repatriated from the post of Director of Academic

Staff College, Utkal University, was retired from service on 31.05.2000 as Professor of Zoology. As such, on the last date of his retirement, he was

holding the post of Professor and accordingly the financial benefits admissible to the post of Professor were to be calculated and disbursed to him. As

the impugned order in Annexure-9 dated 16.12.2002 reverting the petitioner has been passed retrospectively, in view of the law discussed above, this

Court is of the considered view that the said order under Annexure-9 dated 16.12.2002 cannot sustain in the eye of law and is liable to be quashed.

Consequently, the rejection of appeal by the Chancellor under Annexure-11 dated 15.02.2003 and rejection of representation under Annexure-12(B)

dated 26.02.2007 also cannot sustain in the eye of law. Accordingly, the order of reversion dated 16.12.2002 in Annexure-9, which was passed after

two and half years of retirement of the petitioner from service as Professor of Zoology, and the order dated 15.02.2003 in Annexure11 rejecting the

appeal, as well as the order dated 26.02.2007 in Annexure-12(B) rejecting the representation of the petitioner passed by the Chancellor are liable to be

quashed and are hereby quashed. Accordingly, the petitioner is entitled to get all the benefits admissible to him as Professor of Zoology and the same

should be calculated and disbursed to him, after adjusting the amounts received by him in the meantime, within a period of three months from the date of receipt of this judgment.

15. The writ petition is thus allowed. However, there shall be no order as to costs.