
(1978) 07 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 910 of 1977

Durga Charan Pattanaik

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 31-07-1978

Acts Referred:

Orissa Service Code, 1939 — Rule 3, 71

Citation : (1978) 46 CLT 555

Hon'ble Judges : S. Acharya, J; P.K. Mohanti, J

Bench : Division Bench

Advocate : S.B. Nanda, J.K. Tripathy and M. Manawar, for the Appellant; B.B. Mohanty, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—The Petitioner was born on 16-7-1918. He was appointed as a permanent Clerk under the Durbar Administration of the erstwhile princely State of Dhenkanal on 15.2.1943. Article 459 of the Civil Service Regulations, which is relevant for the purpose of this case, was applicable to the employees of the Durbar Administration of Dhenkanal. On 29.5.1947 the Orissa Service Code was adopted by the Dhenkanal Durbar Administration. On 1-1-1948 the ex-State of Dhenkanal merged with the Orissa province. After the merger the Petitioner was absorbed in the State Government service with continuity of service for all material purposes. The Petitioner worked as a Lower Division Clerk in the Mouzi section of the Dhenkanal Collectorate till 15-7-1973. He was retired from service with effect from that date. The above facts are not disputed. The Petitioner has filed this writ petition against the order (Annexure-4) retiring him from service on 15.7.1973.

2. The law relating to the age of retirement of such ex. State employees of Dhenkanal has been settled by this Court in O. J. C No. 670 of 1974 (reported in I. L. R. 1976 Cuttack 870) ; O. J. C No. 1319 of 1974 decided on 30-7-1975 and O. J. C. No. 1006 of 1974 decided on 4-8-1975. The Petitioner's case is identical

to these cases on all scores.

3. Article 459, so far as relevant, is as follows:

Article 459 (a)(i)-Ministerial officers who have attained the age of 55 may be required to retire but should ordinarily be retained in service so long as they remain efficient until they come under the provisions of Clause (e).

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(e) An officer who has attained the age of 60 cannot be retained in the service of Government save in very exceptional circumstances and with the sanction of the local Government.

As the Civil Service Regulations were in force in the ex-State of Dhenkanal till 28-5-1947 and thereafter the Orissa Service Code was applicable to .the employees of that ex-State, the employees of the ex-State of Dhenkanal could not be deprived of the benefit of those provisions after the merger of the Dhenkanal State in the State of Orissa. The age of superannuation prescribed under Article 459(a) and (e) of the Civil Service Regulations which govern the case of the Petitioner, is protected by virtue of Rule 3 of the Orissa Service Code which is as follows:

Rule 3. Nothing in, these rules shall operate either to deprive any person of any right of privilege to which he is entitled by or under any law or by the terms of any contract or agreement subsisting between such persons and the Government or to confer on him any right or privilege in respect of any matter for which specific provision is made by the terms of any contract or agreement between himself and the Government,

4. In paragraph 5 of the Government Resolution No. Pen-6/77-63653/F. dated 14-12-1977, a copy of which was shown to us by Mr. Nanda, the learned Counsel for the Petitioner, it is, inter alia, stated as follows:

5. There was a great diversity of rules and practices in the various ex-States regarding retirement of employees. It is not possible to extend the benefit of higher age of superannuation under Rule 71(b) of Orissa Service Code in general to all such cases without conferring unintended concessions. It has been decided that cases of such ex-State employees may be dealt with on- merits. Ordinarily for the purpose of retirement the persons taken over from the ex-State services will be regulated under Rule 71(a) of the Orissa Service Code, but where under the rules service regulations of the ex-States an employee was entitled to continue in service up to the age of 60 years he is to be retained in service up to the age of 60 years if in the opinion of the appointing authority he is efficient and continues to be physically and mentally fit to discharge his duties. On receiving claims from such, ex-State employees who are entitled to continue

up to the age of 60 years the appointing authorities will review the cases of all such ex-State employees who are/were serving under their control to determine the age of superannuation accordingly.

x x x x ..

There is nothing on record to show that the Petitioner was not efficient to continue in service or that he was physically or mentally unfit to discharge his duties. Even in the counter filed by the State there is nothing to that effect. So the Petitioner was entitled to continue in service till he completed the age of 60 years, and he could not have been retired before he attained that age.

5. Mr. Government Advocate urged that the Petitioner is not entitled to any relief in this case as he filed this writ petition after a long lapse of time.

Mr. Nanda, the learned Counsel for the Petitioner states that after the retirement of the Petitioner from service he remained in his mufasil village, and as the law regarding superannuation of the ex-State employees of Dhenkanal was in a nebulous state until the same was authoritatively decided in the case reported in ILR 1976 Cutt 870, he could not make bold to enforce his right in a Court of law. The Petitioner in his writ petition has also stated so on affidavit. It is also stated on affidavit that the Petitioner represented his case to the Collector, Dhenkanal on 14.8.1975, but as his case was not at all considered and he did not receive any reply to that effect, he ultimately, as advised by his lawyer, filed a petition by way of an appeal before the Governor on the said score on 27-4-1977, and after waiting in vain for a long time in expectation of a favourable order, he filed this writ petition.

On considering the above facts, which are not controverted, we do not consider that this writ petition suffers from inordinate delay so as not to entitle the Petitioner to his legitimate due in this case.

6. On the principle and basis on which the above-mentioned previous decisions of this Court were arrived at, and on the above-mentioned Government resolution, and in the absence of any material to show that the Petitioner was not efficient at the relevant time, we hold that the order retiring the Petitioner from service with effect from 15-7-1973 was illegal. Accordingly the said order is quashed. The Petitioner shall be deemed to have continued in service from 15-7-1973 till he attained the age of 60 from the undisputed date of his birth as mentioned in the service book. He is entitled to the arrears of salary and other consequential service benefits till that date.

The writ application is allowed. The Petitioner is entitled to a bearing fee of Rs. 100/- (Rupees one hundred only).

P.K. Mohanti, J.

I agree.

Application allowed.