
(1975) 03 OHC CK 0004
In the Orissa High Court

Duti Debi

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 13-03-1975

Acts Referred:

Citation : (1977) 2 LLJ 110

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

R.N. Misra, J.—Petitioner before this Court is the widow of one Laxman Mishra who was an employee of the ex-Keonjhar State in the Ministerial cadre. Laxman was recruited to service on 28.6.1931. In 1934, the Keonjhar State adopted the Bihar and Orissa Service Code to requisite the service of its employees. In May, 1936. Laxman was confirmed in a post in the ministerial cadre. With effect from 1st April, 1942. the ex-State of Keonjhar adopted the Orissa Service Code in place of the Bihar and Orissa Service Code In 1948 the Keonjhar State merged with the province of Orissa and Laxman's services were taken over Laxman was made to superannuate from service with effect from 31st July, 1968, in terms of the Political and Services Department Resolution dated 28th February, 1968. Immediately after the decision of this Court in Lingaraj Partanoik's case ILR 1971 Cutt 121 petitioner's husband made a representation to his administrative superiors for reinstatement in service on the ground that he was entitled to be in service until attaining the 60th year and superannuation at any earlier point was not in accordance with the provisions of Rule 71(b) of the Orissa Service Code. Laxman had sent a reminder in May, 1971, for early disposal of his representation. In July, 1971, the State Government issued a Circular inviting persons who had been wrongly retired (as held in ILR 1971 Cutt 121) to resume Service. The petitioner's husband expected that he would be soon called to continue in service but when there was no response, he sent a representation in De ember, 1972. In January, 1973, Laxman died. In August, 1973. petitioner made a representation bringing the entire state of facts to the notice of the Revenue Divisional Commissioner of the Northern Division, Ultimately this writ

application was filed on 21.12.1973 when there was no response. It is during the pendency of this writ application, on 11th March, 1974, when the following order was communicated to the petitioner.

I am directed to say that the benefit of continuance in service till 60 b year has not been allowed to the employees of any of the ex State except Mayurbhanj. The decision of the Orissa High Court in the case of Shri H.K. Mohapatra as pointed out by the petitioner will not apply in case of any other ex-State employees as Government have decided that the case of Shri Mohapatra, shall not be used as a precedent and that the relief given is confined to Shri Mohapatra only. In view of this the claim of the petitioner for service benefits till 60th year do not deserve any consideration.

The petitioner has claimed that Laxman was entitled to continue in service until he attained the 60th year of age unless in terms of the provisions of Rule 71(b) of the Orissa Service Code the appointing authority took & decision that petitioner was not continuing efficient. His superannuation having been directed in terms of the Political are Services Department, Resolution of 19th February, 1968, the direction to superannuate is bad. Laxman should have been allowed to continue in service until he became 60.

2. In the counter-affidavit petitioner claim has been opposed on the ground that the application is belated ; the employee having died, his widow is not entitled to tile the writ application for service benefits; the decision of this Court in the case of S.K. Gupta v. State of Orissa 38 CLT 200 has no application; and Laxman was not an employee of the State Government on the relevant date indicated in Rule 71(b) of the Orissa Service Code and was, therefore, not entitled to the benefit of that rule.

3. In the case of Kali Char an Kuanar v. State of Orissa (1974) 2 CWB 848, the claim of an employee of ex-Keonjhar State to the benefit of Rule 71(b) of the Orissa Service Code was examined by a Division Bench of this Court and similar objections raised on behalf of the State of Orissa were overruled and the petitioner was found entitled to continue in service until attaining the 60th year unless by an order made in terms of Rule 71(b) he was made to superannuate at any time after completing the 55th year. Learned Addl. Govt. Advocate concedes that the objections raised on merits in this case has been directly negated by this Court in the said decision. We would, accordingly, for the reasons given the rein, hold that Laxman was entitled to continue until he became 60 years of age and the order superannuating him with effect from 31.7.68 was not in terms of Rule 71(b) of the Code.

4. The only question that remains for consideration is whether the application should be rejected because of laches on the part of Laxman before he died As already indicated the State of Orissa following the decision of this Court in Lingaraj Pattanaik's case issued a circular on 24.7.71 inviting those officers who had been wrongfully superannuated to resume duty. Even before that date and

soon after the decision of this Court Laxman had made a representation and was pursuing the same claiming the relief; He pursued the matter after the Government Circular. The final order on Lax man's representation and the reminder sent by his widow was communicated more than 3 months after the filing of the writ application. In these circumstances, we find no merit in the objection raised on behalf of the opposite parties on the ground of delay and laches.

5. We would, accordingly, hold that Laxman was entitled to continue in service until he attained his 60th year of age and his superannuation with effect from 31st July, 1968 had been wrongly made. Accordingly Laxman was, and after him his widow who is petitioner before us, would be entitled to such of the service benefits which Laxman would have been entitled had he continued in service up to the age of 60. By a writ of mandamus the opposite parties be called upon to pay to the petitioner the amounts due on such footing within a period of six months from now. The writ application succeeds but we make no order as to costs.

K.B. Panda, J.

I agree.