

(2015) 11 OHC CK 0029
In the Orissa High Court
Case No : W.P.(C) No. 24826 of 2011

Jallepally Narasingham Murty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Orissa University of Agriculture and Technology Act, 1965 — Section 17

Citation : (2015) 11 OHC CK 0029

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

Bench : Single Bench

Advocate : D.P. Dhalsamant and N.M. Rout, for the Appellant

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who was working as Section Officer Level-II in Orissa University of Agriculture and Technology (in short hereinafter referred to as OUAT), has filed this writ petition seeking to quash the letter dated 03.02.2009 under Annexure-6 communicating him that the Board of Management of OUAT has taken a decision on 16.01.2009 not to approve the increase in the qualifying service for pensionary benefit up to the age of 60 (sixty) years on consideration of his representation dated 30.08.2008. He further seeks for a direction to opposite party No. 2 to grant him revised pension and gratuity by adding two more years qualifying service as per Rule-41(4)(i) of the OCS (Pension) Rule, 1992.

2. The factual backdrop of the case in hand is that the petitioner joined as Lower Division Clerk on 01.02.1968 under the Orissa University of Agriculture and Technology (in short hereinafter referred to as "OUAT") and served on different capacities up to 31.12.1996. While working as Section Officer Level-II completing 28 years 11 months of service as well as attaining the age of 57 years one month 27 days had given a three months notice to take voluntary retirement on 31.12.1996. On consideration of his request he was allowed to retire from service voluntarily vide Office order dated 31.12.1996. The retirement age of the

University employees at the relevant point of time was 60 years as per the Statute 15 of the OUAT Employees (Condition of Service) Statutes 1989 (in short hereinafter referred to as 1989 Statute. As per Statute 38 of 1989 Statute the period of qualifying service of employees other than Class-IV employees up to the time when they complete 58 years of age shall be taken into consideration to determine the quantum of their pension, Family Pension and Gratuity. Accordingly, the Pension, Family Pension and Gratuity of the petitioner was sanctioned with effect from 01.01.1997 by adding weightage of 10 months three days till he attained the age of 58 years for the purpose of pensionary benefits. Most of the retired employees of the University filed O.J.C. No. 9221/1993 with a prayer for a direction to opposite party No. 2 to add two more years of qualifying service while calculating the pensionary benefits from the date of superannuation at the age of 60 years. This Court passed an order on 28.03.1997 to provide pensionary benefits up to the age of 60 years instead of 58 years. On the basis of the order dated 28.03.1997 passed by this Court, opposite party No. 2 vide letter dated 16.02.2006 in Annexure-1 sought sanction from opposite party No. 1 to amend Statute 38 of 1989 Statute. Accordingly, by notification dated 01.06.2007 Statute 38 of 1989 Statute was amended and as per the amended Statute the period of qualifying service of employees up to the time when they complete 60 years of age shall be taken into consideration to determine the quantum of their Pension, Family Pension and Gratuity vide Annexure-2. Pursuant to such amended Statute 38 of 1989 Statute a clarification was issued on 26.11.2007 under Annexure-3 to the effect that pensionary benefit is applicable to all the retired employees of University who retired prior to June, 2007 taking their period of qualifying service up to the time when they completed 60 years of age which shall be taken into consideration to determine the quantum of their pension, Family Pension and gratuity with effect from 1st August, 2007. Accordingly, the petitioner submitted a representation on 30.08.2008 praying to grant revised pension in accordance with the revised amended Statute 38 of OUAT Employees (Condition of service) Statute 2007 which has been sanctioned to him with effect from 01.01.1997 by computing the qualifying service up to 60 years by adding weightage of three years. His representation was placed before the Board of Management consisting of by the top level Government personnel as well as Vice-Chancellor of the University including other members as mentioned under Section 17 of the Orissa University of Agriculture and Technology Act, 1965 for discussion on 16.01.2009 by way of memorandum but the Board did not approve the same. Basing upon Rule-42 (5) of O.C.S. Pension Rules-1992, he states that in case of voluntary retirement on completion of 20 years of qualifying service, the qualifying service as on the date of intended retirement of the Government servant retiring under the said rule shall be increased by the period not exceeding five years subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty three years and it does not take him beyond the date of superannuation. If a Government servant who could be prematurely retired or could have voluntarily retired after completing 30 years of qualifying service

before the age of 50 years under Rule 71 (a) of Orissa Service Code, seeks voluntary retirement under the scheme, the weightage in pension should be admissible up to five years if he has not completed 30 years of qualifying service. For determining the quantum of Pension, Family Pension and Gratuity, the period of qualifying service of the employees other than Class-IV up to the time when they complete 58 years shall be taken into consideration and so far as petitioner is concerned he has also been given the weightage in pension up to 58 years. Having not satisfied with the action taken by the Board of Management in not approving the further two years of benefit, the petitioner has filed this present application.

3. Mr. D.P. Dhalsamant, learned counsel for the petitioner submits that in view of the amendment made in Statute 38 of OUAT Employees (Condition of Service) Statute 1989, the period of qualifying service of the employees having been extended to 60 years by notification issued by the OUAT under Annexure-2 for determination of the quantum of Pension, Family Pension and Gratuity, non-approval of the same by the Board of Management on the basis of the provisions contained in Rule-42 (5) of the OCS (Pension) Rules-1992 cannot sustain. As such the petitioner is entitled to get the benefit of another two years as qualifying service as per Rule-41(4)(i) of OCS (Pension) Rules 1992. Therefore, the decision taken by the Board of Management of OUAT on 16.01.2009 as communicated to the petitioner under Annexure-6 dated 03.02.2009 in not approving to add a further period of two years in qualifying service be quashed taking into consideration the provisions of law governing the field. He further urges that the case of the petitioner is squarely covered by the judgment passed by this Court in O.J.C. No. 9221/1993 disposed of on 28.03.1997 wherein the petitioners of the aforesaid case have been extended the pensionary benefits taking into account their retirement age up to 60 years.

4. Per contra, Mr. Ashok Mishra, learned Senior Counsel appearing for opposite party No. 2 lays emphasis on various provisions of OCS (Pension) Rules-1992 vis-?-vis OUAT Employees (Condition of Service) Statutes 1989. He submits that the case of the petitioner does not come within the normal superannuation of service rather he having availed voluntary retirement by giving three months notice which has been accepted by the authority, his case is fully covered by the provisions contained in Rule-42 (5) of the OCS (Pension) Rules-1992. As such, the Board of Management of OUAT is wholly and fully justified in not approving the further extension of two years taking the age of superannuation as 60 years for grant of pensionary benefits to the petitioner in view of decision taken on 16.01.2009 and communication thereof to the petitioner vide Annexure-6 dated 03.02.2009. So far as applicability of the ratio of the judgment passed by this Court in O.J.C. No. 9221/1993 dated 28.03.1997 is concerned, the petitioners in that case were the retired employees, who retired in normal course on attaining the age of superannuation at the age of 58 years. By virtue of the judgment passed by this Court, they have been extended the pensionary benefits taking into account their age up to 60 years. Therefore, the case of the petitioners in

O.J.C No. 9221/1993 stands on a different footing than that of the present petitioner who has retired voluntarily on his own application.

5. On the basis of the facts pleaded above, it appears that two sets of Rules are under consideration, namely, OCS (Pension) Rules-1992 and OUAT Employees (Condition of Service) Statutes-1989. For just and proper appreciation of the relevant Rules, they are extracted for consideration.

"Rule-41-Retiring Pension.

Xxx xxx xxx

(4)(i)- The qualifying service as on the date of intended retirement of the Government servant retiring under clause (a) of Sub-rule (1) shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(ii) The weightage of five years shall not be admissible in cases of those Government servants who are pre-maturely retired by the Government in the public interest under clause (b) of sub-rule (1)."

Statutes 15 and 16 of OUAT Employees (Condition of Service) Statutes-1989 are as follows:

"15. The date of retirement of a University employee other than a Government servant on deputation to a University shall be the date of which he/she completes the age of sixty years.

Provided that an employee shall retire on the last day of the month in which he/she completes the age of sixty years.

16. Notwithstanding any thing contained in Statute 15:--

(1) an employee may retire voluntarily from service 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 competent authority of the University at least three months before the date on which he/she wishes to retire or by giving said notice to the said authority before such shorter period as the University may allow in any case. It shall be open to the said authority to withhold permission to an employee who seeks to retire under this provision if he/she is under suspension or if enquiries against him/her are in progress.

(2) the competent authority may also require an employee other than a Class-IV employee to retire prematurely in the interest of the University at any time after he/she has completed thirty years of qualifying service or has attained the age of fifty years in case where he/she has completed ten years of qualifying service by giving notice in writing to the employee at least three months before the date on which he/she is required to retire prematurely or by giving three months pay and

allowances in lieu of such notice after following the procedure hereinafter specified in Sub-Statute (3)".

Statute 38 of OUAT Employees (Condition of Service) Statute 1989 is quoted below:

"xxx Notwithstanding the age of superannuation, the period of qualifying service of employees other than the Cass-IV employees up to the time when they complete 58 years of age shall be taken into consideration to determine the quantum of their pension, family pension and gratuity in the case of Class-IV employees, the period of service up to the age of superannuation shall be reckoned for the purpose".

The aforesaid Statute 38 has undergone amendment pursuant to notification dated 1st June, 2007 which reads as follows:

"38. The period of qualifying service of employees up to the time when they complete 60 years of age shall be taken into consideration to determine the quantum of their Pension, Family Pension and Gratuity".

6. The admitted fact as emanated from the factual backdrop of the case as mentioned above is that the petitioner while working as Section Officer level-II submitted his application seeking for voluntary retirement on attaining the age of 57 years 1 month and 27 days by giving three months notice on 31.12.1996 which has been considered by the authority and his VRS was accepted by adding weightage of 10 months 3 days till he attains the age of 58 years for the purpose of pensionary benefits. The retirement age of University employees was 60 years as per the Statute 15 of the OUAT Employees (Condition of Service) Statute 1989 and at the relevant point of time when the petitioner availed the voluntary retirement, Statute 38 specifically stated that the period of qualifying service of the employees other than Class-IV employees up to time when they complete 58 years of age shall be taken into consideration to determine the quantum of their Pension, Family Pension and Gratuity. Therefore, on consideration of his application for voluntary retirement the benefit as admissible to the petitioner in consonance with the Statute 38 has been sanctioned with effect from 01.01.1997 by adding weightage of 10 months 3 days till he attains the age of 58 years. The writ petition bearing O.J.C. No. 9221/1993 was filed by some of the retired employees of the University with a prayer to add two more years as qualifying services and calculate their pension as if they were superannuated from service at the age of attaining 60 years which was allowed vide judgment dated 28.03.1997. Pursuant to the order passed by this Court, opposite party No. 2 sought for sanction from opposite party No. 1 vide Annexure-1 dated 16.02.2006 for amendment of Statute 38 of OUAT Employees (Condition of Service) Statute 1989. Accordingly, notification was issued in Annexure-2 on 01.06.2007 by which the period of qualifying service of the employees up to the time when they complete 60 years of age shall be taken into consideration to determine the quantum of their Pension, Family Pension and Gratuity. Therefore, the petitioner

claims to enjoy the pensionary benefits by computing the qualifying service up to 60 years of his age in view of the amended Statute 38 of 1989 Statute as the pensionary benefits of the University employees are being finalized as per the provisions contained in OCS (Pension) Rules-1992. But the notification issued in Annexure-2 dated 01.06.2007 is silent about the application of the provisions of OCS (Pension) Rules 1992 for further extension of qualifying service to the persons who have exercised option for voluntary retirement. Statute 38 of 1989 Statute which has undergone amendment under Annexure-2 dated 01.06.2007 provided that the qualifying service of the employees up to time when they complete 60 years of age shall be taken into consideration to determine the quantum of their Pension, Family Pension and Gratuity but that has not dealt with the situation where a person has sought for voluntary retirement.

7. Rule 42 of the OCS (Pension) Rules 1992 deals with voluntary retirement on completion of 20 years of qualifying service as mentioned supra. Sub-Rule 5 of Rule 42 states as follows:

"The qualifying service as on the date of intended retirement of the Government servant retiring under this rule, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty three years and it does not take him beyond the date of superannuation".

Rule-42(5) of OCS (Pension) Rule 1992 speaks that under the scheme the weightage not exceeding 5 years should be given to the qualifying service to an employee retiring under the said Rule if the qualifying service rendered by him has not exceeded 33 years of qualifying service.

8. Admittedly, as per the Statute 15 of 1989 Statute, the age of superannuation of the OUAT employees has been fixed at 60 years. Under Sub-Statute (2) of Statute-16 an employee other than Class-IV employee may retire prematurely after he/she has completed thirty years of qualifying service or has attained the age of fifty years in case where he/she has completed ten years of qualifying service by giving notice in writing to the employee at least three months before the date on which he/she is required to retire prematurely or by giving three months pay and allowances in lieu of such notice after following the procedure hereinafter specified in Sub-Statute (3).

9. In view of such provision, the petitioner submitted his voluntary retirement application. By the time he submitted such application, he had only completed 28 years 11 months qualifying service and he had attained the age of 57 years 1 month and 27 days. Therefore, he had no qualifying service of 30 years, but he has been sanctioned Pension, Family Pension and Gratuity with effect from 01.01.1997 by adding weightage of 10 months 3 days till he attained the age of qualifying service of 30 years so also the age of 58 years. Therefore, the benefit has been extended to the petitioner in consonance with the provisions contained in Statute 16 which is applicable to the petitioner. Such determination has been

made as on 01.01.1997 on the basis of the Statute 38 which was prevailing then. Statute 38 has undergone amendment pursuant to Annexure-2 dated 01.06.2007 to the extent that the period of qualifying service of the employees up to the time when they complete 60 years of age shall be taken into consideration to determine the quantum of Pension, Family Pension and Gratuity. Therefore, applying the provisions contained in Rule-42(5) of the OCS (Pension) Rules 1992 the qualifying service as on date of intended retirement retiring under the said rule with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not any case exceed thirty three years and it does not take him beyond the date of superannuation. Therefore, applying the said provisions to the present context if the benefit will be made in consonance with the amended provisions of Statute 38, then it does not exceed five years and the qualifying service is not exceeding 33 years and does not take the petitioner beyond the date of superannuation. In other words, if the qualifying service will be taken into consideration at the age of 60 years, the petitioner will only be entitled to get the benefit of 2 years 10 months from the date of submission of his voluntary retirement application towards determination of the qualifying service at the age of 60 years which is the superannuation age as mentioned in Statute 15. The petitioner having been extended the benefit up to the age of 58 years the benefit of period of qualifying service should be redetermined up to the time when the petitioner attained the age of 60 years to determine the quantum of Pension, Family Pension and Gratuity pursuant to notification issued under Annexure-2 dated 01.06.2007 and it shall be in consonance with the Office Order in Annexure-3 dated 26.11.2007. Therefore, non-approval of increase of qualifying service towards pensionary benefits up to the age of 60 years by the Board of Management under Annexure-6 dated 03.02.2009 cannot sustain in the eye of law. Accordingly, the same is quashed.

The writ petition is allowed. No order to cost.