(2023) 01 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (C) No. 22890 Of 2014

Maheswar Dash APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Constitution of India 1950 — Article 226, 227
Central Civil Services (Pension) Rules, 1972 — Rule 33, 39, 40, 40(3), 49, 49(1)
Central Industrial Security Force Rules, 1969 — Rule 65

Citation : (2023) 01 OHC CK 0007

Hon'ble Judges : V. Narasingh, J

Bench : Single Bench

Advocate : M.K. Khuntia, D.R. Bhokta

Final Decision : Disposed Of

Judgement

V. Narasingh, J.

1. The petitioner being duly selected was appointed as a constable under the Opposite Party No. 2 (Deputy Inspector General, CISF, NEZ, East Kolkata Township, Kolkata) on 30.3.82.

2. He was dismissed from service by order dated 30.11 1991. The said order of dismissal, on the representation of the petitioner was modified to one of compulsory retirement from service with effect from 30.11.1991 by the Revisional Authorities in terms of its order dated 2/3rd of April, 1998 at Annexure-3. In the said order it was mentioned that the petitioner is entitled to draw two third compensation pension and gratuity as admissible.

3. Being aggrieved by the amount of gratuity and compensation pension paid to him in terms of the order at Annexure-3, the petitioner approached this court by filing W.P.(C) No. 15549/2013 with a prayer to modify the punishment order and granting pension. By order dated 5.3.2014, this Court disposed of the said Writ Petition directing the Opposite Party No. 2 to dispose of the appeal keeping in

view sub Rule-3 of Rule 40 of the Central Civil Services (Pension) Rules, 1972 (herein after referred to as CCS (Pension) Rules, 1972).

4. The Opposite Party No. 2 having rejected the grievance of the Petitioner by order dated 07.05.2014 at Annexure-10 holding that the petitioner is not eligible for pension as he has not completed 10 years qualifying service in terms of Rule 49 (1) of CCS (Pension) Rules 1972, the present Writ Petition has been filed assailing the said order of rejection at Annexure-10.

5. The prayer in the Writ Petition is quoted hereunder for convenience of ready reference;

" i). To direct the Opposite Party No.3 to modify the order under Annexure-3 to the extent that the petitioner be compulsorily retired from service w.e.f. 13.2.98 not from 30.11.91.

ii). To direct the Opposite Parties to allow the pension of the petitioner as per Rule 33,40 and 39 of Central Civil Service (Pension) Rules, 1972.

iii). To direct the Opposite Parties to release arrear pension of the petitioner with 18% interest.

iv). To quash the order dtd.7.5.14 under Annexure-10.

6. It is apt to state here that during the course of hearing learned counsel for the petitioner on instruction submitted that he does not want to press the prayer-i as quoted above. As such the Writ Petition is confined to prayers at ii, iii, and iv as above.

7. At the outset learned counsel for the Union of India, Shri D.R. Bhokta, CGC raised a preliminary objection regarding maintainability of the present Writ Petition on the ground of territorial jurisdiction. And, relied on the decision of the apex Court in the Case of Oil & Natural Gas commission vs. Utpal Kumar Basu reported in (1994) volume 4 SCC 711 and the order of this court dated 27.1.1997 in OJC No. 4760 of 1992 relating to the very same petitioner.

8. On a bare perusal of the impugned order of rejection of petitioner’s prayer for recalculation of his emoluments in the light of the order of compulsory retirement, it is seen that the same was communicated to the petitioner at his residential address in the district of Bhadrak, within the territorial jurisdiction of this Court. In this context, learned counsel for the petitioner relied on the judgement of the apex court in the case of Shanti Devi Alias Shanti Mishra vs. Union of India and others reported in (2020) 10 SCC 766. It is apposite to state here that in Utpal Kumar Basu(Supra), which is relied on by the learned counsel for the Union of India, it was held by the apex court referring to the principle of “forum convenience” that the Writ Petition is maintainable in the High Court within the territorial jurisdiction of which one resides and more so in the case of a compulsorily retired employee like the present petitioner.

9. Hence applying the law laid down by the apex court in the case of Shanti Devi

(supra), in the factual matrix of the case at hand, the challenge to the territorial jurisdiction of this court to entertain the present Writ Petition is negated. The Writ Petition is thus held maintainable.

10. On perusal of the impugned order at Annexure-10 it can be seen that the petitioner's prayer for entitlement of pension in terms of Rule-40 of the CCS (Pension) Rules did not find favour with the authorities relying on Sub Rule (1) to Rule-49 of the CCS (Pension) Rules of not rendering the qualifying service of 10 years.

11. In the said impugned communication the authorities held that the petitioner is not eligible for pension under Rule 49 for not having 10 years of qualifying service, so as to entitle him to pension (in terms of Rule-40).

12. It is stated in the impugned order that Rule-40 deals with "quantum of pension and/or gratuity in case of compulsory retirement as a means of punishment, which can be reduced by Disciplinary Authority but pension is admissible only under Rule 49(1) of the CCS (Pension) Rules, 1972". And, as the petitioner does not have the qualifying service of 10 years which is the condition precedent to be eligible in terms of Rule-49, he is not entitled to pension, as claimed. "And, further that Rule 40 & 40(3) is not attracted" and accordingly dismissed the petitioner's appeal.

13. Heard learned counsel for the petitioner and the Opposite Parties and perused the record.

14. The sole issue that comes up for consideration in this Writ Petition is whether the petitioner having joined on 30.03.1982 and compulsorily retired on 30.11.1991, is entitled to be granted the benefit of pension under Rule 40 & 49 of the CCS (Pension) Rules, 1972.

15. Admittedly CISF Rules, 1969 do not contain any separate Rule relating to Pension. Rule 65 of the CISF Rule, 1969 states that "the Rules relating to superannuation Pension, Provident Fund gratuity of supervisory officers and members of the force shall be same as those applicable to one Central Government Servants" and thus the case at hand would be governed by the CCS (Pension) Rules, 1972.

16. To appreciate the lis in its proper perspective, it is necessary to refer to the relevant provisions of CCS (Pension) Rules, 1972, which has a direct bearing on the point at issue. Rule 40 deals with compulsory retirement pension. The said Rule is extracted hereunder;

"40. Compulsory retirement pension .-

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory

retirement.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation.- In this sub-rule, the expression "pension" includes gratuity.

(3) A pension granted or award under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of (Rupees three thousand five hundred) per mensem."

16.A. Rule 49 under Chapter-7 deals with the regulation of amount of pension which reads as under;

"49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

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(2) Subject to the proviso to sub-rule (2) of Rule 38, in the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emolument or average emoluments, whichever is more beneficial to him, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty-five thousand rupees per mensem.

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(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

17. It is not in dispute that the petitioner joined in service on 30.03.1982 & initially dismissed from service by order dated 30.11.1991. On rejection of his appeal the petitioner approached

this Court by filing OJC No.4760 of 1992 and in terms of the order passed by this Court dated 27.01.1997, the petitioner preferred revision. The Revisional Authority by order dated 2nd/3rd April 1998 at Annexure-3 modified the punishment of dismissal to one of compulsory retirement w.e.f 30.11.1991 and directed that the petitioner to be entitled to two-third compensation pension and gratuity as admissible.

18. Being aggrieved by the calculation of his emolument as per the order dated 17.01.2000 at Annexure-4 the petitioner sought for recalculation of amount of pension and gratuity initially by representation dated 17.11.2000 (Annexure-5) and reiterated by representation dated 18.08.2008 (Annexure-6).

19. The petitioner thereafter approached this Court in OJC No.17247 of 2001. The said writ petition was disposed of by order dated 12.08.2008 giving direction to DIG, CISF NEZ HQrs to dispose of the appeal of the petitioner within six months, if the same was pending and the petitioner was granted liberty to submit another memorandum of appeal before the said Authority within a period of three weeks to facilitate early disposal. And, the said appeal was preferred within a period of three weeks as fixed. As the Authorities did not dispose of the same, assailing such inaction, the petitioner preferred W.P.(C) No.15549 of 2013 and by order dated 05.03.2014, this Court directed the Opposite Party No.2 to dispose of the appeal of the petitioner in accordance with law and while doing so further directed to specifically deal with the question as to whether the petitioner is entitled to monthly pension as per sub-rule (3) of Rule-40 of CCS (Pension) Rules, 1972.

20. As already noted in obedience to such direction the impugned order at Annexure-10 dated 07.05.2014 was passed.

21. On a bare perusal of the Rule 40 extracted above, it can be seen that the said rule categorically deals with pension of a government servant as in the present case, who is compulsorily retired from service and it stipulates payment of pension or gratuity or both at a rate not less than two-thirds and not more than the full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement and sub-rule (3) thereof specifies that the pension granted shall not be less than the amount of Rs.375/- per Mensem .

22. The underlying principle is that the person who suffered the penalty of compulsory retirement ought to be ordinarily granted full compensation pension and retirement gratuity admissible on the date of his compulsory retirement. As opposed to extreme penalties of removal or dismissal consequentially resulting in loss of pension. At this juncture reference can be made to Rule 49 relying on which the authorities have denied the claim of the petitioner in terms of Rule 40 of CCS (Pension) Rules.

23. Rule 49 of the CCS (Pension) Rules coming under the Chapter-VII (Regulation of Amount of Pensions) deals with the case of government servant retiring in accordance with the provisions of the Pension Rules after qualifying service of 10 years.

24. It is urged by the learned counsel for the petitioner that on a bare reading of the Rule 49 it can be seen that the same is ex-facie not applicable in the case at hand in as much as the petitioner being compulsorily retired, his case is squarely covered under Rule 40. The submission of the learned counsel for the petitioner in this regard in Paragraph-17 is extracted hereunder;

“17. That, on a bare reading of Rule 40 it is crystal clear that when a Govt. servant compulsorily retired from service as a penalty may be granted by the authority competent to impose penalty, pension or gratuity or both @ not less than 2/3 and not more than full compensation or gratuity or both amenable to him on the date of compulsory retirement. As would be evident from Annexure-3 the petitioner was imposed with the compulsory retirement from service w.e.f. 30.01.1991 and entitled to draw 2/3 compensation pension and gratuity. Since the petitioner has been imposed with punishment to draw 2/3 compensation pension as per Rule 40 he is entitled to pension as he has compulsorily retired from service as a major penalty. It is humbly submitted that as cited Rule 49 of pension rules same is not applicable in the case of petitioner. It is humbly submitted that Rule 35 to Rule 41 of pension rules deals with classes of pension and conditions governing their grant. As per Rule 35 a superannuation pension is to granted Govt. servants who is retired on his attaining the age of compulsorily retirement Rule 36 deals with retiring pension where as Rule 37 deals with pension is absorption under corporation company or body. Rule 38 deals with invalid pension and Rule 39 deals with compensation pension. Whereas Rule 40 deals with compulsory retirement pension. Rule 49 deals with amount of pension to a Govt. servant who retires after completion of 10 years of qualifying service. The compensation pension under Rule 39 and 40 and the amount pension fixed in Rule 49 are two distinct things. Hence it is wrong to say if one has not completed 10 years of qualifying service he is not entitled to compensation pension is misinterpretation of law and complete non-application of mind. Hence the same is liable to be quashed. A copy of the order dtd.7.5.14 is marked to this petition as ANNEXURE-10.”

25. Per contra in Paragraph-30 of the counter the Opposite Parties have stated as under;

“30.That in reply to para 17 it is humbly submitted here that the averment made by the Petitioner in this paragraph is nothing but figment of his surmise and conjecture. In this regard it is submitted that if a person, who retires from service before completing 10 (ten) years qualifying service without committing any misconduct, he is given amount of pension in accordance with Rule-49 of CCS (Pension) Rules 1972. And whereas, Sub-Rule (3) under Rule-40 of CCS (Pension) Rules 1972 interalia states to See GID Below Rule 49, then how can a person committing severe misconduct, who is awarded with the penalty of “Compulsory retirement” before completing minimum 10 (Ten) years qualifying service, be given pension in accordance with Rule-40 of CCS (Pension) Rules-1972 ? Hence, the averment made by the Petitioner in this paragraph is totally wrong and misinterpretation of law and completely based on his imagination and just an attempt to misguide the Hon’ble High Court to achieve undue advantage by sitting in his Home.”

26. It is apt to state here that Chapter-V of the CCS (Pension) Rules 1972 deal with “Classes of pensions and conditions governing their grant” and one of the

Classes of pension as enumerated in Rule 40 thereof is compulsory retirement pension, as quoted herein above.

26.A. On a bare perusal of Rule 40 of the CCS (Pension) Rules, it can be seen that a Government Servant compulsorily retired from service as a penalty, as in the present case, may be granted, by the authority competent to impose such penalty, Pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

27. The submission of the learned counsel for the petitioner that Rule 40 of CCS (Pension) Rules is to be interpreted independently so as to entitle a Government Servant compulsorily retired to get pension irrespective of minimum qualifying service would lead to an anomalous scenario. In as much as, where an employee who has not suffered any disqualification in terms of punishment would not be entitled to pension for not completing 10 years of qualifying service. Yet, one who is compulsorily retired would be eligible to receive pension though he has not completed 10 years of qualifying service.

27.A. The rule makers could foresee such an anomaly and therefore the word ‘admissible’ has been specifically mentioned in Rule-40 of CCS (Pension) Rules. The word “admissible” thus must be given its full play.

Meaning of the word appearing in the statute should be contextually understood.

It is a the primary Rule of interpretation that the words appearing in particular provision must be so interpreted which would subserve the objective of such provision, Rule 40 of CCS (Pension) Rules as in the present case.

28. The admissibility and quantum of pension is stated in Rule 49 of CCS (Pension) Rules and as per said Rule, to be entitled to get minimum pension the government servant has to complete qualifying service of not less than ten years.

The Authority in impugned order at Annexure-10 have negated the petitioner’s entitlement to pension on the ground that he has not completed 10 years of qualifying service.

29. In the case at hand, the petitioner joined in service on 30.03.1982 and compulsorily retired from service w.e.f. 30.11.1991 treating the suspension period as such. Thus the petitioner has completed 9 year and 8 months of service. Learned counsel for the petitioner submits that the period of service of petitioner has to be rounded off to ten years in terms of provisions contained in Rule-49(3) of CCS (Pension) Rules, as admittedly the petitioner is governed under the said Rule.

In this context the petitioner has relied upon judgment of Apex Court in State Bank of Patiala vs. Pritam Singh Bedi (2014 AIR SCW 4007) seeking rounding off the 9 year 8 months as 10 years of qualifying service.

30. Undisputedly the petitioner has completed 9 years and 8 months of service.

Hence in terms of Rule 49(3) of CCS (Pension) Rules, culled out hereunder for sake of convenience of ready reference;

"Rule 49(3) of CCS Pension Rules reads as thus:-

(3). In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

The petitioner having putting 9 years and 8 months of service, the period of 8 months by fiction of law has to be treated as one complete year, in computing the service period as qualifying service as envisaged under Rule 49(1) of CCS (Pension) Rules thereby entitling of petitioner for pension on account of compulsory retirement in terms of Rule 40 of CCS (Pension) Rules.

31. It is trite law that while considering claim for pension interpretation which would further such entitlement to be preferred without affecting the intent of the provision. The provision of payment of pension being a beneficial legislation ought to be liberally interpreted as held by Apex Court in catena of decision.

It is to be borne in mind that there is no embargo in application of Rule 49(3) of CCS (Pension) Rules in case of an employee like the petitioner who has been awarded the punishment of compulsory retirement in as much as by operation of Rule 40 thereof, the petitioner is entitled to pension and other emoluments stated therein as "admissible".

32. On a close analysis of the Rules quoted herein above, it is held that the petitioner shall be governed by the provisions of Rule 40 of the CCS (Pension) Rules dealing with compulsory retirement pension read with Rule 49(3) thereof and as such the impugned order at Annexure-10 dated 07.05.2014 so far as it relates to denial of pensionary benefits relying on Rule 49(1) of the CCS (Pension) Rules, 1972 is quashed.

33. Opposite Parties are directed to calculate petitioner's pension in terms of Rules 40 & 49(1) & (3) of CCS (Pension) Rules as discussed above and his entitlement be disbursed within a period of six months from the date of receipt/ production of copy of this judgment.

34. So far as claim of interest is concerned it is the settled law that interest is the compensation to be paid for withholding the amount to which the pensioner is otherwise entitled to. But, such principle cannot be applied mechanically to an incumbent who is made to retire compulsorily. Hence, in the peculiar facts of the present case, this Court is not persuaded to grant any interest.

35. In the event the entitlement as above, are not disbursed, within the period as stipulated, the petitioner shall be entitled to interest @7% from the date of passing of the impugned order dated 07.05.2014 till the date of actual payment.

36. The Writ Petition thus stands disposed of.

37. No order as to costs.

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