(2013) 06 OHC CK 0015

In the Orissa High Court

Case No : Writ Petition (C) No. 1384 of 2012

M/s. Akshaya Kumar Pattnaik APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:
Orissa Electricity Reforms Act, 1995 — Section 23, 24, 55

Citation : (2013) 116 CLT 1035 : (2013) 2 OLR 222

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Advocate : Soubhagya S. Das, R. Sahoo, K.C. Mohapatra and J.K. Swain, for the Appellant; Deba Ranjan Ray for Opp. Party Nos. 3 and 4 and B.K. Pattnaik, S.S. Parida and K. Mohanty for Opp. Party No. 5, for the Respondent

Judgement

S. Panda, J.—This Writ petition has been filed by the petitioner with a prayer to direct the opposite parties to grant the pensionary benefits in his favour by taking his total length of service into account and release the consequential benefits including arrear dues, if any, as admissible under law within a stipulated period and further to quash the letter dtd. 02.12.2002 under Annexure-4 issued by the Manager (HRD), Grid Corporation of Orissa Ltd. rejecting the case of the petitioner for grant of pension. The brief facts of the case are that the petitioner was initially appointed as a Khalasi on 17.12.1995 in Talcher Thermal Power Station and was placed under the control of the Executive Engineer, EPI Division No. III. Subsequently he was promoted to the post of Work Sarkar w.e.f. 08.02.1978. While continuing as such, State Government promulgated the Orissa Electricity Reform (Transfer of Undertakings, Assets,. Liabilities, Proceedings and Personnel) Schemes Rules 1996 (hereinafter referred to as ''1996 Rules'') w.e.f. 01.4.1996 and in consequence of such enactment of 1996 Rules, Talcher Thermal Power Station was taken over by the newly formed GRIDCO and the services of the petitioner stood permanently absorbed in GRIDCO w.e.f. 01.4.1997 and he was posted in Talcher Electrical Division, Chainpal. Thereafter the State Government after consultation with GRIDCO made the Transfer Scheme Rules under the Orissa Electricity Reform (Transfer of Assets, Liabilities, Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998 (hereinafter referred to as ''1998 Rules'') for the purpose of providing and giving effect to the preparation and implementation of the Scheme for the transfer of the Distribution Undertakings of the GRIDCO to the Distribution Companies namely CESCO, WESCO, NESCO and SOUTHCO. According to Rule 3 of 1998 Rules the personnel shall continue to remain with and belong to GRIDCO and Rule 4 of the said Rules protected the service condition of all such employees. Accordingly, the petitioner continued to work for CESCO with protection of his service conditions and retired from service w.e.f. 29.2.2000 on attaining the age of superannuation. After his retirement, the petitioner had made several representations before the opposite parties for grant of his retiral dues as well as pensionary benefits including family pension. The Manager (HRD), Grid Corporation of Orissa Ltd. vide letter dtd. 02.12.2002 rejected the claim of the petitioner for grant of pension but granted gratuity by taking his entire length of service into consideration. While matter stood thus, a similarly situated employee that of the petitioner was granted pension as well as other consequential benefits. Accordingly, the petitioner claimed parity and drawn attention of the competent authority by filing a representation. In response to the said representation, the opposite parties vide letter dtd. 06.04.2011 recommended the case of the petitioner to the Chief HRD Officer of CESU at Bhubaneswar for necessary consideration. As the representation of the petitioner for grant of retrial benefits, pension and family pension has not attained finality, the petitioner has approached this Court by filing the present Writ Petition.

2. A counter affidavit has been filed by opposite party Nos. 3 and 4 stating therein that the Writ Petition is barred by law of limitation and the pensionary benefit being a property attracts the provisions of limitation act. It is further stated that the petitioner has been satisfied with the relief granted to him following his superannuation and at this belated stage he is estopped to raise the dispute. It is stated that as the petitioner has not served under the establishment of opposite party Nos. 3 and 4 for a minimum period as required for grant of pensionary benefit, this Writ Petition is not maintainable. It is further stated that the employees, who were transferred along with their establishment from the Government are not eligible to avail the pension and DCRG but are only entitled to gratuity under the provisions of Gratuity Act as adopted by the then Electricity Board. In so far as the claim of the petitioner that pension has been granted in favour of a similarly situated person to that of the petitioner, it is stated in the counter affidavit that law is well settled that each case has to be considered on its own merit and negative discrimination cannot be claimed as a matter of right.

3. Opposite party No. 5 has also filed a counter affidavit stating therein that under the provisions of Orissa Electricity Reforms Act, 1995 and the transfer scheme framed thereunder though the petitioner was permanently absorbed in GRIDCO w.e.f. 01.4.1997, after creation of CESU he was absorbed in the said

Company w.e.f. 26.11.1998 and the petitioner retired from service on 29.2.2000 while working as a Work Sarkar under CESU, Talcher Electrical Division, Chainpal. Therefore, the CESU is the competent authority to consider the case of the petitioner being his employer.

4. After hearing learned counsel for the parties and going through the materials available oh record, it appears that in exercise of the powers conferred under Sections 55, 23 and 24 of the Orissa Electricity Reforms Act, 1995 the State Government promulgated the Orissa Electricity Reform (Transfer of Undertakings, Assets, Liabilities, Proceedings and Personnel) Schemes Rules, 1996 for the purpose of providing and giving effect to the transfer of undertakings, assets, properties, liabilities, proceedings and personnel of the Orissa State Electricity Board and the transfer of undertakings, assets, properties, liabilities, proceedings and personnel of the State Government engaged in generation, transmission, distribution or supply of electricity to Orissa Hydro Power Corporation Ltd for effectual adjudication of the dispute Rule 6(7), 6(8)(a), (b), 10(c), 10(d)(i)(ii)(iii) and (iv) of 1996 Rules are quoted hereunder:

Rule 6(7) : All personnel who revert to the services of the State Government under Sub-rule (6) and other employees of the State Government assigned for the electricity generation, transmission, distribution and supply related work as provided in Schedule ''C'' shall stand deputed to the services of OHPC or the GRIDCO on the effective date:

Provided that they shall continue to retain their lien in the posts held by them under the State Government till permanent absorption in the Transferees.

Rule 6(8)(a) : The transfer of personnel shall be subject to the condition that the terms and conditions of the services applicable to them on the effective date shall not in any way be less favourable to them those applicable to them immediately before such date and all benefits of their respective services rendered before the effective date shall be recognized and taken into account while fixing the condition of services under the Transferee, except as otherwise provided under these rules.

Rule 6(8)(b): Subject to Sub-clause (a), the OHPC or GRIDCO as the case may be, shall frame regulation governing the conditions of services of personnel so transferred under Sub-rules (5) and (7).

Rule 10(c): All obligations in respect of payment of pension and other retirement benefits including Provident Fund and Superannuation and Gratuity to the employees who had retired from the services of the Board before the effective date shall be discharged by GRIDCO until such obligations are appropriately assigned to OHPC and GRIDCO and OHPC shall reimburse GRIDCO for the expenditure incurred by GRIDCO relating such obligations assigned to OHPC.

Rule 10(d): The personnel of the State Government transferred to OHPC or GRIDCO (the transferee'') who are eligible for pensionary and other

Superannuation benefits as would be applicable or admissible to them if they had continued in the service under the State Government shall be entitled to receive the entire benefits from the Transferee in the following manner unless otherwise specifically provided by the State Government.

(i) The services rendered by them under the State Government upto the date of permanent absorption shall be taken into account for the purpose of grant of the pensionary and other retirement benefits together with the service to be rendered by them under the relevant transferee after the said date.

(ii) The pensionary and other benefits will be sanctioned and paid by the relevant transferee.

(iii) The respective liability in the regard to the above shall be apportioned between the State Government and the Transferee based on the length of service rendered by the personnel in each of the two organizations.

(iv) The State Government shall transfer from time to time the funds to OHPC or GRIDCO as the case may be representing the share of the liability of the State Government in regard to the obligations mentioned under Sub-rule (iii).

In view of the above provisions of 1996 Rules the services of the petitioner stood merged with the transferee and more specifically the petitioner continued to retain his lien in the post held by him under the State Government till his permanent absorption in the transferee. While matter stood thus the transferee namely Grid Corporation of Orissa Ltd. issued a circular on 01.2.1999 for regularization of Work Charged employees into regular establishment along with pensionary benefits thereof. On the basis of such circular, all Work Charged employees on the rolls of the Company were deemed to have been brought over to the permanent/temporary regular establishment of the Company as the case may be, carrying their service continuity for pensionary benefits available to the regular cadre of the employees of the Company. Subsequently the transferee i.e. GRIDCO vide circular dtd. 16.8.1999 clarified that the effective date for adoption and implementation of the pension scheme of the Company would be treated as 01.4.1990 which reads as follows:

In other words, all Work Charged employees on the rolls of the Company as on 01.4.1990 are deemed to have been brought over to the permanent/temporary regular establishment of the Company and they shall carry their service continuity for pensionary benefits to the regular cadre of the employees of the Company.

The 1996 Rule vide its Schedule -C categorizes classification of employees of the State Government transferred on deputation to OHPC/GRIDCO inasmuch as units of State Government which stood transferred to OHPC/GRIDCO on the date of transfer. In the said Schedule at Serial No. 6 it has been indicated that the T.P.I. Division No. II, Talcher Thermal, Talcher, stood transferred to GRIDCO along with ail the employees. Therefore, the services of the petitioner having been transferred to the transferee i.e. GRIDCO and he toeing a Work Charged employee, his services got regularized by virtue of the notifications issued by GRIDCO on 01.2.1999 and 16.8.1999 respectively. It further appears that one employee namely Subhransu Mohan Mishra, who was similarly placed that of the petitioner, was granted pensionary benefits, which was not disputed by the opposite parties.

5. Since a similarly situated person that of the petitioner was granted pensionary benefits under the condition that he would execute an Indemnity Bond to refund over payments and the decision of the opposite parties to grant such pension to the said employee was based on the decision of the Government, which was in reciprocation to the considered opinion of the learned Advocate General of the State in that regard, there is no reason to deny grant of pensionary benefits to the petitioner. The petitioner filed representation ventilating his grievance, which has not been dealt with by the opposite parties, therefore, his representation was pending and the opposite parties cannot take a stand that the petitioner has approached this Court at a belated stage rather the petitioner has repeatedly approached the authorities and the authorities have not taken any action on the representation of the petitioner. In view of the above, this Court disposes of this Writ Petition directing opposite party Nos. 2, 3 and 4 to consider the case of the petitioner and grant pensionary benefits in his favour along with all consequential service benefits, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this judgment.