

(2023) 07 OHC CK 0177
In the Orissa High Court
Case No : Writ Petition (C) No.3892 Of 2018

Narayan Parida

APPELLANT

Vs

Chairman, Odisha Gramya Bank And Others

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Citation : (2023) 07 OHC CK 0177

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : G. N. Rout, S. L. Pattnaik, Bimbisar Dash

Final Decision : Dismissed

Judgement

S.K. Mishra, J

1. The Petitioner, who is at present working as Office Attendant in Odisha Gramya Bank, has preferred the present Writ Petition with prayer to direct the Opposite Parties to pay all financial benefits to him from 12.04.1993 till his reappointment along with seniority and with a further prayer to transfer Employees' Provident Fund (EPF) from old account number to new account number.

2. The brief background facts, which led to filing of the Writ Petition, are that the Petitioner was engaged on 20.03.1982 as a Sweeper-Cum-Water Boy-Cum-Messenger in Chhanua Branch of Balasore Gramya Bank, which has been renamed as Kalinga Gramya Bank and now as Odisha Gramya Bank. While discharging his duty to the satisfaction of the Authority concerned, he was transferred to various Branches of the Bank. While working at Jagannathpur Branch, the Petitioner became seriously ill from 06.03.1986 till 24.08.1986. He applied for leave on medical ground. After he became fit, when the Petitioner wanted to join at Jagannathpur Branch on 25.08.1986 along with medical certificate, he was not allowed to join. Having no other alternative, the Petitioner was constrained to approach this Court in OJC No.1812 of 1990. After hearing

the Parties, the said writ petition was disposed of on 04.12.1992 with the following observation.

"The petitioner belongs to the lower strata of the society as he is discharging the duties of a Sweeper-cum-water boy-cum-messenger. He came under the service of the Gramya Bank on 20.3.1982 and thereafter while serving for quite some time he came to be transferred from place to place. From 6.3.1986 to 24.8.1986, he had to remain absent from duty because he was suffering. But then the employer being in need of some other hand and the petitioner being casual not being entitled to leave and no leave having been granted, some other person was engaged in place, as stated in paragraph 7 of the counter affidavit filed on behalf of the Bank. The petitioner, however, avers in paragraph 12 that after he recovered from the illness, he was contacting the Chairman of the Bank at Balasore from time to time but to no avail. It is his further case that on 27.10.1988 the Chairman appointed a new man named Lalit Patnayak and another named Nibas Majhi. This averment has not been denied in the counter affidavit. The learned counsel for the opposite parties submits that as the petitioner was absent, some alternative arrangement had to be found. That would, however, apply for the period of absence and not what happened in 1988. The further case of the opposite parties is that as and when there would be vacancy under the Bank, they would consider the case of the petitioner subject to fulfillment of reservation available to the candidates of Scheduled Castes and Scheduled Tribes.

2. Not being in know whether there is any vacancy at present to accommodate the petitioner, we dispose of the application by directing the Chairman of the Bank-opposite party no.1 to make available the next vacancy which would fall within his jurisdiction. We make it absolutely clear that in case this Court would be informed that despite vacancy having arisen after today, somebody else has been appointed, we shall take serious view of the matter.

3. The petition is disposed of with the aforesaid observations."

3. It is further case of the Petitioner that since Baleswar Gramya Bank opened an extension counter in Mandari on 20.12.1995, after knowing about the same, he made an appeal to the Chairman of the Bank for his appointment in terms of the direction given by this Court. Since there was no response to the said appeal made by the Petitioner, he was constrained to approach this Court by initiating a contempt proceeding against the Chairman of the Bank, which was numbered as Original Criminal Misc. Case No.219 of 1996 and was disposed of on 12.03.2001 with the following direction.

"It is most unfortunate that the order dtd.04.12.92 passed by this Hon'ble Court in OJC No. 1812/90 has not been complied with by the Opp. Parties for long time. However, as a last chance we grant eight weeks' time to the Opp. Parties to comply with aforesaid order of this Court. if not already complied with failing which it will be seriously viewed.

If the petitioner feels aggrieved by the order if any passed or is going to be passed, it is open to him to challenge the same in an appropriate proceeding.

With the above observation, the contempt petition is closed and disposed of.”

4. Because of non-compliance of the said Order, again the Petitioner was compelled to file another Contempt Petition, which was numbered as Original Criminal Misc. Case No.147 of 2002 and the same was disposed of on 07.01.2011 with the following Order.

“Heard learned counsel for the petitioner and learned counsel for the contemnor-Bank.

The petitioner was appointed as a Messenger on ad hoc basis on 20.3.1982 under Balasore Gramya Bank but his services were terminated with effect from 5.3.1986 on the ground of unauthorized absence from 6.3.1986 to 24.8.1986. Challenging the said order of termination, the petitioner approached this court in O.J.C. No.1812 of 1990. The said writ application was disposed of on 4.12.1992 directing the contemnors to the effect that if any vacancy arises, the chairman of the Bank shall make available the next vacancy to the petitioner which would fall within his jurisdiction. The Court also observed that in case it is informed to the Court that despite vacancy having arisen somebody else has been appointed, the Court shall take serious view of the matter. Initially a show cause reply was filed on behalf of opposite party No.1 in April, 2003 and today also an additional affidavit has been filed in Court on behalf of opposite party No.1. The stand taken by opposite Party No.1 is that since 1990 no appointment has been made despite the fact that three posts of Messengers fell vacant due to death and retirement of the incumbents. The posts have not been filled up as the Bank is having surplus staff and the R.B.I./ Government of India guidelines prohibit any kind of appointment. The learned counsel for the petitioner submitted that there are three vacancies of Messenger-cum-Sweeper which have fallen vacant due to retirement of the incumbents and these posts can be filled up in compliance of the order of this court. There may be a ban order for further recruitment, as stated by the learned Senior Counsel appearing for the Bank but such ban order does not apply to judicial orders passed by this Court. Since there are three clear vacancies available due to death/retirement of the incumbents therein, the case of the petitioner can be considered for appointment as Messenger-cum-Sweeper against one of the said available vacancies.

We accordingly dispose of this contempt application directing the opposite party No.1 to comply with the order of this Court passed in the aforesaid writ application and make available one of the said three posts to the petitioner to work as Messenger-cum-Sweeper. This should be done within a period of two months from today.”

(Emphasis supplied)

5. Being so directed, the General Manager (Administration) of the Bank was

pleased to appoint the Petitioner as Office Attendant (Multipurpose) in Group-C by issuing appointment letter dated 26. 05.2011 indicating therein as to the terms and conditions of such engagement. While appointing so, the Bank Authority took signature of the Petitioner in four to five blank papers and the Petitioner did so under compelling circumstances as he was leading a miserable life having out of employment. It is further stand of the Petitioner that he is legally entitled to be appointed in the post of Office Attendant w.e.f. 20.12.1995 i.e. the date when the Mandari Extension Counter of the Bank was opened. The Petitioner was not appointed in the said Extension Counter with ulterior motive, though the Bank Authority appointed Lalit Kumar Pattanayak and Nibash Majhi on 20.12.1995, whereas one Satya Swarup Jena was appointed on 15.12.1995 in the said Extension Counter. It is further case of the Petitioner that because of negligence of the Bank Authority, the Petitioner sustained heavy financial loss and mental agony. Because of such illegal act on the part of the Opposite Party Nos. 1 and 2-Bank, the Petitioner gave representations to the authority on 21.04.2014 and 29.12.2015. Because of the inaction of the Authority concerned in considering his representations, again the Petitioner was constrained to approach this Court by filing W.P.(C) No.6438 of 2016, which was disposed of at the stage of admission on 08.08.2017 with the following direction.

"Heard learned counsel for the petitioner.

The petitioner has filed his writ petition seeking for a direction to the Opp. Parties to pay the financial benefit to him from 20.12.1995 till his appointment.

In course of hearing, learned counsel for the petitioner states that highlighting the grievance, the petitioner has made representations to Opp. Party No. 1 vide Annexures-3 and 5, on which no decision has yet been taken.

Consideration the limited grievance of the petitioner, without expressing any opinion on the merits of the case, this Court disposes of the writ petition directing opposite party no.1 to take a decision on the representations filed by the petitioner vide Annexures-3 and 5 within a period of three months from the date of communication of this order."

6. Being so directed, the Chairman of the Bank rejected the representation of the Petitioner vide letter dated 15.01.2018 (Annexure-9) indicating therein that his claim for arrear salary/financial benefits from 20.12.1995 does not arise as he was not in service with the Bank at that time. It is further case of the Petitioner that though the Bank Authority took a stand as to ban imposed by NABARD in terms of its Circular dated 09.05.1996, but there is a specific mention in the said Circular that the matter has been carefully examined by the Government of India and it has been decided that as a general measure, no further recruitment should be made in the RRBs, except recruitment on compassionate ground and court orders, if any. Therefore, as per order of this Court, the Opposite Party No.1 should have given appointment to the Petitioner on 20.12.1995 when Mandari Extension Counter was opened . Hence, the Petitioner is eligible to get arrear

salary from 20.12.1995 till his re-engagement. It is further case of the Petitioner that at the time of his initial appointment in the Bank on 20.03.1982, he had EPF Account No. OR-2741/179 till 06.03.1986. Though the EPF contribution has been deposited in that account, but when the Petitioner was reappointed on 26.05.2011, a new EPF Account No. OR-1547/1256 was allowed to him and the amount deducted from his salary was deposited in the new EPF Code. Further, the grievance of the Petitioner is that the Opposite Party No.3, Accounts Officer, O/o Regional Provident Fund Commissioner, Bhubaneswar, has not transferred his old EPF amount to the new EPF account till date, although the Petitioner submitted all the required documents since 05.12.2011. It is further case of the Petitioner that due to negligence of the Opposite Party No.1, he lost his seniority and placed much below his juniors in the Gradation List and in the meantime, the juniors are getting promotion whereas case of the Petitioner has not been considered illegally and arbitrarily.

7. Being noticed, the Opposite Party Nos. 1 and 2-Bank filed their Counter Affidavit indicating therein that the Petitioner has already been communicated about his grievance vide letter dated 13. 01.2020. As his reappointment is effective from 03.06.2011, no question of arrear salary arises, as has been claimed by the Petitioner. Regarding transfer of amount from old to new PF Account, the Bank has already submitted the application of the Petitioner to the Regional Provident Fund Commissioner, Bhubaneswar. As to allegation of vacancy in Extension Counter of the Bank at Mandari, it has been stated that the said Extension Counter of the Bank was managed by surplus subordinate staff and there was no vacancy for the said Extension Counter. It has further been stated that Lalit Kumar Patnaik and Nibas Majhi joined on 14.10.1988 and not on 20.12.1995, as has been falsely alleged. Further, Satya Swarup Jena joined as Clerk-Cum-Cashier and was so appointed on compassionate ground and was never engaged as a subordinate staff in the Extension Counter. As such, the averments made by the Petitioner are misleading. So far as arrear salary, it has been reiterated that with regard to his alleged arrear financial benefit, it was conveyed to him vide communication dated 13.01.2020 (Annexure-A). It is also stand of the Bank that as against vacancy on death of Bijay Narayan Das, his wife and son have claimed appointment on compassionate ground and the matter is subjudice. Similarly, the matter of Jaydev Parida is also subjudice. It is further stand of the Bank that the recruitment was banned by the direction of NABARD. Further, the case of the Petitioner does not come under compassionate appointment and he was given appointment on 03.06.2011 in terms of the direction given by this Court against supernumerary vacancy. Hence, it has been stated that the Writ Petition being devoid of any merit, is liable to be dismissed with cost.

8. So far as Opposite Party No.3, being noticed, a Counter Affidavit has been filed by the Assistant Provident Fund Commissioner, Bhubaneswar specifically indicating therein that the old EPF amount of Rs.24,202/- kept in the previous Account of the Petitioner i.e. OR/2741/179, has already been transferred and

merged with the present PF Account of the Petitioner bearing No. OR/1547/1256 by crediting the said amount with up-to-date interest. Hence, there is no outstanding available in the past EPF Account of the Petitioner and the said amount will be reflected in the present Account of the Petitioner after Annual Account Slips for the year, 2018-2019 is updated.

9. No Rejoinder Affidavit has been filed in response to the Counter Affidavit filed by the Opposite Party No.3 disputing such averments with regard to transfer of fund with interest from old EPF Account to new Account of the Petitioner. However, a Rejoinder Affidavit has been filed to the Counter Affidavit filed by the Opposite Party Nos. 1 and 2-Bank indicating therein that there was clear vacancy for the post of Office Attendant (Multipurpose) and as per the seniority list of Office Attendant (Multipurpose) as on 01.04.2014, the Opposite Parties gave appointment to the persons, namely, at SI No.382 to 437 in between 01.03.1992 to 01.03.2011. During the said period, the Petitioner was debarred by the Opposite Parties from such appointment in spite of order of this Court. Therefore, the letter issued by the Opposite Party-Bank, as at Annexure-A, is totally false and there was no ban in further appointment in terms of NABARD Circular dated 09.05.1996.

In response to the said Rejoinder Affidavit, a reply Affidavit has been filed by the Opposite Party Nos. 1 and 2-Bank clarifying therein that Odisha Gramya Bank has been formed with the amalgamation of Neelachal Gramya Bank, Kalinga Gramya Bank and Baitarani Bank in terms of Government of India Gazette Notification dated 07.01.2013. It has further been indicated in the said reply Affidavit that the seniority list appended to the Rejoinder Affidavit by the Petitioner is dated 01.04.2014 i.e. after the amalgamation took place and it relates to seniority of Office Attendants of erstwhile Bank. The serial numbers 382 to 437 of the seniority list, as mentioned by the Petitioner, are not related to erstwhile Balasore Gramya Bank or Kalinga Gramya Bank. Rather, the name of the persons bearing as against serial numbers 382 to 437 are related to erstwhile Baitarani Gramya Bank and Neelachal Gramya Bank, who were appointed against vacancy of that Bank only or appointed under the compassionate appointment scheme. Hence, the contention of the Petitioner that there was vacancy and Bank has appointed other Office Attendants against those vacancies is incorrect. Further, it has been clarified vide the said reply Affidavit dated 10.05.2023 that the persons, who are appointed as Office Attendant, as at serial numbers 376 to 381 of the Gradation List, were appointed prior to the Order passed by this Court on 04.12.1992 in OJC No.1812 of 1990 and all of them also belong to erstwhile Baitarani Gramya Bank and not Balasore Gramya Bank. It has further been stated that after the order was passed by this Court in Contempt Petition, the Petitioner was appointed as Office Attendant on 26.05.2011 by erstwhile Kalinga Gramya Bank taking permission of the Sponsor Bank against supernumerary vacancy. Hence, the allegations made by the Petitioner are baseless. Further, it has been stated in the said reply Affidavit that though the Petitioner has claimed the financial benefit and seniority from

20.12.1995, to the contrary a prayer has been made in the Writ Petition to pay such benefit w.e.f. 12.04.1993 without any basis.

10. Mr. Rout, learned Counsel for the Petitioner, repeating the averments made in the Writ Petition as well as Rejoinder Affidavit, submitted that the Petitioner is entitled to the financial benefit, so also fixation of seniority w.e.f. 12.04.1993. However, a query being made, he is unable to substantiate the said prayer made in the Writ Petition to justifying said claim to be from

12. 04.1993 though a stand has been taken in the Writ petition an Extension Counter of the Bank being opened at Mandari w.e.f. from 20.12.1995, his client is entitled to benefits from the said date.

11. Ms. Pattnaik, learned Counsel for the Bank submitted that, being directed by this Court in OCRMC No. 219 of 1996, read with observation / direction of this Court in OJC No.1812 of 1990, the Petitioner was given appointment on 03.06.2011 in the post of Office Attendant (Multipurpose) by creating a supernumerary post. She further submitted that agitating the same grievance of the Petitioner, during pendency of the present Writ Petition, W.P.(C) No.24197 of 2019 was preferred by the Petitioner, which was disposed of at the stage of admission directing to dispose of the representation of Petitioner. On being so directed, the representation of the Petitioner dated 22.03.2019 was disposed of with a reasoned Order dated 13.01.2020, as at Annexure-A to the Counter Affidavit, indicating therein that the claim of the Petitioner for arrear financial benefits and promotion to the cadre of Office Attendant are farfetched and untenable. The Petitioner never challenged the said communication made to him till date. The said fact has also not been disputed by the Petitioner in his Rejoinder Affidavit.

12. Mr. Dash, learned Counsel for the Opposite Party No.3 (Regional Provident Fund Commissioner) submitted that the grievance of the Petitioner with regard to transfer of EPF from old EPF Account to new EPF Account has already been made since long and the said prayer of the Petitioner has become infructuous.

13. So far as the grievance of the Petitioner as to the discrimination and non-consideration of his case for appointment in the Extension Counter at Mandari, despite direction of this Court, has been specifically dealt with in Paragraph 4 to 6 of the Counter Affidavit filed by the Opposite Party Nos. 1 and 2-Bank. Though a Rejoinder Affidavit has been filed on 01.11.2022 by the Petitioner giving para-wise reply the said Counter Affidavit, the said stand of the Bank has not been dealt with or denied in the Rejoinder Affidavit. The said Paragraphs of the Counter Affidavit filed by the Bank are extracted below:

"4. That, in reply to the averments made in paragraph-4, 5 and 6 of the writ petition, it is humbly submitted that the extension counter at Mandari was managed by surplus subordinate staff. So there was no vacancy for the extension counter. Lalit Kumar Patnaik and Nibas Majhi joined on 14.10.1988 not on 20.12.1995. Satya Swarup Jena joined as Clerk-Cum-Cashier, not sub-ordinate

staff, also the said Satya Swarup Jena was appointed on compassionate ground. The averments made by the petitioner are misleading.

5. That, in reply to the averments made in paragraph-7, 8 and 9 of the writ petition it is humbly submitted that the petitioner is not entitled to any arrear financial benefits. It has been conveyed to him on 13.01.2020. The petitioner has already been intimated on 13.01.2020 how his representation for arrear financial benefits are untenable. The copy of the letter dated 13.01.2020 is annexed as Annexure-A.

6. That, in reply to the averments made in paragraph-10 of the writ petition it is humbly submitted that Mandari extension counter was managed by surplus subordinate staff. Further against the vacancy of Late Bijay Narayan Das, his wife and son have claimed appointment and the matter is subjudice. The matter of Jaydev Panda is also subjudice, as Sri Jaydev Parida has challenged the punishment awarded."

14. Similarly, with regard to the allegation made for the first time in the Rejoinder Affidavit dated 01.11.2022 as to giving appointment in the post of Office Attendant (Multipurpose) to persons named at Sl. No.382 to 437, in between 01.03.1992 to 01.03.2011 i.e. from the date of order passed by the 1st Division Bench in OJC No.1812 of 1990 till the Petitioner was reengaged, the said allegation has been dealt with in Paragraph-4 of the reply Affidavit filed by the Ban, which is extracted below.

"4. That, with regards to averments made in paragraph-3 of the rejoinder, it is humbly submitted that present Odisha Gramya Bank is formed with the amalgamation of Neelachal Gramya Bank, Kalinga Gramya Bank and Baitarani Bank took place as per Govt. of India Gazette notification dt.07.01.2013. The petitioner has submitted the seniority list of the Bank dated 01.04.2014 i.e. after amalgamation took place and it relates to seniority of Office Attendants of erstwhile Banks. The serial numbers 382 to 437 of the seniority list as mentioned by the petitioner are not related to erstwhile Balasore Gramya Bank or Kalinga Gramya Bank. The said serial numbers 382 to 437 are related to erstwhile Baitarani Gramya Bank and Neelachal Gramya Bank, those serial numbers are appointed against vacancies of that Bank only or appointed under Compassionate Appointment. So his contention that there was vacancy and Bank has appointed other Office Attendants is not true."

(Emphasis supplied)

15. From the undisputed pleadings on record, so also submissions made by the learned Counsel for the Parties, as detailed above, this Court is of the view that the Petitioner was rightly communicated vide letter dated 13.01.2020 by the General Manager, Odisha Gramya Bank, as at Annexure-A, to the effect that he is not entitled for any arrear salary, as has been claimed by him nor he is entitled for any promotion to the cadre of Office Assistant, as was claimed by him vide his representation dated 22. 03.2019, which was communicated to the

Petitioner , being directed by this Court in W.P.(C) No.24197 of 2019. Further, the order passed by the General Manager dated 13.01.2020, as at Annexure-A, being not challenged by the Petitioner, has attained finality.

16. Hence, the Writ Petition, being devoid of any merit, stands dismissed. No order as to cost.

.....