(2023) 09 OHC CK 0159

In the Orissa High Court

Case No : Writ Petition (C) No. 2022 Of 2002

Nilakantha Panda APPELLANT

Vs

Secretary To Govt. Fisheries And Animal Resources Development Department, Bhubaneswar & Ors RESPONDENT

Date of Decision : 22-09-2023

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 148(5), 226, 227, 309

Citation : (2023) 09 OHC CK 0159

Hon'ble Judges : Dr. B.R. Sarangi, J;Murahari Sri Raman, J

Bench : Division Bench

Advocate : C.A. Rao, A.K. Routh, S.K. Behera, S.S. Kanungo

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. The petitioner, by means of this writ petition, seeks to quash Annexure-11, the order/letter dated 05.04.2000, by which opposite party no.2-Director, Animal Husbandary & Veterinary Services, Odisha has intimated the petitioner that his proposal for enhancement of contractual pay has been turned down by the Finance Department, as well as Annexure-12, the order dated 13.05.2002 passed in O.A. No.1024 of 2000, by which the Odisha Administrative Tribunal, Bhubaneswar has disallowed the claim of the petitioner.

2. The factual matrix of the case, in brief, is that the petitioner, while continuing in a Class-I post, i.e., Under Secretary to the Government in School and Mass Education Department, retired from service on 31.07.1993 on attaining the age of superannuation. After five years of retirement, he got a contractual appointment to the post of Administrative Officer on a consolidated pay of Rs.5,000/- per month, vide appointment letter dated 31.12.1997, in a Danish Government sponsored project, called Integrated Live Stock Development Project in Koraput district with the Headquarters at Jeypore for a period of two years or

till completion of the project period, whichever is earlier.

2.1. Prior to his appointment, opposite party no.5 had suggested to opposite party no.2 with regard to the pay of the petitioner at a consolidated amount of Rs.7,500/- per month in its letter dated 03.07.1997, which was recommended vide order dated 11.12.1997 by opposite party no.2 basing on the last pre-retirement pay (last basic pay) of Rs.3,500/- as on 31.07.1993. As the appointment was on contractual basis, an agreement was executed on 18.01.1998 between the petitioner and opposite party no.2, wherein the salary of the petitioner was fixed at Rs.5,000/- consolidated per month. On execution of agreement, the petitioner joined in the post of Administrative Officer in DAILDP. From the date of receiving the payment of Rs.5,000/-, he made objection to it and filed a representation requesting to approve the recommendation of opposite parties no.2 and 5 with regard to fixation of his pay at Rs.7,500/-consolidated. Since he received the appointment order on 09.01.1998 and his date of joining to the said post was fixed to 10.01.1998, on the next day he had no time to go to Cuttack, which is about 550 km away, to approach opposite party no.2 for fixation of his consolidated pay.

2.2. Since the Revised Scale of Pay, 1998 of the State Government employees became effective from 01.01.1996, as per Finance Department Resolution dated 07.09.1998, his representation should stand modified for determination of his consolidated pay in accordance with the provisions of the OCS (Pension) Rules, 1992. In response to same, opposite party no.1 issued a letter to opposite party no.2 on 08.12.1998 to furnish clear information about the basis of fixation of his consolidated pay and clarify that adequate stress may be given while giving information regarding fixation of his pay at Rs.5000/- and also made a query regarding the basis of the proposed monthly consolidated pay of Rs.7,500/- and under what basis Rs.5000/- was allowed as consolidated. In response to same, opposite party no.5 made a clarification to opposite parties no.2 and 1 in its letter dated 04.01.1999.

2.3. The petitioner made his claim under Rules-88, 89 and 94 of the OCS (Pension) Rules, 1992 contending that on the date of determination, i.e., 31.07.1993, he had drawn the last basic pay of Rs.3,500/-, but when the new Revised Pay Rules, 1998 came into force w.e.f. 01.01.1996, the basic pay against the post, in which the petitioner was continuing before retirement, was fixed at Rs.10,200/-and hence Rs.7,500/- consolidated pay per month is correct and genuine and his claim is in conformity with the office order dated 17.03.1999. Therefore, opposite party no.2, vide letter dated 09.04.1998, recommended the case for payment of fixed consolidated emoluments at Rs.7,500/- per month in favour of the petitioner.

2.4. Prior to issuance of Annexure-7 dated 09.04.1998, the petitioner submitted a letter narrating in detail about the deduction of T.I. during re-employment period, i.e., from 10.01.1998 to 10.01.2000. In the said letter/representation, the petitioner also submitted that after deduction of T.I., which was to the extent of Rs.3,585 at Treasury level, he was only getting Rs.1167/- per month. So, he requested that the loss of T.I. on pension is to be compensated by augmenting the consolidated pay. Basing upon the said representation, opposite party no.2 passed order under Annexure-7 dated 09.04.1998. Though he was re-employed, after retirement, on 10.01.1998, and got relieved on 10.01.2000, in these two years, his T.I. on pension were withheld on the plea of re-employment by opposite party no.3 relying on the office memorandum dated 23.03.1977. From the date of re-employment in DAILDP till completion of his tenure in the Department, the petitioner was denied of the T.I. on pension and opposite party no.1 did not agree to pay the petitioner Rs.7,500/- as consolidated pay. Consequentially, he sustained heavy financial loss from both sides i.e. withholding of T.I. and not raising the consolidated pay from Rs.5,000/- to Rs.7,500/-. When he represented to the Treasury Officer, Special Treasury, Jeypore for payment of held over T.I., he wrote to opposite party no.4 requesting him to clarify the matter, which was communicated to the petitioner, vide memo no. 354/99 dated 06.01.1999.

2.5. When the representation of the petitioner for enhancement of his contractual pay was submitted to opposite party no.3, the same was rejected and communicated to the petitioner through opposite party no.2. Therefore, the petitioner approached the Odisha Administrative Tribunal, Bhubaneswar, by filing O.A. No.1024 of 2000, which was disallowed, vide order dated 13.05.2002. Hence, this writ petition.

3. Mr. C.A. Rao, learned Senior Counsel along with Mr. S.K. Behera, learned counsel appearing for the petitioner vehemently contended that since the petitioner was given re-employment after five years of his retirement, i.e., on 31.07.1993 and, as such, the said employment was neither under the State Government nor the Central Government, as per Finance Department office memorandum dated 09.11.1994, clause-4(b) of the Regulation has no application to the case of the petitioner. It is further contended that the OCS (Pension) Rules, 1992 prescribes that prior to the Revised Scale of Pay Rules, those who have been re-employed shall be entitled to the benefit of Revised Scale of Pay Rules during the period of re-employment. Therefore, when the petitioner was re-appointed, his consolidated pay ought to have been fixed at Rs.9,000/-. But the Tribunal, without following Rule-89 of the OCS (Pension) Rules, 1992, disallowed the claim of the petitioner, which amounts to non-application of mind. It is further contended that since the benefit admissible to the petitioner is regulated under Rules-88 & 89 of the OCS (Pension) Rules, 1992, the Finance Department office memorandum dated 09.11.1994 cannot supersede the same and, as such, relying upon administrative instruction, the claim of the petitioner cannot be disallowed. It is further contended that while disallowing the benefit admissible to the petitioner, as communicated vide memo dated 05.04.2000, no reason has been assigned, therefore, the same cannot be sustained in the eye of law. More so, if the similar benefit has been granted to other five categories of employees, who were re-employed after their retirement,

denying the said benefit to the petitioner amounts to discrimination and hit by Article 14 of the Constitution of India. To substantiate his contentions, he has relied upon M/s. Shree Ganesh Construction v. State of Orissa, 2016(II) OLR 237; (Smt.) Bharati Das v. State of Orissa, 2020(II) OLR 537 and U.P. Raghavendra Acharya v. State of Karnataka, AIR 2006 SC 2145.

4. Mr. S.S. Kanungo, learned Addl. Government Advocate appearing for the State-opposite parties, while justifying the orders impugned passed by the authority as well as the Tribunal, contended that the petitioner retired from service on 31.07.1993 and re-employed on the consolidated pay of Rs.5,000/-, vide office order no.38093 dated 31.12.1997, pursuant to which he joined on 10.01.1998. The petitioner was drawing pension at Special Treasury, Jeypore on the strength of P.P.O No.82127 (supn.). In terms of S.R. 303(1) of the O.T.C. Volume-1, he was required to furnish the details of his employment/re-employment duly verified by the Head of Office, where he was employed/re-employed, once in a year preferably in the pension bill. It is further contended that as per Finance Department office memorandum dated 23.03.1977, T.I. in pension shall be suspended when State Government pensioner is employed/re-employed or absorbed permanently in a State Government or Central Government/ Company/ Corporation Undertaking/Autonomous Body or Nationalized Band including R.B.I. or Local Fund. The T.I. in pension shall also be suspended if the petitioner is in receipt of remuneration in any form of consolidated pay, fixed allowances, special pay or honorarium or in any other form. As per clause-4(b) of the Finance Department office memorandum dated 09.11.1994, T.I. on pension shall not be suspended if the petitioner is in receipt of consolidated amount in the form of pay, remuneration honorarium or fixed allowance during the period of re-employment provided the consolidated amount shall not include any element of Dearness Allowance and shall be kept at par with the pre-retirement pay of the pension. The pre-retirement pay of the petitioner is Rs.3500/- and on re-employment the consolidated pay of the petitioner is Rs.5,000/-. Thus, as per the provision contained in the above Government order the action of non-payment of T.I. to the petitioner by the Treasury Officer, Special Treasury, Jeypore is correct. Therefore, the question of release of T.I. to the petitioner does not arise after his re-employment. As such, the Tribunal is well justified in rejecting the claim of the petitioner which does not warrant interference of this Court at this stage.

5. This Court heard Mr. C.A. Rao, learned Senior Counsel along with Mr. S.K. Behera, learned counsel appearing for the petitioner; and Mr. S.S. Kanungo, learned Addl. Government Advocate appearing for the opposite parties in hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Based on the pleadings available on record, as well as the rival contentions raised by the learned counsel for the parties, following questions are formulated

to be answered in this case:-

(1) Whether the authority is well justified in turning down the request made by the petitioner for enhancement of contractual pay from Rs.5,000/- to Rs.7,500/- per month?

(2) Whether the petitioner is eligible to get his pensionary benefit as well as T.I. as admissible to him in accordance with law or not?

7. The Tribunal, vide order dated 13.05.2002 passed in O.A. No.1024 of 2000, has denied the benefit relying upon the office memorandum dated 09.11.1994 issued by the Finance Department, which reads as follows:-

"4(a) T.I. of a pensioner (including a family pension holder) shall be suspended when he/she is employed/re-employed in the services/posts under the State/ Central Government/Company or Local Fund Institutions or Industrial or Commercial undertakings or Corporations/Boards of State as well as Central Government or under any other Aided Institutions or Nationalized Banks including Reserve Bank of India and State Bank of India or Universities or under any other Society including Cooperative Societies/Cooperative Banks.

(b) T.I. on pension shall not be suspended if the pensioner is in receipt or consolidated amount in the form of pay, remuneration, honourarium or fixed allowances during the period of re-employment, provided the consolidated amount shall not include any element of dearness allowance and shall be kept at par with the pre-retirement pay of the pensioner."

8. It appears from clause-4(a) & (b) of the office memorandum dated 09.11.1994 issued by the Finance Department, T.I. of a pensioner (including a family pension holder) shall be suspended when he/she is employed/re-employed in the services/posts under the State/Central Government/Company or Local Fund Institutions or Industrial or Commercial Undertakings or Corporations/ Boards of State as well as Central Government or under any other Aided Institutions or Nationalized Banks including Reserve Bank of India and State Bank of India or Universities or under any other Society including Cooperative Societies/Cooperative Banks and T.I. on pension shall not be suspended if the pensioner is in receipt or consolidated amount in the form of pay, remuneration, honourarium or fixed allowances during the period of re-employment, provided the consolidated amount shall not include any element of dearness allowance and shall be kept at par with the pre-retirement pay of the pensioner.

9. So far as applicability of clause-4(a) of the aforesaid office memorandum is concerned, the same has no relevance to the case of the petitioner, as admittedly the petitioner was re-employed under the Denida project with consolidated remuneration. But the requirement under clause-4(b) of the aforesaid memorandum has to satisfy two conditions, namely, (1) the consolidated amount should not include any element of D.A. and (2) it should be kept at par with the pre-retirement pay of the petitioner. Admittedly, the petitioner satisfied the first

condition, as his consolidated remuneration did not include any element of D.A. and so far as condition no.2 is concerned, the consolidated remuneration of the petitioner was Rs.5,000/-, which is more than Rs.3,500/-, which was the last pay he was getting on the date of retirement. Applying the said analogy, the Tribunal has rejected the claim of the petitioner. The order of the Tribunal is an outcome of non-application of mind, as because by the time the petitioner got employment on consolidated amount of Rs.5,000/- per month, vide office order dated 31.12.1997, pursuant to which he joined before the Project Director, ILDP, Jeypore on 10.01.1998, Revised Scale of Pay Rules, 1998 had come into force w.e.f. 01.01.1996. Thereby, the basic salary of the petitioner was to be fixed at Rs.10,200/-, for which the claim made for fixing consolidated salary at Rs.7,500/- per month was recommended, when, as a matter of fact, his consolidated amount could have been at Rs.9,000/- per month. Under such circumstance, it can be safely stated that the Tribunal, without applying its mind, has disallowed the claim of T.I., which is contrary to clause-4(b) of the Finance Department office memorandum dated 09.11.1994.

10. It is of relevance to note here that the Governor of Odisha, in exercise of power under Article 309 of the Constitution of India, made a rule to regulate the grant of pension, gratuity and other retirement benefits to the persons on retirement from service in connection with the affairs of the State of Odisha, called “The Odisha Civil Services (Pension) Rules, 1992”. Chapter-XII thereof deals with re-employment of pensioners. Rule-87 deals with definition of ‘pension’. For just and proper adjudication of the case, the relevant rules of the Odisha Civil Services (Pension) Rules, 1992 are quoted below:-

“87. Definition-In this chapter, unless, the context otherwise requires:

(a) "Pension" means the gross monthly pension or Government's contribution to Contributory Provident Fund and/or other retirement benefits, if any, payable under the Odisha Civil Services (Pension) Rules, 1992 or the relevant rules of the Government or body under which the re-employed pensioner was serving prior to his retirement, where pension has been commuted partly or fully, pension means the gross pension payable prior to commutation.

(b) "Pre-retirement Pay" means:

(i) the pay which was taken into account for calculation of pension;

(ii) in case of an officer who retires while on leave or on deputation, the pay that he would have drawn, in this parent cadre but for going on leave or on deputation, shall be taken as pre-retirement pay provided the competent authority certifies that he would have continued to officiate the post but for his proceeding on leave or on deputation.

88. Except in case of the Government servants in receipt of non-practicing allowance either before or after re-employment, the persons re-employed prior to the date of introduction of the revised scales of pay shall be entitled to the

benefit of the revised scales of pay during the period of re-employment.

89. Fixation of pay of re-employed pensioners- (a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay attached to the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) (i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of the reemployed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. In all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

(c)(i) The re-employed pensioner, in addition to pay as fixed under sub-rule (b) above, shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(ii) Temporary Increase or Dearness Relief of the re-employed pensioner (including a family pension holder) shall be suspended when he/she is employed/ re-employed in the services/posts under the State/Central Government/Company or Local Fund Institutions or Industrial or Commercial Undertakings or Corporations/Boards of State as well as Central Government or under any other Aided Institutions or Nationalised Banks including Reserve Bank of India and State Bank of India or Universities or under any other Society including Co-operative Societies/Co-operative Banks.

Provided that Temporary Increase or Dearness Relief on pension shall not be suspended if the pensioner is in receipt of consolidated amount in the form of pay, remuneration, honorarium or fixed allowance during the period of re-employment, provided the consolidated amount shall not include any element of dearness allowance and shall be kept at par with the pre-retirement pay of the pensioner w.e.f dtd. 09.11.1994.

(d) In the case of persons retiring before attaining the age of 55 years and who are reemployed, pension/other forms of retirement benefits shall be ignored for initial pay fixation to the extent of ☐ 4000/-w.e.f 01.01.2006 or as shall be notified by the Government from time to time provided that-

(i) in the case of officers drawing pension not exceeding Rs.4000/- p.m. the actual pension.

(ii) In other cases-the first ☐ 4000/- of the pension. The pension for the purpose of this rule means gross pension (pension without deduction of commuted value).

Note-The fixation of pay on re-employment shall be made by the Administrative Department in consultation with the Finance Department.

94. Allowances-The drawal of various allowances and other benefits based on pay shall be regulated with reference to the pay that is fixed on re-employment. Pay for these allowances and benefits will be the pay fixed before deducting the non-ignorable part of the pension/other forms of retirement benefits."

11. From the above definition enshrined in clauses (a) and (b) of Rule-87 with regard to "pension" and "pre-retirement pay", the position is very clear. Under Rule-88, it is made clear that except in case of the Government servants in receipt of non-practicing allowance either before or after re-employment, the persons re-employed prior to the date of introduction of the revised scales of pay shall be entitled to the benefit of the revised scales of pay during the period of re-employment. This makes it clear that since the petitioner was re-employed on consolidated pay of Rs.5000/-, vide office order dated 31.12.1997, pursuant to which he joined on 10.01.1998, i.e., after commencement of the OCS (Pension) Rules, 1992 giving effect to 01.01.1996, he is entitled to get the benefit of revised scale of pay during the period of re-employment. Fixation of pay of re-employed pensioners has been provided under Rule-89 and as per sub-rule (b) (i) thereof, in all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post. Therefore, after revision of pay scale, if the petitioner is entitled to get fixation of scale of pay at Rs.10,200/-, he is entitled to get consolidated remuneration, but the same has not been paid to the petitioner. Thereby, he was loser, so far as revised scale of pay is concerned, as the consolidated salary was granted to him at Rs. 5000/- per month, even though request for consolidated pay of Rs.7,500/- was made by the petitioner. Therefore, in the name of re-employment, the petitioner cannot be denied the benefit admissible to him in accordance with the OCS (Pension) Rules, 1992. Since the said OCS (Pension) Rules, 1992, which have been framed in exercise of the power under Article 309 of the Constitution of India, is statutory and applicable to the petitioner.

12. Much reliance has been placed by the Tribunal on the office memorandum no.38284 dated 09.11.1994, by which the petitioner has been denied the benefit. It is profitable to note that executive instruction or office memorandum issued by the Department cannot supersede the statutory provisions governing the field.

13. In State of Madhya Pradesh v. Municipal Corporation, Indore, AIR 1987 SC 1983 : 1987 Supp. SCC 748, the apex Court held that the Government cannot restrict the operation of statutory rules by issuing executive instruction. The executive instruction may supplement but not supplant the statutory rules. In Palghat Zilla Thandan Sam,udhaya Samrakshna Samiti v. State of Kerala, (1994)

1 SCC 359, the apex Court held that the Government order cannot have the effect of modifying any Statute. In State of Madhya Pradesh v. G.S. Dal Flour Mill, AIR 1991 SC 772, the apex Court further held that an executive instruction cannot go against the statutory provision so as to whittle down the effect of such provision.

14. In Subhash Ramkumar Bind v. State of Maharashtra, (2003) 1 SCC 506 : AIR 2003 SC 269, the apex Court held that the administrative instructions are not intended to supplement or supersede the Act or statutory Rules and cannot take away the right vested in a person governed by the Act. The notification of which statute requires to be issued has a statutory force and not otherwise.

15. In K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395, the apex Court held that executive instructions can always supplement the rules which may not deal with every aspect of a matter.

16. In State of Rajasthan v. Jagdish Narain, (2009) 12 SCC 49, the apex Court held that in case of conflict between statutory rule and administrative instruction, the former shall prevail. No administrative instruction can override a statutory rule.

17. In Vinod Kumar v. State of J&K, (2012) 11 SCC 247, the apex Court held that there is primacy of statutory rules over Government Circulars.

18. In Joint Action Committee of Airlines Pilots' Association v. Director of General of Civil Aviation, (2011) 5 SCC 435, the apex Court held that executive instructions which are issued for guidance and to implement the scheme of the Act and do not have the force of law, can be issued by the competent authority and altered, replaced and substituted at any time. The law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable thereunder. An executive order is to be issued keeping in view the rules and executive business, though the executive order may not have the force of law but it is issued to prove guidelines to all concerned.

Similar view has also been taken by the apex Court in Khet Singh v. Union of India, (2002) 4 SCC 380, Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910 and Union of India v. Amrik Singh, (1994) 1 SCC 269.

19. In G.M. Uttanchal Jal Sansthan v. Laxmi Devi, (2009) 7 SCC 205, the apex Court held as follows:-

"We fail to understand how a mere circular letter which has no force of law shall prevail over the statutory rules. The respondents themselves have relied upon the decisions of the Court in DDA v. Joginder S. Monga, (2004) 2 SCC 297 : A. 2004 SC 3291 wherein it was held that executive instructions cannot run contrary to the statutory provisions."

Similar view has also been taken by the apex Court in catena of decisions.

20. In view of the settled positions of law, as enumerated above, it is made clear

that the OCS (Pension) Rules, 1992 is statutory and Rules-88 & 89 thereof explicitly provide that the benefit is to be extended to the re-employed pensioner and, more so, Rule-94 of the said Rules, 1992 makes it clear that the drawal of various allowance and other benefits based on pay shall be regulated with reference to the pay that is fixed on re-employment. But, in the present case, the petitioner was not getting any allowance rather he was receiving consolidated salary as per pre-revised Rules of 1998. Thereby, he cannot be denied the benefit which is admissible to him in accordance with Rules-88 and 89 of the Rules, 1992. So far as office memorandum office memorandum no.38284 dated 09.11.1994 is concerned, it only supplements the provisions contained in Rules-88 and 89 of the Rules, 1992 to the extent grant of T.I. as per clause 4(b) of the office memorandum. There is no dispute that the petitioner, during his period of re-employment, was receiving consolidated amount in the form of pay and it was not inclusive of dearness allowance. The office memorandum dated 09.11.1994 was issued in consonance with the provisions contained in Rules-88 and 89 of the OCS (Pension) Rules, 1992. Thereby, the Tribunal has committed gross error apparent on the face of the record in passing the order impugned dated 13.05.2002 in O.A. No.1024 of 2000 rejecting the claim of the petitioner to get T.I., which cannot be sustained in the eye of law.

21. As regards the proposal furnished by the authority, in pursuance of the representation filed by the petitioner, to give consolidated pay of Rs.7,500/-per month to the petitioner by enhancing his contractual pay, the same has been turned down on 14.03.2000 vide Annexure-11. On perusal of the same, it is made clear that no reason has been assigned while passing such order.

22. Franz Schubert said-

"Reason is nothing but analysis of belief."

In Black's Law Dictionary, reason has been defined as a-

"faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions."

It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

Therefore, reasons being a necessary concomitant to passing an order allowing the authority to discharge its duty in a meaningful manner either furnishing the same expressly or by necessary reference.

23. "Nihil quod est contra rationem est licitum" means as follows:

"nothing is permitted which is contrary to reason. It is the life of the law. Law is nothing but experience developed by reason and applied continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone can make the laws obligatory and lasting.”

Therefore, recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is pertinent to note that a decision is apt to be better if the reasons for it are set out in writing because the reasons are then more likely to have been properly thought out. It is vital for the purpose of showing a person that he is receiving justice.

In Re: Racal Communications Ltd. (1980)2 All ER 634 (HL), it has been held that the giving of reasons facilitates the detection of errors of law by the court.

In Padfield v. Minister of Agriculture, Fisheries and Food (1968) 1 All E.R. 694, it has been held that a failure to give reasons may permit the Court to infer that the decision was reached by the reasons of an error in law.

24. In Union of India v. Mohan Lal Capoor, AIR 1974 SC 87 it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken in Uma Charan v. State of Madhya Pradesh, AIR 1981 SC 1915.

25. In Travancore Rayons Ltd. v. The Union of India, AIR 1971 SC 862 it is observed by the apex Court that the necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

26. In Salabuddin Mohamed Yunus v. State of Andhra Pradesh, AIR 1984 SC 1905, the apex Court held that the payment of pension does not depend upon

the discretion of the State but is governed by the rules made in that behalf and a Government servant coming within such rule is entitled to claim pension.

27. The concept of 'pension' is now well known and has been clarified by the apex Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution.

28. Rule-33 (3) of the Odisha Service Code prescribes "Pension", which reads as under:-

"(3) Pension & Gratuities:- In case of employees who have retired on or after 1.7.86, the dearness pay shall count as emoluments for pension and gratuity in terms of Rule 73 of the Orissa Pension Rules 1977. The doses of temporary increase totaling to 8% of the pension subject to minimum of Rs.25/- and maximum of Rs.80/- will not however be admissible in these cases. These pensioners shall be entitled to further dose of temporary increase as may be declared effective after 1.1.86 from time to time. If however, the pension admissible without taking into account the dearness pay but the adhoc increase in pension is more favourable that the benefit under this order the individual can be granted the former. The dearness pay will also count as pay for the purpose of Family Pension Scheme, as amended from time to time."

29. Rule-(2)(p) of Odisha Civil Services (Pension) Rules, 1992 reads as under:-

"(p) "Pension" includes gratuity except where the term pension is used in contradiction to gratuity."

30. Taking into account the broad meaning of "pension", as mentioned above, pension is nothing but a periodical payment of money for past service.

31. In D.S. Nakara, as mentioned supra, the apex Court held as follows:-

"Pension" is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment but it is a payment for the past service rendered; and it is social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on as assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical raison d'etre for pensions is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution."

32. In Poornamal v. Union of India, AIR 1985 SC 1196 : (1985) 3 SCC 345, the apex Court referring to the judgment in Deakinandan Prasad v. State of Bihar, AIR 1971 SC 1409, held that "Pension" is not merely a statutory right but it is the fulfillment of a constitutional promise, inasmuch as it partakes the character of public assistance in case of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment.

33. In Kerala State Road Transport Corporation v. K.O. Varghese, AIR 2003 SC 3966, it has been held that the title 'pension' includes pecuniary allowances paid periodically by the Government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representative; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions. Pension means a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the secretary of State is satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing with retirement benefits and, except in the case of such a lump sum which had been paid to the employee.

In the aforesaid judgment the word 'pension' has also been analyzed, which reads as under:-

"On analysis of the word 'pension' three things emerge; (i) that the pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is social welfare measure rendering socio-economic justice to those who in the 'hey days' of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon additional condition of impeccable behavior even subsequent to retirement.

Pension is not a bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied.

Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and quantum of pension."

34. In V. Sukumaran, as mentioned supra, it has been held that pension is succor for post retirement period, which is not a bounty payable at will, but social welfare measure as post-retirement entitlement to maintain dignity of employee.

35. In Col. B.J. Akkara v. Govt. of India, (2006) 11 SCC 709, the apex Court held that the pay of an employee does not remain static. This is almost an universal rule in public services. An employee starts with a particular pay (commonly known as initial pay); then journeys through periodical increases (commonly known as increments) to reach the highest point that he is entitled to (commonly known as the ceiling). This is what a pay scale signifies. A 'pay scale' has basically three elements. The first is the minimum pay or initial pay in the pay scale. The second is the periodical increment. The third is the maximum pay in the pay scale. An employee starts with the initial pay in the pay scale and gets periodical increases (increments) and reaches the maximum or ceiling in the pay scale. Each stage in the pay scale starting from the initial pay and ending with the ceiling in the pay scale, when applied to an employee is referred to as 'basic pay' of the employee. Whenever the Government revises the pay scales, a fitment exercise takes place as per the principle of fitment (formula) provided in the rules governing the revision of pay so that the basic pay in the old scale is converted in to a "basic pay" in the revised pay scale.

36. In Gurupal Tuli v. State of Punjab, 1984 (Supp) SCC 716 : AIR 1984 SC 1901, the apex Court held that to be entitled to draw a particular pay scale the employee must fulfill the eligibility conditions whether by way of qualification or otherwise.

Since no reason has been assigned in the letter dated 14.03.2000 under Annexure-11 while turning down the claim of the petitioner for enhancement of his contractual pay from Rs.5,000/- to Rs.7,500/- per month, the said letter cannot be sustained in the eye of law and is liable to be quashed, and the petitioner is eligible to get his pensionary benefits and T.I., as admissible to him. Accordingly, questions no.1 and 2 are answered in favour of the petitioner.

37. Keeping in view the above meaning attached to the word "pension" and applying the law, as discussed above, to the present case, the order/letter dated 14.03.2000 under Annexure-11 turning down the representation filed by the petitioner for enhancement of his contractual pay from Rs.5,000/- to Rs.7,500/- per month, as well as the order dated 13.05.2002 passed by the Tribunal in O.A. No.1024 of 2000 under Annexure-12 refusing to grant T.I. in favour of the petitioner, cannot be sustained in the eye of law. Accordingly, the same are liable to be quashed and are hereby quashed. Consequentially, this Court directs the opposite parties to extend the pensionary benefits, as due and admissible to the petitioner, by granting T.I. and re-fixing pension by revising his pension as expeditiously as possible, but not later than three months from the date of production/communication of certified copy of this judgment. Needless to say, entire computation shall be made and the amount shall be paid to the petitioner forthwith taking into consideration the fact that the petitioner is at fag end of his life, as he is now 88 years of age.

38. In the result, the writ petition is allowed. But, however, in the facts and circumstances of the case, there shall be no order as to costs.

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