
(1999) 09 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 6207 of 1997

Prafulla Kishore Mohanti

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Orissa State Commission for Backward Classes Act, 1993 — Section 3

Citation : (2004) 97 CLT 622

Hon'ble Judges : Pradipta Ray, J;C.R. Pal, J

Bench : Division Bench

Advocate : S.K. Das, for the Appellant; B.K. Das, Additional Government Advocate, for the Respondent

Judgement

Pradipta Ray, J.—The writ petitioner, a retired Judge of Orissa High Court was appointed Chair-person of the Orissa State Commission for Backward Classes by Notification dated September 9, 1993 for a term of three years from the date of assuming the office. The petitioner assumed the office of Chairperson on September 15, 1993 and his term of office ended on September 14, 1996.

2. The Orissa State Commission for Backward Classes Act, 1993 has been enacted to constitute a State Commission for Backward Classes other than the Scheduled Caste and the Scheduled Tribe and to provide for matters connected there with or incidental thereto (hereinafter referred to as the "Backward Classes Act"). Section 3(1) authorises the State Government to constitute the Orissa State Commission for Backward Classes (hereinafter referred to as the "Commission"). Section 3(2) deals with the composition of the Commission. It has been provided therein that the Commission shall have a Chairperson, who is or has been the Judge of the High Court. Section 4(5) of the Act provides that the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and members shall be such as may be prescribed. Section 17 authorises the State Government to make rules by notification for carrying out the provisions the Act including the salaries and allowances payable

to and other terms and conditions of service of the Chairperson and members under Sub-section (5) of Section 4.

3. After assuming office as Chairperson the Writ-petitioner insisted that the rules relating to the salaries, allowances and other terms and conditions of service of the Chairperson and the members should be finalised before the Commission started functioning. It is the uniform convention and practice that if a retired Supreme Court or High Court Judge is appointed to any whole-time office, such retired Supreme Court or High Court Judge is entitled to all the salaries, allowances and other service benefits available to a sitting Judge of the Supreme Court or High Court as the case may be. In consonance with the said principle whenever the pay and allowances of the Judges of the Supreme Court or High Court are revised, the Central Government also issues guidelines prescribing the same pay, allowances and facilities for the retired Judges re-employed on whole-time basis.

4. When the writ petitioner was appointed Chairperson of the Commission in September, 1993 the salary and allowances of a serving High Court Judge were those which were revised with effect from January 1, 1986. Basic pay of a High Court puisne Judge was Rs. 8000/- (Rupees Eight thousand) fixed. On the basis of the said revision effected from January 1, 1986 the Central Government issued an office memorandum No. 19048.7.80 - E. IV dated October 8, 1987 (Annexure - 5) revising the previous guidelines and prescribing new terms and conditions of retired Judges re-employed on whole-time basis. It will appear from the said memorandum that same pay, allowances and perks as were applicable to the sitting Judges at the relevant points of time were made available to the retired Judges re-employed on whole-time basis.

5. By the Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance No. 7/96 sumptuary allowance of the High Court Judges was enhanced from Rs. 300/- (Rupees Three hundred) to Rs. 2000/- (Rupees Two thousand) per month with effect from January 11, 1996. On April 1, 1995 the Central Government granted interim relief @ 10% of the basic pay to the serving Judges of the High Courts and Supreme Court.

6. Pay and allowances of the sitting Judges of the Supreme Court and High Courts have been revised by the High Court and Supreme Court Judges (Conditions of Service) Amendment Ordinance, 1998 with effect from January 1, 1996. The basic pay of a High Court Judge has been raised from Rs. 8000/- (Rupees Eight thousand) (fixed) to Rs. 26,000/- (Rupees Twenty six thousand) (fixed) with effect from January 1, 1996. Although the Central Government has not yet taken any final decision on the terms and conditions to be allowed to the retired Judges appointed as Chairman/Members of the Commission/ Committee set up by the Government, it has already issued office memorandum No. 19407.4.1999- E. IV dated 12th August, 1999 prescribing that till a final decision is arrived at, the basic pay of a re-employed retired High Court Judge would be Rs. 26,000/- in stead of Rs. 8000/-.

7. According to the assertions made and materials placed before this Court even before issuing the office memorandum dated August 12, 1999 whenever the Central Government or any State Government has appointed any retired Judge of the High Court or the Supreme Court on whole time basis he has been invariably allowed to draw the same pay, allowances and benefits of a sitting High Court or Supreme Court Judge as the case may be.

8. The writ petitioner served as Chairperson of the Commission from September 15, 1993 to September 14, 1996. It is really deplorable that the State Government did not⁷could not frame rules prescribing the pay and allowances of the Chairperson and members of the Commission during the said period of three years. By his D.O. dated October 8, 1993 addressed to the Chief Secretary of the State of Orissa the petitioner claimed that he was entitled to all the benefits and facilities admissible to a sitting Judge of High Court as provided in the High Court Judges (Conditions of Service) Act and Rules, framed thereunder. Although no rule was framed, Harijan Welfare Department of the State of Orissa issued office memorandum dated February 7, 1994 (Annexure - 4) laying down guidelines for functioning of the Commission and provisionally prescribing the salaries and allowance and other benefits to be made available to the Chairperson and Members of the Commission. In its counter affidavit the State Government has averred that the said guidelines were framed following the guidelines as issued by the Central Government by office memorandum dated October 8, 1987. The writ petitioner by his letter No. 3867 OSCBC dated May 13, 1994 (Annexure-7) suggested changes in the guidelines and reiterated that he should be accorded the status and the same benefits as those of a sitting High Court Judge. From time to time the petitioner drew the attention of the State Government to the revised benefits as were being made available to the sitting Judges and claimed those benefits on the basis, that he was entitled to the same pay, allowances and other benefits as available to a sitting High Court Judge from time to time.

9. Undisputedly the petitioner was not allowed all the allowances and benefits of a sitting High Court Judge. It appears that he was not allowed free accommodation, free electricity, house rent allowance at the rate admissible to a High Court Judge, enhanced sumptuary allowance and interim reliefs allowed to the High Court Judges pending the revision of pay and allowances. The State Government in its counter affidavit affirmed by the Deputy Secretary of Welfare Department has taken the stand that petitioner was not entitled to any benefit other than those made available under the guidelines issued by the Harijan Welfare Department. The petitioner in this writ application has asserted with examples that the State Government has always allowed the retired High Court Judges re-employed on whole time basis to enjoy the status, pay, allowances and other benefits of a sitting High Court Judge. In its counter the State Government has not denied the said assertions and has not given any instance other than that of the petitioner where a retired Judge employed on whole time basis was not allowed the same benefits of a sitting High Court Judge. The petitioner has disclosed the benefits made available to the Chairperson of the National

Commission for Backward Classes and other Backward Class Commissions in several other States like West Bengal, Kerala, Assam and Andhra Pradesh where the Chairpersons being the retired Judge of the Supreme Court or High Court have been given the same benefits as those available to a sitting Judge of Supreme Court or High Court.

10. In this connection, relevant rules being Rules 3(1), (4) and (5) of the National Commission for Backward Classes (Salaries and Allowances and other Conditions of Service of Chairperson and Members) Rules, 1996 are reproduced below :

"3. Salaries and allowances : (1) The Chairperson shall be entitled to such pay as admissible to a Judge of the Supreme Court or a High Court depending upon the office earlier held by such Chairperson.

x x x

4. Rank and status : The Chairperson shall have the rank of a Judge of the Supreme Court or of a High Court as relevant to his case depending upon the office earlier held by him. The other Members shall have the status of a Secretary to the Government of India.

5. Sumptuary allowance : The Chairperson shall be entitled to a sumptuary allowance as per the entitlement of sitting Judge of a High Court as revised from time to time."

11. It appears from the Government Memorandum No. CWA-44-98-29996, dated November 11, 1998 that the then President of the State Commission constituted under the Consumer Protection Act, 1986 was allowed all the benefits of the sitting High Court Judge and even the revised pay and allowances from January 1, 1996. It has been also mentioned that Justice B. K. Behera (retd.) who was the Chairman of the Liquor Tragedy Commission was allowed pay, allowances and benefits of a sitting High Court Judge including sumptuary allowance and rent free accommodation. The State Government has not been able to place any acceptable reason why the writ petitioner has been singled out and treated in a manner which is not only discriminatory, but also derogatory to the status of a retired High Court Judge. Reference to the guidelines is misconceived and meaningless inasmuch as the petitioner did not accept the said terms and persistently put forward his claim that he was entitled to the same benefits as that of a sitting High Court Judge. The guideline was just a provisional arrangement till finalisation of the rule and it spent its force after the pay and allowances of the High Court Judges were revised with effect from January 1, 1996. As already pointed out, it is the long standing convention and practice without any exception that whenever a retired High Court Judge is re-employed on whole time basis he is entitled to the same pay, allowances and other benefits which are available to a sitting High Court Judge during the tenure of re-employment. No material has been produced before this Court that there was ever any exception to the said practice and convention. If the Central

Government or the State Government chooses to appoint a retired High Court Judge on whole time basis it is obliged to give him the status, pay, allowances and other benefits available to a sitting High Court Judge at the relevant points of time, unless of course, the concerned retired Judge expressly agrees to accept any lesser benefit.

12. For the foregoing reasons, we are of the view that the State Government has acted illegally, unreasonably and discriminatorily in not allowing the writ petitioner to draw the same pay, allowances and benefits as were available to a sitting High Court Judge during the tenure of the writ petitioner's office as Chairperson of the Commission.

13. We accordingly direct the opposite parties :

(i) to pay the petitioner salary of Rs. 26,000/- fixed and other allowances as admissible to a sitting High Court Judge from January 1, 1996 till September 14, 1996.

(ii) to pay to the petitioner sumptuary allowance at the rate of Rs. 2000/- per month from January 11, 1996 to September 14, 1996.

(iii) to pay house rent allowance at the rate of Rs. 2500/-per month for the period when he was not provided with Government accommodation after deducting the amount already paid as house rent allowance.

(iv) to pay the electricity charges consumed in the quarters allotted to the petitioner till September 14, 1996 and not to realise from the petitioner any amount on account . of electricity charges.

(v) to refund to the petitioner Rs. 3509/- which was deducted from the pay of the petitioner for the month of August, 1996 in terms of Memo No. 969/OSCBC dt. August 29, 1996 (Annexure-16), and

(iv) to calculate and pay all the dues of the petitioner as indicated hereinbefore within a period of three months from the date of communication of this order.

The writ petition is allowed to the extent indicated above.

C.R. Pal, J.

14. I agree.