(2015) 04 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (C) No. 26179 of 2011

Prafulla Kumar Supakar APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 04 OHC CK 0039

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Advocate : D. Panigrahi and A.R. Panigrahi, for the Appellant

Final Decision : Disposed off

Judgement

S.N. Prasad, J.

1. Heard learned counsels for the petitioner, the opposite party Nos. 1 to 4 and opposite party No. 5.

2. The petitioner has approached this Court for release of terminal benefit on account of having been separated under Voluntary Separation Scheme implemented by the Corporation (OSRTC).

3. The brief facts of the petitioner is that the petitioner has joined his service under Orissa State Road Transport Corporation (hereinafter referred to as the Corporation) which is a Government of Orissa undertaking Department of Public Enterprises vide resolution dated 21.09.2001 has floated the scheme "Model Voluntary Separation Scheme" for the employee of the Corporation which has been made applicable to the employees who are sick and unviable State Public Sector Undertakings/Corporation enterprises. Under the said resolution Government has take a decision to provide financial assistance to the aforesaid enterprises for implementation of V.S.S. (Annexure-1) at para-3 which is being quoted herein below:--

(a) "Amount payable towards ex-gratia, gratuity and leave encashment along with all other statutory dues such as Provident Fund, Employees State Insurance Fund shall be released in one installment to ensure disbursement to the employees on the date of separation.

(b) The arrear salary/wages shall be paid in installment (Through post-dated cheques), each installment covering six months of arrear. Accordingly, if the arrear salary/wages is for less than six months the amount shall be paid at the time of separation of the employees.

(c) All other dues (other than that indicated at (a) and (b) above) if any, shall be paid in two equal half yearly installments (through post-dated cheques) to the next financial year."

4. The OSRTC vide Memo No. 29848 dated 22.12.2001 has been implemented the resolution of V.S.S. dated 21.09.2001 the decision taken on 22.12.2001 inviting application from the eligible employee who desires to seek separation under V.S.S. scheme with the decision that the case of the eligible applicant recommended shall accompany his full services records as prescribed under Annexure-C enclosed herewith in the prescribed format.

5. With the further conditions that the payment of ex-gratia, gratuity and leave encashment along with all other statutory dues shall be paid to the employees within 60 days of acceptance of application by the competent authority subject to his/her clearing of all dues payable to the Corporation. The last date of submission of application was 31.01.2002.

6. According to the petitioner, he has made an application in terms of the decision dated 22.12.2001 and has been accepted on 16.01.2004 (Annexure-4) memo of the petition with a direction upon the petitioner to handover complete chares of all the Corporation properties with him.

7. Now the grievance of the petitioner is that if after acceptance of separation under the V.S.S. the monetary benefit as has been provided under Clause-4 of the decision dated 22.12.2001 has not yet been released.

8. According to the petitioner the moment the petitioner has been separated after acceptance of his offer for separation under V.S.S., it is the duty of the Corporation to act upon bilateral agreement which has been looked into after making an application for separation.

9. The grievance, after its acceptance by the authorities there cannot be any dubious act on the part of the authorities by not releasing the monetary benefits because the petitioner in anticipation of getting handsome amount after being separated which will be required to meet his ends for survival of his family members. But due to arbitrary action of the Corporation, the petitioner along with others and their family member at the verge of starvation.

10. The petitioner has approached the concerned authority but the authority has not taken any decision in this regard. This writ petition has been filed in the year

2011 and this Court has directed the opposite party to file counter affidavit. But till date no counter affidavit has been filed and in absence of counter affidavit the writ petition is being disposed of.

11. On the other hand, learned counsel for the opposite parties has argued that the petitioner is to be refund certain amount which according to the counsel for the Corporation is an amount of Rs. 48,000/- and as per the provision made at paragraph-4 of the decision dated 22.12.2001 (Annexure-2) will come under the definition of ''dues'' and since the petitioner has not submitted No Due Certificate hence the amount has not released. If the petitioner will deposit No Due Certificate there will be no delay in payment of the said amount according to the entitlement of the petitioner.

12. On query made by this Court the word ''dues'' lying with the petitioner for which No Due Certificate is necessary to be issued to the petitioner.

13. Learned counsel of the Corporation has submitted that the petitioner since has assigned with a duty for plying Bus and he has been directed to attain some target but he has failed to attain the target which caused financial loss to the Corporation i.e. Rs. 48,000/- which is the ''dues'' to be paid to the corporation by the petitioner. This stand of the learned counsel for the Corporation is not tenable due to the following reason:--

(1) The State of Odisha has issued resolution dated 22.09.2001 prescribing the scheme for "Model Voluntary Separation Scheme" providing ex-gratia, gratuity and leave encashment along with all other statutory dues in course of any employee working under Public Sector Undertaking to its entitlement.

14. In the said resolution of the decision was taken by the Government after payment of ex-gratia, gratuity and leave encashment along with all other statutory dues such as Provident Fund, Employees State Insurance Fund shall be released in one installment to ensure disbursement to the employees on the date of separation.

15. Further it has been provided that the arrear salary/wages shall be paid in installment, each installment covering six months of arrear. Accordingly, if the arrear salary/wages is for less than six months the amount shall be paid at the time of separation of the employees.

16. Further it has been provide that all other dues (other than that indicated at (a) and (b)) of the resolution dated 22.12.2001 if any shall be paid in two equal half yearly installments in the next financial year.

17. The resolution dated 21.09.2001 has been implemented by OSRTC vide decision taken on 22.12.2001 wherein it has also been taken for release of ex-gratia, gratuity and leave encashment and all other statutory dues which shall be paid to the employee within 60 days of acceptance of application by the competent authority subject to his/her clearing of all dues payable to the Corporation.

18. The petitioner in terms of the said resolution have made an application which has been accepted vide order dated 16.01.2004. The petitioner after perusing the terms and conditions of the V.S.S. has opted for separation in anticipation that he will get an handsome amount which will be required to that out the basic necessities for him along with his family members who are depended upon him.

19. The amount has not been released by the Corporation on the ground that there is some dues which is lying with the petitioner and the petitioner is refund back to the Corporation.

20. According to the learned counsel for the petitioner he has not taken any advance in cash or any instruments from the Corporation. This fact has not been disputed by the learned counsel for the Corporation.

21. Since the petitioner has not achieved certain target which is of an amount of Rs. 48,000/- which according to the Corporation is dues which the petitioner is liable to pay to the Corporation and since the said amount has not been paid hence according to the Corporation, the petitioner has not entitled to get the payment which is clearly mentioned at paragraph-4 of the decision dated 22.12.2001.

22. This stand of the learned counsel for the Corporation in my considered view is an arbitrary exercise because. If the employee like the petitioner has not performed his duty accordingly to the performance or according to the target the same can be said to be misconduct or dereliction of duty but it cannot be said to be the dues. The meaning of dues is advanced taken by employee which meant that if anybody has taken advance of any amount and the same has not been released in favour of the authority this can be said the dues.

23. It is admitted fact that the petitioner has not taken any advance from the Corporation hence it cannot be said there is something which can be said to be dues which is lying with the petitioner. Since according to the opposite parties since the petitioner has not performed his duty up to his target due to that the Corporation has sustained financial loss which shall be recovered to thet out the financial loss to the Corporation. This cannot be said to be the dues rather it may be said to be not good performance of the employee but certainly it cannot be said to be dues.

24. The ground taken by the Corporation until and unless Rs. 48,000/- will be paid by the petitioner in favour of the Corporation no "No Due Certificate" can be issued which is unwarranted and unjustified decision on the part of the Corporation.

25. In view thereof, on the basis of the fact mentioned hereinabove the matter is remitted before the Managing Director to take a decision according to the entitlement of the petitioner within 8 weeks from date of representation of certified copy of this order.

26. Learned counsel for the opposite party No. 5 has also submitted that the

amount which was deducted from the salary of the petitioner has also not deposited on the G.P.F. account of the petitioner.

27. The Managing Director is directed to look into the matter and provident fund all details of deduction from the salary to the Regional Provident Fund - opposite party No. 5 who shall take a decision within 8 weeks from the date of representation of certified copy of this order and release the amount of provident fund without any further delay.

28. The failure of release the amount in favour of the petitioner within the stipulated period, the petitioner will be entitled for payment of 10% interest.

With such observation and direction, the writ petition is disposed of.

