(2015) 07 OHC CK 0041

In the Orissa High Court

Case No : Writ Petition (C) No. 9279 of 2015

Premalata Panda — APPELLANT

Vs

State of Odisha and Others — RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Reserve Bank of India Act, 1934 — Section 15(1), 58, 58(1), 7(2)

Citation : (2015) 2 ILR Ori 538 : (2015) 2 OLR 214

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : A.K. Otta, A. Dhalsamanta and S. Das, for the Appellant; A.K. Mishra, Addl. Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J—The petitioner who was working as a Senior Stenographer in the Office of the Cuttack Development Authority (in short CDA) has filed this application seeking for following relief:

"issue RULE NISI calling upon the opposite parties to show cause as to why the petitioner shall not be entitled to get the benefit under Section 71(a) of the Odisha Service Code as amended as 25.07.2014 and on their failure to show cause or showing insufficient cause, to make the said RULE absolute and may also be pleased direct the opposite party No. 1 to take a decision on the resolution under Annexure 6 series within a stipulated period and in case of approval, to give retrospective effect to the same i.e. the day from which the age of superannuation has been enhanced in the case of employees of Urban Local Bodies, Odisha Small Industries Corporation and other Public Sector Units/ Undertakings and may be pleased to pass such other/further order/orders, direction/directions considering the facts and circumstances of the case."

2. The skeletal facts outlining the factual conspectus would be briefly narrated so as to better comprehend the issues seeking adjudication.

3. The petitioner having successfully completed Short Hand and Typewriting Test conducted on 05.12.1983 was given appointment for the post of Junior Stenographer in the office of the Cuttack Development Authority, hereinafter to be referred to as ''CDA'' - opposite party No. 2 herein. Accordingly, she joined in service on 13.07.1984 on contractual basis. After rendering service for a period of one year, vide Memo No. 6477 dated 23.07.1985, she was allowed to continue in service until further orders. Considering her efficiency and ability she was promoted to the post of Senior Stenographer. While she was so continuing, vide Office order No. 7903 dated 22.05.2014, Annexure-2, the CDA published the name of persons to retire during the year 2015-16 on attaining the age of superannuation at the age of 58 years, which includes the name of the petitioner at serial No. 06 and her date of superannuation being 30.06.2015 on attaining the age of 58 years. When the matter stood thus, a resolution was passed by the Government of Odisha in Finance Department on 28.06.2014 enhancing the retirement age of the State Government employees on superannuation and thereafter necessary amendment to Rule 71(a) of the Odisha Service Code by revising the same from 58 years to 60 years was done. Such enhancement has been made considering the significant improvement in average life expectancy in recent years and also following the foot print of Central Government modifying the age of superannuation of the employees of the State Government by enhancing the age from 58 years to 60 years. The Government of Odisha vide Resolution No. 1775-Cor.-I-45/2014-PE dated 02.08.2014 allowed the enhancement of age of retirement on superannuation in respect of the employees of the State Public Sector Undertakings from 58 years to 60 years, which was published in the Official Gazette on 18th August, 2014, vide Annexure-4. Pursuant to such notification, employees of the Orissa Small Industries Corporation Limited have been extended with such benefits with immediate effect. So far the employees of Urban Local Bodies are concerned, the Government of Odisha by resolution dated 07.02.2015 enhanced the retirement age from 58 years to 60 years, but so far as the employees of CDA are concerned, though recommendation has been made by CDA vide Annexure-6 series, till date no decision has been taken. Hence this petition.

4. Mr. S.K. Dash, learned counsel for the petitioner strenuously urged that the petitioner being a regular employee under the CDA, her service condition is regulated under the Orissa Service Code and accordingly, she was drawing her salary and other allowances as per the provisions under the Code since the date of her appointment. In view of the amendment made in Rule 71(a) of Odisha Service Code, there is absolutely no requirement to direct the petitioner to retire at the age of 58 years, rather the resolution passed by the Government dated 28.06.2014 enhancing the age of superannuation of State Government employees from 58 years to 60 years, will ipso facto apply to the employees of the CDA and the same does not require any further recommendation by CDA for approval from the Government for its employees. Accordingly, the petitioner could not have been noticed for superannuation on attaining the age of 58 years

on the basis of the pre-amended Rule 71(a) of Orissa Service Code. It is further urged that since in respect of employees of other Public Sector Undertakings namely, Orissa Small Scale Industries Corporation Ltd. benefit has been extended from the date of notification itself, the employees of the CDA could not have been discriminated in any manner whatsoever and as such, the petitioner could not have been asked to retire when her counterparts in Government, are still continuing even though they would have retired on the basis of the pre-amended age of superannuation under the Orissa Service Code. As such, in absence of any further Rules by the CDA, no approval would be necessary for adopting the amendment made to the Orissa Service Code and therefore, the age of superannuation of the employees of CDA is deemed to have been enhanced from the date such benefit has been granted to the employees of the State Govt. To substantiate his contentions, he has relied upon the Judgments in Santosh Kumar Mohanty v. State of Orissa and others (OJC No. 15530 of 2001 disposed of on 05.02.2015), State of Uttar Pradesh Vs. Dayanand Chakrawarty and Others, (2013) 7 AD 469 : AIR 2013 SC 3066 : (2013) 139 FLR 272 : (2013) 9 JT 494 : (2013) 8 SCALE 74 : (2013) 7 SCC 595 : (2013) 7 SCC(L&S) 791 : (2013) 4 SCT 145 : (2013) 3 SLJ 1 : (2013) AIRSCW 4374 : (2013) 5 Supreme 24 , Harwindra Kumar Vs. Chief Engineer, Karmik and Others, AIR 2006 SC 365 : (2005) 107 FLR 1194 : (2005) 10 JT 32 : (2006) 1 LLJ 452 : (2005) 9 SCALE 452 : (2005) 13 SCC 300 : (2006) SCC(L&S) 1063 : (2006) 2 SLJ 19 : (2005) AIRSCW 5995 : (2005) 8 Supreme 140 . The Bihar State Food & Civil Supplies Corporation Ltd. and others v. Mahendra Pratap Singh, decided in LAP No. 850 of 2009 disposed of on 22.02.2011.

5. Mr. A.K. Mishra, learned Addl. Government Advocate for the State states that the application is premature one in view of the fact that the recommendation made by the CDA for approval is still pending for consideration and therefore, the petitioner could not have approached this Court by filing the present writ petition and has referred to the prayer portion of the writ petition and stated that since the matter is pending with the Government for consideration, the writ petition should not be entertained at this juncture.

6. Mr. Dayananda Mohapatra, learned counsel for opposite party No. 2 - CDA vehemently refuted the contentions raised by the learned counsel for the petitioner and stated that the reference made in Annexure-4, the Resolution passed by the Department of Public Enterprises dated 02.08.2014 speaks about the conditions to be fulfilled with regard to enhancement of retirement age from 58 to 60 years with concurrence of the administrative department. The criteria having been fulfilled as mentioned in Annexured-4 enhancement of the age of superannuation from 58 years to 60 has been granted and therefore, the employees of the CDA having not stood in the same footing, the benefit cannot be extended as the recommendation made by the CDA is still pending for approval by the Administrative Department. Unless the same is approved, no benefit can be extended to the CDA employees with regard to enhancement of age of retirement pursuant to resolution passed by the State Government in

Annexure-2. Reference has been made to the extract of G.C.I.T. resolution dated 08.02.1971 in item No. 11/48 where there is an adoption of Orissa Service Code and T.A. Rules governing Trust employees. It is urged that merely on the basis of adoption of Service Code applicable to the employees of CDA, the benefit of enhancement of retirement age from 58 to 60 years cannot be extended to its employees in view of the resolution passed in the proceedings of the 106th meeting made dated 16.12.2014 in item No. 23/106 so far as enhancement of retirement age on superannuation of CDA employees, it was decided to submit the proposal to Government for orders. In consonance with the resolution passed by the authority, proposal has been sent to the Government but till date no approval has been made. In that view of the matter the petitioner is not entitled to get any benefit as claimed for continuance in service till attaining the age of 60 years.

7. On the basis of the facts pleaded above, it is to be considered whether the resolution passed by the Government in Annexure-2 enhancing the age of retirement of State Govt. employees on superannuation from 58 years to 60 years will be applicable to the employees of the CDA.

8. It appears that the employees of the Greater Cuttack Improvement Trust were transferred to CDA by virtue of Section 128-2(a) of the Development Authority Act, 1982. Greater Cuttack Improvement Trust, in its resolution No. 11/48, dated 08.02.1971 in Annexure-B/2, resolved as under:

"Item No. 11/48 Adoption of Orissa Service Code and T.A. Rules govern Trust employees.

The Trust adopted the Orissa Service Code and T.A. Rules and resolved that the Trust employees shall be governed by the provisions of the Orissa Service Code and T.A. Rules."

The authority of CDA in its resolution No. 4 dated 11.06.1984 adopted the Government Servant Conduct Rule, Orissa Civil Services (Classification, Control and Appeal) Rule and T.A. Rule for the employees of CDA. As per Rule 71 of the Orissa Service Code, the retirement age of the employees of the Government excepting Group-D has been fixed at 58 years. In view of such adoption of Orissa Service Code, the petitioner was to retire at the age 58 years. But subsequently, the Government amended the Rule 71(a) by enhancing the age of superannuation of the State Government employees from 58 years to 60 years and consequential resolution was passed vide Annexure-3 dated 28.06.2014, by which benefit of enhancement of age of superannuation from 58 years to 60 years has been granted to the State Government employees. Since the CDA has adopted the Orissa Service Code for its employees in absence of Rules framed by it, the enhancement age of superannuation made by the State Authority by virtue of the resolution vide Annexure-3 so far it relates to the State Government Employees, is also applicable to the employees of the CDA.

9. In Santosh Kumar Mohanty (supra) this Court has held that so far service

condition of the Bhubaneswar Development Authority constituted under Orissa Development Authority Act, 1982 is concerned, the employees of Greater Bhubaneswar Regional Improvement Trust were transferred and treated as employees of BDA and became amenable to the Rules framed by the Government and adopted by the BDA. Therefore, there is no doubt to the extent that the service condition of employees of Cuttack Greater Development Authority, whose services have been taken over by the CDA, are being regulated by the Orissa Service Code which was duly adopted by virtue of the Resolution passed in Annexure-B/2 referred to above.

10. In Harwindra Kumar (supra) in paragraphs-9, 10 and 11 the apex Court has held as follows:

"9. Reference in this connection may be made to a decision of this Court in the case of V.T. Khanzode and Others Vs. Reserve Bank of India and Another, AIR 1982 SC 917 : (1982) 44 FLR 317 : (1982) 1 LLJ 465 : (1982) 1 SCALE 316 : (1982) 2 SCC 7 : (1982) 3 SCR 411 : (1982) 1 SLJ 466 . In that case, under Section 58(1) of the Reserve Bank of India Act, powers were conferred upon the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision was necessary or convenient for the purpose of giving effect to the provisions of the Act which section in the opinion of their Lordships included the power to frame regulation in relation to service conditions of the bank staff. In that case, instead of framing regulations, the bank issued administrative circulars in relation to service conditions of the staff acting under Section 7(2) of the Reserve Bank of India Act which was a general power conferred upon the bank like Section 15(1) of the present Act. It was laid down that "there is no doubt that a statutory corporation can do only such acts as are authorized by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication." It was further laid down that "so long as staff regulations are not framed under Section 58(1), it is open to the Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act." As in the said case, no regulation was at all framed under Section 58 of the Reserve Bank of India Act, as such, the administrative circulars issued by the Central Board of Directors of the Bank under Section 7(2) of the Reserve Bank of India Act in relation to service conditions were held to be in consonance with law and not invalid.

10. In the present case, as Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting under Section 15(1) of the Act pursuant to direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view,

the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder age of superannuation of its employees to be 58 years, in case, it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to employees of the Nigam. It was also not possible for the State Government to give a direction purporting to Act under Section 89 of the Act to the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor it was permissible for the Nigam on the basis of such a direction of the State Government in policy matter of the Nigam to take an administrative decision acting under Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under Section 97(2)(c) of the Act.

11. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective."

11. In Dayanand Chakrawarty (supra), the apex Court has taken note of the Harwinder Kumar (supra) and held that so long as Regulation-31 is not amended, 60 years which is age of superannuation of the Government employees shall be applicable to the employees of the Nigam. It is further held that it was not possible for the Nigam to take an administrative decision pursuant to the direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the Government servants shall not apply to the employees of the Nigam. In view of such finding of the apex Court, the Nigam cannot act on the basis of the State Government orders on 29.09.2009 providing uniform age of superannuation as 58 years. Accordingly, the apex Court allowed the age of employees of Nigam to continue till the age of superannuation in view of the Regulation 31 and ordered that no recovery shall be made from those who continued till the age of 60 years. It is further observed by the apex Court that the employees who have not been allowed to continue after completing age of 58 years by virtue of the erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years.

12. In Chairman, U.P. Jal Nigam and Another Vs. Radhey Shyam Gautam and Another, (2007) 113 FLR 882 : (2007) 5 JT 177 : (2007) 5 SCALE 216 : (2007) 11 SCC 507 : (2008) 1 SCC(L&S) 59 : (2007) 4 SCR 583 : (2008) 1 SLJ 240 , following the decision of Harwindra Kumar (supra) the apex Court held that the

employees of the Nigam shall be entitled to full salary for the remaining period up to the age of 60 years. Similar question so far as it relates to the employees of BDA is concerned, came up for consideration of this Court in W.P.(C) No. 4641 and 6821 of 2015 and this Court issued notice on the question of admission as well as interim application, for allowing the petitioners therein to continue in service till attaining the age of superannuation at the age of 60 years pursuant to the resolution passed by the Government dated 28.6.2014. As an interim measure, this Court passed an order that pendency of the writ petition is not a bar to consider the grievance of the petitioners in the said cases to continue in service till they attains the age of superannuation at the age of 60 years by virtue of the amendment made in the Code 71(a) of the Orissa Service Code, which is applicable to the employees of the BDA pursuant to the resolution passed by the authority. Considering such interim order, the BDA allowed the petitioners in the said cases to continue in service and the aforementioned writ petitions are still pending for consideration by this Court. But the petitioner in W.P.(C) No. 7945 of 2015, who is an employee of BDA approached this Court to quash the notice of superannuation considering the case of Sarat Chandra Tripathy v. Odisha Forest Development Corporation & others in W.P.(C) No. 1636 of 2015, this Court dismissed the writ petition vide order dated 05.05.2015. Challenging the said order, a writ appeal has been preferred bearing W.A. No. 370 of 2015 and this Court passed an interim order on 30.06.2015 in Misc. Case No. 474 of 2015 directing to maintain status quo in respect of the appellant making it clear that the appellant will be allowed to continue in service subject to further orders to be passed in due course. Therefore, by virtue of said order passed by this Court, the appellant in the said writ appeal, who is the employee of BDA has been allowed to continue in service.

13. Mr. A.K. Mishra, learned Addl. Govt. Advocate for the State referring to the prayer portion of the writ petition states that the relief sought for allowing the petitioner to continue in service cannot be granted as the matter is pending before the State Government for approval. To such contention, Mr. S.K. Dash, learned counsel for the petitioner strenuously urged that in the interest of justice and equity, relief can be molded by the Court to the extent as if it had been asked for and it has been prayed for specifically.

14. The apex Court in the case of State of Rajasthan Vs. Hindustan Sugar Mills Ltd. and Others, AIR 1988 SC 1621 : (1988) 3 JT 57 : (1988) 2 SCALE 20 : (1988) 3 SCC 449 : (1988) 1 SCR 461 Supp : (1988) 2 UJ 362 held that the High Court which was exercising high prerogative jurisdiction under Article 226 could have molded the relief in a just and fair manner as required by the demands of the situation. In exercise of such power under Article 226 of the Constitution of India even though no specific prayer has been made in the writ petition taking into consideration the facts and circumstances of the case, this Court is inclined to mould the relief and pass order/direction as deemed fit and proper as prayed for by the learned Senior Counsel for the petitioner in the present writ petition.

15. Taking into consideration the ratio decided in Harwindra Kumar (Supra) and Chairman, Uttar Pradesh Jal Nigam (supra) and various orders passed by this Court as mentioned supra, since there is an amendment to Rule 71(a) of the Code enhancing the age of superannuation of the State Government employees from 58 to 60 years, that will ipso facto apply to the employees of the CDA by virtue of the resolution passed in Annexure-B/2 and no further approval is required by the Administrative Department, unless the CDA frames its own Rules regulating the service condition of its employees where the age of superannuation of the employees is to be incorporated. In absence of the same, any change in service Code with regard to the age of superannuation in respect of the employees of the State Government will also apply to the employees of the CDA. So far as the contention raised with regard to the recommendation made by the CDA for approval by the State Government is concerned, it may be its own internal arrangement for regularizing the matter in proper perspective, but that itself cannot stand on the way of allowing the benefits to its employees to continue in service till attaining the age of superannuation, i.e., 60 years.

16. Keeping in view the law laid down by the apex Court in Dayanand Chakrawarty (supra), this Court is of the opinion that the following consequential and pecuniary benefits should be allowed to different sets of CDA employees including the petitioner who were ordered to retire at the age of 58 years and this Court so directs.

(a) The employees, who moved the Court of law irrespective of the fact whether interim order was passed in their favour or not, shall be entitled to full salary up to the age of 60 years and arrear salary shall be paid to them after adjusting the amount, if any, paid.

(b) The employees, who never moved before any Court of law and had retired on attaining the age of superannuation, shall not be entitled for arrears of salary. However, they will be deemed to be continuing in service up to the age of 60 years. In their case, the CDA shall treat their age of superannuation as 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled to arrears of retirement benefits after adjusting the amount already paid.

(c) Needless to say that the arrears of salary and arrears of retirement benefits should be paid to such employees within a period of six months from the date of receipt of copy of the judgment.

(d) So far as the petitioner is concerned, since she had approached this Court before completion of 58 years of age and during pendency of the writ petition, she was made to retire on attaining the age of 58 years, this Court directs the opposite party No. 2 to bring her back into service forthwith and allow her to continue till she attains the age of 60 years and grant all the consequential service and financial benefits as due and admissible to her in accordance with law.

17. With the aforesaid observation and direction, the writ petition is allowed. No

cost.

