
(2006) 01 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 9254 of 1998

Rama Narayan Padhy

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Board of Secondary Education (Amendment) Regulations, 1997 — Regulation 20, 21, 22

Orissa Civil Services (Pension) Rules, 1992 — Rule 18, 2, 20(1)

Citation : (2006) 1 OLR 293

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Biswanath Rath, B. Senapati, B. Senapati, T. Rath, S.B. Mohanty, M.K. Panda, S.K. Jethy, P.S. Samantaray and P.K. Panda, for the Appellant; S.S. Das and K.C. Swain, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner has filed this writ application, inter alia, with the following prayers :

(i) to issue a writ of mandamus to the Board of Secondary Education, Orissa to calculate the arrear pension concerning the petitioner from 30.9.84 till date and to pay it forthwith.

(ii) to issue appropriate direction to opposite party No. 2 directing it to count the past service of 17 years of the petitioner for the purpose of commutation of pension and to release the enhanced pension from the date of eligibility.

(iii) to issue appropriate direction to opposite party No. 2 to release full pension and not provisional pension as has been applied in case of petitioner.

2. The brief facts as delineated in the writ application tend to reveal as follows :

The petitioner after acquiring Bachelor Degree in Arts and Diploma in Education

joined as Assistant Teacher in George V High School, presently known as Badakhemundi High School, at Digapahandi on 12.7.1945. Thereafter, on 3.7.1947, the petitioner was deputed for training to Radhanath Training College, Cuttack and after B.Ed. training, he was promoted as Headmaster of Badakhemundi High School vide order dated 26.6.1948. On 1.7.1958 the said High School was taken over by the Government and the petitioner continued as its Headmaster till 30.12.1963 and thereafter the petitioner joined the Board of Secondary Education, Orissa (hereinafter "Board") on 31.12.1963 and promoted as the Deputy Secretary of the Board and continued as such till 30.9.1984 when he took voluntary retirement from service. According to the petitioner, initially the employees of the Board were covered under the contributory Provident Fund Scheme as enumerated in Chapter-XIII of the Orissa Secondary Education Act, 1953 as it stood then with its amendment. According to the petitioner, in terms of Chapter-XIII of the Orissa Secondary Education Act, 1953, on voluntary retirement of the petitioner, the total dues towards Provident Fund benefit was calculated by the Board and the petitioner was allowed to draw his own contribution along with employee's contribution standing at his credit. Thereafter, according to the petitioner, the Board of Secondary Education (Amendment) Regulations, 1997 came into force and in terms of the said amendment, every employee retiring on or after the 1st day of January, 1982 shall be entitled either to the benefit of the pension including commutation of pension, gratuity and family pension as applicable to the State Government employees under the provisions of the Orissa Civil Services (Pension) Rules, 1992 and the Orissa Civil Services (Commutation of Pension) Rules, 1993 subject to the condition that in case of employees opting or deemed to have opted for the pension scheme, the amount contributed by the Board to their contributory Provident Fund together with interest accrued thereon till the date of their receiving pension shall be credited to the pension fund of the Board. The aforesaid Amended Regulations further provide that the pension scheme is to apply with effect from 1st day of January 1982. According to the petitioner, after the aforesaid amendment, the petitioner was served with a letter dated 29.7.1997, issued by the Secretary of the Board vide Annexure-1 indicating therein that the State Government have been pleased to approve the pension scheme in favour of the employees of the Board retiring on or after the 1st day of January, 1982, which was published in the extraordinary issue of the Orissa Gazette bearing No. 563 dated 7.5.1997 and came into force on the date of publication in the Orissa Gazette. In order to implement the aforesaid Scheme, the petitioner by Annexure-I was required to give option as per the enclosed pro forma in duplicate by 31.8.1997. On receipt of the aforesaid letter (Annexure-1), the petitioner submitted a representation, vide Annexure-2, giving his option as well as raising objection to the implementation of the Pension Scheme w.e.f. February, 1997 instead of 1.10.1984, and claimed that he is entitled to get the benefit of the Pension Scheme w.e.f. 1.10.1984. The petitioner also claimed in the said representation that he is entitled to the retrial benefits from 30.9.1984 when he retired from service and also alleged that he has not received an

amount of Rs. 4,015.49 towards the Board's share of the Provident Fund lying with the State Bank of India. When no action was taken on Annexure-2, the petitioner submitted a representation to the Secretary to the Government, School & Mass Education Department, vide Annexure-3. According to the petitioner, as the Pension Scheme under Regulation 20 in Section IV of Chapter-XIII of the Board of Secondary Education, Orissa (Amendment) Regulations, 1997 was published on 7.5.1997 in the extraordinary issue of the Orissa Gazette and as the same came into force on 1st day of January 1982, there is no doubt that the Pension Scheme has come into effect w.e.f. 1.1.1982 and since the petitioner has retired from service in September 1984, he is entitled to get pension from 1.10.1984. As there was no response to the aforesaid representation, the petitioner made another representation vide Annexure-4. The Secretary of the Board, Opposite Party No. 2, by letter dated 6.4.1998 (Annexure-5) intimated the petitioner that the authorities of the Board after careful consideration decided that the conditional option of the petitioner for coming over to the Pension Scheme of the Board of Secondary Education claiming retrospective effect from the very date of the retirement of the petitioner was not acceptable in view of the notification of the Board published in the Orissa Gazette on 7.5.1997 indicating that the same would come into force from the date of publication in the aforesaid gazette. By the aforesaid communication, the petitioner was requested to submit his revised option in duplicate for coming over to the Pension Scheme w.e.f. 7.5.1997, within fifteen days from the date of receipt of the said letter, if so desired. The petitioner's case is that the rejection of his claim for pension w.e.f. 1.10.1984 is illegal, for which, he has filed this writ application with the prayers indicated in the foregoing paragraph.

3. A counter affidavit has been filed on behalf of opposite party No. 2, i.e., the Board, refuting the claim of the petitioner on various grounds. It is stated therein that the Board of Secondary Education (Amendment) Regulations, 1997 specifies that the sanction of pensionary benefit in respect of the employees of the Board retiring on or after 1st day of January, 1982 came into force with effect from the date, of publication of the aforesaid Regulations in the Orissa Gazette w.e.f. 7.5.1997, for which the petitioner, who is a retired Deputy Secretary of the Board, was intimated to exercise his option to come over to the Pension Scheme w.e.f. 7.5.1997. According to the Board, as per the aforesaid Regulations more particularly the provisions laid down in Rule 20(1) of Section IV of Chapter-XIII of the Board's Regulations, the employees retiring on or after 1.1.1982 are entitled to get the benefits of the Pension Scheme w.e.f. 7.5.1997. It has also been clarified in the aforesaid counter affidavit that the payment of pensionary benefits will be made in accordance with the provisions of the Orissa Civil Services (Pension) Rules, 1992 read with the Orissa Civil Services (Commutation of Pension) Rules, 1993 which was given effect to from 7.5.1997. Learned counsel for opposite parties strongly submitted that the spirit of the notification specifying its enforcement w.e.f. 7.5.1997 indicates that an employee retiring on

or after 1.1.1982 and prior to 7.5.1997 is entitled to get pension w.e.f. 7.5.1997 as per O.C.S. (Pension) Rules, 1992. As the petitioner in his option form claimed pensionary benefits w.e.f 1.10.1984, the same was not accepted by the Board since the pensionary benefits accrued only from 7.5.1997.

4. The learned counsel for the petitioner filed a rejoinder to the counter affidavit filed by the opposite parties saying that the petitioner is entitled to get the pension and other benefits from the date of his retirement, i.e., 1.10.1984. According to him, as per the Regulations, i.e., Board of Secondary Education (Amendment) Regulations 1997, he is eligible to get pension and other benefits from the date of his retirement, i.e., 1.10.1984 because Regulation 20(1) of the said Regulations enumerates that all retired employees are to be treated at par with retired Government servants and to be governed by the provisions of the Orissa Civil Services (Pension) Rules, 1992 and the Orissa Civil Services (Commutation of Pension) Rules, 1993. Further, it is claimed that the petitioner is entitled to the benefits of total qualifying service of 39 years, instead of 20 years as wrongly taken by the Board, for which his basic pension requires to be re-fixed.

5. After hearing the rival contentions of the parties, the question that falls for consideration is whether the Board of Secondary Education (Amendment) Regulations, 1997 incorporating the Pension Scheme for employees of the Board will in any way help the petitioner to get the retrial benefits on and from 1.10.1984 he having retired on 30.9.1984, or from 7.5.1997, when the Board of Secondary Education, Orissa (Amendment) Regulations, 1997 was introduced incorporating the Pension Scheme for the employees of the Board. The Orissa Secondary Education (Constitution, Maintenance and Administration of Pension Fund) Regulations, 1997, came into force on the 1st day of January, 1982. There was also an amendment to the Board of Secondary Education, Orissa Regulations called as the Board of Secondary Education Orissa (Amendment) Regulations, 1997 inserting a new Section, i.e., Section-IV, in Chapter XIII. Section IV contains Regulations 20 to 22, which are as follows :

20. (1) Every employee retiring on or after the 1st day of January, 1982 shall be entitled either to the benefit of the pension including commutation of pension, gratuity and family pension as applicable to the State Government employees under the provisions of the Orissa Civil Services (Pension) Rules, 1992 and the Orissa Civil Services (Commutation of Pension) Rules, 1993 or to the benefit of contributory provident-cum-gratuity provided in this chapter, as he may opt.

(2) In the case of employees opting or deemed to have opted for the pension scheme the amount contribution by the Board to their contributory Provident Fund together with interest accrued thereon till the date of their receiving pension shall be credited to the pension fund of the Board.

(3) The employees of the Board under the pension scheme shall subscribe to the General Provident Fund Account, which shall be opened and operated in

accordance with the provisions contained in the General Provident Fund, Orissa Rules.

21. Notwithstanding the age of superannuation, the period of qualifying service of employees other than the class IV employees up to the time when they complete 58 years of age shall be taken into consideration to determine the quantum of their pension, family pension or commutation of pension. In the case of class IV employees the period of service up to the age of superannuation shall be reckoned for the purpose.

22. The period of qualifying service rendered by an employee under any of the following institutions shall count for the purpose of pension:

(a) Central Government

(b) State Government

(c) Any Indian University

(d) Any college affiliated to any University of the state and aided by the State Government.

(e) Any Educational Institution recognized by the Board and/ or any Research Institutions aided by the State/Central Government and

(f) The previous service in any institution on the basis of which such persons have been appointed in the Board.

6. The facts which are not in dispute are that the Board had no pension Rules of its own and its employees were availing the benefits of contributory provident fund and gratuity till 1997, when the Government of Orissa brought an amendment to the Regulations, i.e., Board of Secondary Education Orissa (Amendment) Regulations, 1997 as indicated above, which came into force on 7.5.1997, inserting Section IV to Chapter-XIII. The provisions incorporated in the said Regulations as quoted above would show that Regulation 20(1) provides that every employee retiring on or after the 1st day of January, 1982 shall be entitled either to the benefit of the pension as applicable to the State Government employees or to the benefit of contributory provident-cum-gratuity provided in this chapter, as he may opt. Regulation 20(2) provides that in case of employees opting for pension scheme, the amount contributed by the Board to their contributory Provident Fund together with interest shall be credited to the pension fund of the Board. It is a fact that the petitioner opted to come over to the pension scheme without refunding the amount of Board's contribution towards C.P.F. with a request to the authorities to adjust the amount from his arrear pension amount. The same was sanctioned and till date the petitioner is getting provisional pension at the revised rate.

7. The case of the opposite parties is that the petitioner was appointed on 31.12.1963 as a fresh recruit after due process of selection and joined the Board as Assistant Secretary. But the Board had no knowledge about his past service

and the petitioner took voluntary retirement in the year 1984 though his service was up to 1985 and only having qualifying service of 19 years and 3 months. According to the opposite parties, once the petitioner has opted for the pension scheme, which is at par with the Government employees, he is bound to be guided by the Orissa Civil Services (Pension) Rules, 1992 and Orissa Civil Services (Commutation of Pension) Rules, 1993 which was inserted by way of amendment in the Regulations of the Board in the year 1997 as Section IV under Chapter XIII of the Board's Regulations. This amended Regulations 1997 is a full-fledged one to enforce the pension scheme introduced therein. After the petitioner has opted for coming over to the pensionary benefit scheme, now the thing boils down to one question whether the service rendered by the petitioner in other institutions can be counted towards his qualifying service. I may refer to Clauses (e) & (f.) of the Board Regulation 22 quoted in the foregoing paragraph.

8. The argument of the learned counsel for the opposite parties is that there shall be a conjoint reading of Rule 2(r) of the OCS (Pension) Rules, 1992, which defines "qualifying service" and Rule 18 of OCS (Pension) Rules 1992, which speaks that service does not qualify for pension unless it is rendered in a pensionable establishment post. The interpretation of learned counsel for the opposite parties that the aforesaid Rule 2(r) and Rule 18 read conjointly with Regulation 22 of the Board of Secondary Education Orissa (Amendment) Regulations, 1997 is not acceptable because I am of the opinion that the Regulations of the Board, which was subsequently amended in 1997 is clear and unambiguous. There is no need to take the help of OCS (Pension) Rules, 1992 for the interpretation of Board Regulation, 1997 so also there is no need for a conjoint reading of Board Regulation, 1997 and OCS Rules to interpret the former and to decide whether the petitioner is entitled to get the benefit of the amending Regulations and whether his service elsewhere would be counted for the purpose of pension.

9. It appears from paragraph-3 of the writ application that after bachelor degree in Arts and Diploma in Education, the petitioner joined as Assistant Teacher in George V. High School, presently known as Badakhemundi High School, at Digapahandi on 12.7.1945 and thereafter getting B.Ed. training, he was promoted as Headmaster in the same school vide order dated 26.6.1948. The High School was taken over by Government on 1.7.1958 and the petitioner continued as Headmaster of the said School till joining in the Board of Secondary Education, Orissa on 31.12.1963. So, in my considered opinion, the claim of the petitioner for counting his past service in Badakhemundi High School has not been taken into consideration in terms of Clauses (e) and (f) of Regulation 22. Had it been counted towards pension, the total period of service rendered by the petitioner would have been 39 years, one month and 18 days as the case of the petitioner is squarely covered by the provision of Clauses (e) and (f) of the Regulation 22.

10. For the foregoing reasons, I allow this writ application and direct the opposite

parties to take the total period of service of the petitioner to be 39 years, one month and 18 days and re-fix his pension along with other retiral benefits from 1.10.1984 and complete this exercise within a period of three months from the date of communication of this judgment.