

(2022) 05 OHC CK 0148

In the Orissa High Court

Case No : Writ Petition (C) Nos. 3244, 3247, 3249 Of 2022

Ranjan Kumar Sahu

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 309
Odisha Civil Services (Pension) Rules, 1992 — Rule 3(1), 3(3), 3(4)

Citation : (2022) 05 OHC CK 0148

Hon'ble Judges : S.K. Panigrahi, J

Bench : Single Bench

Advocate : B.K. Pattanaik, S.K. Samal

Final Decision : Disposed Of

Judgement

S.K. Panigrahi, J.

1. These matters are taken up through hybrid mode.
2. All these Writ Petitions have been filed by the Jr. Lecturers of various districts, in Class-II of OES(HSB) in the scale of pay of Rs.6500-200-10500, seeking a direction to the Opposite Parties in the nature of a writ of Mandamus. The Petition calls into question and challenges the action of the Opposite Parties in not enrolling the petitioners under OCS (Pension) rules, 1992 though their selection is prior to commencement of the new pension scheme. Further, the petitioner challenges the discriminatory action of the Opposite Parties in treating the petitioners in a different manner in comparison to the persons selected and appointed in the same recruitment process.
3. The point that arises for consideration in all these Writ Petitions is one and the same. Hence all these Writ Petitions are clubbed together and being disposed of by this common judgment/order.
4. Shorn of unnecessary details, the sub-stratum of the matter presented before

this court remains that the petitioners were appointed as Jr. Lecturers in Class-II of OES (HSB) in the scale of pay of Rs.6500-200-10500 pursuant to advertisement dated 14.03.2002 bearing Advertisement No-5 of 2001-02, issued on behalf of the Odisha Public Service Commission.

5. Subsequently, vide notification dated 17th September 2005, the Government of Odisha amended the Odisha Civil Service (Pension) Rules, 1992. As per the amended Rules, all persons appointed under the Govt. of Odisha w.e.f. 1st January, 2005 shall not be eligible for pension as defined under sub-rule-1 of rule-3 of OCS (Pension) Rules, 1992.

6. It is argued on behalf of learned counsels for the Petitioners Ms. B.K. Pattanaik that even though the advertisement, selection list and the appointment thereto were made prior to 17th September 2005, the amended Rules came into force with retrospective application w.e.f. 01.01.2005.

7. Further, it is submitted by learned counsel for the Petitioners that even though the matter was brought to notice of the authorities, the same was disregarded on the ground that the Petitioner had not approached any judicial forum.

8. Per Contra, learned counsel for the Opposite Parties Mr S.K Samal, AGA, contended that the relief claimed by the Petitioners is contrary to the rule and the petitioners are not entitled to the relief claimed as the same is hit by the provisions of Sub-rule (4) of Rule-3 of O.C.S (Pension) Rules, 1992.

9. The point that arises for consideration in all these Writ Petitions is "whether a rule made with retrospective effect can take away the right vested on the petitioners". The further question to be dealt with is as to whether the opposite parties by allowing some of the Jr. Lecturers to be governed by the Old Pension Rules have discriminated the petitioners thereby violating Articles 14 and 16 of the Constitution.

10. In this regard, we must stress upon the judgment of Constitutional Bench of Hon'ble Supreme Court in the case of Chairman Railway Board v. C.R Rangadhamai CIVIL APPEAL NO. 4174-82 OF 1995. The Court having held that right to receive pension is a right vested under Right to Property, made certain observations as under:

"It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

11. Further, in para-24 of the judgment, the Hon'ble Supreme Court, in very strong terms observed that-

"In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

12. In the case of State of Madhya Pradesh and others v. Yogendra Shrivastava CIVIL APPEAL NO.3156 OF 2007, the Hon'ble Supreme Court was considering the amendment brought to Madhya Pradesh Employees' State Insurance Service (Gazetted) Recruitment Rules, 1981 by Notification dated 20.05.2003 giving it a retrospective effect from 14.10.1982. By the said amendment, the earlier provision in the Rule prescribing payment of Non Practising Allowance @ 25% of pay was amended to the effect that "NPA at such rates as may be fixed by the State Government from time to time by the orders issued in this behalf" in place of words "NPA @ 25% of the pay" wherever they occurred in the Rules.

13. On considering the said question, the Hon'ble Supreme Court, in paragraph - 15 of the said judgment 3 in the case of State of Madhya Pradesh supra held as:

"It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to the non-practising allowance @ 25% of their pay up to 20-5-2003."

14. On analyzing the facts presented before the court, it is clear that the petitioners were appointed and consequently joined their new assignments before the incorporation of amended rules. Admittedly, the amendment to the General Provident Fund (Orissa) Rules, 1938 was introduced by notification dated 31.8.2007 and the amendment to the Orissa Civil Service (Pension) Rules, 1992 by incorporating sub-rule (4) after sub- rule (3) in Rule 3 was brought into by notification dated 17.9.2005. It is, therefore, an admitted case that the petitioners by the dates when the amendments were brought into the rules by notifications, were continuing in their services.

15. In a large number of cases, the Hon'ble Apex Court has categorically laid

down that the right of an employee, which accrued in his favour on the date of appointment, cannot be taken away by the amending provisions of the Rules concerning the service with retrospective effect. An employee, while entering into service, is subjected to the condition of service as on the date, when he joins. Any right given to such employee under the provision of any Act or Rules governing the employment, if taken away by amending such Rules with retrospective effect, the same would amount to violating the Rules under Articles 14 & 16 of the Constitution.

16. Further, in the case of *Rajasthan Public Service Commission v. Chanan Ram* (1998) 4 SCC 202, the High Court made certain observations that once a process of selection has started as per the existing rules; even during the process, if any new rule comes into force, then such process of selection has to be completed as per old rules and not the new rules.

17. Insofar as the response of the Opposite Parties that the Petitioners had not approached any judicial forum, it is well-settled according to the principles of law that the benefit of judgment cannot be denied whether one approaches the court or not. In the case of *Santosh Kumar v. Union of India W.P. (C) 640/2021*, the court observed that:

"A deserving candidate who may not have means to approach the court should not be denied the benefits of one who comes to the court. The matter is one who does not come to court cannot be denied the benefit solely on the ground that he has not approached any judicial forum"

18. Moreover, by virtue of the order of the learned Tribunal, 23 number of Jr. Lecturers who were appointed along with the petitioners and in accordance with the same recruitment process have been brought under the old pension scheme vide order dated 21.01.2021. Therefore, the inaction of the Opposite Parties in not bringing the Petitioners under the Old Pension scheme is not just discriminatory but also untenable.

19. In the case at hand, as already stated above, all the petitioners joined their due assignments before the amendment of the Old Pension Rules. The said amended Rules, which were introduced by Notification dated 31.08.2007 and 17.09.2005 there could not have been given retrospective effect by stating that they will come into operation from 01.01.2005, which is prior to the date, when the Petitioners joined in their new assignments.

20. It is crystal clear that the statutes or Rules dealing with substantive rights - is prim facie / generally prospective unless it is expressly or by necessary implications made to have retrospective operation. In the case of *Young v. Adams* (1898) A.C. 469, the observation reveals that a statute cannot be provided with a retrospective effect unless the language of the statute intends or expressly mentions the same. The fact that the legislature can execute the power to extinguish the existing rights and obligations provided by a statute by means of retrospective enactment seems unfair. While the apex court in the case of

Govind Das v. Income Tax Officer (1976) 1 SCC 906 has followed in the maxim "lexprospicit non respicit" which means that the law in hand always looks forward and not towards the back. The essence of this principle is to subject current activities under the current laws only.

21. This Court is, therefore, of the considered view that the said amendments brought to the General Provident Fund (Orissa) Rules, 1938 and the Orissa Civil Service (Pension) Rules, 1992 will not apply to the Petitioners, who will be governed by the said Rules as it existed on the date of their joining in service.

22. This Court, therefore, quashes the impugned orders by which the representations of the Petitioners were rejected arbitrarily inasmuch as without assigning any reason in support of such rejection and direct that the Petitioners will be governed by the provisions of the old General Provident Fund (Orissa) Rules, 1938 and the Orissa Civil Service (Pension) Rules, 1992 as it stood prior to the amendments brought into the same and will be entitled to all the benefits, which were provided thereunder prior to such amendments. The amendments brought into the above two Rules, will have prospective effect from the date, such amendments were notified.

23. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court allows the petitions.

24. All the Writ Petitions are, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.

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