
(2015) 05 OHC CK 0032
In the Orissa High Court
Case No : O.J.C. No. 14562 of 1999

Sangitrao Pola Ramchandradu	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Citation : (2015) 120 CLT 1042 : (2015) 2 ILR Ori 188 : (2015) LabIC 2731

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

Bench : Single Bench

Advocate : R. Mohanty, for the Appellant

Final Decision : Dismissed

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 being aggrieved with the order dated 30.04.1997 issued by the Deputy Director to the Government of Odisha, School and Mass Education Department by which:-

(i) The claim of the petitioner for counting of the period of past service rendered by the petitioner in the Government School has been rejected.

(ii) For quashing the order dated 21.01.1999 by which the claim of the petitioner for getting pension by counting service of the petitioner which he has rendered under the Government from 14.7.1955 to 4.8.1965 has been rejected in view of the provision of Rule 23(2)(iv) of the Orissa Pension Rules, 1977.

3. The brief fact of the case is that the petitioner had joined his service on 14.07.1955 in the Office of the Collectorate, Ganjam as Clerk remained thereof to 5.8.1965. Thereafter the petitioner resigned from the said post to joint as Assistant Teacher in the High School at Padmanabhapur under Ganjam district

and accordingly his resignation was accepted.

4. The petitioner after being relieved on 5.8.1965 has joined as Assistant Teacher w.e.f. 9.8.1965 and retired from the said post on 30.04.1990.

5. After superannuation from service as an Assistant Teacher from an aided High School at Padmanabhapur, the petitioner was granted pension vide P.P.O. No. 7718 of 12/92.

6. The petitioner thereafter has made a claim before the authorities to count the period of service which he has rendered as Clerk in the Office of the Collectorate, Ganjam from 14.07.1955 to 5.8.1965 after granting full pension, the same has been finalized being rejected against which the petitioner has filed this writ petition.

7. It has been submitted that the case of the petitioner has been looked into by the Government as it would be evident from Annexure - 3 wherein although the claim of the petitioner has been rejected but the Director, Secondary Education, Odisha has been asked to examine the fact as to whether the incumbent is entitled for pension for the period of service rendered under Government and if so, steps may be taken up accordingly.

8. According to the said direction the Inspector of Schools has communicated to the Deputy Director vide communication dated 21.1.1999 (Annexure-4) wherein he has expressed his opinion for consideration of the petitioner for pension. Further he has referred he has already been paid pension for the aided period for 23 years by the Controller of Accounts.

9. The representation of the petitioner has been rejected by the Deputy Director, Government of Orissa vide memo No. 28584 dated 22.07.1999 on the ground that the petitioner is not entitled to get the benefit of pension which he has claimed in view of the provision of Rule 23(2)(iv) of the Orissa Pension Rules, 1977.

10. Being aggrieved with the decision of the Deputy Director, the petitioner has filed this writ petition on the ground as follows:-

(i) Since the petitioner has performed his service as a Clerk in the Office of the Collectorate, Ganjam for the period of more than 10 years and as such this period ought to have been considered for the purpose of counting entire service period for fixing full pension.

(ii) The Inspector of Schools has expressed his opinion that the case of the petitioner for separate pension but that has not been taken into consideration by the Deputy Director, who has issued Annexure-5 dated 21.1.1999 rejecting the claim of the petitioner.

11. On the other hand, learned counsel for the opposite party-State has submitted that the petitioner is not entitled to get benefit of pension by counting the past service rendered by the petitioner as Clerk in the Office of the

Collectorate, Ganjam because the petitioner has resigned from the post and thereafter he has appointed fresh in the aided High School at Padmanabhapur and as such in view of the provision as contained in Rule 23(2)(iv) of the Orissa Pension Rules, 1977, the petitioner is not entitled to be given the benefit of full pension.

12. He further contends that there are two separate rules governed rule one is for the employee working under the State Government, who are governed by the Odisha Civil Services (Pension), 1992 and the teaching and non-teaching staff are being governed by Orissa Aided Educational Institutions and Employees Retirement Pensions Rules, 1981 and as such since the benefit of pension is to be given to the employees of the regular establishment of the Government under provisions of the Rule and the Teaching and non-Teaching employees are being governed with different rules and as such the petitioner cannot be given such benefit.

13. Heard the parties and perused the documents on record.

14. The fact which is not in dispute in this case that the petitioner had joined his service on 14.07.1955 as Clerk in the Officer of the Collectorate, Ganjam remained there up to 5.8.1965. Thereafter, he has put his resignation which has been accepted and thereafter the petitioner has joined in the aided High School after being relieved on 5.8.1965 and after performing his duty he has superannuated w.e.f. 31.04.1990. The petitioner has been given the benefit of pension under the provision of the Orissa Aided Educational Institutions and Employees Retirement Pensions Rules, 1981 and accordingly a P.P.O. has been issued and the petitioner has started drawing the pension according to its entitlement and on the basis of the period of service rendered by the petitioner as an Assistant Teacher in the said aided High school.

15. The petitioner thereafter has made an application before the authorities concerned for consideration of his case for counting the period of service, which he has rendered as Clerk in the Office of Collectorate, Ganjam which is a period of about 10 years and 29 days, the same has been looked into by the authorities and thereafter the Government has referred the matter before the Director, Secondary Education to take a decision.

16. The Director has directed the Inspector of Schools, who is the Sanctioning Authority of pension under the Orissa Aided Educational Institutions and Employees Retirement Pensions Rules, 1981 wherein Rule 2(f) the definition of Pension Sanctioning Authority has been given. According to which the Inspector of Schools in case employees of High School has been the authorities with the power of sanctioning authority of the pension to the Assistant Teacher working under the aided School. The Inspector of Schools has passed an order expressing his opinion for consideration the case of the petitioner's pension which ultimately has not given rather the claim of the petitioner has been rejected by the order dated 21.8.1999 issued by the Deputy Director (School and Mass Education

Department by referring Rule 23(2)(iv) of the Orissa Pension Rules, 1977.

17. The contention of the learned counsel for the petitioner is that since he has performed his duty about 10 years and 29 days in the capacity of the Clerk in the Office of the Collectorate, Ganjam, this period should have been considered for the purpose of consideration of entitlement of the petitioner for full pension. To appreciate this, it is relevant to see the relevant provisions of Odisha Civil Services (Pension) Rules, 1992.

18. However in the counter affidavit or in the order referred Orissa Pension Rules, 1977 has been made in Annexure-5 mentioned as Orissa Pension Rules, 1997 has been trite which according to learned counsel for the State, it is due to typical error. The Orissa Pension Rules, 1977 will not be applicable because in the meanwhile the new Rule in the name of Odisha Civil Services (Pension) Rules 1992 has been promulgated but even if the relevant provision which has been given under Rule 23(2)(iv) of the Orissa Pension Rules, 1977, there is a Rule as contained in Rule 34(2) of the Odisha Civil Services (Pension) Rules 1992 which is *pari materia* to the Rule 23(2)(iv) of the Orissa Pension Rules, 1977 which speaks as follows:-

"A resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the State Government where service qualifies."

19. If the case of the petitioner will be looked into on the basis of the provision of the Rule 34(2) of the Odisha Civil Services (Pension) Rules 1992 which speaks that a resignation shall not entail forfeiture of the past service if it has been submitted to take up with the proper permission for another appointment, whether it is temporary or permanent under the State Government where service qualifies.

20. If the case of the petitioner will be taken into consideration then the petitioner although he was an employee under the State Government appointed as Clerk for a period of 10 years and 29 days but thereafter resigned from the said post and joined his service fresh in the aided School and accordingly fresh appointment cannot be said to be under the State Government.

21. In view of these aspect of the matter, the authorities who has passed the order after going through the Rule 34(2) of the Odisha Civil Services (Pension) Rules 1992 since the petitioner has not been appointed under the State Government rather under the aided School which is being governed by a separate Rule formulated for the purpose of consideration of the Teaching and Non-Teaching staff i.e. Orissa Aided Educational Institutions and Employees Retirement Pensions Rules, 1981. Hence the order passed by the Deputy Director cannot be said to suffer from any infirmity.

22. Further under the Orissa Aided Educational Institutions and Employees Retirement Pensions Rules, 1981 the Sanctioning authority for pension means

the District Inspector of Schools but under the Provisions of the Odisha Civil Services (Pension) Rules 1992 "Pension Sanctioning Authority" has been defined under Rule 2(q) under the explanation who is the appointing authority competent to make appointment to the post held by the retirement from government service since both the pensions depend upon two different provisions of Rules and since the petitioner immediately after resignation had joined his service in the aided School not directly under the State Government, hence in view of the specific bar as contained in Rule 34(2) of Odisha Civil Services (Pension) Rules 1992, the authority thereafter taken a decision of rejecting the claim of the petitioner.

23. In view of the facts stated hereinabove, I find no reason to interfere with the impugned order.

24. Accordingly, the writ petition is dismissed.