
(2012) 07 OHC CK 0029
In the Orissa High Court
Case No : Writ Petition (C) No. 29714 of 2011

Sanoj Podh

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Citation : (2013) 115 CLT 859 : (2013) 136 FLR 63

Hon'ble Judges : V. Gopala Gowda, C.J.; S.K. Mishra, J

Bench : Division Bench

Advocate : B.R. Sarangi and S.N. Jena, for the Appellant; R.K. Mohapatra, G.A., for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, C.J.—This writ petition has been filed by the petitioner, who is at present working as a Junior Stenographer in the judgeship of Sambalpur, questioning the correctness of the rejection of his representation dated 29.4.2010 by the O.P. No. 2 communicated to the petitioner by the O.P. No. 3 vide order dated 1.7.2011 (Annexure-14) with regard to grant of protection of his pay as well as past service rendered in his previous place of posting i.e. in the judgeship of Ganjam-Berhampur.

It is further prayed to quash the order dated 1.7.2011 under Annexure-14 and to issue a writ of mandamus directing the opposite party No. 2 for protection of his pay as well as past service for his future benefits. The case of the petitioner in nutshell is that pursuant to an advertisement issued in the year 2008 by the District & Sessions Judge, Ganjam-Gajapati-Berhampur for filling up of the post of Junior Stenographer he applied for the said post, appeared in the examination along with other candidates and as he came out successful in the process of selection, he was appointed temporarily as Junior Stenographer in the pay band of Rs. 5200-20,200 (Grade Pay Rs. 2400/-) per month with usual D.A. and other allowances as admissible from time to time and posted as such in the Court of Civil Judge (Jr. Divn.), Aska vide order of the District Judge, Ganjam dated 5/6th

January, 2009 and accordingly he joined in the said post. While the petitioner was continuing as such in the judgeship of Ganjam-Berhampur, an advertisement was issued by the District & Sessions Judge, Sambalpur in the month of November, 2009 for recruitment to the post of Junior Stenographer. In the said advertisement it was mentioned that the candidates who are in Govt. employment are required to apply through proper channel. Accordingly, petitioner offered his candidature through proper channel and his application was routed through the District Judge, Ganjam and sent to the District Judge, Sambalpur for consideration for appointment to the post of Junior Stenographer. Thereafter, the petitioner was called for along with other candidates to appear in the examination which was scheduled to be held on 7.3.2010. Petitioner appeared in the recruitment examination and on being duly selected for the post of Junior Stenographer, the District Judge, Sambalpur issued appointment order dated 23.3.2010 in favour of the petitioner and he was directed to join in the judgeship of Sambalpur on 5.4.2010 positively. In compliance to the order of appointment, petitioner prayed to the District Judge, Ganjam to relieve him from his duties to enable him to join in the judgeship of Sambalpur. Accordingly, petitioner was relieved from his duties vide office order dated 3.4.2010 from the judgeship of Ganjam-Berhampur and the same information was also communicated to the District Judge, Sambalpur. As per the appointment order petitioner joined in the judgeship of Sambalpur on 5.4.2010 as a Junior Stenographer. Even though the petitioner rendered service in the judgeship of Ganjam for more than one year, neither credit of his past service nor pay protection has been granted in the judgeship of Sambalpur. Therefore, he made a representation dated 29.4.2010 to the Judge in-charge of Accounts, Sambalpur judgeship seeking protection of pay and past service which he rendered in the Ganjam-Berhampur judgeship. However, the same has been rejected by the opposite party No. 2 vide impugned order under Annexure-14. Hence this writ petition.

2. Dr. Sarangi, learned Counsel for the petitioner submits that the petitioner served more than a year in the judgeship of Ganjam, Berhampur and got one increment in his scale of pay. As per the requirement he has submitted his application for the post of Jr. Stenographer in the judgeship of Sambalpur through proper channel and after issuance of appointment order by the District Judge, Sambalpur he has been duly relieved from the judgeship of Ganjam and joined in the judgeship of Samblapur. Further, the District Judge, Ganjam has also sent his Service Book, LPC indicating the last pay drawn at his old station and GIS information to the District Judge, Sambalpur. However, the O.P. Nos. 2 and 3 without applying their mind in proper perspective rejected the representation of the petitioner without granting the benefit as prayed, which is violative of the principles of service jurisprudence. It is also submitted that petitioner may not claim or get the seniority, but his protection of pay and service rendered in the judgeship of Ganjam cannot be taken away for his future service benefits. Therefore, it is prayed that the petitioner may be granted the

benefits as prayed for in this writ petition.

3. On the other hand Mr. Mohapatra, learned Government Advocate, placing reliance upon the counter filed by the opposite parties, particularly the averments made at paragraph 7 of the counter, submits that the representation of the petitioner has been rejected by the District Judge, Sambalpur on proper application of mind and as per the Government of Odisha, Finance Department Office Memorandum No. 31504/F dated 16.6.1980. It is submitted that if the petitioner could have resigned from his earlier post in the judgeship of Ganjam and joined in the judgeship of Sambalpur, his pay could have been protected. But the petitioner has been relieved from the judgeship of Ganjam and has joined in the judgeship of Sambalpur, therefore he cannot be granted the relief as prayed for. Hence, learned Govt. Advocate prayed for dismissal of the writ petition.

4. Dr. Sarangi, learned Counsel for the petitioner traversing the said contention submits that the O.P. Nos. 2 and 3 have not gone through the said circular dated 16.6.1980 carefully and wrongly interpreting the same, the representation of the petitioner has been rejected. It is submitted that the submission of the opposite parties to the effect that on the basis of the said circular the petitioner is not entitled the benefit is not at all correct, rather on the basis of the said circular petitioner is entitled to get the benefit for the reason that by careful reading of the said circular it speaks otherwise.

5. With reference to the aforesaid rival legal contentions urged on behalf of the parties, the following points would arise for consideration of this Court.

(i) Whether the petitioner is entitled for the protection of pay and past services for the period of service rendered by him in the judgeship of Ganjam-Berhampur?

(ii) What order?

6. The first point is required to be answered in favour of the petitioner for the following reasons.

It is not disputed by the opposite parties that petitioner has rendered service in the judgeship of Ganjam-Berhampur as a Junior Stenographer from 19.1.2009 to 3.4.2010. As per the terms and conditions in the advertisement issued by the O.P. No. 2 for the post of Jr. Stenographer, he applied through proper channel and after appearing in the recruitment test, being found suitable, he got selected for the post of Jr. Stenographer in the judgeship of Sambalpur and appointment order dated 23.3.2010 was issued by the O.P. No. 2 in his favour under Annexure-6. As the petitioner was serving under the establishment of District Judge, Ganjam, he requested the competent authority to relieve him from his duties. Accordingly, the competent authority relieved him from his duties enabling him to join in the judgeship of Sambalpur and thereafter he has joined in his new place of posting. The stand taken on behalf of the opposite parties, that as the petitioner has not submitted his resignation and he has only been relieved from his duty his previous service rendered cannot be taken into

consideration and protection of pay cannot be granted, is wholly untenable in law. The opposite parties-authorities have not properly taken into consideration the intent of the aforesaid circular of the Government dated 16.6.1980 and have rejected the representation of the petitioner wrongly interpreting the same. The Notification No. 31504/F dated 16.6.1980 reads thus:

The question whether the benefit of past service for the purpose of fixation of pay can be given to Government servants who resign their posts before taking up appointments in new posts in the same or another Department/ Organisation has been under the consideration of the State Government. Normally the benefit of past service is not allowed in the cases where service has been terminated by resignation, removal or dismissal. It has, however, been noticed that in several cases employees are called upon to resign their posts before taking up appointments in new posts offered to them as a result of examinations conducted by Service Commissions, Boards etc. Representations and claims are made by such employees for protection of their past service and pay in the new posts. In consideration of the existing employment situation, Government are of the view that denial of protection in such cases would bring avoidable financial hardship to the employees. It has, therefore, been decided that in the cases where Government servants take examinations conducted by Service Commissions, Boards, etc. for appointment to new posts or where they apply for posts in the same or other Departments through proper channel and on selection are asked to resign posts for administrative reasons the benefits of service may, if not otherwise inadmissible under the Rules, be given to them for fixation of pay in the new post treating the resignation as a technical formality.

7. By careful reading of aforesaid Notification of the Government, it is clear that normally the benefit of past service was not allowed in the cases where the employee's service had been terminated on his resignation, removal or dismissal to join a new post in other establishment. However, by that Notification, Government has decided that where the Government servant appears in the examinations for appointment to a new post, applying for the said new post, in the same or other department through proper channel and on selection if he/she is asked by the new employer to resign from the previous post for administrative reasons, the benefit of past service can be given to such employee.

8. In the instant case the petitioner has applied through proper channel and on selection and appointment he prayed the previous employer to relieve him from the post in order to join the new assignment in the judgeship of Sambalpur. He has not been asked by the new employer to resign so as to join the new post, therefore, he has been rightly relieved from his duties in the judgeship of Ganjam-Berhampur to join in the judgeship of Sambalpur. By no stretch of imagination can it be said that person, who has applied through proper channel and on being selected joined the new posts after duly been relieved from the previous employer cannot be given credit of past service and pay protection and the employee who has resigned from the earlier post only can be given the

protection of service/pay. If such an interpretation is given, as has been done by the O.P. No. 2, the aforesaid Notification would become futile and such interpretation is wholly misconceived and untenable in the eye of law. Further, it would not be out of place to mention that the representation submitted by the petitioner to his earlier employer to relieve him from duties and to permit him to join in his new post can also be treated as formal resignation for administrative reasons, which would also be in conformity with the later part of the said Notification. Therefore, the aforesaid Notification of the Government is very much applicable to the case of the petitioner to claim his entitlement of protection of pay as well as past service rendered in the judgeship of Ganjam-Berhampur. For the reasons stated supra, the rejection of the representation of the petitioner dated 29.4.2010 by the opposite party No. 2 is bad in law. Hence the impugned rejection order under Annexure-14 is liable to be quashed and is accordingly quashed. opposite party Nos. 2 and 3 are directed to protect the pay of the petitioner and allow him the benefit of past service rendered in the judgeship of Ganjam-Berhampur. However, petitioner cannot claim the seniority. As the petitioner has joined in the judgeship of Sambalpur on 5.4.2010 and in the meanwhile more than two years have elapsed, aforesaid direction be complied with by the O.P. Nos. 2 and 3 within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. Rule is issued.

Urgent certified copy of this order be given on proper application.

S.K. Mishra, J.

I agree.