

(2015) 05 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 1636 of 2015

Sarat Chandra Tripathy

APPELLANT

Vs

Odisha Forest Development Corporation and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Citation : (2015) 120 CLT 1047 : (2015) 2 ILR Ori 319 : (2015) LabIC 2623

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

Bench : Single Bench

Advocate : P. Panda-3, for the Appellant; P.K. Pattanaik, S.P. Das, D.P. Das and S. Das, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.

1. The petitioner who was working as Field Assistant under the Divisional Manager, Dhenkanal (C) Division of the Orissa Forest Development Corporation and attained the age of superannuation i.e. 58 years on 30.09.2014 seeks for a direction to continue in the post till completion of 60 years of age pursuant to resolution dated 28.06.2014 passed by the Government in Finance Department and avail all the consequential service benefits as due and admissible in accordance with law.

2. The short facts of the case in hand is that the service condition of the petitioner who was working as Field Assistant Grade-III under Divisional Manager, Dhenkanal (C) Division, Orissa Forest Development Corporation Ltd. is regulated by Service Rules framed by the Corporation. The age of superannuation of the employees of Grade-III post as per Rule-43 of the Service Rules of the Regulation was 58 years. The petitioner was due to attain the age of 58 years on 30.09.2014 and retire on the same day. Accordingly, the notice of superannuation was issued to the petitioner on 20.03.2014 allowing him to retire with effect from 30.09.2014. The Government of Orissa passed a resolution on

28.06.2014 enhancing the age of superannuation of State Government employees from 58 years to 60 years. Pursuant to resolution dated 28.06.2014, the petitioner claims that similar benefit has to be extended to the employees of the corporation by enhancing the age of superannuation from 58 years to 60 years. The Government of Odisha, Department of Public Enterprises by Resolution dated 02.08.2014 decided to increase the age of retirement of the employees of the Public Sector Undertakings to 60 years following the decision of the Government of Odisha to increase the age of retirement for the State Government employees. In spite of such Resolution being passed, since the benefit of enhancement of retirement age has not been extended to the petitioner, he has preferred this application.

3. Mr. B. Rout, learned counsel for the petitioner strenuously urged that once the State Government has extended the retirement age of its employees from 58 years to 60 years pursuant to Resolution dated 28.06.2014, the said benefit of enhancement of retirement age should be extended to the petitioner. Further, the Government of Odisha, Department of Public Enterprises by its Resolution dated 02.08.2014 decided to increase the age of retirement of the employees of the Public Sector Undertakings to 60 years. Once such decision has been taken, on that basis the opposite party-Corporation should have extended the benefit to the petitioner and due to non-consideration of the same, the petitioner made a representation on 04.08.2014. When such representation was pending, the petitioner filed W.P.(C) No. 18141/2014 and this Court disposed of the same stating that if the Board takes a decision in the light of the Resolution passed by the State Government increasing the age of superannuation of its employees from 58 years to 60 years, the petitioner shall be brought back to his position within a period of seven days from the date of concurrence from the Finance Department. The opposite party-Corporation recommended the proposal to the Government for approval with regard to enhancement of retirement age of its employees from 58 years to 60 years. On such recommendation, the State Government approved the proposal of enhancement of retirement of age of the Corporation employees from 58 years to 60 years along with consequential amendment to Rule-42 of OFC Service Rules-1986 vide Annexure-D dated 22.10.2014. It is urged that once the age of superannuation is enhanced from 58 to 60 years the benefit should be extended to the petitioner retrospectively in consonance with the order passed by this Court in W.P.(C) No. 18141/2014.

4. Mr. S.K. Pattnaik, learned Senior Counsel appearing for the opposite party-Corporation strenuously urged that though the State Government passed a Resolution on 28.06.2014 enhancing the age of superannuation from 58 to 60 years and subsequently, the Public Enterprise Department of Government of Odisha by Resolution dated 02.08.2014 decided to increase the age of retirement of the employees of the Public Sector Undertakings to 60 years, on that basis the Corporation has recommended vide letter dated 15.10.2014 in Annexure-C seeking for approval of the proposal of enhancement of age of retirement of its employees from 58 years to 60 years and the Government approved the proposal

of enhancement of retirement of age of the Corporation employees from 58 years to 60 years along with consequential amendment to Rule-42 of OFC Service Rules-1986 vide Annexure-D dated 22.10.2014. With reference to the letter dated 22.10.2014 vide Annexure-D, the claim made by the petitioner cannot sustain. So far as the claim relating to enhancement of retirement age is concerned, learned senior counsel submits that on the basis of the judgment passed by this Court, the same having been passed ex parte without hearing the opposite party cannot be acted upon.

5. On the basis of such contentions raised by the learned counsel for the parties, it appears that admittedly the petitioner was continuing as Field Assistant under the Divisional Manager, Dhenkanal (C) Division of the Orissa Forest Development Corporation. While continuing as such, in view of Rule 42 of the OFDC Service Rules, 1986 notice of superannuation vide Annexure-1 dated 20.03.2014 was issued to the petitioner allowing him to retire from the Corporation Service with effect from 30.09.2014 on attaining the age of superannuation of 58 years considering his date of birth as recorded in his Service Book being 30.09.1956. At this point of time the Government of Orissa passed a Resolution dated 28.06.2014 enhancing the age of superannuation of its employees from 58 years to 60 years. But, this Resolution has no application to present petitioner because that is only relating to the employees of the State Government. Subsequently, the Government of Odisha, Department of Public Enterprises passed a Resolution dated 02.08.2014 vide Annexure-3 enhancing the age of retirement of the employees of the Public Sector Undertakings from 58 years to 60 years subject to fulfillment of certain conditions by the respective Public Sector Undertakings which read as follows:

1. The Public Sector Undertaking must justify its need to retain the present experienced manpower for utilization of their services in achievement of the objectives of the Corporation.
2. The entity does not have compelling reasons to reduce cost by downsizing manpower.
3. The PSU must not have defaulted in payment of salary, statutory dues of the employees such as Provident Fund and ESI etc. in past three years.
4. The PSU must not have availed any additional budgetary support during the last three years for payment of salary and other employees dues (excepting the usual level of budgetary support availed by the PSU, if any).
5. The PSU must not have defaulted in payment of loan to any financial institution or State Government. The PSU must be update in payment of guarantee fee/royalty/dividend to the State Government, whichever is applicable.
6. The entity is and will be able to discharge the salary burden out of its own resources and not depend on additional budgetary grant (excepting any usual budgetary allocation)".

6. Pursuant to the aforesaid Resolution under Annexure-3 dated 02.08.2014, the Board of Directors of O.F.D.C. in their 242nd meeting held on 30.09.2014 authorized the Managing Director to submit the proposal to the Administrative Department for concurrence and for obtaining prior approval of the Govt. for giving effect to Public Enterprises Department Resolution dated 02.08.2014 prospectively. On 15.10.2015 the Odisha Forest Development Corporation Ltd. sought for approval of the proposal of enhancing the retirement age of its employees from 58 to 60 years along with the approval of the amendment of Rule 42 of OFC Service Rules 1986 as resolved in 242nd meeting of Board of Directors. Consequence thereof the Government of Orissa, Forest and Environment Department vide order dated 22.10.2014 vide Annexure-D approved the proposal of enhancement of age of retirement on superannuation of the employees of Odisha Forest Development Corporation Ltd. from 58 years to 60 years along with consequential amendment to Rule-42 of OFC Service Rules-1986 with a condition that the enhancement of retirement age shall be effective from the date of issuance of order by the Corporation. In consonance with the order passed under Annexure-D dated 22.10.2014 by the Government of Odisha, Forest and Environment Department, no material has been produced before this Court to show issuance of the order by the Corporation effecting the enhancement of age of retirement of its employees. The petitioner was superannuated from service on attaining the age of 58 years on 30.09.2014 even before grant of approval by the State Govt. In absence of any notification of OFDC pursuant to Annexure-D, the age of retirement of its employees cannot be construed to be applied with retrospective effect from the date of passing of Resolution by the Government of Odisha Department of Public Enterprises. If at all the benefit of enhancement of the age of superannuation is to be extended to the employees of OFDC, it will always be given prospectively pursuant to the approval of the State Govt. in Forest and Environment Department.

7. Coming to the question of implementation of the order of this Court in earlier writ petition bearing No. W.P.(C) 18141/2014 disposed of on 29.09.2014 so far as bringing back the petitioner to his position within a period of seven days from the date of concurrence by the Finance Department, it is only to be considered that the said order has been passed ex parte without hearing the opposite party. Similar question came up for consideration of this Court in Sukanta Chandra Mohanty v. State of Orissa and others W.P.(C) No. 14957/2014 disposed of on 31.03.2015) and Raghunath Das v. State (W.P.(C) No. 20381/2014 disposed of on 12.11.2014) wherein this Court has already held that the order of approval by the competent authority having been passed after the superannuation of the petitioner, the said approval can be applied prospectively but not retrospectively. Till date no material has been produced before this Court to indicate that the Corporation has already passed Resolution after getting approval of the State Government, Department of Forest and Environment to extend the benefit of enhancement of retirement age of its employees from 58 to 60 years. In absence of any notification, the claim of the petitioner that he is entitled to continue in

service till attaining the age of 60 years cannot be accepted.

8. In that view of the matter, even though approval has been made by the State Government, no notification having been issued by OFDC extending the benefit of enhancement of age of superannuation from 58 years to 60 years so far as its employees are concerned, the petitioner is not entitled to get the benefit of continuing in service till attaining the age of 60 years.

9. For the foregoing reasons, this Court finds no merit in the writ petition. Accordingly, the same is dismissed. No order to cost.