

(2013) 08 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No. 25371 of 2011

Smt. Bishnupriya Dei

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2014) 117 CLT 580 : (2013) 2 OLR 662

Hon'ble Judges : M.M. Das, J;A.K. Rath, J

Bench : Division Bench

Judgement

1. The petitioner who is a retired teacher of Secondary Board High School has assailed the action of the Secretary, Board of Secondary Education, Orissa, Cuttack rejecting her representation vide Annexure-4 for grant of pension taking into account the services rendered by her as an Assistant Teacher in Ganeswarpur Girls High School, Ganeswarpur in the district of Puri and to compute the pensionary benefits taking into account the past services rendered by her. The case of the petitioner is that after acquiring B.A. B.Ed. she was appointed as an Assistant Teacher in Ganeswarpur Girls High School in the district of Puri on 13.11.1972 and continued there till 23.09.1980. While the matter stood thus, she was selected as an Assistant Teacher in the Secondary Board High School, Cuttack. Pursuant to the same, she joined as an Assistant Teacher in Secondary Board High School, Cuttack on 24.09.1980 after she was relieved from Ganeswarpur Girls High School on 23.09.1980. After superannuation on 31.08.2010, she applied for pension on 07.09.2010 enclosing all relevant papers. The pension was sanctioned on 04.07.2011. However the period of service rendered by her in Ganeswarpur Girls High School was not taken into account, resulting in sanction of less pension. Thereafter she made a representation to the Board authorities regarding exclusion of seven years service period. However, the said representation was rejected by the Board of Secondary Education on jejune grounds. The order of rejection is impugned in the present writ petition on the ground, inter alia, that in view of the decision of this Court in the case of Rama Narayan Padhy Vs. State of Orissa and Another, ,

the services rendered by her in Ganeswarpur Girls High School ought to be taken into account for the purpose of computation of pension. The further ground of challenge is that the Regulation of the Board which was amended in 1997 is clear and unambiguous for which reference to the Orissa Treasury Rules is uncalled for. She further stated that her pension is to be computed in accordance with Regulation 22 of the Board of Secondary Education, Orissa (Amendment) Regulations, 1997.

2. Pursuant to issuance of notice, opposite parties entered appearance and filed their counter affidavit. The specific case of the opposite parties is that in view of Regulation 22 of the Orissa Secondary Education (Constitution, Maintenance and Administration of Pension Fund) Regulations, 1997, Controller of Accounts, Odisha, Bhubaneswar functioning under the administrative control of Government in Finance Department is the competent authority to interpret the pension Regulations of the Board. But the opposite parties are not competent to implement Pension Rules. Further the Pension Regulations of the Board have been framed by the Government of Orissa in exercise of their powers conferred u/s 21 of the Orissa Secondary Education Act, 1953 providing therein that no regulation made by the Board, shall be valid without approval of the State Government. It is further stated that opposite parties are estopped under the law from interpreting or interfering with the Pension Regulation and to act beyond its scope. It is also stated that, if the petitioner is aggrieved by the calculation made by the opposite parties, she could have moved the competent authority for appropriate action. It is further stated that the service book submitted by the petitioner in support of her service rendered under Ganeswarpur Girls High School, Puri reveals that she has actually served in the same school up to 31.12.1979. No particular of service rendered by her during the period from 01.01.1980 till 22.09.1980 is available in the service record. It is further revealed from the service book that the petitioner was allowed to proceed on leave with effect from 30.12.1979, but there was no record of joining after returning from leave. No verification of service has been recorded as per the provisions of Orissa Service Code pertaining to the period from 31.12.1979/01.01.1980 to 22.09.1980. The petitioner remained absent from the school from 31.12.1979 to 22.09.1980 and joined in the Secondary Board High School on 24.09.1980.

3. We have heard Mr. Kalyan Patnaik, learned counsel for the petitioner, learned Advocate General and Mr. P.K. Mohanty, learned Sr. Advocate for the opposite parties.

4. Relying on Regulations 21 and 22 of the Board of Secondary Education, Orissa (Amendment) Regulations, 1997, the learned Advocate General argues with vehemence that since the school in question, where the petitioner earlier worked is purely a private school and the services rendered by her was not in a pensionable establishment/post, the representation of the petitioner was rightly rejected. He further submits that if on a conjoint reading of Rule 2(r) of the

Orissa Civil Services (Pension) Rules, 1992, which defines "qualifying service" and Rule 18 of the said Rules, which speaks that service does not qualify for pension unless it is rendered in a pensionable establishment/post, a conclusion is irresistible that since the services rendered by the petitioner in Ganeswarpur Girls High School, Puri does not qualify for pension as the same was not a pensionable establishment/post. We are at loss to appreciate the submission made by the learned Advocate General. An identical question came up before this Court for consideration in the case of Rama Narayan Padhi (supra). Interpreting Regulation 22(e) and (f) of the Board of Secondary Education, Orissa (Amendment) Regulations, 1997, this Court in paragraph-8 of the judgment held as under:

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 are 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 Regulations, 1997 so also there is no need for a conjoint reading of Board Regulations, 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 services elsewhere would be counted for the purpose of pension.

5. Mr. Patnaik, learned counsel for the petitioner submits that the said judgment was challenged by the Board authorities in a writ appeal and ultimately the matter went to the Hon'ble Apex Court. But then the, same was not interfered with. Again in Prabodha Kumar Patnaik's case (in W.P. (C) No. 11794 of 2006 disposed of on 19.08.2010) applying the ratio of the judgment of Rama Narayan Padhy (supra), this Court in no uncertain terms held that the petitioner therein is squarely covered under Regulation 22(e), i.e., the period of qualifying service rendered by an employee under any educational institution recognized by the Board and/or any Research Institutions aided by the State/Central Government shall be counted for the purpose of pension. Be it noted that the Board of Secondary Education being unsuccessful, challenged the said order before the Division Bench of this Court. Thereafter the matter went to the Hon'ble Apex Court. The SLP was dismissed by the Hon'ble Supreme Court with the following observation.

In our view, the order passed by the learned Single Judge and the judgment of the Division Bench of the High Court are based on correct interpretation of the Orissa Civil Services (Pension) Rules, 1992 and the Orissa Civil Services

(Commutation of Pension) Rules, 1993 and the direction given by the learned Single Judge for computation of the total length of service of respondent No. 1 for the purpose of fixation of pension and grant of other retiral benefits does not suffer from any legal infirmity warranting interference by this Court under Article 136 of the Constitution.

6. Though, the matter was settled by this Court as well as by the Hon"ble Apex Court time and again, but then the Board authorities have adopted a discriminating attitude. The law is no more *res integra* that if a person similarly circumstanced approaches the Tribunal/High Court and gets some relief, the benefit of the judgment ought to be extended to those persons, who have not approached. The Board of Secondary Education, who is an ideal employer, ought to have extended the benefits of Rama Narayan Padhy (*supra*) and Prabodh Kumar Patnaik (*supra*), to the petitioner. As a necessary corollary, the order rejecting the representation of the petitioner under Annexure-4 is hereby quashed. The opposite parties are directed to compute the pensionary benefit of the petitioner by taking into account the past services rendered by her in Ganeswarpur Girls High School excluding the period from 31.12.1979 to 22.09.1980. The entire exercise shall be completed within a period of eight weeks from the date of production of a certified copy of this order. On such calculation the differential arrear of pension from the date of superannuation of the petitioner will date shall be paid to her within a further period of four weeks and she will thereafter continue to receive the pension amount as would be computed as per the direction given above.

The writ petition is allowed. There shall be no order as to costs.

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