
(2007) 03 OHC CK 0062
In the Orissa High Court
Case No : Writ Petition (C) No. 14362 of 2004

Sri B. Jagga Rao

APPELLANT

Vs

GRIDCO and Others

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Citation : (2007) 1 OLR 829 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Manoj Kumar Mishra, P.K. Das, L. Mishra and P.K. Nanda, for the Appellant; B.K. Nayak, B.K. Mohanty and D. Mishra for O.Ps. 2 and 3, for the Respondent

Judgement

M.M. Das, J.—Heard Mr. Mishra, learned Counsel for the Petitioner and Mr. B.K. Nayak, learned Counsel appearing for the opp. parties 2 and 3. In spite of notice, none have entered appearance on behalf of opp. party No. 1.

2. The Petitioner was serving under the Orissa State Electricity Board (for short "O.S.E.B.") as a Store Assistant. He continued to serve as such under opp. party No. 1-GRIDCO after the O.S.E.B. was taken over by the GRIDCO. It is the case of the Petitioner that as the person who were subsequently appointed as Store Assistants received higher scale of pay, the Petitioner made his grievances before the authority, pursuant to which his scale of pay was raised Rs. 60-1-75 to Rs. 110-8(5)-10(10)-250/- with effect from 1.4.1969. On 30.6.1980, the Secretary of O.S.E.B. having raised the scale of pay of the Petitioner as stated above with effect from 1.4.1969, the Executive Engineer (Electrical), Berhampur communicated the said fact to the Petitioner under Annexure-2 to the writ petition. The Petitioner alleges that in view of such revision in the scale of pay, he was entitled to the revised scale of pay and all consequential benefits, but however on 10.8.1984, the Superintending Engineer revoked the order passed by the Secretary of O.S.E.B. without assigning any reason and without giving any notice to the Petitioner. In the meantime, the Petitioner repeatedly made

representations regarding his scale of pay objecting to the action taken by the Superintending Engineer in revoking the order passed by the Secretary, O.S.E.B. It appears that subsequently the O.S.E.B. was taken over by the GRIDCO and thereafter it was fragmented into SOUTHCO and other distribution companies. The Petitioner also sent repeated reminders to the authority of SOUTHCO i.e. opp. parties 2 and 3 with regard to his entitlement to receive higher scale of pay with effect from 1.6.1994 as was decided by his employer i.e. the Secretary, O.S.E.B.. The Petitioner on attaining the age of superannuation has retired from service in the meantime.

3. As neither the Petitioner was granted higher scale of pay as fixed by the Secretary, O.S.E.B. under Annexure-2 to the writ Petitioner nor was his pension calculated by taking his salary at such higher scale of pay, the Petitioner being aggrieved has preferred this writ petition for appropriate relief. He has sought for quashing the order under Annexure-4 passed by the Superintending Engineer, Stores, revoking the fixation of salary as made by the Secretary, O.S.E.B.

4. A counter affidavit has been filed by the opp. parties 2 and 3 being SOUTHCO. The stand taken by the opp. parties 2 and 3 in the said counter affidavit is that the Executive Engineer erroneously enhanced the scale of pay of the Petitioner which was in contravention of a previous Office Order No. 13813 dated 6.8.1973. The said office order has been annexed to the counter affidavit as Annexure-A/3.

5. Mr. Mishra, learned Counsel for the Petitioner contended that the reasons assigned by the Superintending Engineer for revoking the order of the Secretary, O.S.E.B. are erroneous as well as fallacious. Drawing the attention of this Court to the office order dated 6.8.1973 under Annexure-A/3, Mr. Mishra submitted that in the said office order, nothing is mentioned with regard to the scale of pay of a Store Assistant working under the O.S.E.B. With regard to the submission of the learned Counsel for the opp. parties that the Superintending Engineer revoked the fixation of pay made by the Executive Engineer, Mr. Mishra submitted that it was not the Executive Engineer who passed the order under Annexure-2 fixing the scale of pay of the Petitioner, but it was the Secretary of O.S.E.B. who passed the same being the employer of the Petitioner.

6. Mr. Nayak, learned Counsel for the opp. parties 2 and 3, on the contrary, submitted that the order of the Executive Engineer by which the scale of pay of the Petitioner was revised, being contrary to the said office order, was rightly revoked by the Superintending Engineer. He further contended that the writ petition also suffers from the vigour of delay and laches on the part of the Petitioner, as the order of the Superintending Engineer sought to be quashed, was passed and communicated to the Petitioner on 10.8.1994 whereas the writ petition has been filed in the year, 2004 and further after revocation of fixation of the scale of pay, the same has been accepted by the Petitioner till his superannuation in the year, 1998. Thus, according to him, the Petitioner is estopped for challenging the same.

7. On perusal of the Annexures, it is revealed that the Petitioner on being aggrieved by the revocation of fixation of the scale of pay under Annexure-4, repeatedly made representations objecting to the same and even when his grievances remained unheard, the Employees Union also made representation in the year, 1991 under Annexure-6. Several representations were thereafter also made by the Petitioner under Annexure-7 series. Under Annexure-9 series dated 10.12.2001, the Executive Engineer (Electrical), SOUTHCO wrote a letter to the Assistant Manager (HRD) of GRIDCO, being opp. party No. 1, to consider the case of the Petitioner in accordance with his service book. In reply to the said letter, the Deputy Manager (HRD) of GRIDCO intimated the Executive Engineer, SOUTHCO that the revision of pay and pension of the Petitioner may be finalized by the SOUTHCO as the service book of the Petitioner was under its control and sent back the relevant papers which were received by the GRIDCO along with the aforesaid letter of the SOUTHCO. Subsequently, on 22.5.2004, the Asst. General Manager, Electrical of GRIDCO by his letter addressed to the Executive Engineer, Electrical, SOUTHCO submitted the original service book in 3 Vols. of the writ Petitioner to the said Executive Engineer.

8. From the above correspondence, this Court is of the view that the contention of Mr. Nayak, learned Counsel for the opp. parties that the claim is stale and the writ petition should be dismissed on the ground of laches, is not acceptable as the matter was under active consideration of the authorities till May, 2004 and the writ petition was filed in December, 2004. Now coming to the only defence set-forth in the counter affidavit filed by the SOUTHCO that the Superintending Engineer finding that fixation of the scale of pay of the Petitioner by the Executive Engineer was contrary to the office order dated 6.8.1973, it is to be examined as to how far the stand taken by the opp. parties 2 and 3 is acceptable.

9. A bare reading of the office order dated 6.8.1973 of O.S.E.B. under Annexure-A/3 goes to show that the said order referred to certain category of employees. For better appreciation, the relevant portion of the said order dated 6.8.1973 is quoted hereunder.

In pursuance of the decision taken by the Board, sanction is hereby accorded for the revision of the pay scales and categorization as enclosed in the statement. The old nomenclature to be assigned to them and the category to which they belong have been incorporated in the enclosure (Annexure-4).

10. It, therefore, transpires that the office order referred only to the category of employees mentioned in enclosed Annexure-A to the said order. On perusal of Annexure-A enclosed to the said order, it is clearly that the same does not include the category to which the writ Petitioner belonged i.e. "Storage Assistant". This Court, therefore, is of the cogent view that the said office order under Annexure-A/3 had absolutely no application to the case of the Petitioner. Further, the fixation of the scale of pay of the Petitioner was made by the O.S.E.B. through its Secretary under Annexure-2 to the writ petition. The O.S.E.B. was the employer of the Petitioner. This Court is of the considered view

that the Superintending Engineer being not the employer of the Petitioner, had no authority to revoke the order under Annexure-2 wherein the scale of pay of the Petitioner was fixed. From the above, therefore, the order of revocation passed by the Superintending Engineer under Annexure-4 to the writ petition by which the revised scale of pay fixed by the Secretary, O.S.E.B. which was communicated by the Executive Engineer was revoked, cannot be sustained.

11. In view of the above, this Court has no hesitation to hold that the revocation of the order of fixation of the scale of pay of the Petitioner made under Annexure-4 to the writ petition should be quashed. Accordingly, the order of the Superintending Engineer passed under Annexure-4 is quashed and as a consequence, the opp. parties 2 and 3 are directed to calculate salary of the Petitioner at the scale of pay which was fixed in Annexure-2 pursuant to the order of the Secretary, O.S.E.B. with effect from 1.4.1969 and pay the differential arrear salary to the Petitioner. Further, the authorities are directed to re-fix the pension of the Petitioner on calculating his entitlement as per the revised scale of pay which took effect from 1.4.1969 and also the annual increment in accordance with such revised scale of pay and pay the differential arrear pension and current pension at such rate to be calculated. The entire exercise shall be done within a period of six months from the date of communication of this order.

12. With the aforesaid observations and directions, the writ petition is disposed of.

13. It shall be the responsibility of the Petitioner to produce a certified copy of this order along with a copy of the writ petition before the opp. parties for compliance of the above directions.