(2025) 03 OHC CK 1359

In the Orissa High Court

Case No : Writ Petition (C) No. 20808 Of 2024

Sri Chittaranjan Senapati — APPELLANT

Vs

State Of Odisha And Another Vs — RESPONDENT

Date of Decision : 06-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 300A
Orissa Leave Rules, 1966 — Rule 20
Orissa Civil Services (Pension) Rules, 1992 — Rule 66

Citation : (2025) 03 OHC CK 1359

Hon'ble Judges : Aditya Kumar Mohapatra, J

Bench : Single Bench

Advocate : Prasanta Kumar Mishra, Akshaya Pati

Final Decision : Allowed

Judgement

Aditya Kumar Mohapatra, J.

1. Heard the learned counsel for the Petitioner as well as learned counsel for the State-Opposite Parties. Perused the respective pleadings of the parties as well as the documents annexed thereto.

2. The present writ petition has been filed by the Petitioner with a prayer to quash the order/letter No.8170/T dated 06.08.2024 under Annexure-2 to the writ petition, so far as it relates to sanction of unutilized leave salary with a further prayer to direct the Opposite Party No.1 to sanction and disburse the unutilized leave salary in his favour within a stipulated period of time.

3. Learned counsel for the Petitioner, at the outset, contended that the Petitioner, while working as Inspector Motor Vehicles in OTES Cadre under the Opposite Parties, has retired from service on attainting the age of superannuation w.e.f. 30.04.2024. In the present writ petition, the Petitioner seeks to challenge the order dated 06.08.2024 passed by the Commerce and Transport Department, Government of Odisha, thereby rejecting his claim for payment of unutilized

leave salary which the Petitioner is entitled to as per law.

4. Learned counsel for the Petitioner further contended that while the Petitioner was serving as Motor Vehicles Inspector, he was entangled in a vigilance case as well as in a disciplinary proceeding. However, both the proceedings were not concluded by the time the Petitioner retired from service. He further contended that after retirement from service, the Petitioner approached the Opposite Parties for payment of the financial dues in lieu of unutilized leave salary. The same having been rejected by the Opposite Parties by virtue of the impugned order dated 06.08.2024 under Annexure-2, the Petitioner seeks to challenge the same in the present writ petition. Learned counsel for the Petitioner further contended that the claim of the Petitioner has been rejected on the ground that such unutilized leave salary has not been sanctioned in favour of the Petitioner due to pendency of the vigilance case and disciplinary proceeding against him. Accordingly, the pension papers and the original Service Book of the Petitioner has been returned by the competent authority with a request to take appropriate action under Rule-66 of O.C.S. (Pension) Rules, 1992.

5. In course of his argument, learned counsel for the Petitioner contended that Rule-66 of the O.C.S. (Pension) Rules, 1992 has no application to the facts of the Petitioner's case, as no such provision exists permitting the authorities to withhold the unutilized leave salary in a case where a criminal case as well as a disciplinary proceeding is pending against the employee. He further contended that there exists no statutory provision to withhold the unutilized leave salary as is due and admissible to the present Petitioner. In such view of the matter, learned counsel for the Petitioner submitted that the conduct of the Opposite Party No.1 in rejecting his claim for sanction and disbursal of the unutilized leave salary for a period of 300 days is highly illegal and arbitrary. Further, referring to the judgment of the Hon'ble Supreme Court in the case of State of Jharkhand & others Vs.- Jitendra Kumar Srivastava & another, reported in AIR 2013 SC 3383, learned counsel for the Petitioner submitted that the executive instructions do not have statutory character and, therefore, the same cannot be termed as law within the meaning of the Article 300A of the Constitution of India. Since the monetary value equivalent to unutilized leave salary can very well be considered as a property within the definition of Article 300A of the Constitution of India, the Petitioner cannot be deprived of such benefits in the absence of any statutory provisions. Moreover, an executive instruction does not have the force of law and no provision in any of the statutes permit the Opposite Parties to withhold such benefits being extended to the employees/officers who are otherwise entitled to such benefits as per law.

6. In the aforesaid context, learned counsel for the Petitioner also referred to the order dated 28.02.2017 passed by a Division Bench of this Court in W.P.(C) No.3442 of 2016 (in the case of State of Odisha and Others v. Nirmal Chandra Satapathy and another). In the aforesaid case, the Hon'ble Division Bench dealt with a matter involving issues identical to the one involved in the present case,

where the unutilized leave salary was withheld on the ground of pendency of a vigilance case as well as a disciplinary proceeding. While referring to the judgment in Jitendra Kumar Srivastava's case (supra), the Hon'ble Division Bench has come to a conclusion that in the absence of any statutory rules, the leave encashment cannot be withheld by the authorities. Moreover, it has also been held that the contention of the learned Additional Government Advocate that the provision contained in Rule-20 of the Orissa Leave Rules, 1966 is attracted to the case, was also rejected by the Hon'ble Division Bench in the aforesaid order. Accordingly, the writ petition preferred by the State-Opposite Parties was dismissed while upholding the order passed by the learned O.A.T. dated 14.08.2015 in O.A. No.2037 of 2015 directing the Petitioners to release the unutilized leave salary.

7. Learned Additional Standing Counsel appearing for the State-Opposite Parties, on the other hand, referring to the counter affidavit filed on behalf of the Opposite Party No.1 and 2, emphatically argued that a judicial proceeding in the shape of a vigilance case as well as a disciplinary proceeding was pending against the Petitioner by the time the Petitioner retired from service on attaining the age of superannuation. Therefore, learned Additional Standing Counsel contended that pendency of such cases disentitled the Petitioner from getting such financial benefits including the cash equivalent of unutilized leave salary for a period of 300 days.

8. In course of his argument, learned Additional Standing Counsel referring to paragraph-7 of the counter affidavit, contended that the Finance Department, Government of Odisha, has come out with a Memorandum No.7493 dated 26.03.2015 wherein it has been stated that a cash amount equivalent to the unutilized leave salary to the Government servants will not be sanctioned in the event of their retirement on superannuation if it is found that a departmental/ judicial proceeding is pending against the Government servant as on the date of their retirement. While arguing with regard to applicability of Memorandum dated 26.03.2015, he further contended that since both a judicial proceeding as well as a disciplinary proceeding was pending against the Petitioner by the time the Petitioner retired from service, the Petitioner will be automatically covered under the Finance Department Office Memorandum dated 26.03.2015 and, as such, the Opposite Parties have not committed any illegality in denying such benefits to the Petitioner. In such view of the matter, learned counsel for the State submitted that the Petitioner is not entitled to the cash equivalent of unutilized leave salary and, as such, the writ petition is devoid of merit and, accordingly, the same should be dismissed.

9. Having heard the learned counsels appearing for both the sides, on a careful analysis of their submissions and upon a careful examination of the pleadings of the respective parteis as well as the documents placed before this Court for consideration, this Court observes that the only issue that falls for determination in the present writ petition is with regard to the entitlement of the Petitioner to

the cash equivalent of unutilized leave salary and the rejection thereof by the Opposite Parties vide order dated 06.08.2024 under Annexure-2. It is not disputed by both the sides that by the time the Petitioner has retired from service, a vigilance case and a disciplinary proceeding was pending against the Petitioner. Therefore, in the aforesaid factual background, the case of the Petitioner is required to be considered by this Court. With regard to withholding of the cash equivalent of unutilized leave salary, this Court found that there is no statutory rule or guidelines which specifically prohibits payment of such benefits to the employees who are involved in any judicial/disciplinary proceeding at the time of their retirement from service.

10. So far the applicability of Rule-66 of the OCS (Pension) Rules is concerned, this Court observes that the same has no application to the facts of the present case, as the same does not deal with sanction and disbursal of cash equivalent of unutilized leave salary and that the same specifically relates to payment of gratuity. Similarly, the Hon’ble Division Bench of this Court in Nirmal Chandra Satapathy’s case (supra) has taken into consideration the Finance Department Circular dated 17.12.1991 which was issued under Rule-20 of Orissa Leave Rules, 1966. In the said context, the Hon’ble Division Bench, by referring to the judgment of Hon’ble Supreme Court in Jitendra Kumar Srivastava’s case (supra), has categorically held that it is not open to the State Government to take away a part of the pension or gratuity or even leave encashment without any statutory provision under the umbrage of administrative instruction. Moreover, the circular that has been referred to by the learned counsel for the State in paragraph-7 of the counter affidavit dated 26.03.2015 is similar to the one that was under consideration by the Hon’ble Division Bench in the above noted case.

11. On a careful analysis of the factual background of the present case, further on close scrutiny of the legal provisions governing the field of sanction and disbursement of retiral benefits including cash equivalent of unutilized leave salary, this Court observes that there is no statutory provision either in the shape of an enactment or rules prohibiting payment of such amount to the employee who is found to be involved in a judicial proceeding or a disciplinary proceeding by the time he retires from Government Service. While saying so, this Court is aware of the provisions that prohibit payment of pensionary benefits as well as gratuity in a case where the Government employee is found to be involved in a judicial/departmental proceeding on the date of his retirement from service.

12. The question, therefore, which arises for consideration before this Court is whether the executive, by virtue of an executive instruction, can take away the service benefits which the Petitioner is otherwise entitled to as per law. In the aforesaid context, this Court would like to refer to the judgment of the Hon’ble Supreme Court in Jitendra Kumar Srivastava’s case (supra). In the said judgment, the Hon’ble Supreme Court has very categorically observed that it is not open to the State Government to take away a part of the pension or gratuity or even leave encashment without any statutory provision to that effect.

Therefore, the Opposite Parties have committed an error in withholding the leave encashment of the Petitioner by referring to the executive instruction dated 26.03.2015 under Annexure-A/2 to the counter affidavit. Moreover, this Court observes that in the rejection order dated 06.08.2024, it has not been mentioned that the claim of the Petitioner was rejected in view of the executive instruction vide Memorandum dated 26.03.2015 of the Finance Department, Government of Odisha, under Annexure-A/2 to the counter affidavit.

13. In view of the aforesaid analysis of the legal as well as factual position, further relying upon the order passed by the Hon'ble Division Bench of this Court in Nirmal Chandra Satapathy's case (supra), this Court is of the view that the impugned order dated 06.08.2024 under Annexure-2 to the writ petition is unsustainable in the eye of law. Accordingly, the same is hereby quashed. Further, the Opposite Parties are directed to calculate the cash equivalent of the unutilized leave salary for a period of 300 days as is due and admissible to the Petitioner and the same be sanctioned and disbursed in favour of the Petitioner within a period of two months from the date of communication of a copy of this judgment.

14. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

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