
(2014) 01 OHC CK 0075
In the Orissa High Court
Case No : W.P. (C) No. 14817 of 2013

State and Others	Vs	APPELLANT
Umesh Ch. Sutar		RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2014) 01 OHC CK 0075

Hon'ble Judges : Ratnakar Dash, J; M.M. Das, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard.
2. The petitioners - State have challenged the order dated 11.11.2011 passed in O.A. No. 348 of 2009 by the learned State Administrative Tribunal, Bhubaneswar.
3. By filing the present writ application on 03.07.2013, i.e., nearly two years after the impugned order was passed only one question has been raised by the petitioner - State that whether the O.C.S. (Pension) Rules, 1992, which was amended by Notification dated 17.09.2005 with retrospective effect from 01.01.2005, can be held to govern the opposite party - applicant or not?
4. The learned Tribunal, while considering the pleadings of the parties and after hearing learned counsel for the respective parties, as a matter of fact, finding that the opposite party was recruited to the post and joined on 17.02.2005, which was born in a pensionable establishment and by the impugned amendment, his right to get pension is curtailed and referring to a Constitution Bench judgment of the Hon'ble Supreme Court in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, as well as the other decisions, came to the conclusion that in accordance with the ratio of the aforesaid decisions, sub-rule- (4) of Rule - 3 of the O.C.S. (Pension) Rules, 1992 as amended as well as the amendment brought to the General Provident Fund

Rules under Annexure-B to the Original Application, cannot have any application in respect of the applicant - opposite party.

5. The learned Tribunal, therefore, quashed the order under Annexure-7 to the Original Application, by which the representation of the opposite party was rejected to include his service under the pensionable establishment.

6. Mr. Mohapatra, learned Government Advocate for the petitioners - State submits that the State has the authority to amend the Rules under Article - 309 of the Constitution of India and the amendment brought into the Rules having not been declared ultra vires, the interpretation made by the learned Tribunal cannot be accepted.

7. We, however, find that the Hon"ble Supreme Court, in the case of the Chairman, Railway Board and others (supra) categorically laid down that a Rule which operates in futuro so as to govern the future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles- 14 and 16 of the Constitution, but a Rule which seeks to take away the benefit from an anterior date, which has been granted or availed, can be held to be violative of Articles - 14 & 16 of the Constitution of India to the extent it operates retrospectively.

8. The same question, which is raised now with regard to the amendment of the O.C.S. (Pension) Rules, 1992 in Rule - 3 by adding a sub-rule as sub-rule (4) as well as the amendment brought to Rule - 4 of the General Provident Fund (Orissa) Rules, 1938 were considered by this Court in W.P. (C) No. 15433 of 2012 and other connected writ applications, which was disposed of by a judgment dated 24.04.2013.

9. This Court, in the said case also, came to the conclusion that the amendment brought in, cannot be applied to the petitioners and they will be governed by the said Rules as it existed on the date of their joining in service, which was prior to the amendments brought into those Rules.

10. In view of the above settled position of law, there is no necessity to refer to the decisions cited by the petitioners - State.

11. We do not find any impropriety or illegality to have been committed by the learned Tribunal in the impugned order. We are, therefore, not inclined to interfere with the same.

12. The writ application is accordingly dismissed.