

(2022) 03 OHC CK 0185

In the Orissa High Court

Case No : Writ Petition (C) No. 31814 Of 2011

State of Odisha And Another

APPELLANT

Vs

Samarendra Pradhan And Another

RESPONDENT

Date of Decision : 28-03-2022

Acts Referred:

Citation : (2022) 03 OHC CK 0185

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : P.K. Muduli, Amrit Mishra

Final Decision : Disposed Of

Judgement

1. The challenge in the present petition by the State is to an order dated 3rd September, 2009 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (OAT) in O.A. No.877 (C) of 2004 filed by OP No.1 and directing that his retiral and pensionary benefit should be recalculated as if OP No.1 had continued in the rank of Deputy Superintendent of Police (DSP) till the date of his retirement.

2. The background facts are that OP No.1 was selected in 1992 for promotion to the rank of DSP from the post of Inspector of Police. He was allowed to hold the office of DSP as ad hoc DSP by Notification dated 29th January, 1993 till the date of recommendation made by the Orissa Public Service Commission, Cuttack (OPSC).

3. Within the period of one year, the OPSC did not recommend OP No.1. His posting as DSP was therefore extended. Subsequently, by letter dated 23rd February, 1996 the OPSC did not find OP No.1 suitable for promotion to the rank of DSP. Accordingly, by Notification dated 31st August, 1996 the Government reverted the Petitioner from the post of DSP to the post of Inspector of Police.

4. The above reversion order was challenged by OP No.1 by filing O.A. No.2289

of 1996 in the OAT. While issuing notice in the said application, the OAT stayed the operation of the Notification dated 31st August, 1996 by an order dated 23rd September, 1996.

5. As a result of the above stay order, OP No.1 continued as ad hoc DSP till the date of his retirement i.e. 31st March, 2000. It appears that in O.A. No.2289 of 1996 was listed before the OAT for hearing on 21st February, 2003, OP No.1 informed the OAT that since he had retired from Government service, he did not wish to prosecute the case. The order passed by the OAT on 21st February, 2003 in this regard significant read as under;

"Taken up on mention Heard.

The learned counsel for the applicant files a memo for withdrawal of this O.A. on the ground that the applicant has already been retired and does not want to prosecute the case. In view of the said memo the O.A. is permitted to be withdrawn with the liberty to agitate the same cause of action before any Bench of the Tribunal. The O.A. is disposed of."

6. It may be noted here that permission was granted by the OAT to withdraw the petition without liberty to agitate the same cause of action. Consequently, as a result of withdrawal of the above O.A. the Petitioner's reversion from the post of DSP to that of Inspector of Police by Notification dated 31st August, 1996 of the Government, became final.

7. It is thereafter that an order was issued on 9th May, 2003 by the Home Department, Government of Orissa fixing his retiral dues and pension on the basis that he had been reverted as Inspector of Police by the Notification dated 31st August, 1996.

8. The above order dated 9th May, 2003 was challenged by OP No.1 before the OAT by filing O.A. No.877(C) of 2004. By the impugned order dated 3rd September, 2009 the application was allowed by the OAT with a direction to the Department as noticed hereinbefore.

9. It may noted here that by an order dated 22nd January, 2015 notice was issued by this Court to the present Petitioner. Subsequently, on 28th March, 2019 while admitting the petition, the impugned order of the OAT was stayed by this Court. However, it was made clear that OP No.1 would be paid his pension as Inspector pending disposal of the writ petition.

10. This Court heard the submissions of Mr. P.K. Muduli, learned AGA and Mr. A. Mishra, learned counsel for OP No.1.

11. Mr. Muduli placed reliance on the decision of the Supreme Court in *Abhimanyoo Ram v. State of Uttar Pradesh* (2008) 17 SCC 73 to urge that upon withdrawal unconditionally by OP No.1 of the petition challenging his reversion from the post of DSP to that of Inspector of Police, the said reversion became final. Consequently, on the date of his retirement i.e. 31st March, 2000 the

Petitioner could have retired only as Inspector. It so happened that on account of stay granted by the OAT he retired as DSP. But with the OA itself standing withdrawn without liberty, the retirement of OP No.1 could not have been in the rank of DSP but only in the rank of Inspector. To the same effect is the decision in *Abhimanyoo Ram v. State of Uttar Pradesh* (supra).

11. Consequently, the Court has no hesitation in setting aside the impugned order of the OAT and directing that OP No.1 will be continued to be paid his pension and other retiral benefits in the light of the order dated 9th May, 2003 of the Home Department subject to the modification that the Petitioner will get salary of DSP for the period after 31st August, 1996 till the date he retired because he continued as DSP till his retirement. In other words, he will get salary of DSP for the period between 31st August 1996 till 31st March 2000.

12. The writ petition is disposed of in the above terms.

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