
(2016) 08 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (Civil) No. 4182 of 2006

State of Odisha

APPELLANT

Vs

Prafulla Kumar Biswal

RESPONDENT

Date of Decision : 25-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 LLN 781

Hon'ble Judges : Mr. Indrajit Mahanty and Dr. Justice D.P. Choudhury, JJ.

Bench : Division Bench

Advocate : Mr. M. Sahoo, Additional Government Advocate, for the Petitioners; M/s. M.K. Mishra, P.K. Das, D.K. Pattnaik & D. Mishra, Advocates, for Opp. Parties No.1

Final Decision : Disposed Off

Judgement

Dr. D.P. Choudhury, J.—Challenge has been made to the orders dated 22.12.1998 and 9.11.2005 passed by the learned Odisha Administrative Tribunal (hereinafter called 'the Tribunal') in O.A. No.2210 of 1998 and M.P. No.6 of 1999, respectively.

Facts

2. The unshorn details of the case is that the opposite party No.1 was serving as a Sanitary Inspector under the Health Department made application on 17.7.1987 for voluntary retirement from service with effect from 1.1.1988. After examination of his petition it was accepted vide order No.22858 dated 13.10.1987 by acceding to his request but it was allowed only with effect from 1.1.1988.

3. It is also stated that the opposite party No.1 expressing his intention to continue in service made representation on 27.12.1987 to withdraw his voluntarily retirement representation but it was received by the Directorate on 7.1.1988 which is after he was being relieved on 1.1.1988.

4. It is also stated that O.A. No.1650 of 1996 came to be filed by the opposite party No.1 claiming pension and other retirement benefits. In that case the Tribunal directed the petitioners to clear the arrear and pensionary dues. It is also stated that the opposite party No.1 being aggrieved towards inaction of the petitioners for not considering his application for withdrawal of voluntary retirement filed O.A. No.2210 of 1998 which came to be allowed against the present petitioners. The present petitioners also made review application to review the order passed in O.A. No.2210 of 1998 but it was rejected. So, the petitioners filed the present writ application raising various contentions against the order passed on 22.12.1998 in O.A. No.2210 of 1998 and order dated 9.11.2005 in M.P. No.6 of 1999.

Submissions

5. Mr. M. Sahoo, learned Additional Government Advocate submitted that the learned Tribunal has committed material irregularity by overlooking the principles of natural justice because in O.A. No.2210 of 1998 the order was passed to issue notice on 8.12.1998 to file the counter within fifteen days and before expiry of fifteen days the Tribunal passed the order on 22.12.1998. Mr. Sahoo further submitted that the opposite party No.1 having made the petition for withdrawal after the order of acceptance of voluntary retirement passed on 13.10.1987 with effect from 1.1.1988, the Tribunal ought to have rejected the prayer of the opposite party No.1 to continue in service till his retirement and allowing the pensionary benefits. He submitted that the learned Tribunal has erred in law by following the decision of the Hon'ble Apex Court passed in J.N. Srivastava v. Union of India and another, 1998 SCC (L& S) 1251 as the said principle is not applicable to the present facts and circumstances of the case. He further submitted that the Tribunal has also committed error in law by not considering the review application filed by the State to reconsider the order dated 22.12.1998. It is submitted by the learned Additional Government Advocate that since the prayer for restoration of service was not acceded to in O.A. No.1650 of 1996, the Tribunal should not have considered the same relief in O.A. No.2210 of 1998. So, he contended that the order of the Tribunal in O.A. No.2210 of 1998 and M.P. No.6 of 1999 being arbitrary, illegal and invalid should be set aside by allowing the writ application.

6. Mr. Manoj Mishra, learned Senior Advocate for the opposite party No.1 submitted that there is no any dispute over the principles of law about acceptance of the voluntary retirement and revocation of same. He submitted that before retirement on 1.1.1988 the opposite party No.1 having changed his mind made representation for withdrawing the application form for voluntary retirement on 27.12.1987 and he had also orally submitted to the concerned Director who turned deaf to his request.

7. Mr. Manoj Mishra, learned Senior Advocate appearing for the opposite party No.1 further submitted that since the authority did not pay any heed to the request of opposite party No.1, he had to file O.A. No.1650 of 1996 which was

allowed so far retirement is concerned. Mr. Mishra also submitted that even if the opposite party No.1 was made to retire on 1.1.1988 but no regular pension, gratuity or other pensionary benefits have been given so far for no fault of his for which he had to file O.A. No.2210 of 1998 which went against the State but the State instead of filing any appeal filed a review petition vide M.P. No.6 of 1999 which was also duly rejecte. According to him there is no any illegality in the impugned orders passed by the learned Tribunal. So, he submitted to reject the writ petition and direct the order of the Tribunal passed on 22.12.1998 and 9.11.2005 to be enforceable.

8. The point for consideration:-

(i) Whether the order of the Tribunal on both the occasions are illegal and improper.

Discussions

Point No.(I) :

9. It is admitted fact that while the opposite party No.1 was working as Sanitary Inspector, has made the petition for voluntary retirement on 17.7.1987. It is not in dispute that on 13.10.1987 the request for voluntary retirement was acceded to by the State with effect from 1.1.1988 as per the request of the present opposite party No.1. It is admitted fact that the opposite party No.1 made representation to withdraw his voluntary retirement application which was received on 7.1.1988 by the Department.

10. On going through the L.C.R. in O.A. No.1650 of 1996 it is only available that although the opposite party No.1 has retired from 1.1.1988 but no arrear dues for the purpose of pension and service records have been made up-to-date before his voluntary retirement. It is revealed from the order dated 23.7.1996 that the matter was disposed of with the following direction by the Tribunal:

"xxx Accordingly, I direct that in case it is not possible to count the qualifying service of the applicant for the purpose of pension and other post-retirement benefits the entire period shall be treated as qualifying service and he shall be paid his post-retirement benefits on the basis of last pay drawn. The entire exercise shall be completed within six months from the date of receipt of a copy of this order".

After disposal of O.A. No.1650 of 1996, one M.P. No.347 of 1997 was filed on 22.4.1997 for not complying the order of the Tribunal and in that Miscellaneous Petition an order was passed on 21.10.1998 with direction to sanction final pension and to disburse DCRG to the applicant within two months. Those orders in O.A. No.1650 of 1996 have not been challenged before any forum for which those orders have reached finality. In that case the opposite party No.1 being petitioner has never raised about withdrawal of the voluntary retirement representation but claimed only arrear pension and DCRG.

11. On the other hand, from the LCR in O.A. No.2210 of 1998 it appears that the opposite party No.1 being petitioner had raised two points, one for not considering his petition for withdrawal of voluntary retirement by the authority and secondly there is no disbursement of his pension or DCRG in spite of the order of the Tribunal. It is only claimed by opposite party No.1 in the Original Application and before this Court also that after 27.10.1987 he has met the Director for considering his continuance in service by allowing him to withdraw the voluntary retirement, but the Director did not accede to his request. If at all he has got any grievance about not considering his request by the Director, it was within his domain to file the Original Application before 1.1.1988. Moreover, if this matter happens to be of 1987 it is not known why he did not disclose the said fact in 1996 when claimed for arrear pensionary benefits. Similarly the Tribunal has committed error by not considering the facts agitated in O.A. No.1650 of 1996. It only considered the order of the Tribunal directing for payment of pension and post re-tiral benefits. Of course, the Tribunal passed order obviously being persuaded by the judgement of the Hon^{ble} Supreme Court in J.N. Srivastava v. Union of India and another, (1998 SCC (L& S) 1251 by observing that the opposite party No.1 was deemed to have continued in service till his superannuation.

12. Mr. Mishra strenuously submitted that in spite of the request of the opposite party No.1 to the Director for allowing him to continue in service before the date of superannuation on 1.1.1988, the matter should have been considered even if letter of revocation of the voluntary retirement had reached on 7.1.1988. When the order of acceptance of voluntary retirement passed on 13.10.1987 with effect from 1.1.1988 as per the request of the opposite party No.1 on 17.7.1987 and there was no any impediment on the part of opposite party No.1 to make any grievance in writing when made oral prayer to the Director and also no impediment to mention said fact in O.A. No.1650 of 1996, submission of the opposite party No.1 that before acceptance of the voluntary retirement, non-consideration of his case for withdrawal is an afterthought and under no circumstances the order of the Tribunal in this regard would remain valid. It must be held that he retired on 1.1.1988. Mr. Mishra, learned Senior Advocate further submitted that even if the opposite party No.1 retired on 1.1.1988 but till date the State Government has sat over the matter by not allowing DCRG and regular pension. The opposite party No.1 is 70 years old and has got two daughters who are deaf and dumb. Mr. Sahoo factually conceded that the provisional pension has been sanctioned but other benefits have not been given. He could not explain the reasons for non-grant of the same.

13. Sanction of regular pension is not a bounty but the pension is a matter of right of every Government servant. When the authority made him to retire on 1.1.1988 and there is clear cut order of the Tribunal in O.A. No.1650 of 1996 and also in O.A. No.2210 of 1998 to clear his arrear dues and pensionary benefits including DCRG, we take it very seriously and to hold that natural justice of the opposite party No.1 has been seriously violated. We agreed with the learned

counsel for the opposite party No.1 that due to callousness of the authorities the pensionary benefits of the opposite party No.1 has been withheld in spite of the order of the Tribunal. When a person has already reached 70 years old and has two dependant daughters, it is not known when he would get his regular pension to feed his family. We are very much disappointed with the inaction of the petitioners. Point No.(i) is answered accordingly.

Conclusion

14. Considering all those aspects and having regard to the peculiar facts and circumstances, we hereby direct that under the Odisha Civil Services (Pension) Rules, 1992 all pensionary benefits including DCRG be paid to the opposite party No.1 within a period of six weeks from today without fail.

15. The writ petition is disposed of accordingly.

Mr. Indrajit Mahanty, J. - I agree.