

(2016) 05 OHC CK 0002

In the Orissa High Court

Case No : W.P.(C) No. 13863 of 2015 & W.P.(C) No. 19216 of 2014

State of Odisha

APPELLANT

Vs

Sri Srikanta Pattnaik

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Civil Services (Pension) Rules, 1992 — Rule 66(1)

Citation : (2016) 122 CutLT 423

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

Bench : Division Bench

Advocate : Mr. M.S. Sahoo, AGA, for the Petitioner; None, for the Opposite Parties

Final Decision : Dismissed

Judgement

Dr. D.P. Choudhury, J. - Challenge has been made to the order dated 12.01.2015 passed by the learned Odisha Administrative Tribunal, Bhubaneswar (hereinafter called "the Tribunal") in O.A. No.2156 of 2013 by allowing the Original Application filed by opp. Party no.1 before the Tribunal.

FACTS :

2. The factual matrix leading to the case of the petitioner is that opposite party No.1 was initially appointed as Sub-Deputy Collector and later on he was promoted to O.A.S. Class-I and finally retired from Government Service on 29.02.2000. Prior to his superannuation two Vigilance cases were registered against him vide Berhampur Vigilance P. S. Case Nos.2 and 4 dated 10.01.1998 and in both the cases charge sheet were filed against the opposite party No.1 on 30.06.2004 and 31.12.1999 respectively. In both the cases cognizance of the offences have been taken by the concerned Court. Due to such Vigilance cases the concerned Administrative Department started the disciplinary proceeding against the opposite party No.1. In the departmental proceeding, the opposite party No.1 was awarded punishment against which he preferred O.A. No.177 of

2011, but the Tribunal was pleased to quash the punishment order dated 17.01.2011 vide their order dated 08.08.2013. Since the order of the Tribunal was not implemented by the petitioner, the opposite party No.1 filed O.A. No.2156 of 2013 for a direction to disburse the final pension along with the retiral benefits like DCRG, un-utilized leave salary and regular pension. The learned Tribunal allowed the relief sought for by the opposite party No.1. Against such order of the Tribunal the present writ petition has been filed by the petitioner alleging that said order of the Tribunal is illegal and bad in law.

SUBMISSIONS :

3. It is submitted by learned Addl. Government Advocate for the petitioner that the learned Tribunal failed to appreciate that charge sheet has been filed against the opposite party No.1 in Berhampur Vigilance P. S. Case Nos.2 and 4 of 1998 and disciplinary proceeding has been initiated against him on 07.02.2000, i.e., prior to retirement of opposite party No.1, for which the learned Tribunal ought to have held that the opposite party No.1 has no ground to seek relief against the petitioner before the Tribunal. It is also contended that that the learned Tribunal has erred in law by not following the provisions of Rules 66(1) of the Odisha Civil Services (Pension) Rules, 1992 (hereinafter called "the Rules") and Rules 4 of the Odisha Civil Services (Commutation of Pension Rules, 1992) because the Rules clearly prohibit the sanction of pensionary benefits during pendency of vigilance case and disciplinary proceeding. Learned Tribunal should have taken cognizance of the fact that the petitioner has already challenged the order of the Tribunal passed in O.A. No.177 of 2011 before this Court vide W.P. (C) No.19216 of 2014. He further submits that the Tribunal has failed to appreciate the law that no gratuity shall be paid to the Government servant until conclusion of departmental proceeding or judicial proceeding and issue of final orders but on the other hand illegally passed the order allowing gratuity to the opposite party No.1. Hence it is submitted that the order of the Tribunal is wrong and bad in law for which same should be set aside and action of the petitioner should be affirmed.

POINT FOR DETERMINATION :

(i) Whether order of the Tribunal is illegal and bad in law?

DISCUSSION :

4. It is admitted fact that opposite party No.1 retired from the post of Joint Commissioner, Settlement and Consolidation, Berhampur and he superannuated on 29.02.2000. It is also admitted fact that the applicant was placed under suspension basing on the Berhampur Vigilance P.S. Case Nos.2 & 4 of 1998. It is undisputed fact that the opposite party No.1 has challenged the order of suspension before the Tribunal vide O.A. No.2245 of 1999 and that suspension order was also quashed. It is also admitted fact that the opposite party No.1 preferred an appeal against the order of the Tribunal vide O.A. No.177 of 2011 before this Court. It is not disputed that the cognizance of offence under section

13(2) read with 13(1)(d) of the P.C. Act were taken in both the cases on 21.6.2000 and 31.1.2007. It is also not disputed that the disciplinary authority has imposed punishment in the disciplinary proceeding by withholding the final pension, gratuity, un-utilized leave salary and commuted value of pension as the opposite party No.1 had retired from service. So, the provisions of O.C.S. (Pension) Rules 1992 are relevant to the fact of the case. Rule 7(2) of the Rules speaks as hereunder :

"2(a) Such departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that when the departmental proceedings are instituted by an authority, subordinate to Government that authority shall submit a report recording its findings to the Government.

(b) Such departmental proceedings as referred to in Sub-rule (1) if not instituted while the Government servant was in service, whether before his retirement or during his reemployment :

(i) shall not be instituted save with the sanction of Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(c) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(d) In the case of Government servant who has retired on attaining the age of superannuation or judicial proceedings are instituted or where departmental proceedings are continued under Clauses (a) and (b), a provisional pension as provided in Rule 66 shall be sanctioned.

(e) Where the Government decided not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

Explanation : For the purpose of this rule :

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from the date of his suspension; and

(b) judicial proceedings shall be deemed to be instituted :

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made; and

(ii) in the case of Civil proceedings, on the date of presentation of the plaint in the Court."

5. In view of the aforesaid provisions, pendency of the judicial proceeding will commence from the date of cognizance of offence by the concerned Court. In the instant case, opposite party No.1 was placed under suspension basing on the two Vigilance cases started against him but the opposite party No.1 challenged the same before the Tribunal which was pleased to quash the order of suspension. Against such order, the petitioner has not filed any writ application before this Court to quash the same. No material is placed by Tribunal that charge sheet in Departmental Proceeding has been issued to opposite party No.1 before his retirement to show pendency of departmental proceeding under Section 7(2) of the Rules. It is also admitted and available from the materials produced by both the parties that the opposite party No.1 retired from Government service on 29.02.2000 whereas the cognizance of offence was taken on 3.1.2005 and 6.5.2000 in both the P.S. Case Nos.2 and 4 1998, respectively. So, from the date of taking cognizance of the offence the judicial proceeding is stated to have been pending and under Rules 7(2) on the date of retirement, i.e., 29.02.2000 no judicial proceeding was pending against him. Moreover, against the order passed by the Tribunal in O.A. No.177 of 2011, a writ application vide W.P.(C) No. 19216 of 2014 has been filed in this Court but petitioner has not established that it has become successful in that writ application. When there is no judicial proceeding pending on the date of retirement and the original punishment awarded by the State Government in the disciplinary proceeding has been quashed by the Tribunal which has not been set aside by this Court, there remains nothing to withhold the pensionary benefits of the opposite party No.1. On the other hand, there is nothing found from the order of the Tribunal that it is against the principle of law and it is illegal.

The point for determination is answered accordingly.

CONCLUSION :

6. Rule 66(1) of O.C.S. (Pension) Rules, 1992 only directs about payment of pensionary benefits where departmental proceeding and judicial proceeding are pending. In view of the aforesaid discussions on the date of retirement of opposite party No.1 neither there was any judicial proceeding nor any departmental proceeding pending. We, therefore, of the considered view that

withholding of pensionary benefits and gratuity of opposite party No.1 by the petitioner is illegal, without jurisdiction and the right of the opposite party No.1 to receive pension and other retiral benefits cannot be put into back seat. So, there is no merit in the writ petition filed by the petitioner as there is nothing to interfere with the order of the Tribunal and accordingly, we refrain from exercising writ jurisdiction to quash the same. Hence, the writ petition is dismissed being devoid of merit.

I. Mahanty, J. : I agree.