
(2016) 04 OHC CK 0019
In the Orissa High Court
Case No : W.P.(C) No. 4024 of 2016

Sukanta Kumar Das

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Citation : (2016) 04 OHC CK 0019

Hon'ble Judges : Dr. Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : R.K. Rath, Sr. Advocate and J.P. Behera, Advocate, for the Appellant;
D.K. Pani, Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Dr. Akshaya Kumar Rath, J.—1. In this writ application the petitioner has prayed inter alia for a direction to opposite parties 2 and 3 to implement the policy decision of the State of Odisha taken on 2.8.2014, vide Annexure-1. Ancillary prayer has been made to direct opposite parties 2 and 3 to allow the petitioner to continue in service up to the age of 60 years.

2. Bereft of unnecessary details, the short facts of the case of the petitioner are that the Government of Odisha in the Department of Public Enterprises, opposite party No. 1 passed a resolution on 2.8.2014, vide Annexure-1, to enhance the age of retirement on superannuation of the employees of the State Public Sector Undertakings from 58 to 60 years with certain terms and conditions keeping in view the demands of various service associations of the State Public Sector Undertakings as well as significant improvement in average of life expectancy in recent years. The resolution was passed consequent upon enhancement of age of superannuation of the State Government employees from 58 to 60 years with the following conditions:--

"1. The Public Sector Undertaking must justify its need to retain the present experienced manpower for utilization of their services in achievement of the

objectives of the Corporation.

2. The entity does not have compelling reasons to reduce cost by downsizing manpower.

3. The PSU must not have defaulted in payment of salary, statutory dues of the employees such as Provident Fund and ESI etc. in past three years.

4. The PSU must not have availed any additional budgetary support during the last three years for payment of salary and other employees dues (expecting the usual level of budgetary support availed by the PSU, if any).

5. The PSU must not have defaulted in payment of loan to any financial institution or State Government. The PSU must be update in payment of guarantee fee/royalty/dividend to the State Government, whichever is applicable.

6. The entity is and will be able to discharge the salary burden out of its own resources and not depend on additional budgetary grant (excepting any usual budgetary allocation)".

3. The opposite party No. 1 issued a direction to the Public Sector Undertakings to prepare a detailed proposal for approval of the Board of Directors of the Public Sector Undertakings concerned. It was intimated that the proposal approved by Board shall be concurred by the Administrative Department and the latter shall obtain approval of the Government before giving effect to the enhancement proposal.

4. Pursuant to the policy decision of the State of Odisha, Odisha Renewable Development Agency, which is fully controlled and governed by the State of Odisha (hereinafter referred to as "OREDA"), considered the matter and sent a letter on 5.11.2015, vide Annexure-2, to the Additional Secretary to Government, Science and Technology Department, Government of Odisha, Bhubaneswar enclosing therein the receipt and expenditure statement from 2010-11 to 2014-2015 and financial implication statement from 2015-2016 to 2019-20 requesting the latter to enhance the age of superannuation of OREDA employees for two years more. On 1.1.2016, the Chief Executive, OREDA sent a letter to the Additional Secretary to Government, Science and Technology Department, vide Annexure-3, stating therein that OREDA would be able to meet the additional requirement of fund from its own source and undertook to shoulder the liability without any Government assistance in the event of enhancement of the age of superannuation from 58 to 60 years. By letter dated 24.2.2014, vide Annexure-4, the Chief Executive, OREDA requested the Additional Secretary to Government to place the proposal before the Government for consideration of enhancement of superannuation from the age of 58 to 60 years. With this factual scenario, the writ application has been filed.

5. Pursuant to issuance of notice, a counter affidavit has been filed by opposite party No. 3. The sum and substance of the case of opposite party No. 3 is that OREDA has framed the Service Rule, namely, "Odisha Renewable Energy

Development Agency Service Rules, 1997 (hereinafter referred to as "Rules"). Rule 59 (1) provides that any of the provisions of the Rules may be amended, for reasons to be recorded in writing, by the Governing Body. In accordance with the said Rule, preliminary resolution was made in 36th Governing Body held on 12.3.2015. As per the resolution of the Governing Body, the proposal for enhancement of superannuation age of the employees of OREDA from 58 to 60 years was placed before the Government in S & T Department vide its letter No. 1031 dated 20.5.2015. Subsequent letters had been issued on 5.11.2015, 1.1.2016, 14.1.2016 and 24.2.2016 respectively for approval. The approval of the Government is still awaited.

6. Heard Mr. R.K. Rath, learned Sr. Advocate along with J.P. Behera for the petitioner and Mr. D.K. Pani, learned Additional Standing Counsel for opposite party Nos. 1 and 2 and Mr. B.K. Dash, learned Advocate for opposite party No. 3.

7. Mr. Rath, learned Sr. Advocate for the petitioner submitted that the Government of Odisha in its wisdom have taken a policy decision to enhance the age of superannuation of the employees of the State Government from 58 to 60 years keeping in view the demands of various service associations of the State as well as Public Sector Undertakings and significant improvement in average life expectancy in recent years. The State Government have been pleased to allow the enhancement of age of retirement on superannuation of the employees of the State Public Sector Undertakings from 58 years to 60 years subject to the conditions enumerated therein. One of the conditions is that the Public Sector Undertakings will be able to discharge the salary burden out of its own resources and not depend on additional budgetary grant. The Public Sector Undertakings have been directed to prepare a detailed proposal which should be approved by the Board of Directors of the Public Sector Undertakings. The proposal approved by the board shall be concurred by the Administrative Department. In turn, the Administrative Department shall obtain appropriate Government approval before giving effect to the enhancement proposal. Pursuant to the resolution dated 2.8.2014, vide Annexure-1, the Chief Executive, OREDA sent a letter on 5.11.2015 to the Additional Secretary to Government, Science and Technology Department, Government of Odisha, Bhubaneswar enclosing therein receipt and expenditure statement from 2010-11 to 2014-15 and financial implication statement from 2015-16 to 2019-20. The Chief Executive, OREDA had sent another letter on 1.1.2016, vide Annexure-3, stating therein that OREDA would be able to meet the additional requirement of fund from its own sources without any Government assistance. A request was also made to the Government for approval on enhancement of age of superannuation at the earliest. The Chief Executive had also sent a letter on 24.1.2016 reiterating its earlier stand and requested the Government for enhancement of age.

8. Per contra, Mr. Das, learned counsel for opposite party No. 3 submitted that the service conditions of the employees of OREDA are governed by the Rules. Referring to sub-rule 2 of Rule 51, he submitted that the age of retirement of the

employees of OREDA is 58 years. The Rule has not been amended. In view of the same, it is not possible to enhance the age of superannuation from 58 to 60 years.

9. Mr. Pani, learned Additional Standing Counsel for the State filed a memo annexing thereto the letter No. 7927 dated 30.3.2016 issued by the Government of Odisha in its Finance Department to the Office of the Advocate General. As would be evident from the said letter, the Finance Department has already agreed to the proposal submitted by OREDA and communicated its views on 22.3.2016 to Science and Technology Department on its proposal for enhancement of retirement of age from 58 to 60 years with the stipulation that the consequential extra financial burden arise out of such enhancement of retirement age shall be borne by the organization from its own sources without budgetary support.

10. Pursuant to the resolution dated 2.8.2014 of the Government of Odisha, vide Annexure-1, the Governing Body of OREDA, which has been constituted by the State Government in its Science and Technology Department to regulate the affairs of the agency, in its 36th meeting held on 12.2.2015, has decided to send proposal to the Finance Department through S&T Department for enhancement of age of retirement on superannuation of employees of OREDA from 58 to 60 years. A decision was taken that OREDA shall meet the additional requirement of fund from its own source. Accordingly, the proposal was submitted by OREDA. The proposal has been concurred by the Government of Odisha in its Finance Department. Thus there is no impediment on the part of opposite party No. 3 to amend the Rule so as to give benefit to its employees.

11. In the wake of the aforesaid, the petitioner shall be allowed to continue in service till completion of 60 years of age.

The writ application is allowed.