

(2022) 04 OHC CK 0216
In the Orissa High Court
Case No : Writ Petition (C) NO. 11418 Of 2019

Tukubabu Dash

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Wealth Tax Act, 1957 — Section 2(e)

Citation : (2022) 04 OHC CK 0216

Hon'ble Judges : Dr B.R.Sarangi, J;Savitri Ratho, J

Bench : Division Bench

Advocate : K.P. Mishra, T.P.Tripathy, L.P.Dwibedy, A. Mishra, K. Hussain, B.P. Tripathy

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. By means of this writ petition, the petitioner seeks, in the guise of modification of order dated 20.04.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2509(C) of 2016, direction to the opposite parties to count his services from 25.08.1983 as qualifying service for availing retiral benefits.

2. This case has a chequered career. The petitioner, who was initially working as a constable in the office of Reserve Officer, Sundargarh, had approached the tribunal praying for a direction to the opposite parties to count his appointment to be on regular basis, instead of contractual appointment, pursuant to the direction of this Court with all consequential financial and service benefits from the date he got afresh appointment. But fact remains, the petitioner after being duly selected was appointed against a regular post, vide order 25.08.1983, and his service was terminated, vide order dated 30.04.1984, as his service was no longer required in police department. Thereafter, the petitioner made several representations to the higher authorities and since no remedy was made

available against such illegal action of the opposite parties, he approached this Court by filing OJC No.1890 of 1984, wherein direction was given to the Special I.G. to dispose of the representation of the petitioner, if pending, within a period of two months. Since the same was not considered, the petitioner filed OJC No. 1296 of 1985 before this Court, which was dismissed for non-appearance on 13.03.1986. Thereafter, against the said order of dismissal, restoration petition bearing MJC No.65 of 1986 was filed, which was also dismissed for non-prosecution. After coming to know about dismissal of the OJC, the petitioner filed OA. No.1075 (C) of 1994 before the tribunal and the tribunal, vide order dated 24.06.1994, directed to consider the grievance of the petitioner to save him from starvation, which was ultimately rejected on the ground that the representation was submitted with abnormal delay.

2.1 Thereafter, the petitioner filed another original application bearing O.A. No. 1646 of 1995 before the tribunal which was dismissed vide order dated 27.10.1995. Again the petitioner filed O.A. No. 1363 of 1996, which was also dismissed vide order dated 02.05.1996 giving him liberty to file a Misc. Petition for contempt in O.A. No. 1075 of 1994. After hearing both the parties, the tribunal, vide order dated 27.03.2009, rejected the said M.P. Challenging the said order, the petitioner approached this Court by filing W.P.(C) No. 10675 of 2009, which was disposed of on 05.11.2012 with the following order:-

"Be that as it may, there is a delay but the petitioner is throughout approaching various forums and running from pillar to post for redressal of his grievance. Accordingly, we set aside the order of termination in Annexure -2 and the order dated 27.03.2009 in Annexure -10. The Superintendent of police, Sundergarh, is directed to appoint the petitioner afresh as a temporary Constable within a period of one month from to-day and such appointment shall be governed by the Police Manual Rules. The age of the petitioner shall not be a bar for such appointment. However, he shall not be entitled to any back wages for the period for which he has not worked".

2.2. Challenging the aforesaid order, the State approached the apex Court by preferring SLP No.24610 of 2013, which was dismissed vide order dated 30.06.2014. After dismissal of SLP, in compliance of the direction given by this Court on 05.11.2012 in W.P.(C) No. 10675 of 2009, the petitioner was appointed on contractual basis vide order dated 13.10.2014, which was assailed in O.A. No. 2509 of 2016. The tribunal, taking into consideration the order dated 05.11.2012 passed by this Court in W.P.(C) No. 10675 of 2009 directing the authorities to give appointment to the petitioner afresh as a temporary constable, observed that the petitioner has to be appointed in the post he was holding at the time of his initial appointment, i.e., 25.08.1983 or from the date on which his services were terminated on 30.04.1984, and that as per the order dated 25.08.1983, he was appointed as a temporary constable against a regular post, thereby, appointing him in a contractual post in accordance with the rules, which came much later, i.e. on 17.11.2013, has no application. By so observing, the tribunal,

in compliance of the order dated 05.11.2012 passed in W.P.(C) No.10675 of 2009, which was confirmed by the apex Court by order dated 30.06.2014 in dismissing SLP No. 24610 of 2013 preferred by the State, directed the opposite parties to treat the petitioner as a regular constable from the date he was given "afresh" appointment in terms of the order of this Court, as referred to above. The tribunal further directed that the petitioner is entitled to all consequential service and financial benefits and, as such, the entire exercise shall be completed within a period of two months. But, by means of this writ petition, the petitioner seeks direction from this Court to the opposite parties to count his services from 25.08.1983 as qualifying service for availing retiral benefits.

3. Mr. K.P. Mishra, learned counsel for the petitioner contended that since the petitioner was appointed on 25.08.1983 and his service was terminated w.e.f. 30.04.1984, by virtue of the order dated 05.11.2012 passed by this Court in W.P. (C) No.10675 of 2009, the termination order was set aside and he was directed to appointed "afresh" as temporary constable. But the petitioner was not extended with the financial benefits, as due and admissible to him for the period he was terminated from service. It is contended that the past service of the petitioner should be taken into consideration for counting as qualifying service, so that he can get the benefit in accordance with law. To substantiate his contention, he has relied upon the judgment of the apex Court in the case of Satbir Singh v. Chief of the Army Staff, New Delhi, (2013) 1 SCC 390.

4. Mr. B.P. Tripathy, learned Addl. Government Advocate contended that the benefit, as has been extended to the petitioner, was because of quashing of the order of termination of the petitioner by this Court in W.P.(C) No. 10675 of 2009 on 05.11.2012, which was affirmed by the apex Court by order dated 30.06.2014 passed in SLP No.24610 of 2013. In the aforesaid order, specific direction was issued by this Court to the authorities to appoint the petitioner "afresh" as a temporary constable within a period of one month from the date of passing of the order. Therefore, if any other benefit is given to the petitioner, that will amount to violation of the order passed by this Court as well as the apex Court and, as such, since the authorities have adhered to the order dated 05.11.2012 passed by this Court in W.P.(C) No.10675 of 2009, then sacrosanct finding of that order cannot be dislodged by subsequent intervention of this Court. Thereby, this writ petition should be dismissed.

5. This Court heard Mr. K.P. Mishra, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State-opposite parties by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. The factual matrix, as delineated above, is not in dispute. But fact remains, whether the past service rendered by the petitioner can be counted towards extension of service benefits to him is the crux of the issue, which is to be decided by this Court. As a matter of fact, this Court, by order dated 05.11.2012

passed in W.P.(C) No. 10675 of 2009, quashed the termination order passed by the authority and directed the authorities to appoint the petitioner "afresh" as temporary constable within a period of one month. Admittedly, the petitioner was appointed on 25.08.1983 on temporary basis against the regular post and he was terminated from service w.e.f. 30.04.1984. In the event the order of termination is quashed, the situation has to be relegated to that stage, when the petitioner was continuing as temporary constable against regular vacancy. As such, the order dated 05.11.2012 passed in W.P.(C) No. 10675 of 2009, having been assailed by the State in SLP No.24610 of 2013 before the apex Court and the same having been dismissed, vide order dated 30.06.2014, the order 05.11.2012 passed in W.P.(C) No. 10675 of 2009 was confirmed. Therefore, the petitioner can only be appointed "afresh" as a temporary constable, from the date he was provided his temporary status against the regular vacancy.

7. It is trite-law that if no specific definition has been given to a word or phrase in the Act, then the meaning attached to the same in the dictionary is to be taken as external aid for interpretation of the same.

8. In Coca-Cola Company of Canada Ltd. v. Pepsi-Cola Company of Canada Ltd., AIR 1942 PC 40, it has been clearly held that dictionaries could always be referred to in order to ascertain not only the meaning of the word, but also the general use of it.

9. In Mangoo Singh v. Election Tribunal, AIR 1957 SC 871, the apex Court held as follows:-

"We have been referred to several meanings of the word 'demand' in standard English dictionaries and law lexicons. When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. It is sufficient for our purpose to state that even in standard dictionaries and law lexicons, it is well recognised that the word 'demand' may mean simply a 'claim or 'due', without importing any further meaning of calling upon the person liable to pay the claim or due."

10. Similar view has also been taken by the apex Court in Workmen v. Management, D.T.E., AIR 1958 SC 353; Ramavatar v. Asstt. STO, AIR 1961 SC 1325 and Sk. Gulfan v. Sanat Kumar, AIR 1965 SC 1839.

11. In South Bihar Sugar Mills Ltd. v. Union of India, AIR 1968 SC 922, the apex Court held, if the Act does not define a word, the Legislature must be taken to have used that word in its ordinary dictionary meaning.

12. In CWT v. Officer-in-Charge (Court of Wards), (1976) 3 SCC 864, the dispute was whether the several lands held by the respondent were "agricultural lands" and hence excluded from the definition of "assets" given in Section 2 (e) of the Wealth Tax Act, 1957. The apex Court held:

"Agricultural land" is a species of land. It must be land which could be said to be

either actually used or ordinarily used or meant to be used for agricultural purposes. In other words, "agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of user that the meanings of "agricultural purpose" and "agriculture" becomes relevant. It is true that, in Raja Benoy Kumar Sahas Roy's case (supra), this Court pointed out that meanings of words used in Acts of Parliament are not necessarily to be gathered from dictionaries which are not authorities on what Parliament must have meant. Nevertheless, it was also indicated there that, where there is nothing better to rely upon, dictionaries may be used as an aid to resolve an ambiguity. The ordinary dictionary meaning cannot be discarded simply because it is given in a dictionary. To do that would be to destroy the literal rule of interpretation. This is a basic rule relying upon the ordinary dictionary meaning which, in the absence of some overriding or special reasons to justify a departure, must prevail."

13. In *State of Orissa v. Titaghur Paper Mills Co. Ltd.*, 1985 Supp SCC 280, the apex Court held as follows:-

"The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there is no such definition or interpretation, the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance. In doing so the court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the court, therefore have to select the particular meaning which would be relevant to the context in which it has to interpret that word.

14. In view of the law laid down by the apex Court, as discussed above, the word "afresh" having not been defined in the Act and the rules itself, the ordinary meaning prescribed in the dictionary has to be taken into consideration to come to a conclusion. Therefore, the ordinary meaning attached to the word "afresh", as derived from the various dictionaries, are quoted herein below:-

"According to Cambridge Dictionary, afresh means:- again, esp. from a new beginning.

As per Collins English Dictionary, afresh means:- again, newly, once again, once more.

In terms American English, afresh means:-anew; once more; again, to start afresh

According to British English, afresh means-once more; once again; anew

According to Macmillan Dictionary, afresh means:- in a new or different way"

15. If the above meaning attached to the word "afresh" is applied, in the present case the service status of the petitioner before his termination was temporary constable. This Court, by order dated 05.11.2012 passed in WP(C) No. 10675 of 2009, directed to appoint the petitioner "afresh" as a temporary constable.

Therefore, the petitioner cannot claim for counting of service from his initial date of appointment, i.e., 25.08.1983.

16. The case of Satbir Singh (*supra*), on which reliance has been placed by learned counsel for the petitioner, cannot have any help to the petitioner, as because the factual matrix of that case is different from that of the present case. Furthermore, the said judgment is distinguishable from the present case because of the fact that the order passed by this Court on 05.11.2012 in W.P.(C) No. 10675 of 2009 has been confirmed by the apex Court in SLP No. 24610 of 2013 on 30.06.2014. Thereby, this Court is of the considered view that, once in conformity with the order passed by this Court, the petitioner has already been extended with the benefit against the regular vacancy, counting of service of the petitioner from his initial date of appointment, i.e., 25.08.1983 does not arise at all, as the same was confirmed by the apex Court. If any contrary order is passed, then it will amount to violation of the order passed by the apex Court on 30.06.2014 in SLP No. 24610 of 2013, wherein the order of this order dated 05.11.2012 passed in W.P.(C) No. 10675 of 2009 was confirmed.

17. In view of the above position, we do not find any illegality or irregularity apparent on the face of the order impugned passed by the tribunal so as to modify the same, as claimed by the petitioner in this writ petition.

18. Accordingly, the writ petition merits no consideration and the same is hereby dismissed. However, there shall be no order to costs.

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