

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21531 of 2023

Niranjan Nayak

..... Petitioner
Mr. A.C. Mohanty, Advocate

-versus-

State of Odisha & others

..... Opposite Parties
Mr. N.K. Praharaj, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

31.08.2023

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel appearing for the petitioner as well as learned Addl. Government Advocate for the State-Opposite Parties. Perused the writ petition as well as the documents annexed thereto.
 3. The present writ application has been filed by the Petitioner with the following prayer:-

“Therefore it is prayed that this Hon’ble Court in the fact and circumstances of the case, issue Rule Nisi, calling upon the Opp.parites to show cause as to why they shall not be commanded to pay the entire service benefits including the pension to the petitioner and refund the illegally deducted sums of Rs.1,14,198/-, which is evident from Annexure-4, and allow the writ petition with cost;”

4. It is submitted by Mr. Mohanty, learned counsel appearing for the petitioner that the Petitioner was initially appointed as Senior Store Inspector in the Civil Defence Department on 28.08.1985. However, in

the meantime the Petitioner has retired from service on attaining the age of superannuation from the post of Assistant Director with effect from 30.04.2018. He further submitted that in the meantime the Cadre Rule for the Civil Defence Department Employee, Govt. of Odisha came into force with effect from 12.04.2018. Therefore, he further contended that by the time the Petitioner was superannuated from service the cadre rule was very much in force with effect from 12.04.2018. Since the Petitioner did not get benefit by applying the aforesaid cadre rule the Petitioner had approached the Opposite Party No.1 by filing a representation on 25.04.2018 under Annexure-3 to the writ application for grant of RACP benefits by taking into consideration the aforesaid Cadre Rule. Since, no action was taken the Petitioner had earlier by filing W.P.(C) No.26960 of 2022. The said writ petition was disposed of by a Coordinate Bench of this Court vide order dated 11.11.2022 with a direction to the Opposite Parties to consider the representation of the Petitioner under Annexure-7 to the said writ application.

5. While the matter stood thus, the Petitioner after disposal of the earlier writ application approached the Director General, Civil Defence, Odisha, Cuttack along with a certified copy of this order. The Director, Civil Defence-Opposite Party No.3 vide his order No.69/CD dated 10.02.2023 has rejected the representation of the Petitioner on the ground that the same is devoid of merit. Learned counsel for the Petitioner, at this juncture contended that the principal ground on which the representation of the Petitioner was rejected is that the Cadre Rule which came into force on 12.04.2018 as admitted by the Opposite Party No.3 in its order dated 10.02.2023 is not applicable to the petitioner. However, on perusal of the impugned rejection order under Annexure-1 dated 10.02.2023 it appears that the Cadre Rule came into force on 12.04.2018 on being notified by the Government vide S.R.O.

No.139/2018. However, the Petitioner has retired from service on attaining the age of superannuation with effect from 30.04.2018. On a close scrutiny of the impugned rejection order it appears that the representation has been rejected on the ground that the Cadre rule came into force after retirement of the Petitioner. Therefore, in view of the own admission of the Opposite Party No.3 in the impugned rejection order such a stand is erroneous. In such view of the matter, learned counsel for the petitioner submitted the writ petition be allowed and the Opposite Parties be directed to consider and grant necessary consequential relief to the Petitioner by applying the aforesaid Cadre Rule.

6. Learned Additional Government Advocate on the other hand contended that pursuant to the order passed by this Court in the earlier writ application, the Opposite Party No.3 has rejected the representation of the Petitioner by passing a detailed order dated 10.02.2023 under Annexure-1 to the writ application. He further submitted that the Opposite Party No.3 has not committed any error or illegality while passing the impugned rejection order under Annexure-1. It is further contended by learned Additional Government Advocate that since the Cadre Rule came into force after retirement of the Petitioner, the Petitioner has not been granted the benefits by applying the aforesaid Cadre Rule to the case of the Petitioner. In such view of the matter, learned Additional Government Advocate submitted that the writ application is devoid of merit and the same should be dismissed.

7. Having heard the learned counsels appearing for the respective parties and on a careful consideration of their submission as well as on a close scrutiny of the impugned rejection order dated 10.02.2023 under Annexure-1, this Court observed that the Opposite Party No.3 in impugned order itself has mentioned that the Cadre Rule came into

force with effect from 12.04.2018, if the very same impugned order it was also indicated that the Petitioner was superannuated from service with effect from 30.04.2018. Therefore, there is no dispute with regard to the fact that the cadre rule was in force when the Petitioner superannuated from service with effect from 30.04.2018. As such this Court is of the considered view that such Cadre rule is applicable to the Petitioner. However, while passing the impugned order the Opposite Party No.3 has observed that such cadre rule is not applicable at the stage came into force after retirement of the Petitioner. Such a ground taken by the Opposite Party No.3 in the impugned rejection order is not free from error and the same is also not based on record. In such view of the matter, this Court has no hesitation in setting aside the impugned rejection order dated 10.02.2023 under Annexure-1 to the writ application and accordingly, the same is hereby set aside. Further, the matter is remanded back to the Opposite Party No.3 to reconsider the case of the Petitioner by taking into consideration the correct factual position as has been discussed hereinabove and pass necessary orders on the representation of the Petitioner as has been directed by this Court in the previous writ application within a further period of six weeks from the date of communication of the certified copy of this order by the Petitioner. The Opposite Party No.3 is further directed to take into consideration the order dated 13.01.2020 passed in W.P.(C) No.29120 of 2019 a copy thereof shall also be furnished by the Petitioner along with a certified copy of this order before the Opposite party No.3. In the event, the Opposite Party No.3 comes to a conclusion that the Petitioner is covered by the order passed in the case of Santanu Kumar Padhi in W.P.(C) No.29120 of 2019, then

similar benefits shall also be extended to the Petitioner within a period of four weeks from the date of taking such a decision. The decision so taken by the Opposite Party No.3 be also communicated to the Petitioner within 10 days from the date of taking such a decision.

8. With the aforesaid observations/ directions, the writ application stands disposed of.

Issue urgent certified copy of this order as per Rules.

(*A.K. Mohapatra*)
Judge

Anil



Signature Not Verified

Digitally Signed
Signed by: ANIL KUMAR SAHOO
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 01-Sep-2023 16:26:57

