

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1179 of 2023

State of Odisha and others *Appellants*

-versus-

Banamali Samal and others *Respondents*

Advocates appeared in the case:

For Appellants : Mr. M.K. Khuntia
Additional Government Advocate

For Respondents : Mr. Shashi Bhusan Jena
Advocate

**CORAM:
THE CHIEF JUSTICE
MR. JUSTICE MURAHARI SRI RAMAN**

**JUDGMENT
05.03.2024**

Chakradhari Sharan Singh, C.J.

1. The State of Odisha has preferred this intra-Court appeal assailing an order dated 20.10.2022 passed by a learned Single Judge of this Court in W.P.(C) (OAC) No.1126 of 2017 (*Banamali Samal and others v. State of Odisha and others*), whereby the learned Single Judge has allowed the writ petition of the respondents herein directing the State Government to extend to them the pensionary benefits pursuant to a letter dated 24.05.2017 (Annexure-17) issued by the Scheduled Tribe (ST) and Scheduled Caste (SC) Development Department, Government of Odisha.

2. We have heard Mr. M.K. Khuntia, learned Additional Government Advocate (AGA) for the State-appellants and Mr. Shashi Bhusan Jena, learned counsel for the respondents.

3. The facts relevant for adjudication of the case are not in dispute. The respondents, who were the employees of Poudi Bhuyan Development Agency (PBDA), Dongaria Kandh Development Agency (DKDA), Didayi Development Agency (DDA) and Tumba Development Agency (TDA), which are Micro Projects in different districts. It is also not in dispute that these Micro Projects under the Integrated Tribal Development Agencies (ITDAs) functioning under the Scheduled Tribe (ST) and Scheduled Caste (SC) Development Department, Government of Odisha are the societies constituted and registered under the provisions of the Societies Registration Act which have their own governing bodies. As per the bye-laws of such Micro Projects, the Collector of the district functions as the Ex-Officio Chairman of the Micro Projects. Some of the posts of the Micro Projects are filled up on deputation of the Government servants whereas some are filled up through direct recruitment by Micro Projects in accordance with the stipulations of the ST & SC Development Department. The respondents are directly appointed staff of the ITDAs and Micro Projects. The ST & SC Development Department, Government of Odisha had come out with a communication addressed to all the Collectors, the PA., ITDAs and the Special Officers of the Micro Projects, under the signature of the Director (ST & SC)-cum-Additional Secretary to Government, the body of which reads as under:-

“Sub:- Status of Micro Projects and the employees directly recruited.

Sir,

I am directed to say that, it has come to the notice of the Government that in many cases Collectors, Spl. Officers of Micro Projects are sanctioning pensioners benefits or forwarding the pension papers of employees of Micro Projects, who are recruited by them directly to the Government for sanction of the same, through such employees are not Government Servants. Very often such retired employees on legal heirs of such deceased employees are claiming pensionary benefits and other welfare benefits like Rehabilitation Assistance which ultimately drags the Government into undesirable litigations. It is, therefore, clarified that:-

- 1. All the Micro Projects functioning under S.T. & S.C. Dev. Deptt. are the Societies, constituted and registered under the provisions of Societies Registration Act, 1860.*
- 2. All the Micro Projects have their own Governing Body. As per their bye-law, the Collector of the district functions as ex-officio Chairman of the Micro Projects.*
- 3. Specific posts of Micro Projects are filled up on deputation of Government servants, where as other posts are filled up either on deputation or through direct recruitment by the Micro Projects as per stipulations of this Department Circular No.22869/TRW, dt.2.8.1979.*
- 4. Merely because of the fact that appointment of persons to the Micro Projects are done under the orders of Collectors of the districts in capacity of ex-officio Chairman of the Micro Projects, it does not confer the status of State Government employees on such appointees.*

Thus, the directly recruited employees of Micro Projects are not Government servants and they are not entitled to get pensionary benefits under Orissa Civil Service (Pension)

Rules, 1992 and other welfare benefits under Rehabilitation Assistance Scheme, G.I.S. etc.

You are, therefore, requested not to sanction such benefits or forward such applications to the Government further.”

4. The respondents herein challenged the said communication before the Orissa Administrative Tribunal (OAT), Cuttack Bench, Cuttack giving rise to O.A. No.1126(C) of 2017. The respondents also sought a declaration that they were entitled to pension and other retiral dues. To substantiate their claim, they asserted in their original application before the OAT that they were appointed after due process of selection and had joined against their respective posts in the different Micro Projects and they were working. By way of illustration, they asserted that respondent no.1 was working as Field Assistant in PBDA which is a Micro Project pursuant to an order dated 05.12.1981 issued by the Special Officer, PBDA, Khuntagaon.

5. Service Books of the applicants were opened. The “GPF contribute” are being deducted. The contributions towards Group Insurance Scheme (GIS) are being deducted from their salary as has been done in case of regular Government employee” (*sic*). They assailed the said communication dated 08.01.2007 and claimed that they were entitled to get pensionary benefits under the Orissa Civil Services (Pension) Rules, 1992 (hereinafter referred to as ‘Odisha Civil Services (Pension) Rules’).

6. Upon abolition of the OAT, the original application came to be transferred to this Court and the transferred case came to be

registered as WPC(OAC) No.1126 of 2017. The respondents brought on record a communication dated 24.05.2017 issued under the signature of the Deputy Director-cum-Deputy Secretary (TSP), ST & SC Development Department, Government of Odisha relating to the sanction of pensionary benefits to the directly appointed retired staff of the ITDAs and Micro Projects, which read as under:-

“To

All PA, ITDAs & Spl. Officer, Micro Projects.

Sub: Sanction of pensionary benefit to the directly appointed retired staffs of ITDAs and Micro Projects.

Sir/Madam,

*In continuation of this Dept. L. No.4356 dt. 01.03.2017 on the subject sanction of pensionary benefit to the directly appointed staffs of ITDAs and Micro Projects, I am directed to request you, to kindly submit the information on “**Last Pay & Grade Pay**” of the directly appointed retired staff of your office along with copy of the last pay certificate for necessary compilation of the data at this level. Please furnish the information by return e-mail.*

*This may please be treated as **MOST URGENT.**”*

7. A submission was made on behalf of the respondents before the learned Single Judge that though initially, the State Government had denied pensionary benefits under the Odisha Pension Rules, subsequently vide letter dated 24.05.2017, the State Government had already decided to extend such benefits to the directly appointed retired staff of the ITDAs and Micro Projects. Having considered the said communication dated 24.05.2017, the learned Single Judge recorded

the following conclusion in paragraph 6 of the order, which is under challenge in the present appeal:

“6. Having heard learned counsel for the parties and after going through the records, it appears that against the denial for grant of pensionary benefit, the petitioners have approached this Court. But the Government of Odisha S.T. & S.C. Development Department has taken a decision to sanction pensionary benefit to the directly appointed retired staff of ITDAs and Micro Projects pursuant to letter dated 24.05.2017 under Annexure-17. Thereby, the letter dated 08.01.2007 under Annexure-8 issued by opposite party no.2 denying to sanction pensionary benefit to the petitioners cannot be sustained in the eye of law. Accordingly, the same is liable to be quashed and is hereby quashed.

8. Mr. M.K. Khuntia, learned AGA has drawn the Court's attention to Rule 3 of the Odisha Civil Services (Pension) Rules, 1992 which clearly provides that the said rule shall apply to Government servants, appointed in the posts and services in connection with the affairs of the State which are borne on pensionable establishment. He has argued that the respondents were admittedly, employees of the ITDAs/Micro Project agencies registered under the Societies Registration Act and by no stretch of the imagination they can be treated to be government servants for application of the Odisha Civil Services (Pension) Rules, 1992. He has submitted that nearly 10 years after the issuance of the communication dated 08.01.2007, the respondents challenged the same before the Odisha Administrative Tribunal (OAT). He has placed reliance on a Supreme Court's decision in the case of *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and another*, reported in (1992) 4 SCC 404 wherein the question as to whether an employee of ITDA could be

considered to be holding an office of profit under the Government had arisen. He further contends that the learned Single Judge has committed an error of record by treating the subsequent communication dated 24.05.2017 as the decision of the Government of Odisha to sanction pensionary benefits to the directly appointed retired staff of the ITDAs and Micro Projects. He submits that through the said communication all the PAs of the ITDAs and Special Officers of Micro Projects were requested to submit information on “*last pay and grade pay*” of directly appointed retired staff of their offices along with copies of last pay certificates for necessary compilation of data at that level. He submits that the letter dated 24.05.2017 does not contain any decision to grant pensionary benefits to directly appointed staff of the ITDAs and Micro Projects, that too under the Odisha Civil Services (Pension) Rules.

9. Mr. S.B. Jena, learned counsel appearing for the respondents has vehemently argued that it is evident from the communication dated 24.05.2017 that a decision was taken to sanction pensionary benefits to the directly appointed retired staff of the ITDAs and Micro Projects. He has submitted that they were appointed under the ITDA/Micro Project Agencies after following due process and their appointment letters were issued under the signature of the District Collector in his capacity as the *ex officio* Chairman of such agency. He has submitted that though the Micro Projects are the societies registered under the Societies Registration Act, they are under the direct control of the Collector of the district and the department of the State Government. He has further argued that even deductions were made against the General Provident Fund as is done in the case of the State Government employees. He contends that as the

respondents were treated by the State Government as the government employees, there is no legal infirmity in the order passed by the learned Single Judge issuing directions to the appellants to extend the benefit of pension under the Odisha Civil Services (Pension) Rules.

10. Learned counsel appearing on behalf of the appellants, in reply to the submissions advanced on behalf of the respondents as regards deductions for General Provident Fund, has submitted that the said submission is misconceived and is based on a document concerning deductions against the General Insurance Scheme (GIS).

11. The first and foremost question that we are required to consider is whether the respondents can be said to be qualified to claim the benefits under the Odisha Civil Services (Pension) Rules. It is manifest from Rule 3 of the Odisha Civil Services (Pension) Rules that the said rule applies to the government servants appointed in posts and services in connection with the affairs of the State which are borne on pensionable establishment. The respondents were employees of the agencies registered under the Societies Registration Act. They were not government servants at any point in time. In the case of *Satrucharla Chandrasekhar Raju (supra)* the Supreme Court, though, while considering an election dispute needed to deal with the question as to whether the members of the government body of ITDA were the officials holding the posts in the government. After having considered in detail the background of ITDA, the Supreme Court held in paragraph 29 as under:-

“29. What emerges from the above discussion is that the Government has some control over the ITDA which is set up as a project, since it provides funds and sanctions the posts: the District Collector is

appointed as Project Officer and some officers are ex-officio members of the ITDA which carries out the object of providing the compulsory education in tribal areas. But the ITDA is a registered Society having its own constitution. Though the Project Officer is the District Collector, he acts as a different entity. The power to appoint or to remove teachers is not with the Government but with the Project Officer. The Government may have control over the appointing authority but has no direct control over the teachers. The small post that appellant holds in ITDA is only that of a Teacher who is directly under the control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he, as a teacher, can be subjected to any kind of pressure by the Government which has neither the power to appoint him nor to remove him from service. Taking a practical view of the substance of these factors into consideration, we are of the view that the appellant cannot be held to be holding an office of profit under the Government.”

12. It would be apt to notice at this juncture certain relevant provisions of Odisha Civil Services (Pension) Rules, Rule 11 of which is of significance as it lays down as to which service shall qualify for pension under said Rules. The said Rule reads thus:-

“11. Conditions to qualifying service – Subject to the provisions hereinafter contained, the service of a Government servant shall qualify for pension if it conforms to the following three conditions, namely:

- (1) The service must be under Government,
- (2) The employment must be in a pensionable establishment/post and
- (3) The service must be paid by Government.”

13. Rule 13 of the Odisha Civil Services (Pension) Rules further provides that the service of a government servant does not qualify for pension unless he is appointed and his duties and pay are regulated by the Government or under orders of the Government.

14. The law is well settled that the entitlement of a pension is derived from the rules governing the service conditions of an employee.

15. It would be useful at this juncture to notice also the Supreme Court's decision in the case of *the State of Maharashtra and Another vs. Bhagaban and others* and other connected matters reported in (2022) 4 SCC 193. In the said case, the employees of Water and Land Management Institute (WALMI) registered under the Societies Registration Act had claimed pension, which was allowed by the Bombay High Court directing the State Government to extend the pensionary benefits to them. The Governing Council of WALMI, in that case, had framed WALMI Establishment Rules which provided *inter alia* that service rules made by the Government of Maharashtra for its employees shall apply to the employees of the institute unless they were repugnant to the rules made or might be made by the institute. The Supreme Court after having a detailed discussion held in paragraphs 29 to 31 as under:

“29. In the present case, WALMI being an autonomous body, registered under the Societies Registration Act, the employees of WALMI are governed by their own Service Rules and conditions, which specifically do not provide for any pensionary benefits; the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except the Pension Rules. Therefore, as such a conscious policy decision has been taken not to adopt the Pension Rules applicable to the State Government employees; that the State Government has

taken such a policy decision in the year 2005 not to extend the pensionary benefits to the employees of the aided institutes, boards, corporations, etc.; and the proposal of the then Director of WALMI to extend the pensionary benefits to the employees of WALMI has been specifically turned down by the State Government. Considering the aforesaid facts and circumstance, the High Court is not justified in directing the State to extend the pensionary benefits to the employees of WALMI, which is an independent autonomous entity.

30. The observations made by the High Court that as the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State and/or that the WALMI is getting grant from the Government are all irrelevant considerations, so far as extending the pensionary benefits to its employees is concerned. WALMI has to run its administration from its own financial resources. WALMI has no financial powers of imposing any tax like a State and/or the Central Government and WALMI has to depend upon the grants to be made by the State Government.

31. Now, so far as the observations made by the High Court that the amount available with WALMI and deposited with EPF towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI is concerned, it is to be noted that merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefit. Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. Therefore, merely

because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees. **In any case, it is ultimately for the State Government and the Society (WALMI) to take their own policy decision whether to extend the pensionary benefits to its employees or not. The interference by the Judiciary in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified.**” (Highlighted for emphasis)

16. In the wake of the above-noted discussions, we reach the following definite conclusions:

- (i) The respondents do not qualify to get the benefit of the Odisha Civil Services (Pension) Rules, 1992, given the unambiguous language of Rules 3, 11, and 13 of the said Rules;
- (ii) The respondents cannot be treated to be employees of the Government to qualify for pension under the Odisha Civil Services (Pension) Rules, 1992,
- (iii) The letter dated 24.05.2017 based on which the impugned order has been issued does not contain any decision of the State Government to extend the pensionary benefit to the directly appointed retired staff of ITDAs and Micro Projects. The purpose of the said communication has been mentioned in the letter itself i.e. *“for necessary compilation of the data at this level”*.

17. In the result, we disagree with the view taken by the learned Single Judge in the order under appeal dated 20.10.2022 passed in

W.P.(C) (OAC) No.1126 of 2017, which is accordingly set aside. The appeal is allowed.

18. Consequently, the writ petition stands dismissed. There shall be no orders as to costs.

(Chakradhari Sharan Singh)
Chief Justice

(M.S. Raman)
Judge

SK Jena/Secy
S. Behera/Sr. Steno

