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IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.12848 of 2016

Kalpataru Pati Petitioner

-Versus-

State of Odisha & Ors. Opposite Parties

**For Petitioner : Mr.J.K. Mohapatra,
Advocate**

**For Opposite Party No.1 : Mr.S.N.Pattnaik,
AGA**

**For Opposite Party : Mr.R. Acharya
Nos. 2, 3 & 4 Advocate**

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment: 22.06.2023

S.K. MISHRA,J.

1. The Petitioner has preferred the Writ Petition with a prayer to set aside decision dated 04.04.2016 of the Principal Secretary to Government, P.G & P.A Department and to direct the Opposite Party Nos.2 to 4 to extend all the benefits as per law, taking into consideration his age of retirement to be 60 years and to extend all other retiral benefits accordingly within a stipulated period.

2. The factual matrix, which laid to filing the present Writ Petition is that the Petitioner was serving as an employee under the category of Clerk-B in erstwhile Orissa State Electricity Board (OSEB), GRIDCO and finally, under the administrative control of newly created reform Company namely, NESCO. After completion of 33 years of service, he was directed to retire on 31.07.2003 at the age of 58 years, though he should have been retired at the age of 60 years being a workman. Challenging the said retirement, the Petitioner filed an application before Principal Secretary to Government, P.G & P.A Department (O.P.No.1) on 23.10.2003, with a prayer to extend the benefits under Rule-42 of OCS (Pension) Rules, read with Rule-71 of Odisha Service Code in terms of amendment made by the Government of Orissa vide FDR No.4481 dated 29.01.2003 and to extend other retiral benefits, including exgratia, as admissible under the provisions, considering his premature retirement as VRS. Because of the inaction of the Opposite Party No.1, the Petitioner was constrained to approach this court in W.P.(C) No.10258 of 2005.

3. After hearing the parties, this Court was pleased to dispose of the said Writ Petition on 09.12.2015 directing the Opposite Party No.1 to decide the claim of the Petitioner, as raised in the grievance petition dated 23.10.2003, in accordance with law after giving opportunity of hearing to

the Petitioner within a reasonable period, preferably within six weeks from the date of receipt of certified copy of the said order.

4. The said order was communicated to the Opposite Party No.1 on 16.12.2015. Being noticed, the Petitioner appeared before the Opposite Party No.1 on 22.01.2016 and filed the relevant documents in support of his claims and put forth the arguments. It is further case of the Petitioner that out of the said documents filed before the Opposite Party No.1, Office Order dated 26.05.1997 and the counter affidavit filed by the Opposite Parties-NESCO in W.P.(C) No. 10258 of 2005 before this Court show that the Petitioner is a workman. But the opposite party no.1 failed to consider the said two documents along with other documents while disposing of the grievance petition of the petitioner and rejected the same vide order dated 04.04.2016 with some baseless grounds and communicated the said order on 29.04.2016, only recording the submissions of the Opposite Parties i.e. NESCO.

5. It has further been averred in the writ petition that the Opposite Party No.1, while passing the impugned order of rejection, has not given any reason to the said effect and the said order is a product of non application of mind and the sole basis of rejection of the representation of the Petitioner is relying on the provisions in Regulation-3 (a) of OSEB

Employees' age of Retirement Regulation, 1979, which is silent about the retirement age of a workman.

6. It is further case of the Petitioner that the submissions made by the NESCO Authority were recorded without any documents to the said effect, to substantiate the said submissions made before the Opposite Party No.1. The Order of rejection has been passed without giving any specific findings only on the plea that the Petitioner has not refuted the submissions of NESCO Authority, which is not only false but also a premature statement by such a responsible officer like Opposite Party No.1. So far as the grievance of the Petitioner to sanction the unutilized leave and Gratuity etc., it has been averred that the Opposite Party No.1 has not considered the said aspect in the impugned order dated 04.04.2016 while disposing of the grievance petition of the Petitioner. It has also been averred that the authority concerned has failed to consider the grievance of the Petitioner as per law and passed an order without any reason and the same is not acceptable in the eye of law.

7. Being noticed, the contesting Opposite Party Nos.2 to 4 have filed Counter Affidavit taking a stand therein that the Petitioner was working as Clerk-B under Bhadrak South Electrical Division (BSED), Bhadrak under NESCO. As per rules and regulation adopted by NESCO, the age of retirement of its employees has been fixed to 58 years so far as the post

of Clerk-B is concerned. Accordingly, prior to completion of 58 years of age, a retirement notice was given to the petitioner after observing all formalities and he was superannuated on 31.07.2003 on attaining the age of 58 years being a Clerk-B.

8. It has further been stated that as per the direction of this Court vide order dated 09.12.2015, in W.P.(C) No.10258 of 2005, representation of the Petitioner dated 23.10.2003 was duly examined by the Opposite Party No.1 and the order was passed on 04.04.2016, wherein the grievance of the Petitioner was thoroughly examined and disposed of with a finding that the retirement age of the Petitioner is 58 years as per Regulation-3 (a) of OSEB Employees Age of Retirement Regulations, 1979 and further, the NESCO authorities have taken necessary action with regard to his further claims. Hence, no grievance remained unattended as alleged in the Writ Petition.

9. It has also been stated that OSEB Employees' Age of Retirement Regulations, 1979 clearly prescribes that the age of retirement of an employee other than an employee in Category IV, is 58 years. The age of retirement of employees under Category IV is 60 years and as per Schedule-III of the said Regulation, Clerk-B comes under Category III services. Since the petitioner was working as Clerk-B under erstwhile OSEB/GRIDCO as admitted by himself, he was retired from his service

on attaining the age of 58 years as per Regulation-3(a) of OSEB Employees Age of Retirement Regulation, 1979.

10. It has further been averred that the Petitioner was granted provisional pension vide office order dated 22.01.2004 pending regularization of his service records and in the meantime the Petitioner has been sanctioned the death-cum-retirement gratuity vide office order dated 23.11.2004. A stand has also been taken in the counter affidavit, as per existing Rules and Regulation, benefits of unutilized leave has already been given. That apart, with regard to allegation of delay of one year two months in payment of provisional pension to the Petitioner, it has been averred that due to non submission of the pension papers and other required documents in time by the Petitioner, some delay was caused for which the Petitioner himself is responsible and the authority concerned cannot be blamed for such alleged delay. So far as 3rd TBAPS, it has been stated that there was no such provision for payment of such time bound advancement of pay during the service period of the Petitioner.

11. During hearing, learned Counsel for the Petitioner fairly concedes before this Court that the grievance of the Petitioner as to nonpayment of various after retiral dues, after superannuating him at the age of 58 years, have already been disbursed as detailed in the impugned Order dated 04.04.2016. Mr. Mohapatra submits, such a prayer has been made in the

Writ Petition based on the claim of the Petitioner to consider his age of retirement as 60 years and to extend the financial benefits accordingly.

12. From the pleading made in the Writ Petition, it is well revealed that the sole basis of praying to set aside the impugned order dated 04.04.2016 and to treat the age of retirement of the Petitioner as 60 years is the averments made by the erstwhile NESCO Authority in its Counter Affidavit filed in W.P.(C) No.10258 of 2005, wherein, inter alia, a stand had been taken by the said authority that the Petitioner being a workman under Industrial Disputes Act, 1947, shortly, I.D.Act,1947, alternative remedy is available for redressal of his grievances under the said Act and the writ petition is not maintainable. That apart, the prayer of the Petitioner for treating his age of retirement as 60 years is also based on an Office Order dated 26.05.1997 made by the GRIDCO Authority, vide which he and similarly placed other Union office bearer were declared as protected workmen in terms of Section-33 (3) of the I D Act, 1947 read with Rule-68 of the Orissa Industrial Disputes Rules, 1959.

13. Learned Counsel for the Petitioner submits, though the Petitioner was working as Clerk-B at the time of his superannuation, since in the Counter Affidavit filed before this Court in earlier Writ Petition, the Opposite Party specifically averred that the Petitioner is a workman under the I..D. Act, 1947 and also declared him to be a protected workman in

terms of the provisions enshrined under the I.D. Act, 1947, instead of OSEB Employees' Age of Retirement Regulation, 1979, the Petitioner ought to have been superannuated at the age of 60 years in terms of the proviso in Rule-71 of Odisha Service Code, which prescribes that a workman, who is governed by the said Rules, shall be retained in service up to the age of 60 years.

14. Mr.Acharya, learned Counsel for the Opposite Party Nos.2 to 4, submits that the Petitioner was working as Clerk-B at the time of his superannuation and he is governed by the OSEB Employees' Age of Retirement Regulation, 1979. There is no such averments in the Writ Petition that the said Regulations, 1979 is not applicable to the Petitioner and rather, he is guided by the Rule-71 of the Odisha Service Code. Further, the Petitioner has also not challenged the said Regulations, 1979 as to its applicability, as has been rightly detailed in the Order dated 04.04.2016, as at Annexure-2.

15. He further submits that in terms of Regulation-3 (a) of the Orissa State Electricity Board Employees' Age of Retirement Regulations, 1979, the age of retirement of an employee, other than an employee in Category IV, is 58 years. He further submits that as per Schedule-III of the said Regulation, Clerk-B comes under Category III services. As the Petitioner was working as Clerk-B under the earstwhile OSEB/GRIDCO, which has

been admitted by him in his grievance petition dated 23rd October, 2003, he has been rightly superannuated at the age of 58 years in terms of the said Regulations, 1979.

16. Mr. Acharya, learned Counsel for the Opposite Party Nos.2 to 4 files a photocopy of the said Regulations, 1979 and submits, the word “Employee” has been defined under Regulation 2(d). More particularly, Clause (iii) under Regulation 2(d) read with the Schedule, well demonstrates that Clerk-B post belongs to Category III.

17. He further submits that even though the Petitioner, being a Clerk, is a workman as defined under the Section-2 (s) of the Industrial Disputes Act, 1947, but for the purpose of regulating the service conditions of the Petitioner, he is abided by the Employees’ Age of Retirement Regulations, 1979. Admittedly the Petitioner belongs to Category III as defined under the said Regulations, 1979. Hence, he was rightly superannuated at the age of 58 years and such a stand of the Petitioner to treat him as a workman and retire him at the age of 60 years in terms of Odisha Service Code is misconceived.

18. Mr.Pattnaik, learned AGA for the State-Opposite Parties also reiterates the said submissions made by Mr.Acharya and submits that the Petitioner being an employee under the erstwhile NESCO/GRIDCO, is guided by the Employees’ Age of Retirement Regulations, 1979 and the

provision with regard to age of retirement in terms of the Odisha Service Code is inapplicable to the case of the Petitioner.

19. The averments made in the Counter Affidavit filed by the contesting Opposite Party Nos.2 to 4 is not disputed by the learned Counsel for the Petitioner to the effect that the Petitioner was working as a Clerk-B at the time of his retirement. Further, there is no such averment in the Writ Petition as to inapplicability of Employees' Age of Retirement Regulations, 1979 to the Petitioner and applicability of Rule-71 of Odisha Service Code with regard to age of retirement. Further, the Petitioner has not challenged the said Regulations, 1979 on the ground that the same is inapplicable to the Petitioner on the basis of alleged admission by the contesting Opposite Parties that he is a workman under the I.D. Act, 1947. Rather, it has been alleged in the paragraph 8 of the Writ Petition that OSEB Employees Age of Retirement Regulation, 1979 is silent about the retirement age of a workman, while admitting that the Petitioner was working as Clerk-B.

20. At this juncture, it is apt to reproduce below Regulation-2 (d) with relevant portion from schedule, so also Regulation-3 in Regulation, 1979:

“2. (d) “Employee” means any person employed under the Board, in any of the following categories whether borne in regular or work-charged Establishment and includes the State Government Servants permanently transferred to

and opted or deemed to have opted for service under the Board;

- (i) Employees in category I Services/posts,
- (ii) Employees in Category II services/posts,
- (iii) **Employees in Category III Services/posts, and/or nomenclatures.**
- (iv) Employees in Category IV posts, and/or nomenclatures.

Note:-1 **Employees in above categories are specified in the Schedule appended.**

Note:-2 **Government servants and employees of other Organisations, if any, working on deputation at any time under the Board shall not be treated as employee for the purpose of these regulations.”**

HIGH COURT
ORISSA

SCCHEDULE

EMPLOYEES IN CATEGORY I SERVICES/POSTS

XXXXXXXXXX

EMPLOYEES IN CATEGORY II SERVICES/POSTS

XXXXXXXXXX

EMPLOYEES IN CATEGORY III
SERVICES/POSTS AND/OR NOMENCLATURE

Assistant Public Relations Officer	Accounts Clerk
Attendant ‘A’	Assistant Gr. I
Assistant Store Keeper	Accountant
Assistant Gr. II	Artisan ‘C’
	Artisan ‘B’

Auto-Foreman	Crane Operator Gr.II
Auto Electrician	Crane Operator Gr.III
Assistant Foreman	Crane Operator Gr.IV
Asst. Store Keeper	Chargeman
Assistant Teacher	Chargeman 'A'
Assistant Care Taker (Guest House)	Compressor Driver
Bradma Operator	Carpenter
Boiler Operator	Compounder (Pharmacist)
Clerk B	Chemical Assistant
Clerk 'A'	Draftman 'C'
Circle U.D.C	Draftman 'B'
Care Taker	Draftman 'A'
Crane Operator Gr.I (E.O.T.)	Driver 'C'
	Driver 'B'
	Despatcher

(Emphasis Supplied)

“3. (a) **The age of retirement of an employee other than an employee in Category IV is 58 years ;**

(b) The age of retirement of an employee in Category IV is 60 years ;

Provided that

(i) an employee may retire at any time after completing 30 years of service or after attaining the age of 50 years by giving notice in writing to the appointing authority at least three months before the date on which he wishes to retire and it shall be open to the appointing authority to withhold permission to such an employee who seeks to so retire if he is under suspension or if any

disciplinary proceedings against him are pending or in the contemplation ;

(ii) the appointing authority or the authority to which the appointing authority is administratively subordinate may also require an employee to retire at any time, after he completes 30 years of service or attains the age of 50 years by giving three months' notice in writing to the employee, for reasons to be recorded in writing that it is inexpedient or against the interest of the Board to continue to employ him in service ; provided that an employee may be retired under this regulations forthwith without complying with the requirement of notice and on such retirement he shall be entitled to an amount equal to three months' wages/salary. The decision of the appointing authority or the authority to which the appointing authority is administratively sub-ordinate requiring an employee to retire from service shall be final and binding on the employee.

(Emphasis Supplied)

21. From the Regulations, 1979, as extracted above, it is amply clear that the age of retirement of an employee other than an employee in Category-IV is 58 years. Further, though the communication with regard to protected workman was made vide office order of GRIDCO dated 26.05.1997, the Petitioner never took such a plea as to his age of retirement should be 60 years till he attained the age of superannuation i.e.58 years, on 31.07.2003. Only after his retirement, he filed a grievance petition before the Opposite Party No.1, which was disposed of by a reasoned and speaking order after giving due opportunity of hearing to

the Petitioner, so also other parties, as detailed vide the said impugned order.

22. Law is well settled that in terms of Section 2 (s) of the I.D. Act, 1947, the nature of job is the decisive factor to bring an employee under the definition “workman” and not the designation of an employee or the salary drawn by him or her. Similarly, there are provisions under the said Act, 1947 to declare Office Bearers of Trade Union(s) as “protected workman”.

23. From the pleadings and submissions made by the learned Counsel for the parties, so also discussions made above, this Court is of the view that since the Petitioner was working as Clerk-B and was General Secretary of Bhadrak Electrical Workers Union, he along with office bearers of other Trade Unions, functioning under the Industrial Establishment of GRID Corporation of Orissa Limited, were declared as protected workman in terms of Rule-68 of the Orissa Industrial Disputes Rule, 1959, read with Sub sections 3 and 4 of Section 33 of the I.D. Act, 1947. The same cannot be the basis to claim that the Petitioner is a workman and should have been superannuated at the age of 60 years applying the provisions of OCS (Pension Rules) read with Rule-71 of the Orissa Service Code, which is not applicable to him and is meant for the State Government Employee.

24. Further, law is well settled that the employees of an autonomous bodies cannot claim, as a matter of right, the same service benefits on par with the Government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and the service conditions. The State Government and the autonomous board/body cannot be put on par. In this regard a recent judgment of the apex Court in *State of Maharashtra & Anr. v. Bhagwan & Ors.* reported in 2022 Live Law (SC) 28 is relevant and Paragraph 17 being relevant to the present lis, is extracted below:

“17. Even if it is presumed that NWDA is “State” under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. As held by this Court in *UT, Chandigarh v. Krishan Bhandari* [(1996) 11 SCC 348], **the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts**

of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be “Central Government employees” as stated in the OM for its applicability.”

As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on par with the Government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the Autonomous Board/Body cannot be put on par.”

(Emphasis Supplied)

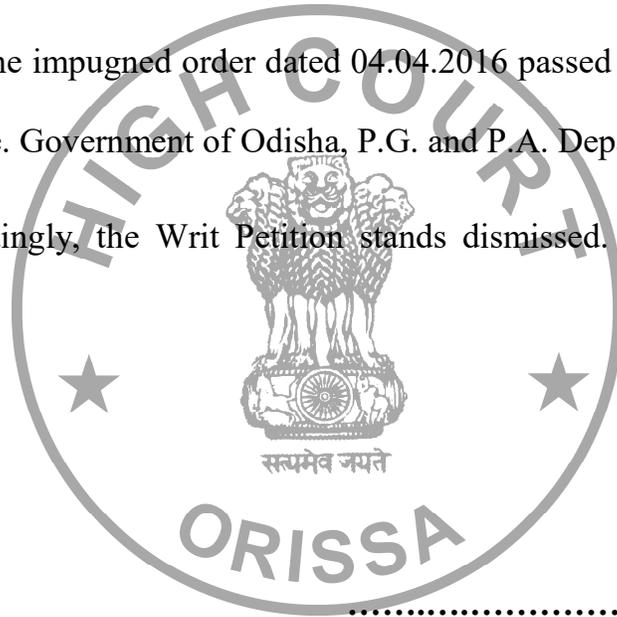
25. Admittedly, all the after retiral dues, including pension, have already been disbursed in favour of the Petitioner as detailed in the impugned Order dated 04.04.2016, so also admitted by the learned Counsel for the Petitioner.

26. From the pleadings of the parties, so also submissions made by the learned Counsel for the parties, as detailed above, as well as legal provisions, so also settled position of law quoted above, since there is no dispute that the Petitioner is abided by the Regulation, 1979, which is

applicable to the NESCO Authority, as there is a clear cut provision under the said Regulation with regard to age of retirement of an employee, other than employees in Category IV, to be 58 years and the Petitioner was coming under Category III, he was rightly superannuated at the age of 58 years and the claim that he should have been superannuated at the age of 60 years, being contrary to the said Regulation, 1979 and misconceived, the Writ Petition is liable to be dismissed.

27. Hence, this Court is of the view that there is no infirmity or illegality in the impugned order dated 04.04.2016 passed by the Opposite Party No.1 i.e. Government of Odisha, P.G. and P.A. Department.

28. Accordingly, the Writ Petition stands dismissed. No order as to cost.



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S.K. MISHRA, J.

Orissa High Court
Dated, 22nd June, 2023/ Banita