

ORISSA HIGH COURT: CUTTACK

AFR

W.P. (C) NO. 11332 OF 2011

In the matter of an application under Article 226 of the
Constitution of India.

Sarat Chandra Nayak Petitioner

-Versus-

Registrar, Judicial, Opp. Parties
Orissa High Court, Cuttack
and Others

For Petitioner : M/s. S.C. Dash and
S.N. Jena, Advocates

For Opp. Parties : Mr. P.K. Muduli,
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE M.S. RAMAN

Date of hearing: 21.04.2023:: Date of judgment: 25.04.2023

DR. B.R. SARANGI, J. By means of this writ petition, the
petitioner, who was working as a Secretary in the High

Court of Orissa and retired from service on attaining the age of superannuation on 30.04.2007, seeks direction to the opposite parties to extend the benefit contained in para-2(2) of the resolution dated 19.01.2009 in Annexure-2. He further seeks direction to the opposite parties to grant full pension, taking into account the qualifying service period as 25 years in terms of para-2 of the said resolution, and consequentially release the differential pension amount in his favour within a stipulated time by making revision of the pension.

2. The factual matrix of the case, in a nutshell, is that on attaining the age of superannuation the petitioner retired from service w.e.f. 30.04.2007 and consequentially he was granted with pension vide P.P.O. No. 368710. Subsequently, Odisha Revised Scale of Pay Rules came into force w.e.f. 01.01.2006 by the Finance Department, vide resolution dated 19.01.2009, allowing revision of pension/family pension w.e.f. 01.01.2006 and gratuity and commutation of pension w.e.f. 01.12.2008. In the

said resolution it was indicated that government servants, who have rendered the minimum qualifying service of 25 years, would be entitled to get pension at the rate of 50% of the last emoluments drawn by them on the date of their retirement. As such, the said benefit is also applicable to the government servants retiring on or after 01.12.2008. The maximum limit of Death-cum-Retirement Gratuity was also enhanced to Rs.7.5 lakhs w.e.f. 01.12.2008. But the employees, who retired during the period from 01.01.2006 to 30.11.2008, were granted Death-cum-Retirement Gratuity up to maximum limit of Rs.2.5 lakhs. Therefore, the affected pensioners challenged such action before the State Administrative Tribunal. Consequently, the Government in Finance Department, after being directed for reconsideration of the matter, issued a fresh resolution on 01.04.2011 allowing the maximum limit of Rs.7.5 lakhs on revision of pay to all employees who have retired during the period from 01.01.2006 to 30.11.2008. But, for the government servants, the cutoff date was

fixed by the Finance Department as 01.12.2008 with regard to their eligibility to get pension at the rate of 50% with having 25 years of qualifying service. Thereby, the petitioner is grossly aggrieved by such action of the authority and contended that the benefit of ORSP Rules, 2008 having been made applicable w.e.f. 01.01.2006 and the revision of pension and family pension also allowed w.e.f. 01.01.2006, the qualifying service period of 25 years be extended to him to be entitled to get the full pension. Consequentially, he seeks for differential amount of revised pension taking into consideration his 32 years of service for grant of full pension. Hence, this writ petition.

3. Mr. S.C. Dash, learned counsel for the petitioner contended that the petitioner, being a retired employee, by virtue of the resolution dated 19.01.2009 the benefit has to be extended to him in terms of para-2(2) and 2(3) of the resolution. It is contended that though part of such resolution has been complied with, but so far as qualifying service of 25 years for the purpose of

granting full pension is concerned, the same has not been made applicable in respect of the petitioner. Thereby, the authorities have acted arbitrarily and unreasonably. Consequentially, he seeks direction to the opposite parties for extension of the benefit full pension, as admissible to the petitioner, by revising his pension, taking into consideration 25 years of qualifying service.

4. Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the State-opposite parties, referring to the counter affidavit filed by opposite party no.2, justifies the action taken by the Government in not extending the benefit of full pension to the petitioner on completion of 25 years of qualifying service. It is contended that the petitioner is not entitled to the relief, as sought by him, as because revision of pension and fixing a benefit of liberalization in service conditions of State Government employees are different and distinct in character. Fixing of date for the specific benefit in relation to reduction of length of qualifying service for full pension

does not lack principles of any intelligible differentia and it is neither discriminatory nor designed to create classification. If the State Government, instead of liberalizing the service conditions, minimizes any benefit or withdraws the same, the question of homogeneous class would not arise. On the other hand, the claim would be differently placed on the plea that the Government has taken away the benefit. Thereby, it is contended that the State Government is well justified in fixing the pension of the petitioner which does not require any interference of this Court. It is further contended, referring to the additional affidavit filed by opposite party no.2 in compliance of the order dated 04.04.2022, that considering the financial position of the Government as well as financial impact on the State Exchequer by giving the provisions with effect from 01.01.2006, even though the circular dated 19.01.2009 has been issued extending such benefit to the petitioner, but actually the same

cannot be extended. Consequentially, dismissal of the writ petition is sought for.

5. This Court heard Mr. S.C. Dash, learned counsel appearing for the petitioner and Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the State-opposite parties by virtual mode and perused the records. 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. On careful appraisal of the factual matrix, as delineated above, this Court finds that Government of Odisha in Finance Department issued a resolution on 19.01.2009 under Annexure-2 with regard to revision of pension/family pension, gratuity and commutation of pension of Post-2006 pensioners/family pensioners. Paragraphs-2, 3, 4 and 5 of the said resolution, being

relevant for the purpose of the case, are extracted hereunder:-

“2. Pension:-

(1) xxx xxx xxx

(2) Qualifying service of 33 years was required as per Rule 47(2) (a) & (b) of O.C.S (pension) Rules, 1992 and for sanction of full pension. Government have been pleased to decide that the Government servants who have rendered the minimum qualifying service of 25 years would now be entitled for pension at the rate of 50% of the last emolument (basic pay + grade pay) drawn by him on the date of his retirement.

In case of Government servants retiring before completion of 25 years of qualifying service, but after completion of 10 years, the amount of pension shall be proportionate to the amount of pension admissible under clause (b) of sub-rule (2) of Rule 47 of O.C.S (pension) Rules, 1992 and in no case the amount of pension shall be less than the minimum amount of pension admissible now fixed at Rs.3,500/-.

(3) The revised provisions for calculation of pension in para 2(2) above shall come into force w.e.f 01.12.2008 and shall be applicable to the Government servants retiring on or after that date. The Government servants who have retired on or after 01.01.2006 but before 01.12.2008 will continue to be governed by the rules /orders which were in force immediately before coming in to effect of this Resolution.

(4) The minimum amount of pension admissible shall be Rs.3,500/- and maximum up to 50% of

the highest pay and grade pay admissible to the Government employees.

(5) The provisions of clause (a) & (b) of sub-rule-2 of Rule 47 of O.C.S. (pension) Rules, 1992 shall stand modified to the extent in para 2(2) and 2(4) above.”

7. On perusal of the aforesaid provisions, it is made clear that Rule-47(2)(a) & (b) of the O.C.S. (Pension) Rules, 1992, requires qualifying service of 33 years for sanction of full pension. But, by virtue of para-2(2) of the aforementioned resolution, a government servant who has rendered minimum qualifying service of 25 years would be entitled to get pension at the rate of 50% of the last emolument (basic pay + grade pay) drawn by him on the date of his retirement. In para-2(3) of the above resolution, it is provided that the revised provisions for calculation of pension in para-2(2) above shall come into force w.e.f. 01.12.2008. Thereby, a cutoff date has been fixed for implementation of para-2(2) and the same shall be applicable to the government servant retiring on or after 01.12.2008. The government servant, who has

retired on or after 01.01.2006 but before 01.12.2008, would continue to be governed by the rules and orders which were in force immediately before coming into effect the above resolution. Meaning thereby, the said government service shall be regulated by the old principles instead of para-2(2) of the resolution, referred to above. Furthermore, the minimum pension has been admissible at Rs.3500/- and maximum up to 50% of the highest pay and grade pay admissible to the government employees. Therefore, the benefit, which has been granted under para-2(2), has been taken away under para-2(3), so far as the government servants who have retired on or after 01.01.2006 but before 01.12.2008. The petitioner falls within this category, as he has retired from service on 30.04.2007. It is made clear that by the time the petitioner retired from service he had rendered 32 years of service, thereby the condition of minimum qualifying service of 33 years to get full pension was not satisfied. Therefore, he was getting proportional pension taking into

consideration his qualifying service as 32 years. If the qualifying service period of the petitioner has been reduced as per para-2(2) of the resolution dated 19.01.2009, then he is entitled to get the full pension of 50% of the last emolument (basic pay + grade pay) drawn by him. If it is examined mathematically, at best the petitioner can have some differential amount to get. But fact remains, because of para-2(3), he has been debarred from getting such benefit, as the State Government has created a class which is not permissible. If for a government servant having qualifying service of 25 years, who retired after 01.12.2008, the revised pension is applicable, denial of such benefit to the government servant, who retired between 01.01.2006 and 01.12.2008, has no valid justification. Thereby, the cut-off date fixed as 01.12.2008, depriving of the benefit to the government servants retired between 01.01.2006 and 01.12.2008 has no nexus to the object sought to be achieved. More so, in the process, a small group of persons have been deprived

of getting their legitimate claim of revision of pension, which is arbitrary, unreasonable, illegal and contrary to the provisions of law.

8. The reason for fixation of cut-off date, i.e., 01.12.2008 to extend the benefit of qualifying service of 25 years to be entitled to get full pension has no reasonable nexus to the object sought to be achieved. Therefore, the basic question is to be determined as to whether the fixation of such cut-off date is arbitrary, unreasonable or discriminatory.

9. When a cut-off date is fixed by the concerned authority, the Court is required to keep in mind that such a date must have been fixed by the authority after considering various aspects of the case and, therefore, there is very limited scope of judicial interference in such matters. This issue has been examined and considered by the Supreme Court time and again in a large number of cases, some of which are ***Jaila Singh v. State of***

Rajasthan, AIR 1975 SC 1436; **D.S. Nakara v. Union of India**, AIR 1983 SC 130; **Dr. (Mrs.) Sushma Sharma v. State of Rajasthan**, AIR 1985 SC 1367; **U.P.M.T.S.N.A. Samiti, Varanasi v. State of Uttar Pradesh**, 1987 (2) SCC 453 : AIR 1987 SC 1772; **Krishna Kumar v. Union of India**, AIR 1990 SC 1782; **State of Rajasthan v. Rajasthan Pensioner Samaj**, AIR 1991 SC 1743; **All India Reserve Bank Retired Officers Association v. Union of India**, AIR 1992 SC 767; **T.S. Thiruvengadam v. Secretary to the Government of India**, (1993) 2 SCC 174; **Union of India v. Sudhir Kumar Jaiswal**, AIR 1994 SC 2750; **M. C. Dhingra v. Union of India**, (1996) 7 SCC 564 : AIR 1996 SC 2963; **University Grants Commission v. Sadhana Chaudhary**, (1996) 10 SCC 536; **State of Rajasthan v. Amrit Lal Gandhi**, AIR 1997 SC 782; and many others.

10. It is well settled in law that a cut-off date can be introduced, but it is not permissible to introduce such a date in an artificial manner resulting in discrimination

between similarly situated persons. A cut-off date may be introduced by creating a fiction, but before fixing such cut-off date, the consequences are required to be examined thoroughly and the date so fixed must have some nexus to the object sought to be achieved and should not result in making an artificial classification between similarly situated persons. If the choice of fixing a particular date is shown to be wholly arbitrary and introduces discrimination, which violates the mandate of Article 14 of the Constitution, such a cut-off date can be struck down for the reason that a purpose of choice unrelated to the object sought to be achieved cannot be accepted as valid. The Constitution Bench of the Supreme Court in ***Union of India v. M.V. Valliappan***, AIR 1999 SC 2526 held that a cut-off date cannot be held to be invalid unless it is shown to be capricious or whimsical and it cannot be held to be so merely in absence of any particular reason for choosing the same. The Court observed as under:

*“It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances; while fixing a line of point is necessary and there is no mathematical date or way of fixing it, precisely the decision of the Legislature or its delegate must be accepted unless it is very wide of reasonable mark (**University Grants Commission v. Sadhana Chaudhary**: (1996) 10 SCC 536. The learned Counsel for the respondents was not in a position to point out any ground for holding that the said date is capricious or whimsical in the circumstances of the case.”*

11. In **Bhupinderpal Singh v. State of Punjab**, (2000) 5 SCC 262, the Supreme Court placed reliance upon large number of its earlier judgments, particularly in **Ashok Kumar Sharma v. Chandra Sekhar**, (1997) 4 SCC 18; **Andhra Pradesh Public Service, Commission v. B. Sharat Chandra**, (1990) 2 SCC 669 and **M.V. Nair (Dr.) v. Union of India**, (1993) 2 SCC 429 and observed as under:

“The High Court has held that (i) the cutoff date, by reference of which the eligibility required must be satisfied by the candidate seeking a public employment, is the date appointed by the relevant rules and if there be no cut-off date appointed by

the rules then such date, as may be appointed for the purpose in the advertisement seeking for application; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed, by which the application has been received by the Authority. The view taken by the High Court is supported by several decisions of the Court and is, therefore, well settled and hence cannot be found fault with.”

Applying the above principle to the present context, fixation of 01.12.2008 as the cut-off date cannot be sustained in the eye of law.

12. It is of relevance to note that the State Government has revised the pay, pension and family pension with effect from 01.01.2006. Subsequently, the State Government made revision of pension/family pension, gratuity and commutation of pension of Post-2006 pensioners/family pensioners vide Finance Department Resolution dated 19.01.2009. In the said resolution, State Government brought about some modifications incorporating new provisions, which are extracted hereunder:-

“(i) Provision of additional pension/family pension in respect of pensioners and family pensioners who have completed 80 years and above.

(ii) Provision of enhanced family pension for 10 years in case of an employee died in harness.

(iii) Provision of addition of qualifying service is withdrawn.

(iv) Reduction of qualifying service from 33 years to 25 years for the purpose of full pension.

(v) Enhancement of maximum limit of DCRG from Rs.2.5 lakhs to Rs.7.5 lakhs.

(vi) Adoption of new methodology for commutation of pension.

These provisions are carried into effect from 01.12.2008.”

13. It may be noted that the Odisha Administrative Tribunal in O.A. No. 1320 of 2009 (***Bijay Kumar Mohanty v. State of Orissa and others***) disposed of on 27.07.2010, while observing that the issue seems to be already under serious consideration of the Anomaly Committee, directed the State Government to take a positive decision on the issue within three months from the date of receipt of the order. Thereby, taking into

consideration the opinion of the Anomaly Committee, the Government decided to enhance the maximum limit of DCRG to Rs.7.5 lakhs admissible in respect of State Government employees w.e.f. 01.01.2006. Therefore, the petitioner, even though retired on 30.04.2007, has been extended with such benefits.

14. Though in the counter affidavit filed by the State no plea has been advanced as to why the petitioner has been deprived of getting the differential benefit, taking into consideration the qualifying service of 25 years, as per para-2(2) of the resolution dated 19.01.2009, but in compliance of the order dated 04.04.2022 an affidavit has been filed by the opposite party, in which it has been stated as follows:-

“Considering the financial position of the Government as well as the financial impact on the State Exchequer by giving the provisions w.e.f. 01.01.2006, the above mentioned provisions have been given effect w.e.f. 01.12.2008.”

It is therefore inferred that due to financial position of the Government as well as financial impact on the State Exchequer, the benefit claimed is not admissible. It is essentially contended that due to financial stringency the benefit admissible to the petitioner cannot be extended even though he retired with effect from 30.04.2007 in between the period 01.01.2006 and 01.12.2008. The plea of financial crunch is no ground not to extend such benefit.

15. A similar question had come up for consideration before the apex Court in State of **Maharashtra v. Manubhai Pragaji Vashi**, AIR 1996 SC 1 that, was non-extending the grant-in-aid by State to Non-Government Law Colleges and at the same time extending such benefit to non-Government Colleges with faculties, viz., Arts, Science, Commerce, Engineering and Medicine (other professional non-Government colleges) patently discriminatory? In that case, the aforesaid benefit had not been extended by pleading paucity of funds or

otherwise, and the apex Court held that the plea of paucity of funds taken by the State would not be tenable as the paucity of funds can be no reason for discrimination.

In paragraph 12 of the aforesaid judgment, the apex Court specifically observed as follows:

*“The facts stated above amply bring out the fact that recognised private law colleges alone were singled out for hostile discriminatory treatment. The recommendations of the committee (pages 198-208) to apply the new formula for the grant to private law colleges and the resolution adopted by the Government to extend the UGC scales to teachers of law colleges (pages 86-87) remained only in ‘paper’ and no concrete steps were taken to implement them. It is not explained as to why recognised private law colleges alone are disentitled to receive grant-in-aid from the Government. The burden of proof cast on the State, that discrimination against recognised private law colleges is based on a reasonable classification having nexus to the object sought to be achieved, has not been discharged. The High Court has held so, placing reliance on the decisions of this Court reported in **Budhan Choudhary and others v. State of Bihar**, AIR 1955 SC 191 **Express Newspaper Ltd. v. Union of India**, AIR 1958 SC 578, **Mehant Moti Das v. S.P.Sahi** AIR 1959 SC 942, **Babulal Amthalal Mehta V. Collector of Customs** AIR 1957 SC 877*

and **D.S.Nakara v. Union of India**, AIR 1983 SC 130. We hold that the aforesaid reasoning and conclusion of the High Court is fully justified and no exception can be taken to the decision so arrived at by the High Court. The High Court has further referred to the plea of paucity of funds pleaded by the State and has held that paucity of funds can be no reason for discrimination placing reliance on the decision of this Court in **Municipal Council, Ratlam v. Vardhichand** AIR 1980 SC 1622. This reasoning of the High Court is also fully justified and no exception can be taken to the said proposition as well. We hold so.”

16. In **Punjab State Cooperative Agricultural Development Bank Limited v. Registrar, Cooperative Societies and others**, (2022) 4 SCC 363, taking into consideration the ratio decided in the case of State of **Rajasthan v. A.N. Mathur**, (2014) 13 SCC 531, the apex Court in paragraphs-55, 56 and 57 held as under:-

“55. In State of Rajasthan(supra), it was a case where the University which was an autonomous body created under the provisions of the Act by its Resolution introduced the pension scheme, without taking recourse of the fact that the Resolution of the Board of the Management of the University can be enforced only with prior approval from the Chancellor, i.e., the Governor of the State in terms of Section 39

of the Act and it was never approved by the Chancellor, in absence whereof, such resolution of the Board of Management was unauthorized and was not open to be implemented. In the given circumstances, this Court was of the view that in absence of the mandate of Section 39 being complied with, the Board of Management of the University was not justified in introducing the scheme of pension.

56. So far as the submission made by learned counsel for the appellant about the financial distress of the appellant Bank to justify the impugned amendment to say that it may not be possible to continue the grant of pension any more is concerned, suffice to say, that the rule making authority was presumed to know repercussions of the particular piece of subordinate legislation and once the Bank took a conscious decision after taking permission from the Government of Punjab and Registrar, Cooperative, introduced the pension scheme with effect from 1 st April 1989, it can be presumed that the competent authority was aware of the resources from where the funds are to be created for making payments to its retirees and merely because at a later point of time, it was unable to hold financial resources at its command to its retirees, would not be justified to withdraw the scheme retrospectively detrimental to the interests of the employees who not only became member of the scheme but received their pension regularly at least upto the year 2010 until the dispute arose between the parties and entered into litigation.

57. In our view, nonavailability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socioeconomic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.”

17. On perusal of the above, it is made clear that non-availability of financial resources would not be a defence available to the State in taking away the vested rights accrued in favour of the petitioner that too when it is for his socio-economic security. Thereby, denial of the benefit of pension to the petitioner, taking into consideration qualifying service of 25 years as per para-2(2) of the resolution dated 19.01.2009, as he has retired in between 01.01.2006 and 01.12.2008, i.e., 30.04.2007, cannot be sustained in the eye of law.

18. In view of the facts and law, as discussed above, this Court is of the considered view that the petitioner is entitled to get the benefit of pension, taking into consideration 25 years of qualifying service, as per para-2(2) of the resolution dated 19.01.2009. Accordingly, the opposite parties are directed to revise the pension of the petitioner w.e.f. 01.05.2007 and release the differential amount in favour of the petitioner within a period of three months from the date of production/communication of certified copy of this judgment.

19. In the result, the writ petition is allowed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

M.S. RAMAN, J. I agree.

(M.S. RAMAN)
JUDGE

Orissa High Court, Cuttack
The 25th April, 2023, Ashok