

IN THE HIGH COURT OF ORISSA :: CUTTACK

(ORIGINAL JURISDICTION CASE)

W.P.(C) NO. 2142 OF 2010

CODE NO. 310799



Presented in Court

R.O.

2-2-10

An application under Articles 226 and 227 of the Constitution of India.

AND

IN THE MATTER OF ;

1. Smt.Archana Mohanty, aged about 57 years, wife of late S.C.Mohanty, Flat no.006 Akashdeep Apartment, Vivekananda Marg, Bhubaneswar, District: Khurda.
2. Bhabagrahi Mohanty, aged about 57 years, son of late Nanda Kishore Mohanty, Qr.No.Tuype-II-53, Delta 'B' Colony, Unit - 8, Bhubaneswar, District: Khurda.
3. Sadhu Charan Sethi, aged about 57 years son of Bamadev Sethi, Plot No.2325/2454, Kharakhia Baidyanath Lane, Old Town, Bhubaneswar.

Bhabagrahi Mohanty

P. K. MOHANTY
NOTARY CUTTACK TOWN



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4. Dillip Kumar Mishra, aged about 50 years, son of late Niranjan Mishra, S2-186/187, Niladrivihar, Bhubaneswar-21, District: Khurda.

.. .. Petitioners

Versus

1. State of Orissa, represented through its Secretary, Higher Education Department, Secretariat Building, Bhubaneswar, District: Khurda.
2. Council of Higher Secondary Education, Orissa, represented through its Chairman, Bhubaneswar, District: Khurda.

.. .. Opposite Parties

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**ORISSA HIGH COURT
CUTTACK**

W.P.(C) No.2142 of 2010

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Smt. Archana Mohanty & others

Petitioners

-versus-

State of Orissa & another

Opposite Parties

For petitioner : M/s. Budhadev Routray,
D.K.Mohapatra,
S.Jena, D.Routray,
P.K.Sahoo, D.Mohapatra,
K.Mohanty, S.K. Ray &
S.K. Samal.

For opp. Parties : Addl. Government Advocate
(For O.P.No.1)

M/s. A.K. Bose & P.K.Das
(For O.P.No.2)

Date of Judgment: 20.12.2010

P R E S E N T:

**THE HONOURABLE SHRI JUSTICE B. P. DAS
&
THE HONOURABLE KUMARI JUSTICE SANJU PANDA**

S. Panda, J. The petitioners, who are the ministerial employees of the Council of Higher Secondary Education, Orissa (hereinafter referred to as "the Council", have filed this writ application praying for issuance of a direction to the Council to implement its resolution dated 8.11.2005 whereby it has fixed the age of superannuation of its ministerial

employees at 60 years instead of 58 years and for a declaration that the action of the Council in forwarding the aforesaid proposal for fixation of the date of superannuation as 60 years to the State Government is contrary to the provisions of the Orissa Higher Secondary Education Act and the Regulations framed thereunder.

2. The facts of the case, as enumerated in the writ application, are as follows :

The Executive Committee of the Council in its meeting held on 8.11.2005 passed a resolution and fixed the age of superannuation of ministerial employees of the Council other than the Government employees on deputation to the Council at 60 years subject to the approval of the Council since the age of retirement was not specific, i.e. whether 58 years or 60 years, in the Service Rules. The said decision was taken as the employees working in the sister organizations like Utkal University, Board of Secondary Education, Orissa University of Agriculture & Technology and Orissa Bureau of Text Books, where the age of superannuation was fixed at 60 years. After the Executive Committee passed the aforesaid resolution, the matter was sent to the Council for confirmation.

3. Learned counsel for the petitioners submitted that the Executive Committee of the Council was empowered under Regulation 70(iv) to take such decision. The financial burden whatever may be is on the Council and the Government is not to bear any financial burden in respect of the employees of the Council. But the Council, which was to



approve and implement the resolution, under a misconception of Section 33 of the Orissa Higher Secondary Education Act, 1982 referred the matter to the Government on 17.12.2005 for approval. Therefore, the action of the Council in referring the matter to Government for approval is illegal, arbitrary and warrants interference of this Court.

4. Opposite party no.2 has filed a counter-affidavit taking a stand therein that as per Regulation 70(iv), the Executive Committee of the Council has been empowered to determine the ministerial establishment of the council and other establishment lower in rank, including the creation of post, their salaries and other emoluments, subject to such provisions as the regulations may contain, conditions of their service including appointment, leave, discipline, pension, provident fund benefits. Although the Executive Committee of the Council has been conferred with absolute power to decide the structure/design of the ministerial establishment of the council, so far as the service condition, etc. are concerned in particular relating to superannuation age of an employee, the same is required to be made by amending the service rules/regulations and approval of the Government is statutorily required for the above purpose.

5. The Government has also filed a counter-affidavit taking a stand that Regulation 166 of the Orissa Higher Secondary Education (Amendment) Regulations, 2004 provides for entitlement to pension and family pension to the employees of the Council of Higher Secondary Education. Said regulation provides that notwithstanding the age of



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superannuation the period of qualifying service of the employees other than the Class IV employees upto the time when they complete 58 years of age shall be taken into consideration to determine the quantum of their pension, family pension, etc. In view of the said statutory regulation, it was not prudent on the part of the Executive Committee of the Council to resolve and fix the age of superannuation of the Council at 60 years. The Government has reiterated that the present financial stability of the organization is not to be taken into consideration while enhancing the age of superannuation as the financial burden is to be borne by the Council.

6. Considering the submissions of the parties and after going through the provisions of the relevant Acts, Rules and Regulations, it appears that the date of retirement of a ministerial employee of the Council is the date on which he or she attains the age of 58/60 years as decided by the authorities of the Council and Regulation 70(iv) also empowers the Executive Committee of the Council to take a decision in this regard which is also not disputed by the parties. Therefore, the only question left to be considered is whether the said decision of the Executive Committee is to be implemented by the Council or needs Government approval.

7. Our attention was drawn to Regulation 33 of the Orissa Higher Secondary Education Regulations, 1982 which reads as under :

"33. (1) The Government shall have the right to address the council with reference to anything conducted or done by the Council and to communicate to the Council their views on any matter with which the Council is concerned.

- (2) The Council shall report to the Government such action if any, as it proposes to take or has taken on the communication and shall furnish an explanation if it fails to take action.
- (3) If the Council does not within a reasonable time take action to the satisfaction of the Government, the Government may, after considering any explanation furnished or representation made by the Council, issue such directions consistent with this Act and the Regulations made thereunder as they may think fit and the Council shall comply with such directions.
- (4) When any emergency in the opinion of Government requires that immediate action should be taken, the Government may take, such action consistent with this Act and the Regulations made thereunder as they deem necessary without previous consultation with the Council and shall forthwith inform the Council of the action taken.
- (5) The Government may, by order in writing specifying the reasons therefore, suspend the execution of any resolution or order of the Council, the Executive Committee, or any other Committee constituted under this Act and prohibit the doing of any Act which purposes to be done or intended to be done under this Act, if the Government, after calling for a report from the Council and considering same, are of opinion that such resolution, order or Act is in excess of the powers conferred by or under this Act upon the Council, the Executive Committee or such other Committee, as the case may be.
- (6) In the event of any difference of opinion between the Chairman and the Council or any of its committees on any matter, the same shall be referred to Government for decision which shall be final.
- (7) The Government shall have the right to cause an inspection to be made by such persons or persons as they may direct, of the Council and also cause an enquiry to be made in respect of any matter connected with the Council. The Government shall in every such case give notice the Council of their intention to cause such inspection or enquiry to be made and the Council shall be entitled to be represented thereat.
- (8) The Government shall forward to the Chairman of the Council a copy of the inspection report for obtaining the views of the Council and on receipt of such views the Government may issue such instructions as they consider necessary and fix a time-limit for action to be taken by the Council.
- (9) Where action has not been taken by the Council to the satisfaction of Government within the time fixed or extended by them under sub-section (8), they may, after considering any explanation furnished or representation made by the Council, issue such directions as they may think fit and the Council shall comply with such directions.
- (10) The Government may by order in writing direct the Council to pay out of the Council fund, the Salaries and allowances to its Chairman, Vice-Chairman, Secretary, Controller of Examination and the Finance Officer."

8. Under the aforesaid provisions of Section 33, the Government have a right to address the Council with reference to anything conducted or done by the Council and to communicate to the Council their views on any matter with which the Council is concerned. Further, the conditions in which the Government can interfere in the matters of the Council have



been enumerated in the said provisions. After giving our anxious consideration to the aforesaid provisions, we are of the view that those conditions are not applicable to the present case. That apart, in the Service Rules relating to the ministerial employees of the Council, it has been provided that the retirement age of an employee is 58/60 years. Hence, it is well within the domain of the Executive Committee of the Council to consider and determine the age of superannuation. In this case, the Executive Committee has passed the resolution dated 8.11.2005 fixing the age of superannuation at 60 years. Therefore, it cannot be said that the age of superannuation of the ministerial employees cannot be enhanced by the Council.

9. It would not be out of place to mention that experience and expertise gained by an employee due to his seniority in service is for the benefit of the Institution and the same in this case can be utilized by the Council for its interest and benefit. Present days' Human Resources principle is to create positivity in the organization with a team, members of which work together. The team usually has its own set of dynamics, which help the members perform better. The dynamics of the team may be a little difficult for the newcomer to handle. Therefore, the organization can utilize the skill and experience of the senior employees to organizational effectiveness.

10. In view of the aforesaid discussion, we are of the considered opinion that since the Executive Committee of the Council has taken a decision regarding enhancement of the age of superannuation of its



ministerial employees and the Council has approved the same, it has to implement the same within a reasonable time instead of referring it to the Government as there was no difference of opinion between the two, i.e. the Executive Committee and the Council.

11. The writ application is accordingly disposed of with a direction to the Council of Higher Secondary Education, Orissa, opposite party no.2 to implement the resolution dated 8.11.2005 passed by its Executive Committee as expeditiously as possible.

There shall be no order as to costs.



B. P. Das, J.

I agree.

Sd/- S. Panda, J

Sd/- B. P. Das, J

Orissa High Court, Cuttack.
December 20, 2010/TPRaiguru.

Compared by
[Signature]
12.8.11

Date of Application 31/10/10
 Date of Disposition 10/8
 Date of Order 10/8/11
 Date of Delivery 12/9
 14/9

CERTIFIED TO BE A TRUE COPY
 Assistant Registrar (Exec)
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