

Nand Kishore Nayak

Vs

State of Orissa and another

Civil Appeal No. 2224 of 1991 (arising out of S.L.P. (C) No. 7086 of 1990)

(A. M. Ahmadi, V. Ramaswami- II, K. Ramaswamy JJ)

02.05.1991

JUDGMENT

1. Delay condoned.

2. Special leave granted.

3. The Full Bench of the Orissa High Court in Rama Chandra Das v. State of Orissa (1988) 65 Cut LT 253 (1988 Lab IC 1478) on an interpretation of the relevant provisions of the Orissa Education Act, 1969 read with the relevant rules made thereunder came to the conclusion that the fixing of the date of superannuation of some teachers at 58 years and others at 60 years was violative of Art. 14 of the Constitution. It, therefore, concluded as under:

"Hence, the teachers whose age of superannuation according to the instructions read with the 1981 Rules was 58 are entitled to have a declaration that they would continue till they attained the age of 60 years unless the tenure was cut-short by the coming into force of the 1986 Rules which fixed the age of superannuation at 58 years and so declare. Therefore, it follows that the teachers who completed 60 years of age prior to 15-3-1986 were to retire on attaining 60 years of age and those who did not complete 60 years of age but had completed 58 years of age when the rules came into force, would retire on 15-3-1986. Some of the petitioner-teachers even though they had completed 58 years of age and should have retired on 15-3-1986 have, however, continued in service pursuant to orders of stay passed by this Court. They shall retire, on 31-12-1987. If they have rendered service, they shall be entitled to their salary."

After this declaration was made by the High Court, certain employees, who had retired at the age of 58 years but were entitled to continue till attainment of 60 years, filed petitions in the High Court. The appellant was one such employee. The grievance of the appellant is that although the benefit was granted to others similarly situated by the High Court it was refused to him on the ground that he approached the High Court after a lapse of 4 1/2 years since his retirement. His submission is that he could approach the High Court only after this pronouncement was made on 22nd December, 1987. In fact, he approached the High Court on 19-1-1988, i.e. within less than a month after this pronouncement. We think that the High Court was not right in refusing to grant benefit of the judgment to the appellant.

4. The appellant has claimed two reliefs. One for payment of salary for the two years period and

second for re-fixation of his pension. So far as the first relief is concerned, even from the order of the High Court, which we have extracted above, it is obvious that salary was directed to be paid to only those who had actually served and not to others. It is true that this observation was in respect of those who had served beyond their regular superannuation period but the concept is clearly to pay for work actually done. Cases of the present type where the employee accepted his retirement at the age of 58 years and is now seeking the benefit of the High Court's order stand on a different footing from those whose services were wrongly terminated. In our view such employees would not be entitled to salary for the idle period but the relief for re-fixation of pension by extending the date of superannuation by two years can be granted to them. We, therefore, direct the State Government to grant the benefit of the judgment to all those employees including the appellant herein who would have otherwise retired at the age of 60 years on the interpretation placed on the relevant provisions of the Act and the rules by the High Court. In the present case, we, therefore, direct the State Government to extend the benefit of the judgment to the appellant, re-fix his date of superannuation, add two years to his qualifying service and re-fix his pension and grant the same from the deemed date of superannuation. The arrears of pension should also be paid after re-fixing the pension within a reasonable time not exceeding three months.

5. The appeal is allowed accordingly with no order as to costs.

Appeal allowed.

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