



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.A. No.787 of 2024

Subasini Dei

....

Appellant

Mr. U. Sahoo, Advocate

-versus-

State of Odisha & others

....

Respondents

Mr. S.K. Jee, AGA

CORAM:

JUSTICE KRISHNA SHRIPAD DIXIT

JUSTICE CHITTARANJAN DASH

ORDER

24.02.2026

Order No.

04. A retired employee has presented this Intra-Court Appeal for laying a challenge the learned Single Judge's order dated 30.01.2024 whereby her W.P.(C) No.6660 of 2023 has been negatived. In the said WP, she had challenged BEO's order dated 13.02.2023, operative portion of which reads as under:-

“Keeping in view the aforesaid facts and circumstances and on a meticulous scrutiny of the material documents and records it is found that the petitioner was remained absent from her duty from 4.10.2015 till she submitted her joining report as Headmistress of Mahatapala, UP (ME) School, Ranpur Block on 19.6.2017. As such the grievance as has been made by the petitioner in her representation dtd.15.10.2018 to review/recall the order dtd.29.8.2018 is devoid of any merit and merits no consideration hence the representation dtd.15.10.2018 as under Annexure-7 is rejected being devoid of any merit.”

2. Learned counsel vehemently submits that the Orissa Administrative Tribunal in O.A. No.2888(C)/2015 disposed off



on 21.03.2017, had directed the BEO to regularize her absence from duty and therefore, the increments that would otherwise fall due on account of addition of this part of service to the whole, could not have been denied. In support of this view, he presses into service Rule 77 of the Orissa Service Code, which arguably says that unless withheld in a due process, increments accruing due during the course of service have to be accorded to the employee. Learned AGA appearing for the official Respondents resists the Appeal making submissions in justification of the impugned order and the reasons on which it has been constructed. He draws attention of the Court to the BEO's order at Annexure-6, which mentions about sanctioning of leave, half pay leave & extra ordinary leave without pay so that Appellant is denied pensionary benefits for want of qualifying service.

3. Having heard learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter for the following reasons:

3.1. The Appellant was absent from duty during the period between 02.08.2015 to 18.06.2017. The Tribunal, in the earlier round of litigation, vide order dated 21.03.2017, had given relief to the Petitioner on humanitarian ground as under:

“In view of such submission, we direct the respondent No.4 to regularize the service of the applicant for the period she remained absent as per rule, expeditiously so that she will not face any difficulty to get her retiral dues.”



The above relief was granted to the Appellant, as already said, purely on humanitarian ground even after recording a specific finding as to her unauthorized absence for the period mentioned above. But for the concession given by the Tribunal, Appellant would not have been entitled to grant of pensionary benefits, on account of lack of qualifying service. It is admitted before us that she has been drawing pension on regular basis. Therefore, what has been notionally treated as service despite unauthorized absence, cannot be basis for earning increments. In such circumstance, Rule 77 of the Code, which operates in normal circumstances entitling the employee to the benefit accrued increments, is not invokable.

3.2. Learned Single Judge has rightly reproduced the observation of Tribunal to the effect that but for the regularization of break in service on account of unauthorized absence, Appellant could not get the pensionary benefits. It had not set at naught the finding as to her unauthorized absence during the period between 04.10.2015 and 18.06.2017. What has been done in the mercy jurisdiction cannot be abuse by the beneficiary of such order, as rightly contended by learned AGA appearing for the official Respondents. He is right in drawing our attention to the document at Annexure-6, wherein the Block Education Officer has given the following particulars of leave, half pay



leave & extraordinary leave without pay that have been sanctioned to the Appellant because of order of Tribunal:

Sl No.	Kind of Leave Sanctioned	Period of Leave			Remarks
		From	To	Total	
1	Earned leave on full pay	02/08/2015	03/10/2015	63 days	On medical ground
		04/10/2015	29/11/2015	57 days	On private affairs
2	Half Pay Leave	30/11/2015	06/02/2017	435 days	On private affairs
3	Extra ordinary Leave without pay	07/02/2017	18/06/2017	132	On Private affairs
		Total		687 days	

Appellant should be happy with the benefits which she has received despite not being entitled to.

In the above circumstances, the Appeal being devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy.

Web copy of order to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge