IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.26782 of 2020
CNR No. ODHC010584042020

In the matter of an application under Article-226 & 227 of the Constitution of India
....

Kapileswar Sahoo .... **Petitioner**

-versus-

State of Odisha & Others .... **Opposite Parties**

For Petitioner : M/s. A. Tripathy, Adv.

For Opp. Parties : M/s. S. Das, Adv.

PRESENT:

THE HONBLE MR.JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 19.08.2026 & Date of Judgment:19.08.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Heard learned counsel appearing for the parties.

3. The present Writ Petition has been filed inter alia with the following prayer:

> On the facts and in the circumstances stated above, your petitioner, therefore, pray that this Hon'ble Court be pleased to;

(i) quash the impugned order dt.05.10.2020 of the Opp. Party No.1 under Annexre-6 by holding the same as not only bad, illegal and arbitrary in law, but also violative of Rule-71(a) of the Orissa Service Code; and thereby

(ii) direct the Opp. Parties to forthwith re-instate the Petitioner in service with all consequential service and monetary benefits.

(iii) pass such other order(s) as deemed fit and proper in the Bonafide interest of justice and fair play;

And for which act of your kindness, Petitioner shall as in duty bound, ever pray.

4. It is contended Petitioner while continuing as Assistant Commercial Tax Officer (ACTO) in C.T & GST Office under C.T and GST Circle, Jatni, he was given pre-mature retirement in terms of the provisions contained under clause(a) of Rule 71 of the Odisha Service Code (in short, "the Code") vide order dtd.05.10.2020 under Annexure-6.

4.1. While assailing the impugned order, learned Counsel appearing for the Petitioner contended that Petitioner while continuing in service, he was promoted to the rank of Assistant Commercial Tax Officer vide order dtd.09.10.2017 under Annexure-3.

Not only that, Petitioner also come out successful in Paper I,II & II in the Departmental Examination vide Office order dtd.08.02.2018 under Annexure-4 series.

4.2. It is however, contended that while so continuing as against the post of Asst. Commercial Tax Officer on being given the benefit of promotion vide order dtd.09.10.2017 under Annexure-3, basing on the decision taken by the Review Committee in its proceeding dtd.27.12.2019, Petitioner was given pre-mature retirement vide the impugned order dtd.05.10.2020 under Annexure-6.

4.3. It is contended that, such decision taken by the Review Committee in its proceeding dtd.27.12.2019, with issuance of the impugned order dtd.05.10.2020 under Annexure-6, since has been taken and issued contrary to the guideline issued by the G.A and P.G Department on 24.09.2019 under Anenxure-7, the impugned order needs interference of this Court.

4.4. Placing reliance on the provisions contained under Para-4 & 7 of the guideline so issued under Annexure-7, learned counsel appearing for the Petitioner contended that, since by the time the Review Committee meeting was held on 27.12.2019, Petitioner had already attained the age of 57 years, Petitioner's name could not have been referred to the Review Committee to give him pre-mature retirement in terms of the provisions contained under clause(a) of Rule-71 of the Code. Para-4 & 7 of the guideline reads as follows:

4. The cases of Group-A and Group-B Officers on their completing 30 years of qualifying service or attaining 50 years of age and on their attaining 55 years of age, as the case may be, on the 31st March, 30th June, 30th September and the 31st December of a year shall be reviewed by the Review Committees constituted in pursuance of these instructions. Similarly the case of Group-C Officers and Group-D employees shall be reviewed on the 30th June and the 31st December of the year by the relevant Review Committee.

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7. The cases of Govt. servants covered under Paragraph-4 above should be reviewed six months before their completing 30 years of qualifying service or attaining 50 years of age and on their attaining 55 years of age, as the case may be as per the following time schedule.

Sl..No.	*Quartr in which review is to be made*	*Cases of officer/employee completing 30 years of qualifying service or attaining 50 years of age and on their attaining 55 years of age*	*Dateline of furnishing the report to the G.A & P.G Department*
1.	*Jan. to March*	*July to September of the same year*	*15th April*
2.	*April to June*	*October to December of the same year*	*15th July*
3.	*July to September*	*January to March of the next year*	*15th October*
4.	*October to December*	*April to June of the next year*	*15th January of the next year*

A register of officers/employees who are completing 30 years of qualifying service or attaining 50 years of age and on their attaining 55 years of age is to be maintained. The register should be scrutinized at the beginning of every quarter by a senior officer in the Department/ Office and the review undertaken according to the above schedule.

In addition to the above, the Secretary of the Administrative Department is also empowered to constitute internal Committees to scrutinize all the cases required to be reviewed in each quarter and finalize the specific cases to be reviewed. These Internal Committees will ensure that the service record of the employees being

reviewed, along with a summary bringing out all relevant information, is submitted to the review committees at least one month before the due date of review.
The administrative Departments shall furnish reports of every review conducted quarterly in respect of their own offices as well as all the offices functioning under their administrative control to the G.A & P.G Department in the format prescribed in Annexure-VI.

4.5. It is also contended that relying on the aforesaid provisions so contained in Annexure-7, this Court in the case of *Ratnaka Mallick Vs. State of Orissa, W.P.(C) No.14146 of 2022*, disposed of on 28.10.2025, held as follows in para-3.13 and 6.3.

3.13. It is contended that since by the time petitioner's name was referred vide letter dated 10.11.2021 and the Review Committee recommended to give Premature Retirement to petitioner in its Proceeding dated 15.03.2022 under Annexure-11, petitioner had already crossed the age of 50 years, his case could not have been taken up by the Review Committee with such recommendation. It is contended that once a thing has been prescribed to be done in a particular manner, the same should be done in that manner or not at all. In support of his aforesaid submission, learned Senior Counsel relied on the following decisions:
1. Bernard Francis Joseph Vs. Government of Karnataka.
2.Independent Sugar Corporation Limited Vs. Girish Sriram Jeneja
3.Checkmate Service Pvt. Ltd. Vs. Commissioner of Income Tax.

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6.3. It is also found that by the time the Review Committee took the decision in recommending Premature Retirement to the petitioner on 15.03.2022 under Annexure-11, petitioner since had completed the age of 50 years, in view of the provisions contained under Para-4 read with Para-7 of the Resolution dated 24.09.2019 under Annexure-10, petitioner's case could not have been taken up by the

> *Review Committee. Placing reliance on the decisions of the Hon'ble Apex Court as cited supra in the case of Bernard Francis Joseph, Girish Sriram Juneja and Checkmate Service P. Ltd., it is the view of this Court that case of the petitioner could not have been taken up by the Review Committee.*

4.6. Not only that, placing reliance on the said decision of this Court in the case of *Ratnakar Mallick,* this Court also interfered with similar nature of premature retirement in W.P.(C) No.1425 of 2022, disposed of on 28.01.2016.

4.7. It is further contended that since Petitioner was given the benefit of promotion vide order dtd.09.10.2017 under Annexure-3, in view of the stipulation contained in Para-6 (c) of the guideline so issued issued under Annexure-7, Petitioner could not have been given premature retirement vide the impugned order. Para-6(c) of the guideline reads as follows:

> 6. (c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the higher post, has been found satisfactory.
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> Consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post, in case of promotion within the period of 5 years, only when retirement is sought to be made on grounds of ineffectiveness.

4.7. Making all these submissions and placing reliance on the decisions so cited supra, learned counsel appearing for the Petitioner contended that since the impugned order of pre-mature retirement under Annexure-6 has been issued in violation of the provisions contained under Para-4 & 7 r/w Para-6(c) of the guideline so issued under Annexure-7, the said order requires interference of this Court. It is also contended that during pendency of the Writ Petition, Petitioner has already attained the age of superannuation on 31.05.2022.

5. Mr. S. Das, learned Addl. Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. party Nos.1 & 2.

5.1. It is contended that after getting the benefit of promotion from the post of Sr. Clerk/Sr. Assistant to the rank of Asst. Commercial Tax Officer, vide order dtd.20.10.2017 under Anenxure-3, it was found that Petitioner neither has the ability to work nor showed any interest to work and never acquired proficiency in GST related work. Not only that he was neither system friendly in the Office nor has interest to learn. Accordingly, his name was referred to the Review Committee to give him pre-mature retirement. Basing on the decision taken by the Review Committee in its proceeding dtd.27.12.2019, Petitioner was given pre-mature retirement vide the impugned order dtd.05.10.2020 under Annexure-6. Stand taken in Para-10 (iii)) reads as follows:

> *(iii) The CT & GST Territorial Range Head, Puri had submitted required information/ report to the Opp. Party No. 2 in case of the petitioner vide his letter No. 17/ CT & GST, dated 09.01.2020 suggesting for premature retirement of the petitioner as per para-6 (b) and para-10 of GA & PG Department Circular No.27037/Gen dated 24.09.2019. The salient points of this report are:*
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> *The petitioner Sri Kapileswar Sahoo, who had been working as Asst. CT & GST Officer (Group-B) in CT & GST Circle, Jatni since 20.10.2017 on promotion from the post of Senior Clerk/ Senior Assistant, had neither the ability to work nor had shown any interest in work and to acquire proficiency in GST related work. He was neither system friendly in back office of GST Portal nor had interest to learn and was always dependent on others. As a result of this, he failed to complete the assigned monthly targets like post registration enquiry and survey of un-registered dealers in time. Virtually, he was unable to handle / browse the back office independently.*
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> *The petitioner was neither sincere nor punctual in attending official works and even failed to carry out orders in time. On some occasions, he had shown disobedience to authority's orders. Even though leave was denied, he proceeded on leave.*
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> *He had failed to maintain the Profession Tax records even though it was assigned to him for Assessment Unit, Khordha.*
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> *His integrity was doubtful. Lots of complaints against him were received over phone and he had been reprimanded verbally on several occasions, but his behaviour was not amended.*
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> *As far as PAR (Performance Appraisal Report) of 2018-19 was concerned, the performance related appraisal of the petitioner (i.e. in case of decision making ability, knowledge of Rules / Procedures / IT skills / relevant subjects, initiatives and quality of works) was found to be average as recorded by the reporting and reviewing authority although he was rated 'good' on overall consideration of other aspects.*
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> *The committee found the case of the petitioner (Sri Kapileswar Sahoo, Asst CT & GST Officer) suitable*

for premature retirement basing on the strong recommendations made by the CT & GST Territorial Range Head, Puri as well as Deputy Commissioner of CT & GST, Jatni Circle, Jatni and had recommended his name for consideration of premature retirement at the level of Opp. Party No.1.
The Minutes of the Review Committee meetings held on 27.12.2019 and 12.05.2020 were sent to Opp. Party No.1 vide letter No.5086, dt. 29.05.2020 of Opp. Party No.2.
Copy of letter No.5086, dated 29.05.2020 of Opp. Party No.2 with its enclosures, i.e. copies of minutes dated 27.12.2019 and 12.05.2020 are annexed herewith and marked as Annexure-C/2 Series to this counter Affidavit.

5.2. It is accordingly contended that since Petitioner lacks the interest to work, and his PAR for the period 2018-19 was found to be “Average” as recorded by the reporting authority and the Reviewing authority, although he was given “Good” in overall consideration, but in view of such lacking on the part of the Petitioner, his name was referred to the Review Committee and basing on the decision taken by the Review Committee in its proceeding on 27.12.2019, Petitioner was given pre-mature retirement vide order dtd.05.10.2020 under Annexure-6. It is accordingly contended that no illegality or irregularity can be found with the impugned order and it requires no interference.

6. Having heard learned counsel appearing for the parties and considering the submission made, this Court finds that

Petitioner entered into service on 17.04.1995 as against the post of Jr. Clerk. While so continuing as against the post of Sr. Asst., Petitioner was given the benefit of promotion to the rank of Asst. Commercial Tax Officer vide Office order dtd.09.10.2017 under Annexure-3. However, while so continuing in the promotional post, basing on the decision taken by the Review Committee in its proceeding dtd.27.12.2019, so admitted by Opp. party Nos.1 & 2 in the counter affidavit, Petitioner was given pre-mature retirement vide the impugned order dtd.05.10.2020 under Anenxure-6.

6.1 It is found from the record that by the time Petitioner's name was referred to the Review Committee and the Review Committee took the decision in its proceeding dtd.27.12.2019, Petitioner had already attained the age of 57 years, his date of birth being 25.05.1962, so available in the Service Book available under Anenxure-2.

6.2. Placing reliance on the provisions contained under Para-4 r/w Para-7 of the G.A Department circular dtd.24.09.2019 under Anenxure-7 and the decision of this Court in the case of Ratnakar Mallick so cited supra, this Court is of the view that since by the time Petitioner's name was referred to the

Review Committee, Petitioner had already attained the age of 57 years, his name could not have been referred to the Review Committee to give him pre-mature retirement.

6.3. Not only that since Petitioner got the benefit of promotion vide order dtd.09.10.2017 under Anenxure-3, in view of the stipulation contained in Para-6 (c) of the guideline under Annexure-7, Petitioner's name also could not have been referred to the Review Committee.

6.4. In view of the aforesaid irregularities which are apparent on the face of the record, in referring the name to the Review Committee to give pre-mature retirement to the Petitioner, this Court is of the view that the order of pre-mature retirement issued on 05.10.2020 under Annexure-6 basing on the recommendation of the Review Committee, is not sustainable in the eye of law.

6.5. Therefore, this Court is inclined to quash order dt.05.10.2020 under Annexure-6 and quash the same accordingly. However, since the Petitioner has attained the age of superannuation in the meantime on 31.05.2022, this Court directs Opp. party No.1 to treat the Petitioner to have continued in his service, till he attained the age of superannuation, but on notional basis and extend the retiral benefits as due and admissible in his favour. This Court directs Opp. party No.1 to complete the entire exercise within a period of 4(four) months from the date of receipt of this order.

7. The Writ Petition accordingly stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 19th August, 2026/Sangita