



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

W.P.(C) No.37415 of 2020

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Jagadananda *Petitioner(s)*

-versus-

State of Odisha & Ors. *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Debesh Panda, Adv.*
Ms. S. Guman Singh, Adv.

For Opposite Party (s) : *Mr. Sonak Mishra, ASC*
Mr. B. K. Dash, Adv.
Along with
Mr. R. B. Dash, Adv.

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-07.10.2024

DATE OF JUDGMENT: -08.11.2024

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- A. Whether the Right to Information Act, 2005 statutorily provides for grant of post retiral benefits to retired State Information Commissioners?
- B. Whether the State is duty bound to formulate the rule governing the issue of pension as per the mandate of Section 16(5) of the Act, 2005?
- C. Whether the Petitioner can be denied the benefit of pension on the ground that he was not in any pensionable service the day he was appointed as State Information Commissioner?

V. Conclusion

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Dr. S.K. Panigrahi, J.

1. The Petitioner has filed the present Writ Petition challenging the order dated 22.07.2020 by which the Opposite Parties have dismissed the petitioner's claim for post-retirement benefits, deeming it devoid of merit and unworthy of consideration.

I. FACTUAL MATRIX OF THE CASE:

2. Succinctly put, the facts leading to the petition are as follows:
 - (i). The petitioner, a social worker involved in various public welfare initiatives, served as a private citizen until his appointment to the position of State Information Commissioner in Odisha.



- (ii). In 2008, a committee was constituted in terms of Section 15(3) of the Right to Information Act, 2005 to evaluate and recommend the names of persons for appointment to the posts of State Information Commissioners in Odisha.
- (iii). In furtherance of the recommendations of the Committee, the Governor of Odisha approved the appointment of the present Petitioner as a State Information Commissioner, following which Notification No. 22585/RTI-110/07 dated 9.7.2008 was issued and he was consequently appointed.
- (iv). On 07.08.2008, the petitioner assumed office and commenced his duties. He duly completed the prescribed tenure of five years in accordance with the provisions of the Act, 2005, and was permitted to relinquish office on 06.08.2013. The aforementioned facts are undisputed and stand admitted by all parties.
- (v). The present dispute arose following the petitioner's retirement. The petitioner contends that while Section 16(5) of the Act, 2005, refers to "*service, allowances, and other terms and conditions,*" which he interprets to include post-retirement benefits, the State has not formalized the service conditions, including such benefits, for State Information Commissioners through any official resolution, order, or memorandum. It is noteworthy that the State had issued an official resolution regarding the service conditions of State Chief Information Commissioners via Resolution No. RTI-51/11/2013/I&PR dated 13.10.2011; however, no equivalent policy decision has been made to date for State Information Commissioners.



- (vi). Aggrieved by this omission, the petitioner submitted multiple representations before ultimately approaching this Court by filing W.P.(C) 990 of 2019. By an order dated 11.03.2019, this Court disposed of the writ petition with a direction to Opposite Party No. 1 to consider the representations and issue an appropriate decision in accordance with the law, without expressing any opinion on the merits of the case.
- (vii). As the representations were not resolved within the stipulated period of three months as directed, the petitioner initiated contempt proceedings through CONT(C) No. 1027/2020. During the pendency of the contempt case, the impugned order dated 22.07.2020 was passed, wherein the Opposite Party No. 1 rejected the representation of the petitioner and held as hereunder:

"...Whereas in order to dispose of the representation of the petitioner under Annexure- 8 series a meeting was held on 30th August, 2019 under the chairmanship of Director, I&PR in presence of Additional Director-cum-Joint Secretary to Govt., Joint Secretary to Govt, AFA-cum-Deputy Secretary to Govt I&PR Dept. and other members. It was unanimously recommended that in absence of any provision for sanction of pension under the Right to Information Act, 2005, the claim of the petitioner is having no merit for consideration."

3. Now that the broad factual matrix leading up to the instant Petition have been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been urged to seeking the exercise of this Court's writ jurisdiction.

II. PETITIONER'S SUBMISSIONS:

4. Learned counsel for the Petitioner Mr. Debesh Panda earnestly made the following submissions in support of his contentions:



- (i). The impugned order is *ultra vires* Section 16(5) of the Act, 2005, rendering it manifestly arbitrary. It is argued that the phrase “*other terms and conditions*” employed in Section 16(5) was intended to encompass post-retirement benefits. Furthermore, it is contended that the State Government lacks the authority to issue orders regulating the petitioner’s service conditions, including post-retirement benefits, as these matters fall within the scope of the general superintendence, direction, and management of the affairs of the Odisha Information Commission. Consequently, the responsibility for making such determinations rests exclusively with the Odisha Information Commission.
- (ii). It is further submitted that where the Act itself states that the salaries and allowances payable to the Petitioner and other terms and conditions of service of the Petitioner “...*shall be the same as that of the Chief Secretary to the State Government...*” It is unfortunate that though a Chief Secretary is entitled to post-retiral benefits, the present Petitioner is not. It is argued that the Impugned Order has failed to give effect to the expression “*shall be the same as*”. It is submitted that such equivalence was given intentionally by the Parliament to attract the best possible talent to be appointed to these positions, which now gets defeated as a private sector person of eminence would see no reason to give up their vocation for five years and then face discrimination in service conditions while their counterparts from the government service remain better placed in so far as post retiral benefits are concerned.



- (iii). It is argued that pension is not a bounty, nor a gratuitous payment made depending on the will of the employer, it is an allowance made in consideration of past service and therefore, the Impugned Order is in gross disregard of the settled principles of law.
- (iv). It is submitted that the States of Karnataka, Kerala, Tamil Nadu and Haryana have all extended pensionary benefits to the post of State Information Commissioners *albeit* not the same pension to the level of the Chief Secretary of the State Government. The present Petitioner also claims parity with past State Chief Information Commissioners who have enjoyed pension and retiral benefits.

III. OPPOSITE PARTIES' SUBMISSIONS:

5. *Per contra*, learned counsel for the Opposite Parties Mr. Sonak Mishra earnestly made the following submissions in support of his contentions:
- (i). The Odisha Information Commission, established as a statutory body under Section 15(1) of the Act, 2005 by Notification No. 29067/IPR dated 29.10.2005. The Commission has rightfully rejected the petitioner's representation for pension and other post-retirement benefits. The rejection is grounded in the absence of any provision in the Act, 2005, sanctioning such benefits for State Information Commissioners. The Information and Public Relations Department, as the nodal department, examined the provisions of the Act and concluded accordingly. It was further contended that the petitioner, having not belonged to a pensionable establishment prior to his appointment, cannot claim parity with individuals who were eligible for such benefits. The State Government, upon due deliberation, adopted a policy decision to



extend post-retirement benefits solely to State Chief Information Commissioners. In the absence of a similar policy for State Information Commissioners, the petitioner's claims in the present writ petition are unsustainable.

- (ii). It was argued that pensions can only be granted in accordance with rules specifically framed for such benefits. In this case, as no such rules have been enacted, the question of granting post-retirement benefits to the petitioner does not arise. Attention was drawn to the Right to Information (Amendment) Act, 2019, which amended Section 16(5) of the Act, 2005. Post-amendment, the power to formulate rules governing the service conditions of both Central and State Information Commissioners lies with the Central Government. The Department of Personnel and Training, Ministry of Personnel, Public Grievances, and Pensions, has already framed the relevant rules under the Right to Information (Term of Office, Salaries, Allowance, and Other Terms and Conditions of Service) Rules, 2019. Consequently, the authority to create any rules, memoranda, or orders concerning post-retirement benefits for the petitioner has been removed from the jurisdiction of the Opposite Parties.
- (iii). It was submitted that the Act, 2005 imposes no statutory obligation to grant post-retirement benefits to retired State Information Commissioners. Although the Act stipulates that the salaries, allowances, and other terms and conditions of service of a State Information Commissioner shall be the same as that of the Chief Secretary of the State Government, it was argued that the Chief



Secretary's service conditions are governed by the All India Services (Conduct) Rules, 1968. These rules do not apply to the petitioner or any State Information Commissioners. Therefore, any grant of post-retirement benefits to the petitioner would necessitate the framing of specific rules, which had not been done before the 2019 Amendment and cannot now be done post-amendment. As such, the petitioner cannot seek a writ of mandamus compelling the State to enact a policy decision in this regard.

- (iv). It was also contended that the petitioner was fully aware of the service conditions at the time of his appointment, including the absence of provisions for post-retirement benefits. Throughout his tenure, he was repeatedly informed that such benefits could not be granted without a policy decision, which the State, in its discretion, has not found appropriate to make.
- (v). Furthermore, Respondent No. 5, the Odisha Information Commission, has submitted that the responsibility for providing salaries, allowances, and retirement benefits to State Information Commissioners lies exclusively with the State Government. The Odisha Information Commission itself plays no role in these matters, as they fall squarely within the domain of the State Government.

IV. COURT'S REASONING AND ANALYSIS:

6. Having heard the parties and perused the materials available on record, this Court has identified the following issues that have to be determined which have emerged contentiously during the course of the hearing and is germane to finally decide the *lis* at hand;



A. WHETHER THE RIGHT TO INFORMATION ACT, 2005 STATUTORILY PROVIDES FOR GRANT OF POST-RETIRAL BENEFITS TO RETIRED STATE INFORMATION COMMISSIONERS?

7. Before advertng to the submissions, and analysis of this court, it is apposite to refer to Section 16(5) of the Act, 2005 prior to its amendment in 2019. The same is reproduced hereinbelow for ready reference:

“Section 16. Terms and Conditions of Service –

...

5. The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government.”

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central



Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment."

8. The aforementioned provision was amended and incorporated into the statute effective from 24.10.2019. The amendment introduced a new framework stipulating that the salaries, allowances, and other terms and conditions of service for the State Chief Information Commissioner and State Information Commissioners shall be determined by the Central Government. However, the amendment includes a safeguard that such salaries, allowances, and terms and conditions of service shall not be altered to the disadvantage of the incumbents after their appointment. Furthermore, it is expressly provided that the State Chief Information Commissioner and State Information Commissioners who were appointed prior to the commencement of the Right to Information (Amendment) Act, 2019, shall remain governed by the provisions of the original Act and the rules framed thereunder as if the 2019 amendment had not come into effect.
9. The counsel for the Petitioner has vehemently argued that the use of the expression "*and other terms and conditions of service*" includes post-retiral benefits, invoking the principle of *ejusdem generis*. In this regard, he has relied on the Supreme Court's judgment in *State of Madhya Pradesh*



and Ors. v. Shardul Singh,¹ *I.N. Subba Reddy v. Andhra University and Ors.*,² *State of Punjab v. KailashNath*,³ *Union of India v. Gurnam Singh*,⁴ and *Jagdish Prasad Saini and Ors. v. State of Rajasthan and Ors.*⁵.

10. This Court recognizes that the phrase “*other terms and conditions of service*” has been usually interpreted to include various service conditions, which may extend to post-retirement benefits. However, the petitioner’s contention cannot succeed on this ground alone. The Court must interpret the statutory framework in its entirety, taking into account the relevant provisions, legislative intent, and the established rules governing the service conditions of State Information Commissioners.
11. A holistic examination of the Act, 2005, and the applicable legal framework demonstrates an absence of any explicit provision or legislative intent to grant pensionary benefits to individuals in the petitioner’s position. The statutory equivalence of the petitioner’s service conditions with those of the Chief Secretary is limited to allowances and pay and does not encompass the pension framework applicable to cadre-based posts under the All India Services. Furthermore, the omission of any provision for post-retirement benefits in the Right to Information (Term of Office, Salaries, Allowance, and Other Terms and Conditions of Service) Rules, 2019, underscores the

¹ (1970) 1 SCC 108

² (1977) 1 SCC 554

³ (1989) 1 SCC 321

⁴ (1982) 2 SCC 314

⁵ 2022 SCC OnLine SC 1298



lack of a statutory basis for the petitioner's claim. Consequently, the petitioner, as a retired State Information Commissioner, cannot claim pension under these rules.

12. A detailed examination of the Act, 2005 reveals that it does not explicitly mandate the grant of post-retirement benefits to State Information Commissioners.
- (i) *First*, an ocular perusal of the provisos to Section 16(5) clarify that where an individual is appointed as a State Chief Information Commissioner or State Information Commissioner belongs to a pensionable establishment, the Act explicates adjustments to their salary to account for any pension already received. This demonstrates a clear legislative intent to prevent duplication of benefits and ensure fiscal prudence. When the legislature has consciously refrained from even granting full salary without adjustments to such appointees, it would be unreasonable to infer an intention to confer a right to pension upon them.
- (ii) *Second*, the Act does not designate the Commission itself as a pensionable establishment, nor does it provide any statutory entitlement to post-retirement benefits. This absence of statutory support underscores the legislative intent to exclude State Information Commissioners from the ambit of pensionary benefits unless expressly covered by prior service in a pensionable establishment.
- (iii) *Third*, while the 2019 Amendment to the Act does not apply to the present petitioner, it is pertinent to note that the Right to Information (Term of Office, Salaries, Allowance, and Other Terms and Conditions



of Service) Rules, 2019 comprehensively outline the service conditions of State Information Commissioners. These include provisions for the term of office, retirement from parent service upon appointment, pay, dearness allowance, leave, cash payment in lieu of unutilized earned leave, medical facilities, accommodation, leave and travel concession, as well as travel and daily allowances. However, the deliberate omission of any provision for pension or gratuity for retired State Information Commissioners is quite significant. This omission reflects the legislative intent not to extend pensionary benefits to retired State Information Commissioners, particularly those who were not part of a pensionable establishment prior to their appointment to the Commission.

13. It is no longer *res integra* in service law that pension is not a bounty but a vested right of a retired employee, subject to the fulfillment of the conditions prescribed under the applicable rules, regulations, or schemes. However, it must also be emphasized that not all forms of employment automatically confer an entitlement to pension. Eligibility for pension is contingent upon specific conditions, such as the employee occupying a pensionable post, completing the requisite tenure of service, or meeting other criteria laid down under the governing framework. In the absence of such qualifications, an employee cannot assert a claim to pension benefits as a matter of right. Furthermore, the courts, including writ courts, are precluded from issuing a mandamus to compel an employer to grant pension benefits to an employee who does not fall within the ambit of the prescribed rules, as such an order would grossly lack a solid legal foundation. This principle underscores



that pension entitlements are derived solely from statutory provisions and not from equitable or moral considerations, thereby ensuring the uniform and consistent application of pension schemes without deviation or judicial intervention.

14. The Supreme Court in *Prabhu Narain v. State of U.P.*,⁶ held that to receive pension, the employees must establish that they are entitled to pension under a particular rule or scheme. The following has been held in para 5:

“5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be.”

15. Further, in *UP Roadways Retired Officials and Officers Association v. State of UP & Anr.*,⁷ the Supreme Court reaffirmed its position and held that in the absence of any applicable rules or provisions establishing a right to pension, the judiciary lacks the authority to grant such benefits. This decision underscores the principle that pension entitlements are governed strictly by law and cannot be conferred on equitable grounds or through judicial directives. The relevant excerpt is produced hereinbelow:

“It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to

⁶ (2004) 13 SCC 662

⁷ (2024) 9 SCC 331



provide pension to an employee who is not covered under the rules.”

16. In a similar vein, in *Shristidhar Mahato v. State of Jharkhand*,⁸ the Jharkhand High Court addressed the question directly and ruled that the entitlement of the State Information Commissioner to certain benefits, based on the terms and conditions granted by the Chief Secretary, does not automatically confer pensionable service status. The court emphasized that the mere pensionable nature of the Chief Secretary’s post does not imply similar entitlement for the incumbent of the State Information Commissioner role. The relevant portion is produced hereinbelow:

“25. Further argument has been advanced that since the post of State Information Commissioner is held to be at par with the post of Chief Secretary of the State as such similar benefit including pension is to be extended to the holder of the post of State Information Commissioner but according to our considered view based upon the provision of Section 27 read with un-amended provision of Section 16(5) it is only confined to the salary and allowances.

26. The authority by taking into consideration the fact that the holder of the post of State Information Commissioner has been given the benefit as per the terms and conditions of the Chief Secretary but that does not mean that merely because the post of Chief Secretary is pensionable hence the incumbent will be entitled for the pensionable service it is for the reason that the Chief Secretary the day when entered into service was in the pensionable service but the writ petitioner when entered into service it was not pensionable particularly since there was already a rule under un-amended Section 16(5) governing the issue of pension and as such it is not available for the writ

⁸ 023 SCC OnLine Jhar 3215



petitioner to claim parity with the Chief Secretary so far as claim of pensionary benefit is concerned.

.....

32. Further question will be that the writ petitioner at the time when appointed was well knowing about the fact that he is not in the service said to be pensionable so as to govern the pensionary benefit rather he, after demitting the office after completing tenure of five years for the first time, has made such claim, which according to our considered view cannot be said to be sustainable on the ground that once the writ petitioner has accepted the offer of appointment based upon the statutory provision as was existed even there was the same rule when he demitted the office he cannot insist upon for direction to frame out a new rule holding him entitled for pensionary benefit for the reason that if any appointment is being made the same is to be governed by the existing rule as was in vogue at the time when appointment was made or even the day when the concerned incumbent had demitted the office."

17. It is, thus, evident that the right to pension arises exclusively when an employee holds a pensionable post and fulfills the conditions stipulated under the applicable legal framework. In the present case, the petitioner does not hold a position that directly entitles him to post-service pension benefits. Furthermore, courts exercising writ jurisdiction lack the authority to issue a mandamus directing the grant of pension in the absence of statutory provisions establishing such entitlement.

B. WHETHER THE STATE IS DUTY BOUND TO FORMULATE THE RULE GOVERNING THE ISSUE OF PENSION AS PER THE MANDATE OF SECTION 16(5) OF THE ACT, 2005?

18. As discussed hereinabove, the pension is not statutorily provided for in the Act, 2005, this Court shall now delve into the question of whether



the State is duty bound to formulate Rules for grant of pension to the State Information Commissioners.

19. The Rule making power of the State Government is outlined in Section 27 of the Act, 2005. Section 27 of the Act is reproduced hereinbelow for ready reference:

“Power to make rules by appropriate Government.

(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(b) the fee payable under sub-section (1) of section 6;

(c) the fee payable under sub-sections (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed.”

20. A plain reading of Section 27 reveals that there is no mandatory obligation on the State Government to formulate rules prescribing the salaries, allowances, or service conditions of State Information Commissioners. The power to frame such rules may only be exercised



by the State Government if it deems it necessary for the purpose of effectuating the provisions of the Act.

21. In this context, the State Government issued Resolution No. RTI-51/11/2013/I & PR dated 13.10.2011, detailing the service conditions of State Chief Information Commissioners; however, no corresponding policy decision has been made to date concerning the service conditions of State Information Commissioners.
22. This does not imply that the matter was ignored by the State Government. The petitioner has appended various file notings and internal communications to the writ petition to demonstrate that the State Government considered issuing a resolution to extend post-retirement benefits to State Information Commissioners. Nonetheless, it remains a fact that no such resolution has been finalized or implemented.
23. The petitioner has argued that several States, including Karnataka (Government Order No. DPAR 56 RTI 2011 dated 5.1.2013), Tamil Nadu (Government Order No. 167 dated 5.12.2018), Kerala (Government Order P. No. 199/2014/Fin dated 29.5.2014), and Haryana (Government Order No. 5/2/2012-1 AR dated 11.6.2014), have introduced policies granting pension benefits to State Information Commissioners. While this demonstrates that other States have exercised their discretion to provide such benefits, it is a settled principle of law that the formulation of rules or policies is a matter of exclusive executive prerogative. Each State Government has the autonomy to determine its priorities and



financial considerations, and the judiciary cannot impose a uniform approach based on actions taken by other States.

24. This position has consistently been upheld in law from the outset, as reflected in the judgment of the Supreme Court in *Supreme Court Employees' Welfare Association v. Union of India*⁹ wherein it has been laid down:

"51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

25. The Apex Court in the case of *Census Commr. v. R. Krishnamurthy*,¹⁰ was pleased to hold that interfering with a policy decision and issuing a mandamus to frame a policy in a specific manner are distinct matters. The power to issue notifications related to the conduct of the census lies with the Central Government, which has exercised this authority. It is not within the judicial domain to legislate or dictate policy. The extracts of the judgment is as follows:

"25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the

⁹(1989) 4 SCC 187

¹⁰(2015) 2 SCC 796



domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. ...”

26. The abovementioned judgment has been followed by the judgement of the Apex Court in ***Suresh Chand Gautam v. State of U.P.***¹¹ wherein it has been held that:

“48. Be it clearly stated, the courts do not formulate any policy, remain away from making anything that would amount to legislation, rules and regulation or policy relating to reservation. The courts can test the validity of the same when they are challenged. The court cannot direct for making legislation or for that matter any kind of subordinate legislation....”

27. The law is, therefore, well settled in so far as interference by the Court sitting under Article 226 of the Constitution of India in the matters of policy decisions of the State. It has been consistently held that the High Court in exercise of its powers under Article 226 must be slow to interfere with the policy decision of the State Government unless a specific plea is taken and demonstrated that the policy in question suffers from *mala fides* or is arbitrary and whimsical.
28. In the case of ***State of Jharkhand v. Ashok Kumar Dangi***,¹² the Apex Court has held that Policy formulation requires careful consideration,

¹¹(2016) 11 SCC 113



and courts should not dictate or direct the government on specific policies. The court has been pleased to hold as under:

“17. The High Court has found that the Government of Jharkhand, till date, had not framed any policy regarding the number of posts to be filled by physical trained candidates. How many posts of primary school teachers be filled up by physical trained candidates, in our opinion, is essentially a question of policy for the State to decide. In framing of the policy, various inputs are required and it is neither desirable nor advisable for a court of law to direct or summarise the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the courts do not have the satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.” (Emphasis supplied)

29. In this regard, this Court may also note that the Central Information Commission *vide* its letter dated 27.1.2014 has clarified as follows:

“... So far as guidelines in respect of framing a rule, specifying service conditions and pensionary benefits to State information Commissioners appointed by the State Government from non-government background, I am directed to say that the matter does not come under the jurisdiction of the Central Information Commission. The Central Information Commission cannot give any opinion/guidelines in their respect, since it is clearly a state government matter and the concerned state government have to decide the entitlements and pensionary benefit of the State information Commissioner is appointed from outside the government.

¹²(2011) 13 SCC 383



However, the draft suggestions in the matter were placed as an agenda for discussion in the 8th Annual Convention of the Central Information Commission held on 4th September 2013 on request of some of the State Information Commissioners coming from different states. But no final view was arrived at in the matter in the convention. The state government like to examine the matter at their end and take appropriate decision on the issue."

30. The State must have liberty and freedom in framing the policy decisions. It is a well-accepted principle that in complex administrative, social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the executive to formulate, change, vary and/or modify the policy which appears better to the court.
31. In any case, since the Government of India has notified the Right to Information (Amendment) Act, 2019 wherein Section 16(5) of the Act, 2005 stands amended, the power to make rules governing service conditions of all Central and State Information Commissioners, has post the amendment, rests with the Central Government and the State Government therefore cannot be compelled to frame any rules now.
32. Therefore, it becomes abundantly clear that the State Government could not be compelled either under the Statute or by this Court to take a policy decision and frame a rule to grant post retiral benefits to retired



State Information Commissioners. In the absence of the same, the State Government cannot be directed by this Court to grant or release post-retiral benefits to the present Petitioner. Imposing a policy by judicial fiat could create administrative and financial burdens on the State, potentially disrupting existing governance priorities. It is also pertinent to note that the decision to frame a policy depends on various factors, including fiscal capacity, administrative feasibility, and public policy considerations, which the judiciary is ill-equipped to evaluate comprehensively. Therefore, unless there is a clear statutory mandate requiring the State to act, the judiciary must exercise restraint and allow the executive to operate within its constitutional domain.

C. WHETHER THE PETITIONER CAN BE DENIED THE BENEFIT OF PENSION ON THE GROUND THAT HE WAS NOT IN ANY PENSIONABLE SERVICE THE DAY HE WAS APPOINTED AS STATE INFORMATION COMMISSIONER?

33. Before advertng to the aforesaid issue it is worthwhile to bear in mind that the present Petitioner is a private person who was straightaway appointed as State Information Commissioner. The said fact is not only borne out from the records of the case but is also an admitted position. It is with this backdrop in mind that the Petitioner prior to his appointment as State Information Commissioner was a private person, i.e. was not a part of any government service or subject to any pensionable establishment thereunder.
34. The relevant portion of the impugned order is produced here:

"...Whereas, Government in I&PR Department have sanctioned additional pension in favour of former State Chief



Information Commissioners in line with the State Chief Information Commissioner of Himanchal Pradesh with due concurrence of Finance Department vide Resolution No. 12013/IPR- dated. 13.10.2011.

Whereas, the former State Chief Information Commissioners are retired Government Officers having pensionable service and additional pension and other retirement benefits have been sanctioned as the salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner is same as that of an Election Commissioner as per Section 16(5) (a) of the RTI Act, 2005 whereas the present petitioner does not belong to the said category no pension and retirement benefits have been sanctioned in favour of the retired State Information Commissioners.

Whereas in order to dispose of the representation of the petitioner under Annexure- 8 series a meeting was held on 30th August, 2019 under the chairmanship of Director, I&PR in presence of Additional Director-cum-Joint Secretary to Govt., Joint Secretary to Govt, AFA-cum-Deputy Secretary to Govt I&PR Dept. and other members. It was unanimously recommended that in absence of any provision for sanction of pension under the Right to Information Act, 2005, the claim of the petitioner is having no merit for consideration....”

35. It is germane to the *lis* at hand to refer to the correspondences annexed with the Writ Petition by the Petitioner:
- (i) ***State Information Commission’s Order dated 10.2.2009***: Following the implementation of the revised pay structure for IAS officers under the Sixth Pay Commission, as per Section 16(5)(b) of the RTI Act, 2005, the petitioner was granted pay, house rent allowance, and dearness allowance.
 - (ii) ***Letter dated 19.8.2010 from the Odisha Information Commission***: The letter highlighted that while the New Pension Scheme was adopted by



Odisha from 1.1.2005, eligibility requires service under the government, a pensionable post, and government funding. Statutory bodies like the Orissa Public Service Commission have their own pension rules, but no rules was framed for State Information Commissioners. The Department of Personnel and Training was advised to clarify the matter.

- (iii) *Letter dated 12.1.2012 from the Chief Information Commissioner, Central Information Commission:* It was noted that despite the RTI Act being enacted six years prior, no comprehensive rules had been formulated by any State Government regarding the service conditions and entitlements of State Information Commissioners. The State Government was urged to take necessary steps.
- (iv) *Minutes of Meeting dated 22.2.2012:* During this meeting, where the petitioner was a member of the State Information Commission, it was resolved to recommend the State Government frame appropriate rules for pensionary benefits for State Information Commissioners.
- (v) *Letter dated 13.2.2013 from the Chief Information Commissioner, Central Information Commission:* The letter stressed the need for the State Government to urgently define the terms and conditions, including post-retirement benefits, for State Information Commissioners.
- (vi) *Internal File Noting dated 15.4.2013:* The petitioner's claim for pension and pensionary benefits was recommended for further review and concurrence.



- (vii) **Letter dated 1.11.2013 from the Central Information Commission:** The letter clarified that the final decision regarding the service terms of State Information Commissioners, including pension benefits, rests with the State Government.
- (viii) **Government Orders from other States:** The State Governments of Karnataka (Govt. Order No. DPAR 56 RTI 2011 dated 5.1.2013), Kerala (Govt. Order P. No. 199/2014/Fin dated 29.5.2014), Haryana (Govt. Order No. 5/2/2012-1 AR dated 11.6.2014), and Tamil Nadu (Govt. Order No. 167 dated 5.12.2018) issued policies granting pension and post-retirement benefits to State Information Commissioners.
- (ix) **Government of Odisha's Letter dated 23.10.2019:** In compliance with the Court's order in W.P.(C) No. 990/2019 dated 11.3.2019, the Government of Odisha clarified that no specific provision for pension and pensionary benefits exists for retired State Information Commissioners. As such, the petitioner's claim for pension was found to have no merit.
- 36.** A careful review of the materials on record, particularly those referred to above, reveals that while the Petitioner's claim was thoroughly considered at various stages, it was ultimately not approved due to the absence of any governing Rules in this regard. Furthermore, the individuals with whom the Petitioner seeks parity were undeniably part of the IAS cadre, belonging to a pensionable establishment prior to their appointment in the Commission. Consequently, the Petitioner's claim for parity with them cannot, under any reasonable interpretation, be sustained.



37. It is significant to note that the Petitioner himself participated in meetings where the recommendation was made to urge the State Government to establish rules for the provision of post-retirement benefits to State Information Commissioners. Given that the Petitioner was fully aware of the terms of his service both at the time of his appointment and when he retired, he cannot now claim entitlement to pension benefits, particularly when such benefits were never extended to his post during his tenure.
38. In light of the aforementioned considerations, this Court has unequivocally concluded that, in the absence of any statutory provisions regarding the release of pension or pensionary benefits, and where the State Government cannot be compelled to provide the same, the Petitioner is not entitled to receive any pension or post-retirement benefits.
39. Pensionary benefits are governed by established statutory frameworks, which provide clarity on eligibility and entitlement. Absent such statutory provisions, judicial intervention cannot create a right where none exists. The courts must respect the legislative and executive domains and refraining from making policy decisions that are within the purview of the State. The role of the judiciary is to interpret and apply the law, not to legislate or mandate benefits that have not been statutorily prescribed.
40. The Court's intervention in granting pension benefits where none exists under the applicable rules would set a dangerous precedent, potentially encouraging similar claims and placing an undue burden on the state



exchequer. Such an approach could lead to arbitrary and unsustainable financial obligations, undermining the principle that pension entitlements must be rooted in law and based on clear statutory provisions. Additionally, granting pension benefits to an individual who has served for a mere five years would create inequitable disparities, as pension schemes are typically designed to reward long-term service, ensuring fairness and fiscal responsibility in public finance management

V. CONCLUSION:

41. In the absence of any Rules that explicitly recognize the entitlement of State Information Commissioners to receive pension, there can be no legal right for them to claim such benefits.
42. Based on the foregoing discussion and in adherence to established legal principles, this Court is of the considered opinion that the Petitioner is not entitled to pension or post-retirement benefits. Accordingly, the present Writ Petition is dismissed.
43. Interim order, if any, passed earlier stands vacated.
44. No order as to costs.

(Dr.S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 8th November, 2024/