

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.13504 OF 2010

Smt. Sarojini Mishra

....

Petitioner

Mr.L.Pangari, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.R.K.Samal, SC

CORAM:

JUSTICE BISWANATH RATH

ORDER

20.12.2022

Order No.

12.

1. Heard learned counsel for the Parties.

2. The Writ Petition involves the following prayer :-

“It is, therefore, prayed that in the fact and circumstances stated above and in the interest of justice, this Hon’ble Court may be pleased to issue appropriate writs/directions/declarations and directing the opposite parties to sanction family pension of the petitioner with effect from 01.09.1998 under Rule-3 of the Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit (Amendment) Rules, 1998, published in the Orissa Gazette, Extraordinary, vide S.R.O. No.111/98 dated 23.03.1998 along with temporary increase (T.I.) in her pension and may further be pleased to direct the opposite party to release all arrear dues within a stipulated time period.”

3. Background involving the case is, taking help of the Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit (Amendment) Rules, 1998 (herein after called as “the Rule, 1998”), the Petitioner claims to have been entitled to Family Pension as well as T.I. from 1.9.1998

and the Authorities failing to work out, the Petitioner was constrained to file OJC No.8281/1999, which matter was disposed of by a Division Bench of this Court with the following direction :-

“Petitioner’s husband was a Non-Government Fully Aided Primary School Teacher. In this writ petition, she has prayed for grant of family pension/T.I. on pension in her favour.

The petitioner is entitled to the relief(s) claimed under Rule-3 of the Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers’) Retirement Benefit (Amendment) Rules, 1998, published in the Orissa Gazette, Extraordinary, vide S.R.O. No.111/98 dated 23.3.1998. We, therefore, dispose of this writ petition with the following directions :-

- (1) The Petitioner shall furnish all necessary papers to the appropriate authority within two weeks.
- (2) The authorities concerned shall consider the case of the petitioner in terms of the above Rule and pass necessary orders within three months from the date of submission of necessary papers by the petitioner.
- (3) The arrear amount found payable to the petitioner shall be paid to him/her within one month thereafter, and the current dues shall be paid regularly.”

After the aforesaid direction, necessary papers being submitted before the D.I. of Schools being the Sanctioning Authority sent the same to the Controller of Accounts, Orissa, Bhubaneswar on 6.4.2000. Unfortunately after requisite check up, the Family Pension proposal was returned to the P.S.A. for compliance. It appears, there has been re-submission of the Pension Papers and finally the pension claim of the Petitioner has been turned down, vide Annexure-6 herein resulting in filing of the present Writ Petition.

4. Filing counter affidavit, the contesting O.P.2 through Paragraph-8 claimed, for there is stay on implementation of the order passed in W.P.(C) No.3891/2000, a similarly situated case, vide SLP No.CC-5993-6054/2005, this position becomes an impediment in considering the case of the Petitioner.

5. Producing the proof, learned counsel for the Petitioner brings to the notice of this Court that in the meantime SLP No.14265/2005 has been dismissed on 19.2.2015 thereby affirming the direction in W.P.(C) No.3891/2000.

6. For the opinion of this Court, if the case of the Petitioner was covered by the judgment passed in W.P.(C) No.3891/2000 and pendency of litigation was an impediment in considering the case of the Petitioner, on disposal of the SLP nothing prevented the Competent Authority in working out the claim of the Petitioner even in spite of pendency of Writ Petition. Be that as it may, in the meantime, there has been another judgment on this aspect delivered by a single Bench of this Court in the case of *Smt. Muturimani Nayak vrs. State of Orissa & ors.*: reported in 2015 (II) OLR-166 settling the position involved herein.

7. In the circumstance, this Court in disposal of the Writ Petition directs O.Ps.2 & 3 to consider the claim of the Petitioner, who is already appearing to be 73 years by now, in the involvement

of the B.E.O., Nayagarh to work out the claim of the Petitioner also keeping in view the support of the case of the Petitioner through Smt.Muturimani Nayak (supra) and also taking into account that the SLP No.14265/2005 at the instance of the School & Mass Education Department having been dismissed on 19.2.2015 further through the decision of this Court in Muturimani Nayak (supra) . The entire working out be completed within a period of two months from the date of communication of this order. If the Petitioner is entitled to Pension and T.I., release of the arrear will also take place within a period of one week from the date of decision and the Petitioner will also be entitled to interest @ 5% per annum all through.

M.K.Rout

(Biswanath Rath)
Judge