

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11476 of 2012

State of Orissa & Others

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Petitioners

Mr. B.P. Tripathy, A.G.A.

Vs.

Chandra Priya Mishra

.....

Opposite Party

Mr. T.K. Mishra, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

06.04.2022

Order No.

12.

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Tripathy, learned Additional Government Advocate for the State and Mr. T.K. Mishra, learned counsel for the opp. party.

3. The State-petitioners have filed this writ petition assailing the order dated 15.11.2011 passed in O.A. No. 3501(C) of 2002, by which the State Administrative Tribunal, Cuttack Bench, Cuttack by holding that the deceased husband of the opposite party was in police service from 01.05.1953 till 20.02.2001, directed that the opposite party is entitled to get admissible family pension and also retiral benefits of her late husband and the same should be paid to her within a period of three months.

4. Mr. B.P. Tripathy, learned Additional Government Advocate for the State-petitioners contended that if the period from 01.05.1953 till 20.02.2001 is taken into consideration, then it will indicate that the husband of the

opposite party had rendered service for more than 47 years in the police organization which is practically possible. It is contended that the husband of the opposite party had joined in special branch on 25.07.1968 on transfer from P.M.T. with reference to Special Branch D.O. No.756/SB, dated 25.07.1968 and he was discharged from service on resignation with effect from 31.07.1972, vide Special Branch D.O. No. 1110/SB., dated 14.09.1972. Therefore, as per Rule 42 of Orissa Pension Rules, 1977, resignation entitles forfeiture of past service. Thereby, the husband of the opposite party is not entitled to get any family pension as due and admissible in accordance with law. Thus, it is contended that the observation made by the tribunal to that extent cannot sustain in the eye of law and, as such, the same is liable to be quashed.

5. Mr. T.K. Mishra, learned counsel for the opposite party contended that the opposite party approached the tribunal by filing the Original Application No. 3501(C) of 2002 24.12.2002 with a prayer to sanction family pension, T.I. and also other financial benefits as due and admissible to her deceased husband. It is contended that the husband of the opposite party had joined as a constable on temporary basis in the year 1953 and thereafter, he was absorbed on permanent basis in the year 1955 and subsequently he was promoted to the post of Havildar on 01.01.1973. But due to suffering, he was bed-ridden and therefore, he applied for leave on 04.01.1974 and extended the same from time to time. But ultimately, he expired on 20.02.2001 leaving behind the opposite party and five sons. After the death of her husband, the opposite party approached the tribunal for

family pension and on consideration of the materials available on record, the tribunal has granted benefits vide order dated 15.11.2011 passed in O.A. No. 3501(C) of 2002.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the husband of the opposite party joined in police service in the year 1953 and continued till 1973 and also got promotion to the post of Havildar. Contention was raised by learned counsel for the petitioners that husband of the opposite party had tendered resignation on 31.07.1972, but that itself is being disputed by the opposite party. As a consequence thereof, the tribunal time and again directed the State-authorities to produce the records, but the State-petitioners failed to produce the same. Thereby, the tribunal while disposing of the original application, in paragraph-7 of the order observed that the matter relates to police department and it is a matter of concern that the State-authorities have filed the counter affidavit in December, 2003 and though the tribunal asked to place the letter of resignation on 31.07.2004, i.e., about seven months after filing of counter affidavit, but the same was not published even though several orders were passed for production of such document and, as such, stand was taken that the file was lost and not traceable. In view of such position, adverse inference has to be drawn and for the laches of the department, the opposite party should not suffer.

7. In any case, the observation made by the tribunal that the husband of the opposite party was continuing in service from 01.05.1953 to 20.02.2001 cannot be believable in view of the fact that the deceased joined in service on 01.05.1953 and the tribunal come to a conclusion that since he died on

20.02.2001, he was continuing in service till 20.02.2001, meaning thereby, the husband of the opposite party has rendered service for more than 47 years, which is not acceptable. Thereby, the finding given by the tribunal to that extent is absolutely misconceived one and, as such, the tribunal has not applied its mind in proper perspective. Otherwise also, though contention raised by the department that the husband of the opposite party had tendered resignation on 31.07.1972, but to substantiate the same, no such document has been filed and even though the tribunal called for the record, the State-petitioners failed to produce the same. Thereby, adverse inference was drawn and as a consequence thereof, so far as the matter of resignation is concerned, the same is not acceptable. But fact remains, for some reasons or other, the husband of the opposite party had remained absent from duty with effect from 31.07.1972, then the opposite party is entitled to get the family pension taking into consideration the length of service rendered by her husband from 1953 to 1972.

8. In the above view of the matter, this writ petition stands disposed of directing the State-petitioners to grant family pension to the opposite party taking into consideration the service rendered by her husband from 01.05.1953 till December 1973, the day he fell ill and could not join in service. Furthermore, had the husband of the opposite party continued in service till attaining the age of superannuation, he would have retired in the year 1992. Since the husband of the opposite party had rendered service for the aforesaid period and due to his illness he could not join in service thereafter, the authorities are directed to look into all these

aspects and pass appropriate order by extending the family pension to the opposite party, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order. Needless to say, if any other financial benefits admissible to the deceased husband of the opposite party are lying with the State-authorities, the same shall also be released in favour of the opposite party within the time, as stipulated above.

9. With the aforesaid observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

Ashok/ Sukanta

