

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7038 of 2002

Smt. Baidehi Dash and others ***Petitioners***
Mr. Manoj Kumar Mohanty, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Smt. S. Pattanayak, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
04.01.2022

Order No.

05. 1. The challenge in the present petition is to an order dated 21st October, 2002 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack (OAT) in Original Application No.530(C) of 2000 filed by the present Petitioners, who are the legal heirs of late Bhagaban Dash-the original applicant, who had died during the pendency of the said application. By the impugned order, the OAT directed that the gratuity payable in respect of the service rendered by late Bhagaban Dash, who had retired from Government service while working as Assistant Engineer in the Water Resources Department (WRD) should be released after withholding Rs.27,275/- being the price of 8 pieces of Hume pipes, which were entrusted to late Shri Dash in his official capacity for distribution to various sites on the directions of the Chairman of the concerned Panchayat Samiti.

2. This Court has heard the submissions of Mr. Manoj Kumar Mohanty, learned counsel for the Petitioners and Smt. Suman Pattanayak, learned Additional Government Advocate appearing for the State-Opposite Parties.

3. The occasion to withhold the above amount was in the background of the fact that 24 numbers of Hume pipes were purchased by the WRD from M/s. Keonjhar Hume Pipes Industries (KHPI). At the relevant time, Bhagaban Dash was working as Junior Engineer in Aul Irrigation Sub-Division and in that capacity, he received the same Hume pipes and kept them in the store. On the instructions of the Chairman of the Panchayat Samity as well as Assistant Engineer, these were supplied to different sites. Thereafter, Bhagaban Dash was transferred to Akhuapada WRCP Sub-Division as an Assistant Engineer and in that capacity, he retired from service.

4. It appears that for non-payment of the supply of Hume pipes, KHPI instituted a money suit against the Government. As far as late Shri Dash is concerned, after his retirement, a direction was issued by the Executive Engineer that his gratuity should be withheld on account of the pendency of the money suit. The stand taken by the WRD in the reply filed in the OAT was that of the 16 Hume pipes, 8 had been returned by late Shri Dash. The remaining said to be supplied to the sites “were not found at the spot on inspection and were also not returned by late Dash while he was transferred to Akhuapada”. Anticipating the initiation of the Departmental proceedings against late Shri Dash, it was decided to

withhold the aforementioned sum of Rs.27,275/- being the price of the 8 Hume pipes.

5. In the impugned order of the OAT, a reference has been made to Rule-66 (2) of the OSC (Pension) Rules, 1992 (1992 Rules), which states that no gratuity shall be paid to the Government servant “until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.”

6. The above provision clearly refers to the departmental or judicial proceedings involving the Government servant and not judicial proceedings involving the Government itself. In the present case, not only has no departmental proceedings been initiated against late Shri Dash, but the fact remains that there are no judicial proceedings involving him either. The only judicial proceedings stated to be pending is the money suit filed by the KHPI against the Government. Clearly, therefore, the withholding of the aforementioned sum from the gratuity amount payable to late Shri Dash could not have been substantiated with reference to Rule 66 (2) of the 1992 Rules. In coming to such conclusion, the OAT has clearly committed an error, which requires to be corrected.

7. For the aforementioned reasons, the impugned order of the OAT to the extent it permits withholding of Rs.27,275/- from the gratuity payable to the legal heirs of late Bhagaban Dash is hereby set aside. The balance amount of gratuity that has been withheld together with whatever interest is payable thereon will now be paid

to the Petitioners by the State of Orissa within a period of eight weeks.

8. The writ petition is accordingly disposed of.

9. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda

