

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14515 of 2012

<i>State of Orissa & Ors.</i>		<i>Petitioners</i>
		<i>Mr.A.K. Mishra, AGA</i>
	Vs.	
<i>Dijabar Biswal</i>		<i>Opposite party</i>
		<i>Mr. K.P. Mishra, Advocate</i>

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

**ORDER
22.03.2022**

I.A. No.2849 of 2017

Order No.
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This matter is taken up through hybrid mode.

2. This application has been filed for substitution of the legal heirs of the opposite party, as he has expired during pendency of this case.

3. Heard Mr. S. Rath on behalf of Mr. K.P. Mishra, learned counsel for the opposite party.

3. Considering the grounds taken in the petition, prayer for substitution is allowed. The legal representatives of the deceased opposite party are impleaded as opposite parties no.1(a) to 1(e).

4. I.A. stands disposed of.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE

W.P.(C) No.14515 of 2012**Order No.**

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Heard Mr. A.K. Mishra, learned Additional Government Advocate for the State-petitioners and Mr. S. Rath on behalf of Mr. K.P. Misrha, learned counsel for the opposite parties.

2. Mr. S. Rath, learned counsel for the opposite parties contended that in the meantime, opposite party no.1(a)-the wife of deceased opposite party has also died. Therefore her name be deleted from the cause list.

3. In view of the above, the name of opposite party no.1(a) be deleted from the cause list.

4. The State-petitioners have filed this writ petition to quash the order dated 29.06.2011 passed by the State Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.3076(C) of 1998, by which the tribunal, accepting the date of birth of the deceased opposite party as 11.04.1943, has directed that he should be continued in service till completion of 58 years and extended the pensionary benefit.

5. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the petitioners contended that dispute is with regard to date of birth of the deceased opposite party, the tribunal, instead of deciding the same, should have left the matter to the civil court for adjudication in proper perspective by adducing evidence, so that the benefit can be extended to the legal representatives of the deceased opposite party. Instead of doing so, the tribunal, taking into

consideration the date of birth of the deceased opposite party as 11.04.1943, passed the impugned order dated 29.06.2011, which cannot sustain in the eye of law. Therefore, the said order should be quashed.

6. Mr. S. Rath, learned counsel appearing for the opposite parties stated that since there was an error on the face of the record, with regard to date of birth of the opposite party, the order passed by the tribunal is well justified.

7. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the deceased opposite party, having passed I.T.I in 1960, joined service on 01.12.1961 as a Junior Wireman in the G.E.D. He was posted in the High Court Section, Cuttack and was subsequently promoted to the rank of Electrician Grade-1 in the High Court Section of the G.E.D. In his service book, his date of birth was recorded as 11.04.1943, which was also reflected in his duplicate service book. On 11.02.1998, he was served with a notice for superannuation with effect from 30.04.1998, i.e. three years prior to his due date of retirement, vide letter no.1643 dated 16.02.1998. He later came to know that such notice, which was impugned in O.A. No.3076(C) of 1998, was issued presuming his date of birth as 11.04.1940, and that his service book was unilaterally interpolated indicating his date of birth as 11.04.1940, instead of 11.04.1943. He alleged that such vindictive action was initiated by the petitioners, as he was involved in union activities. It is also alleged that the service book of the deceased opposite party was exclusively under the custody of the authority and without giving opportunity

to him, the authority cannot change his date of birth unilaterally as 11.04.1940. Therefore, the tribunal has come to a conclusion that the actual date of birth of the deceased opposite party is 11.04.1943 and he should be retired from service at the age of 58 years and benefit should be extended accordingly. Challenging the said order, the State has preferred this writ petition and while entertaining the writ petition, this Court, on 24.02.2014, passed the following order:

“Heard Mr. M.S. Sahoo, learned Additional Standing Counsel for the petitioner-State and Mr. S.N. Mishra, learned counsel for the sole opposite party.

In this writ petition, reliance has been placed upon the status report of Policy No.582501308 (Annexure-4) said to have been issued in the name of opposite party-Dijabar Biswal, in which, his date of birth has been indicated as 11.04.1940. School certificate has been provided as age proof, which becomes necessary for this Court in order to adjudicate this matter.

The concerned branch of Life Insurance Corporation of India is required to provide the original documents pertaining to the policy mentioned above for perusal of this Court. Therefore, Registry is directed to intimate this order along with Xerox copy of Annexure-4 calling upon it to provide the original file pertaining to such policy before this Court for its perusal. Such communication be made forthwith, preferably within a period of two weeks.

Opposite party-Dijabar Biswal is also called upon to produce his High School Certificate/School Leaving Certificate in original, if the same is available on the next date.

List this matter after two weeks.

Interim order dated 04.09.2012 passed earlier shall continue till the next date.”

In compliance of the said order, an affidavit has been filed by the Branch Manager, LIC of India, Cuttack City Branch-1 on 09.05.2014, paragraph-5 whereof reads as follows:

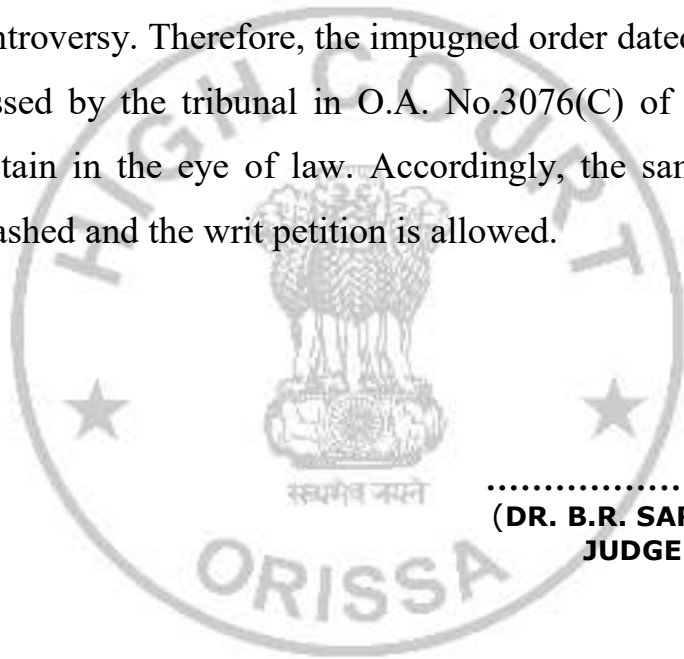
“That from the status of the policy available in the Office record, it is humbly submitted that, admittedly the Opposite party had subscribed the policy bearing number – 582501308 from Life Insurance Corporation of India Cuttack City Branch Office – 1 w.e.f. 28.02.1989 with a sum assured of Rs.14,500/- on submission of school certificate as age proof, wherein the

his date of birth was mentioned as 11.04.1940. The aforesaid policy had attained maturity in Feb 2004, the maturity claim was settled on 28.02.2004. Copy of the status report of policy no – 582501308 is filed herewith as Enclosure -1.”

The document annexed to the said affidavit as Enclosure-1 clearly indicates that the date of birth of the deceased opposite party is 11.04.1940 as per school certificate. Relying upon the said document, Life Insurance Corporation has extended the benefit to the legal representatives.

8. In that view of the matter, since disputed question of fact is involved with regard to date of birth of the deceased opposite party, this Court is not inclined to enter into such controversy. Therefore, the impugned order dated 29.06.2011 passed by the tribunal in O.A. No.3076(C) of 1998 cannot sustain in the eye of law. Accordingly, the same is hereby quashed and the writ petition is allowed.

Alok/Sukant



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(**DR. B.R. SARANGI**)
JUDGE

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(**SAVITRI RATHO**)
JUDGE