

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.2880 of 2022

Bishnupriya Acharya ***Petitioner***
Mr. Himanshu Sekha Panda, Adv.
-versus-
State of Odisha and Anr. ***Opposite***
Parties
Mr. S. Mishra, SC
(For S & ME Deptt.)
Mr. Subash Ch. Acharya, Adv.
(for O.P.8)

CORAM:
Mr. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
31.05.2022

5.

1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner has filed this application challenging the inaction of Opp. Parties not releasing the funds (GIS, GPF, Gratuity, Arrear, Unutilised Leave) and family pension(Legitimate Share) in favour of the petitioner, even though petitioner is mother and legal heir of the deceased Amiya Ranjan Acharya and said Amiya Ranjan Acharya died in service who was serving under School and Mass Education Department, Odisha as a Teacher.
4. Shorn of unnecessary details, the substratum of the matter presented before this court remain that

the petitioner is the mother of the deceased. The deceased died on 21.06.2021 of a chronic illness while he was engaged as a teacher at the Talapada Nodal Girls High School. The deceased's wife and children have relinquished their relationship with the petitioner and did not co-operate with the final rites of the deceased. The petitioner is struggling with old age and various diseases. Moreover, the husband of the petitioner is suffering from schizophrenia and they have to survive on a very limited pension. The deceased died while financially helping his ill father by getting a job under a rehabilitation scheme. After repeated request to competent authorities the petitioner had filed application before Opp. Parties no- 3, 4 and 5. But no action has been taken by the above authorities. Therefore, the petitioner has filed this petition before this Court.

- 5.** Learned counsel for the petitioner submits that the present petitioner and her husband have found place as the legal heir and they should be receiving the financial benefits being the parents of the deceased. The petitioner is struggling with old age and various diseases. Moreover, the husband of the petitioner is suffering from schizophrenia and they have to survive on a very limited pension.

Therefore, they are in dire need of the financial benefits from their deceased son's job.

6. Learned Counsel for the Opp. Party no.8 submits that the Opp. party no.8 being the legally married wife of the deceased and she is legally entitled to receive the family pension, gratuity, GPF, GIS & unutilized leave salary of her deceased husband who died on 21.06.2021; as such the contentions/allegations made against the authorities/Opp. Parties No.3 to 5 in not releasing such amount in favour of the petitioner are no way sustainable in the eye of law.

7. It is worthwhile to refer to the Orissa Civil Services (Pension) Rules, 1992 to understand the provisions for recipient of the financial benefits arising out of the service of the deceased.

*(i) **Rule-56 of the Orissa Civil Services (Pension) Rules, 1992** dealing thereby 'Family pension' where clause (5) reads period for which family pension is payable.*

(a) In the case of widow or widower, up to the date of death or remarriage whichever is earlier;

(b) In the case of a son until he attains the age of twenty-five years or he starts earning of his livelihood, whichever is earlier.

(c) In the case of an unmarried daughter, until she attains the age of twenty-five

years or she gets married or until she starts caring her livelihood, whichever is earliest.

Rule-56(7(b)) of the Orissa Civil Services (Pension) Rules, 1992 reads as:

If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

Rule-56(10) of the Orissa Civil Services (Pension) Rules, 1992, reads as:

In case both wife and husband are Government servants and are governed by the provisions of this Rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving spouse, and in the event of the death of such spouse, the surviving child or children shall be granted the two family pensions in respect of the deceased parents subject.

The **Rule-53 of the Orissa Civil Services (Pension) Rules 1992** dealing therein the concept of "Gratuity" reads as follows:-

Nomination (1) A Government servant shall at any time after his appointment in a pensionable establishment, make a nomination in Form-3 or 4. as appropriate in the circumstances of the case, conferring on one or more persons

the right to receive the gratuity payable under Rule 49.

- 8.** Additionally, Rule-2(b) of the Orissa Civil Service (Rehabilitation Assistance) Rules 1990 prescribes the order of preference to avail the benefit under Rehabilitation Assistance Scheme wherein the wife/husband of the deceased employees was indicated in the 1st place and then son.

"Family members" has been defined under Rule 2(b) of the aforesaid Rules. It means and include the following members in order of preference :-

- (i) Wife/Husband;*
- (ii) Sons or step sons or sons legally adopted through a registered deed;*
- (iii) Unmarried daughters and unmarried step daughters;*
- (iv) Widowed daughter or daughter-in-law residing permanently with the affected family.*
- (v) brother or unmarried Government servant who was wholly dependent on such Government servant at the time of death.*

- 9.** A plain reading of the aforesaid provision reveals that Rehabilitation Assistance to the family members, who are eligible for appointment under Rehabilitation Assistance Scheme, should be provided in order of preference as indicated above. Thus, a plain reading of the provisions means that a person who is entitled to any appointment under the Rehabilitation Assistance Scheme, the

authority has to see if the spouse of the deceased employee is alive and intends to avail the benefit under the Rehabilitation Assistance Scheme. If he/she is ineligible for over age, suffering from ailment or cannot be given appointment under the Rehabilitation Assistance Scheme, as per the scheme, the second preference will be given to the sons. This view has been reiterated by this Court in the case of **Prem Sagar Naik vs State Of Orissa And Others**¹.

10. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court rejects the petition.
11. The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.

(**S.K.Panigrahi**)
Judge

BJ

¹W.P.(C) No. 18981 of 2016.