

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4077 of 2020

Priyambada Parida

....

Petitioner

Mr. A.P. Bose, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
09.05.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr. A.P. Bose, learned counsel for the petitioner as well as Mr. P.C. Das, learned counsel for the State. Perused the record.
3. The present writ petition has been filed by the petitioner for a direction to the Opposite Party Nos.1 to 4 to release the family pension of the petitioner by not insisting on Succession Certificate basing upon legal heir certificate of the petitioner and other relevant paper given under Annexure-2 series.
4. The case of the petitioner as pleaded in the writ petition, in gist, is that the father of the petitioner, namely, Baman Parida, who was working as under the Chief Construction Engineer, Upper Indravati Hydro Electric Project, Nabarangpur-Opposite Party No.3

and the said Baman Parida died in harness on 11.10.2013. After his death, his successors had obtained legal heir certificate. Further it is stated that after death of late Baman Parida, his wife Late Premalata was getting family pension till her death on 08.05.2017. It is further stated in the writ petition that after death of Premalata, who is the mother of the petitioner, the petitioner by enclosing of relevant papers submitted an application before the Opposite Party No.3 for grant of family pension to her as the petitioner is a unmarried daughter of late Baman Parida and Premalata.

5. Learned counsel for the petitioner submits that the Department of Revenue and Disaster Management-Opposite Party No.4 has issued a circular dated 06.02.2018 whereunder they have specifically provided for family pension to unmarried daughter after the death of the employee concerned. The application, which was submitted by the present petitioner before the Opposite Party No.3 claiming family pension as unmarried daughter of late Bamana Parida, was written by the Opposite Party No.3 on the sole ground that the petitioner has not submitted succession certificate. Learned counsel for the petitioner further contends that vide letter dated 03.01.2019, the office of the Opposite Party No.3 has informed the petitioner that the pensionary benefit like family pension cannot be paid to her unless she produced Succession Certificate.

6. It is further submitted by Mr. Bose, learned counsel for the petitioner that the petitioner in obedience to the letter under Annexure-3 and relying upon the circular under Annexure-1 had filed Intest Case bearing No.3 of 2019 before the competent court for grant of Succession Certificate. The court below refused to grant Succession Certificate by observing that the petitioner pension or

family pension cannot be considered as a debtor securities recoverable from the employer and that the Succession Certificate can be issued in respect of the provident Fund Money and further observed that upon perusal of Orissa Miscellaneous Certificate Rule, 2017, the legal heir certificate grant for the purpose drawl of pension and arrear salary etc. and that when there is specific provision of grant of legal heir certificate under the Rule, 2017, the petitioner cannot be allowed to file application for Succession Certificate under the Indian Succession Act, 1925. Thus, the learned court below has finally held that the application for grant of Succession Certificate for receiving family pension is not entertainable in the eye of law.

7. Learned counsel for the petitioner further contends nowhere the law requires to produce a Succession Certificate for sanctioning disbursing the family pension. He further contends that the only provision which is applicable is Odisha Miscellaneous Certificate Rule, 2017 which mandates issue of legal heir certificate for getting pensionary benefit as admissible to the family members of the deceased employee. In such view of the matter, learned counsel for the petitioner submits that although the petitioner is legally entitled to getting pensionary benefits as is due and admissible in law, however, she is not getting it due to the obstruction created by the office of the Opposite Party No.3. Moreover after rejection of the Intest Case by competent court, the petitioner has become remediless. Therefore, the petitioner approached this Court by filing the present writ petition for a direction to the opposite parties to pay the family pension to the petitioner, who is none other than the unmarried daughter of late Baman Parida.

8. Learned counsel for the State, on the other hand, supporting the action of the opposite parties submits that the legal heirs might quarrel among themselves to receive the family pension, after death of their predecessor in interest. Therefore, he submits that the opposite parties have not committed any illegality by insisting upon production of Succession Certificate for getting pensionary benefits,

9. On perusal of letter date 03.01.2019 under Annexure-3, this Court finds that the letter of Accounts Officer, Odisha of the office of Principal Accountant General (A&E), Odisha, Bhubaneswar referring to a clarification of the Finance Department letter No.3261 dated 06.02.218 requested the petitioner to submit a "Succession Certificate" for availing benefit of family pension. It would be fruitful at this juncture to mention that there is no dispute with regard to the proposition that the unmarried daughter are entitled to get the benefit of family pension under the relevant pension rules. However, insisting upon production of succession certificate does not appeal to the judicial conscience of this Court. Moreover, same is not backed by any statutory provision. The only difficulty that has been pointed out by the learned counsel for the State is that often it is found that in the matter of family pension, the legal heirs usually dispute the payment of family pension to any single/particular legal heir and often quarrel among themselves leading to litigation. However, this Court is of the considered view that the apprehension expressed by the learned counsel for the State can very well be taken care of by :-

- i. Paying entire family pension amount to the legal heirs jointly;
- ii. if they so agree, the same may be distributed equally among all the legal heirs; and

- iii. in the event the legal heirs produce an undertaking with a deed of relinquishment, in such eventuality amount of pension can very well be disbursed in favour of single beneficiary of the family.

10. Reverting back to the fact of the present case, Mr. Bose, learned counsel for the petitioner submits that as per the legal heir certificate issued by the competent authority, there are four legal heirs of late Baman Parida. Since the present petitioner LR no.2, who is an unmarried daughter, has submitted a claim, the authorities can very well ask the present petitioner to file an affidavit sworn by LR Nos. 3 and 4 in favour of the LR No.2 the present petitioner. In the event such affidavits are presented before the authorities, the authority shall do well to consider the case of the present petitioner for payment of family pension and accordingly release the family pension in favour of the LR No.2 the present petitioner upon the petitioner submitting indemnity bond in favour of the Government / competent authority.

11. Having heard learned counsel for the parties and after analyzing the legal position and factual position involved in the present case and taking into consideration the plight of unmarried daughter, who needs support in the absence of her parents, this Court is of the considered view that the opposite parties should have considered the claim of the present petitioner particularly keeping in view the object of payment of family pension to the surviving members of the deceased employee.

12. In such view of the matter, this Court in the interest of justice, directs the Opposite Party No.3 to consider the case of the petitioner

afresh in the light of the aforesaid discussion and shall process the claim of the petitioner in accordance with law and the family pension as is due and admissible be sanctioned and disbursed in her favour within a period of two months from the date of production of certified copy of this order subject to compliance of other condition, if any.

13. With the aforesaid observation/direction, the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

Jagabandhu

