

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 2100 OF 2014

In the matter of an application under Articles 226 & 227
of the Constitution of India.

AFR

Principal Accountant
General (A&E), Orissa,
Bhubaneswar.

.....

Petitioner

-Versus-

Bijaya Prasad Kanungo
& Others

.....

Opp. Parties

For Petitioner : Mr. Saroj Ku. Das, CGC

For Opp. Parties : Mr.K.K. Jena, Advocate
(O.P.1)

Mr. S.N. Nayak,
Addl. Standing Counsel
(O.P.2)

Mr. S. Mohanty, Advocate
(O.P.3)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON : 10.05.2022

DR. B.R. SARANGI, J. The Principal Accountant General (A&E),
Odisha, Bhubaneswar has filed this writ petition
seeking to quash the order dated 04.03.2011 passed in

O.A. No.52 of 2009 and subsequent order dated 14.11.2012 passed in R.P. No.131 of 2011 and order dated 28.11.2013 passed in M.P. No.504 of 2012 by the Odisha Administrative Tribunal, Bhubaneswar vide Annexures-1, 2 and 3 respectively.

2. The factual matrix of the case, in brief, is that opposite party no.1, who was applicant in O.A. No. 52 of 2009, while working as Assistant Executive Engineer under the Government of Odisha, Water Resources Department, was superannuated from service on 30.04.2003. His pension papers were forwarded by the concerned pension sanctioning authority on 03.08.2005, which were received in the office of the petitioner on 03.08.2005. While forwarding the pension papers, the concerned pension sanctioning authority, vide letter dated 03.08.2005, had requested the petitioner that the retirement gratuity of opposite party no.1 shall be released after receipt of final NDC from the Department. The pension case of opposite party no.1 was processed and pension payment order and

commuted value of pension were issued in September, 2005. But the DCRG amount could not be authorized simultaneous with issuance of pension payment order & commuted value of pension, as no specific NDC received from the pension sanctioning authority. Thereafter, the petitioner issued reminders, vide letters dated 17.02.2006, 10.04.2007 and 31.01.2008, to the pension sanctioning authority for supply of final NDC in respect of opposite party no.1. Finally, opposite party no.1 through his representation dated 12.03.2008 had supplied copy of the letter dated 25.08.2007, on the basis of which, the petitioner had authorized DCRG amounting to Rs.2,09,138/- in favour of opposite party no.1, vide letter dated 26.03.2008, which was released in favour of him.

2.1 Due to delay caused in disbursement of DCRG, opposite party no.1 filed O.A. No.52 of 2009 claiming interest on delayed payment of DCRG. The tribunal, vide order dated 04.03.2011, directed that opposite parties no.2 & 3 are to pay interest at the rate

of 7% per annum on the gratuity amount of opposite party no.1 from one year after the retirement of opposite party no.1, i.e. from 01.05.2004 to 03.08.2005 and the petitioner is to pay interest at the rate of 7% per annum on amount of Rs.2,09,138/- from 03.11.2005 till 18.03.2008, and the exercise shall be completed within three months from the date of communication of the order. Against the said order dated 04.03.2011, the petitioner filed R.P. No.131 of 2011, but the same was dismissed on 14.11.2012 for non-appearance. Subsequently, the petitioner filed M.P. No.504 of 2012 for restoration of R.P. No.131 of 2011, but the same was also dismissed vide order dated 28.11.2013 in Annexure-3. Hence this writ petition.

3. Mr. S.K. Das, learned Central Government Counsel appearing for the petitioner contended that there were no laches on the part of the petitioner and, as such, the petitioner is not liable to pay interest, as directed by the tribunal, vide order dated 04.03.2011, for the period from 03.11.2005 till 18.03.2008. Since

there was delay on the part of the pension sanctioning authority in issuing pension papers and NDC, the DCRG could not be released in favour of opposite party no.1. Therefore, the petitioner is not liable to pay interest, as directed by the tribunal. If any liability is to be fixed, it should be fixed against the pension sanctioning authority.

4. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State opposite parties contended that so far as direction of the tribunal with regard to payment of interest at the rate of 7% per annum for the period from 01.05.2004 to 03.08.2005 is concerned, the same has already been paid to opposite party no.1. Thereby, that part of the order dated 04.03.2011 passed by the tribunal has been complied with.

5. Mr. S. Mohanty, learned counsel appearing for opposite party no.3-Orissa Lift Irrigation Corporation Ltd. contended that there was delay in payment of retiral dues to opposite party no.1. As such, opposite

party no.1 is entitled to get interest for the delayed period and even though steps were taken for early disbursal of retiral dues to opposite party no.1, but the same could not be done. As such, delay was caused at the level of pension sanctioning authority as well as opposite party no.3. Therefore, they are liable to pay interest, as directed by the tribunal.

6. This Court heard Mr. S.K. Das, learned Central Government Counsel appearing for the petitioner; Mr. K.K. Jena, learned counsel for opposite party no.1; Mr. S.N Nayak, learned Additional Standing Counsel for opposite party no.2; and Mr. S. Mohanty, learned counsel appearing for opposite party no.3 by hybrid mode. Pleadings have been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

7. On perusal of the records, it appears that admittedly opposite party no.1, who was working as Assistant Executive Engineer, Water Resources

Department, retired from service on attaining the age of superannuation. As such, there was delay in disbursement of DCRG, for which the tribunal directed the petitioner and opposite parties no.2 & 3 to pay interest. The claim made by the petitioner that there was a condition, while the pension papers of opposite party no.1 were forwarded to the petitioner, that the retirement gratuity shall be released on receipt the final NDC from the Department of Water Resources. Therefore, there were no laches on the part of the petitioner for disbursement of amount, as the petitioner had waited for NDC from the pension sanctioning authority to release the amount in question, and as soon as the petitioner received the same, disbursement was made to opposite party no.1 without any delay. Therefore, the petitioner is not liable to pay interest. The petitioner cannot absolve its liability to pay interest, in view of Chapter-VI of Orissa Pension Rules, which deals with gratuity payable on death or retirement. Sub-rule-(5) of Rule-49 thereof deals with death/retirement gratuity, which reads thus:-

“49. Death/Retirement Gratuity- (1) *In the case of a Government servant, who has completed five years of qualifying service, on retirement from service shall be paid a Retirement Gratuity equal to one-fourth of his last emolument for each completed six monthly period of qualifying service subject to a maximum of 16½ times of the emoluments:*

(5) (a) Where the sanction of payment of gratuity is delayed for more than a year from the date is due under sub-rule (1) or (2), as the case may be, and such delay is attributable to administrative lapses, interest at the rate of 7 per cent per annum for the period beyond one year shall be payable on the amount of gratuity:

Provided that where a departmental or Judicial proceedings as the case may be, in respect of pensioner, is continued or initiated under rule 7, the gratuity shall become payable on the date finalisation of such proceedings and the period of one year shall be reckoned from the date.

(b) The payment of interest on delayed sanction of gratuity shall be ordered by the Secretary of the concerned Administrative Department.”

8. On perusal of aforementioned provision, it is made clear that where the sanction of payment of gratuity is delayed for more than a year from the date it is due under sub-rule (1) or (2), as the case may be, and such delay is attributable to administrative lapses, interest at the rate of 7% per annum for the period beyond one year shall be payable on the amount of gratuity. Therefore, statute prescribes for grant of

interest for delayed payment of statutory dues as admissible to opposite party no.1.

9. So far as payment of interest is concerned, in **S.K. Dua v. State of Haryana**, AIR 2008 SC 107, the apex Court held as follows:

“11. Xxx xxx In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. xxxx”

10. Following the judgment, as mentioned above, the other High Courts, namely, High Court of Madras, High Court of Bombay (Nagpur Bench) and also the Goa Bench have awarded interest for delayed payment of the dues of the petitioners in the respective cases.

11. In **Dhruba Charan Panda v. State of Orissa**, 1999 (II) OLR 433, this Court also directed in paragraph-18 to the following effect:-

“18. We dispose of this application with a direction to the State Government to administratively instruct all the Heads of Departments and the concerned officials to ensure that different steps prescribed to be taken under the Rules are rigidly followed and any non-observance thereof is to be strictly viewed. If there is any delay in payment of pension the pensioner shall be entitled to 18% interest per annum for the period of delay and this interest shall be recovered from the person/persons responsible for the delay. While fixing the rate of interest, we have kept in view the minimum bank rate of interest charged for borrowing from bank. This aspect shall also be notified to all concerned. We are sure, if such stringent steps in addition to those, which the State Government may feel necessary to impose, are taken there shall be strict compliance of the requirement of law and in future the old retired persons shall not be required to move in the corridors of the Courts with tears in their eyes and a faint ray of hope of getting remedy early, and not posthumous. We record our appreciation for the able and fair assistance rendered by all learned counsel who appeared in the case for various parties. No costs.”

12. In view of such position, admittedly, there was delay in payment of gratuity amount, for which opposite party no.1 is entitled to get interest thereon at the rate of 7% per annum. Therefore, the tribunal, vide order dated 04.03.2011, directed the petitioner as well as State and Orissa Lift Irrigation Corporation Ltd. to pay interest at the rate of 7% per annum on the gratuity amount to opposite party no.1. So far as liability of State and

Orissa Lift Irrigation Corporation is concerned, they have already paid interest for delayed payment of gratuity amount, as directed by the tribunal. But, so far as the petitioner is concerned, the order of the tribunal has not been complied with on the ground that the petitioner is not liable to pay because the pension payment order contemplates a condition that the retirement gratuity shall be released on receipt the final NDC from the Department of Water Resources. Thereby, the delay is attributable to the State and Orissa Lift Irrigation Corporation Ltd., who are the pension sanctioning authorities, but not to the petitioner herein. But fact remains, if the death cum gratuity is payable by the petitioner, in that case the petitioner is also liable to pay interest in terms of Sub-rule (5) of Rule-49 of the Orissa Pension Rules. Consequentially this Court does not find any error apparent on the face of the record, as directed by the tribunal in its order dated 04.03.2011 passed in O.A. No.52 of 2009, which is required to be complied with by the petitioner in letter and spirit as expeditiously

as possible, preferably within a period of six weeks from the date of communication of this judgment.

13. In view of the discussions made above, the writ petition merits no consideration and the same is hereby dismissed. There shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

SAVITRI RATHO,J.

I agree.

(SAVITRI RATHO)
JUDGE

Orissa High Court, Cuttack
The 10th May, 2022, Alok

