A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.902 of 2018

(This is an application under Article 226 & 227 of the Constitution of India, against non-sanction of pension on the ground that the excess payment was made to the deceased husband of the petitioner while he was in service).

Smt. Kamini Acharjya .... ***Petitioner***

-versus-

State of Orissa & Others .... ***Opposite Parties***

Advocates appeared in the case through Hybrid Mode:

For Petitioner : ***Mr. S.K. Ojha, Advocate.***

-versus-

For Opposite Parties : ***Mr. D.Mund, AGA***

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING :07.04.2022
DATE OF JUDGMENT:07.04.2022

V. Narasingh, J.

1. The petitioner's husband –Gouri Sankar Acharya was appointed as a Octroi Tax Sarkar on temporary basis in Koraput N.A.C along with three others. On 08.04.1987 for non-sanction of posts by the Government all the four incumbents including the petitioner were discharged from their service on 06.10.1990. After due sanction, the husband of the petitioner was appointed as a Octroi Tax Sarkar in the regular establishment and as per the 6th Pay Commission recommendation all the Tax Collectors, Sarkars and other categories were placed in pay band of Rs.4440-7440 with Grade Pay (GP) of Rs. 1600/-.

2. At that stage being aggrieved by such fixation, matter was carried to the Apex Court and in terms of the order passed by the Apex Court, the Tax Collectors, Octroi Tax Sarkar were placed in the Pay Band of Rs. 5200-20200/- with Grade Pay (GP) Rs.1900/- and the same was followed by corrigendum dtd. 22.05.2012 issued by the Government of Odisha in Housing and Urban Development Department, wherein it was stated that " the category of Octroi Tax Collector was inadvertently left out and the same is now included " . Such corrigendum is on record at Annexure-3. In terms of such corrigendum the pay of the husband of the petitioner was duly fixed in the higher grade as per the Officer Order dtd. 02.08.2013 of the Executive Officer, NAC, Koraput, the administrative authority, wherein his pay scale was clearly stated to be Rs.5200-20200 with Grade Pay (GP) of Rs.1900/- with effect from 01.04.2012. Such fixation was vetted by endorsement dtd. 02.08.2013 in his Service Book at Page-36 (Annexure-1) of the writ petition.

3. As ill luck would have it, the husband of the petitioner passed away on 08.05.2013 and after passing away of her husband the entitlement of the deceased husband of the petitioner was again verified and approved as is clear from the endorsement at Page-39 of the Brief.

4 That, after passing away of the husband when the petitioner was eagerly looking forward to family pension to sustain herself, she received letter dtd. 22.07.2016 at Annexure-5 issued by the Housing and Urban Development Department directing the Executive Officer, Koraput Municipality to comply with the audit objection that the deceased husband of the petitioner was not eligible to be paid emoluments in the scale of pay of Rs.5200-20200 with Grade Pay (GP) of Rs.1900/-, with effect from 16.03.2012, inter alia on the ground, that the husband of the petitioner who was working as Octroi Tax Sarkar is not eligible to get such scale and grade.

5. In terms of the letter by the Housing and Urban Development Department dtd. 22.07.2016 as referred to above, under letter dtd. 24.05.2017 at Annexure-7 which is impugned herein the Executive Officer, Koraput Municipality, Koraput was asked to comply the audit objection as raised. It was also stated that recovery of excess amount to be intimated to the Administrative Department, i.e., Housing and Urban Development Department.

6. The issue, which falls for consideration of this Court is entitlement of the petitioner's husband to emolument in pay band of Rs.5200-20200 with Grade Pay (GP) of Rs.1900/- since designation of "Tax Sarkar" does not find place in the notification at Annexure-2 (16.03.2020).

7. Mr. Ojha, Learned counsel for the petitioner places reliance on the letter of Koraput Municipality addressed to the Under Secretary to Government of Odisha, Housing and Urban Development Department dtd. 26.11.2016 (Annexure-6) more particularly Para-2 thereof, which is quoted hereunder for ready reference.

"Para No.2 Housing & Urban Development Order No. 8105/HUD Dt. 16.03.2012 has been modified & according to corrigendum No. 14473/HUD, Dt.22.05.2012 (copy enclosed), Octroi Tax Collector/Octroi Tax Sarkar (O.T.C & O.T.S are same post with same nature of work and same scale of pay having change of nomenclature name) are eligible to get pay scale of Rs.5,200-20,200 with Grade Pay-Rs.1,900/-. This matter has been again concurred by Finance Department vide letter No. 28851/HUD Dt. 16.10.2012**".**

8. On a bare perusal of the communication at Annexure-6 addressed to the Government in the Housing and Urban Development Department, it is seen that referring to the corrigendum dtd. 22.05.2012 the Executive Officer of the Koraput Municipality has clearly indicated that the Octroi Tax Collector/Octroi Tax Sarkar (OTC and OTS) are "same posts with same nature of work and same scale of pay having change of nomenclature name" are eligible to get pay scale of Rs.5200-20200/- with Grade Pay of Rs.1900/-. It has also been indicated therein that the same has concurrence of the Finance Department. It is also submitted by the learned counsel for the petitioner referring to the absorption of DLR and NMR workers against non-tax LFS existing vacancies in different ULBs by the Government notification dtd. 05.08.2013 at Annexure-4 that the Tax Sarkar of different municipality are being paid Scale of Pay of Rs.5200-20200 with Grade Pay of Rs.1900/-.

9. He draws the attention of the Court to the incumbents whose name appear at SL. Nos. 14,17,20 and 26 relating to Berhampur Municipal Corporation as well as Serial Nos. 261 to 263 and 265 relating to the self same Municipality i.e., Jeypore where the husband of the petitioner served as an Octroi Tax Sarkar clearly indicating that the scale of pay is Rs. 5200-20200 with Grade Pay (GP) of Rs.1900/-. It is thus asserted that there is no rational in issuing Annexure-7 and it is ex-facie violative of Article-14 and amounts to colorable exercise of power and hence liable to be set aside and it is also submitted that because of such curious understanding of the Pay Band applicable to the husband of the petitioner, the widow is left in the lurch and she is not getting her dues.

10. Mr. Mund, Learned Counsel for the State relying on the counter affidavit submits that since admittedly the post of Octroi Tax Sarkar does not find place in the Notification and corrigendum (Annexures-2 & 3 respectively) on which reliance is placed by the petitioner, there is no irregularity or illegality in issuance of Annexure-7. In as much as since it is a policy decision and as the matter has financial implication, the notification has to be interpreted in Stricto senso and no inference as prayed for can be drawn from, referring to others cases of similar nature. As such seeks dismissal of the writ petition.

11. On consideration of materials on record, it is seen that the petitioner has clearly averred in Paragraph-6 of the writ petition, the basis for entitlement.

12. While replying to such paragraph answering the Opposite Party has chosen to give evasive reply. In as much as the assertion that the petitioner has been discharging duties at par with others as mentioned in Annexure-6, has not been answered. The contention of the petitioner referring to the absorption of DLR and NMR workers against Non-LFS existing vacancy in different ULBs as contained in (Annexure-4) and Scale of Pay of Tax Sarkar therein that is Rs.5200-20200 with Grade Pay of Rs.1900/- remained uncontroverted.

13. In view of such stand of the answering Opposite Parties, this Court has no hesitation to hold that the action of the Opposite Parties not extending the benefit of pay fixation of the petitioner's husband in the Pay Band of Rs.5200-20200 with Grade Pay (GP) Rs.1900/- is liable to be set aside. It is thus directed that the pensionery benefits of the petitioner be fixed, treating the husband of the petitioner to be entitled to emoluments in the Pay Band of Rs.5200-20200 with Grade Pay (GP) of Rs.1900/..

14. The direction as contained in Paras-2, 3 & 4 of the impugned Annexure-7 are set aside and the Opposite Party No.1 is directed to fix the pensionery benefits of the petitioner treating her deceased –husband as entitled to emoluments in Pay Band of Rs.5200-20200 with Grade Pay (GP) Rs.1900/- and issue necessary direction to the Collector, Koraput, since it is brought on record by virtue of Notification dtd. 10.03.2021 of the Housing and Urban Development

Department that the District Magistrate is the Pension Sanctioning Authority. On the prayer of the learned counsel for the petitioner, the Collector, Koraput implead as Opposite Party No.4, in Court.

15. Since it is stated that the husband of the petitioner has passed away on 08.05.2013 and the petitioner is not getting family pension as due (except the Provisional Pension), the authority would do well to calculate and make payment as per the entitlement of the petitioner within a period of four months from the date of production/receipt of the certified copy of this Judgment.

16. Accordingly, the writ petition is allowed. There shall be no order as costs.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 7th of April,2022/Balaram