

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 5311 of 2016

State of Orissa & Ors.

.....

Petitioner

Mr. S. Jena, SC, S&ME Deptt.

Vs.

Sanatan Bag & Ors.

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

02.05.2022

Order No.

7

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel for School and Mass Education Department for the petitioners.

3. The State and its functionaries have filed this writ petition challenging the order dated 06.02.2015 passed in O.A. No.926(C) of 2004, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, while allowing the said O.A., has quashed the letter under Annexure-8 to the O.A. issued by the Controller of Accounts, Odisha, Bhubaneswar directing to the District Treasury Officer, Jharsuguda to recover an amount of Rs.2,13,505/-, i.e. Rs.19,800/- from the gratuity and balance amount of Rs.1,93,705/- from the pensionary benefits, and directed the petitioners to release all such benefit in favour of opposite party no.1 within a period of three months.

4. The tribunal had passed the order on 06.02.2015, but the State-petitioners have approached this Court by filing this

writ petition on 22.03.2016. Thereby, the writ petition suffers from delay and laches.

5. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department, relying upon the judgment of the apex Court in *State of Bihar v. Pandey Jagdishwar Prasad*, (2009) 3 SCC 117, submits that the excess amount paid to opposite party no.1 as salary may not be recovered from him, but for the purpose of fixing the retiral benefits, the period in respect of such salary was received by opposite party no.1 cannot be taken into consideration and opposite party no.1 would be entitled to fixation of retiral benefits as on the date of his superannuation i.e. 31.12.1995.

6. This matter was filed on 22.03.2016 and had been adjourning from time to time at the instance of the State. By this process, six years have passed. Now at this stage when opposite party no.1 is more than 80 years, this Court is not inclined to issue notice in this case. Accordingly, the writ petition is dismissed for delay and laches, in view of judgment/order of this Court in the case of *State of Odisha v. Surama Manjari Das*, (W.P.(C) NO.15763 of 2021 dismissed on 16.07.2021).

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE