

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 7442 OF 2018

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

AFR

Jyotsna Rani Mohanty Petitioner

-Versus-

Secretary, Indian Council Opp. Parties
of Agricultural Research
and others

For Petitioner : Mr. J.K. Rath, Sr. Advocate
along with M/s. D.N. Rath,
P.K. Rout, A.K. Saa and
P. Prusty, Advocates

For Opp. Parties : Mr. M.K. Pati,
Central Govt. Counsel
[O.P.Nos.1 to 4]

M/s B.S. Tripathy,
M.K. Rath, J. Pati and
N. Panda, Advocates
(O.P. No.5)

P R E S E N T:

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

Date of hearing and judgment: 13.04.2022

DR. B.R. SARANGI, J.

Jyotsna Rani Mohanty, the widow

of late Bansidhar Mohanty, being opposite party no.5 before the Central Administrative Tribunal, has filed this writ petition seeking to quash the order dated 12.03.2018 under Annexure-9, and to issue direction to opposite parties no.3 and 4 not effect the family pension in favour of opposite party no.5-divorced daughter of deceased government employee, who was applicant before the tribunal, and to hold that the petitioner is legally entitled to reimbursement of the family pension deducted from her dues on the plea that excess amount had been paid to the late husband of the petitioner and the same was utilized by some stranger.

2. The factual matrix of the case, in brief, is that late Bansidhar Mohanty was appointed under the Central Rice Research Institute, Cuttack, a Central Government establishment, and while he was continuing as such, was promoted to the post of Asst. Administrative

Officer. The petitioner is the legally wedded wife of late Bansidhar Mohanty and out of their wedlock, they blessed with one daughter, namely, Swagatika Mohanty and a son, namely, Dipak Mohanty. On attaining the age of superannuation, late Bansidhar Mohanty was retired on 30.11.1994 and enjoying the pension as per provisions of the Central Civil Services (Pension) Rules, 1972. Late Bansidhar Mohanty filed his pension papers indicating therein that the petitioner is the legally wedded wife of the government servant and accordingly nominated her to get family pension in the event of death of the retired government employee. He, however, succumbed to death on 18.03.2014. Consequent upon his death, the petitioner applied before the authority for grant of family pension in accordance with Rule-54 of the Central Civil Services (Pension) Rules, 1972, as amended from time to time. On consideration of the same, the authorities also granted family pension in favour of the petitioner w.e.f. 19.03.2014 @ Rs.4,827/-, vide order no.193/3201 dated 10.03.2016. From the pension payment order issued in favour of the

petitioner, it was found that some excess amount was deposited in the bank account of late Bansidhar Mohanty. From date of death of Bansidhar Mohanty, i.e., 18.03.2014 till November, 2014, when arrear family pension of the petitioner was calculated and credited, such excess amount paid was deducted from the family pension of the petitioner, which was duly acknowledged by State Bank of India by letter dated 01.11.2015. When the petitioner was enjoying the family pension, being the widow of late Bansidhar Mohanty and also being a nominee for the family pension, opposite party no.5, claiming to be the daughter of the late husband of the petitioner and a divorcee, approached the authority by filing representation on 23.04.2015. The same was rejected, by opposite party no.2, vide order dated 22.12.2015, and communicated by opposite party no.3. Thereafter, by letter dated 18/30th December, 2015, the family pension was released in favour the petitioner. Challenging the same, opposite party no.5 approached the Central Administrative Tribunal, in which the present opposite parties no.1 to 4, were arrayed as

opposite parties no.1 to 4 and the petitioner was arrayed as opposite party no.5. On being noticed, opposite parties no.2 to 4 filed counter affidavit denying the claim of opposite party no.5 herein, and contended that as per records of the establishment, the petitioner is the legally wedded wife of the deceased government servant and, therefore, she is entitled to get the family pension not the present opposite party no.5, the divorced daughter of the government employee. The petitioner, who was opposite party no.5 in the original application, also filed an independent reply denying the claim of the opposite party no.5 herein, who also filed rejoinder affidavit to the counter affidavit in the original application stating inter alia that a mutual divorce petition was filed by her and her husband on 30.04.2016 and some order was passed on 27.07.2017 on such application. Therefore, she stated to be a divorcee and therefore she is entitled to the family pension. But the petitioner had filed reply thereto stating that fraud has been played by the present opposite party no.5, by withdrawing the excess amount

from the account of the late husband of the petitioner. Therefore, such excess amount, which was deducted from the family pension of the petitioner, has to be paid to the petitioner, as she is entitled to the same. But the tribunal, on consideration of the pleadings available on record and on perusal of the documents, vide order dated 12.03.2018, directed opposite party no.2 to the original application to sanction family pension in favour of opposite party no.5 herein prospectively from the date of passing of the order by splitting the pension equally between the legally wedded wife (petitioner herein) and the present opposite party no.5 treating her as a divorced daughter of the deceased government employee subject to the condition that such family pension would be made available to them until their death or re-marriage whichever is earlier. Hence this application.

3. Mr. J.K. Rath, learned Senior Counsel appearing along with Mr. D.N. Rath, learned counsel for the petitioner contended that opposite party no.5 has no

right to claim the family pension as due and admissible to the petitioner. It is contended that the petitioner, being the married wife of the deceased Bansidhar Mohanty, is entitled to get family pension as per the rules and, as such, the same was also allowed by the authority on perusal of records and documents filed by the deceased at the time of retirement of government employee. Therefore, the claim of opposite party no.5, that she being a divorced daughter of the deceased government servant is entitled to get family pension, cannot sustain in the eye of law. It is further contended that the claim of the opposite party no.5 that she is the daughter of government servant, born to the second wife and was dependent on her father and her father had authorized her to receive pension and, therefore, she has the right, has no justification as admittedly the petitioner is the legally married wife of the deceased government employee late Bansidhar Mohanty. It is further contended that no contemporaneous document had been filed before the tribunal to show that mother of opposite party no.5, Santilata Mohanty was the wife

of late Bansidhar Mohanty, nor her mother Santilata Mohanty was made a party in the original application filed by her. In absence of any such document, only because opposite party no.5 produced a legal heir certificate obtained from the Tahasildar, Baranga on 10.05.2016 showing that Santilata Mohanty is the widow of late Bansidhar Mohanty and opposite party no.5 is their daughter, the tribunal treated Santilata Mohanty as legally married wife and opposite party no.5 as the daughter of late Bansidhar Mohanty and directed that she is entitled to a share of the family pension, which itself is contrary to the documents available on record. Therefore, by in-correct reading and interpretation of the government circulars, the benefit has been extended in favour of opposite party no.5. As a consequence thereof, the order so passed by the tribunal cannot sustain in the eye of law.

4. Learned Central Government Counsel appearing for opposite parties no.1 to 4 contended that admittedly late Bansidhar Mohanty was a government employee

and retired from service on attaining the age of superannuation and, as such, on the basis of the documents produced by him at the time of retirement, pensionary benefits were extended in favour of the petitioner. As such, opposite party no.5 has never raised any claim before the authority to grant family pension in place of the petitioner or ever claimed any share even in the family pension being a divorced daughter of the government employee and being the daughter of second wife, namely, Santilata Mohanty. Therefore, grant of family pension in favour of the petitioner is well justified which does not warrant any interference of this Court.

5. Mr. B.S. Tripathy, learned counsel for opposite party no.5 vehemently contended that opposite party no.5 is the daughter of second wife of late Bansidhar Mohanty and out of their wedlock she was born and got married. But the marriage could not sustain and as a consequence thereof she was divorced by her husband. Therefore, as a divorced daughter of

the deceased employee, she is entitled to get the share of the family pension admissible to the deceased employee, in view of the provisions laid down vide OM dated 02.12.1996 and OM dated 27.11.2012. As such, the tribunal considering all the materials available on record, sanctioned the family pension in favour of opposite party no.5 prospectively from the date of passing of the order by splitting the pension equally between the legally wedded wife, the present petitioner and the divorced daughter-opposite party no.5 of the government employee. It is further contended that the claim of opposite party no.5 flows from a legal heir certificate issued by the Tahasildar, Baranga on 10.05.2016 showing Santilata Mohanty as the widow of late Bansidhar Mohanty, and opposite party no.5 as their daughter. Thereby, the tribunal has not committed any error apparent on the face of record so as to interfere with the order impugned in this proceeding in granting the benefit admissible to the opposite party no.5 in terms of the office memorandum dated 02.12.1996 and 27.11.2012. Thus, it is contended that

the tribunal is well justified in passing the order impugned which does not warrant interference of this Court.

6. This Court heard Mr. J.K. Rath, learned Senior Counsel appearing along with Mr. D.N. Rath, learned counsel for the petitioner; learned Central Government Advocate appearing for opposite parties no.1 to 4; and Mr. B.S. Tripathy, learned counsel appearing for opposite party no.5 by hybrid mode. Pleadings having 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 the basis of the factual matrix, as delineated above, and the rival contentions raised by learned counsel for the parties, the only question revolves round the fact that whether a divorced daughter of a deceased government employee is entitled to get part of the family pension for her sustenance.

8. There is no dispute that late Bansidhar Mohanty retired from service as an Administrative Officer on 30.11.1994 on attaining the age of superannuation and died on 18.03.2014. Opposite party no.5, the daughter of second wife of the deceased employee got married on 17.01.2000 and by way of panchayat faisalanama, she was divorced by her husband on 13.04.2010 and was residing with her father on being divorced. She had also filed an application under Section 13(B) of the Hindu Marriage Act bearing No. 227 of 2016 before the Family Court, Cuttack seeking decree of mutual divorce which was pending at the time of filing of original application. She claimed that her father authorized his pension in her bank account since December, 2013 due to the fact that she and her son were residing with her father, the deceased government employee. After death of her father on 18.03.2014, the pension was stopped and, therefore, she made representation on 26.02.2015 before the Director, CISR-opposite party no.2 to release the family pension in her favour. Even though the

opposite party no.5 had represented on 23.04.2015 to opposite party no.2, she was informed by the Sr. Administrative Officer on 22.12.2015 that as per family declaration submitted by late Bansidhar Mohanty, the deceased government employee, the first wife of late Bansidhar Mohanty, the present petitioner, is eligible to get family pension. Thereafter, vide letter dated 18/30.12.2015 the I/c Sr. Administrative Officer informed opposite party no.5 that on the basis of family declaration, the petitioner is eligible to get family pension as per rules. Opposite party no.5 also annexed the PPO in respect of the petitioner authorizing family pension along with applicable D.A. Being aggrieved by the order of the authority, opposite party no.5 approached the tribunal seeking to quash the orders dated 22.12.2015 and 18/30.12.2015 with a further direction to the authorities to consider her case for release of the share of family pension in her favour within a stipulated time. As such, claim has been made on the ground that the daughter from the second wife, who is a divorcee, is eligible and entitled to receive

pension. Thereby, denial of pension to her is illegal and contrary to the settled position of law. Indeed, opposite party no.5 is a divorcee, by virtue of the panchayat faisalanama, although mutual divorce proceeding was pending before the Family Court, Cuttack at the time of filing of original application. More so, the present petitioner, who is the step mother of opposite party no.5, was living separately even during the life time of her father, and during the life time of opposite party no.5's father he had authorized pension in her favour, she being a divorcee daughter and suffering from mental disability. But the official records indicate that late Bansidhar Mohanty, during course of his employment, had submitted the family declaration on 11.03.1992, and as per Form-III submitted by him on 15.10.1994, along with the pension papers, the petitioner is the first wife of late Bansidhar Mohanty and is thus eligible to get the family pension. As per Rule-54 of Family Pension Rules, 1964, opposite party no.5 is not entitled to get family pension. As such, there is no official record about the family status and

the ailment of the opposite party no.5 and about the application for mutual divorce filed by opposite party no.5. But it is ascertained from the Bank record that after the death of her father, opposite party no.5 had illegally and fraudulently withdrawn the pension of the deceased employee amounting to Rs.1,55,245/- between 18.02.2014 and November, 2014. Therefore, the authority stated that opposite party no.5 is not entitled to get family pension, when the first wife of the deceased government employee is still alive. But nothing was placed on record by the petitioner before the authority disputing the factum that opposite party no.5 is the daughter of the deceased employee. Rather it is proved that opposite party no.5 is the daughter of the deceased employee through second wife and was married to one Rajkishore Das and by virtue of the panchayat faisalanama she was divorced and, as such, an application bearing no. 227 of 2016 under Section 13(B) of the Hindu Marriage Act is pending before the Family Court, Cuttack and the divorce was granted only on 27.07.2017 by the competent civil court. More so,

although a claim has been made by opposite party no.5 that she is of unsound mind, suffering from mental disorder and has filed divorce, proceeding, but no such declaration has been made by any court of law on the factum of mental disorder. The present petitioner although disputed the second marriage of deceased employee and contended that nothing has been placed on record that the said marriage was solemnized and therefore her claim to get family pension is well justified as per Rule-54 of OCS (Pension) Rules, but the said fact has been disputed by opposite party no.5 stating that she was getting pension of her father late Bansidhar Mohanty through her Savings Bank Account No. 10368381925 and her father was staying separately from the petitioner, who never informed the department about the death of her husband, in order to apply for family pension in her favour. Therefore, being a divorced daughter of the government employee, she is entitled to get the family pension, in view of the legal heir certificate issued by the Tahasildar Baranga on 10.05.2016. On perusal of the legal heir certificate

issued by the Tahasildar, Barang, it is revealed that Santilata Mohanty has been shown as widow of late Bansidhar Mohanty, whereas Biswakesh Mohanty and Satyajit Mohanty are the sons and Baijayanti Mohanty-opposite party no.5 is daughter of the deceased government employee and, as such, the said certificate has been issued for the purpose of pension.

9. Opposite parties no.1 to 4 unequivocally contended that on the basis of declaration made by late Bansidhar Mohanty in his pension paper, the present petitioner is entitled to get the family pension and accordingly the same granted in her favour. But fact remains, the legal heir certificate which was produced by opposite party no.5 has neither been questioned by opposite parties no.1 to 4 nor has the same been assailed by the present petitioner in proper forum. Thereby, such legal heir certificate issued by the competent authority for the purpose of pension became sacrosanct and accordingly opposite party no.5 has a

right to claim pension of the deceased government employee Bansidhar Mohanty.

10. Reliance was placed on the provisions contained in Rule-54 of the CCS (Pension) Rules, 1972 to grant pension in favour of the petitioner. Rule-54(6)(i) stipulates that subject to first proviso the period for which family pension is payable in case of a widow or a widower is up to the death or remarriage whichever is earlier provided that the family pension shall continue to be payable to a childless widow on remarriage, if her income from all sources is less than the amount of minimum family pension under sub-rule(2) of the rule and the dearness relief admissible thereon.

11. The Department of Pension & Pensioners' Welfare, Government of India, deals with grant of family pension to children from the void of voidable marriage. Paragraph- 20 and (20-A) of O.M. dated 2nd December, 1996 are extracted hereunder:-

“20. Family pension is admissible also to children from the void or voidable marriage- Attention is invited to provisions contained in Rule 54(8) of CCS (Pension) Rules, 1972 and decisions

thereunder on regulation of amount of family pension payable. This Department has been receiving references from Ministers/Departments seeking advice on the question of admissibility of family pension to children of a deceased Government servant/petitioner from a wife whose marriage with the said Government servant/pensioner would be voidable or held void under the provisions of Hindu Marriage Act.

2. The matter regarding grant of pensionary benefits to such children has been examined in consultation with the Ministry of Law.

3. In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by the Hindu Marriage Laws (Amendment) Act States "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and whether or not the marriage is held to be void otherwise than on petition under this act".

4. The rights of such children require to be protected and will accrue accordingly. It is therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant /pensioner from such type of void marriage when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same. (For revised provisions – See GID 20-A below).

[G.I Deptt. Of P & P.W., O.M No.1/16/96.P & P.W (F), dated the 2nd December, 1996].

(20 - A). Eligibility of children from a void of voidable marriage for family pension – The undersigned is directed to refer to this Department's O.M.No-1/16/96- P &PW (E) dated 2.12.1996, whereby it was clarified that pensionary benefits will

be granted to children of a deceased Government servant/pensioner from void or voidable marriage when their turn comes in accordance with Rule – 54(8). It is mentioned in Para -4 of the O.M. that “it may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same.;

2. The matter has been re-examined in consultation with the Ministry of Law and Justice (Department of Legal Affairs) and Ministry of Finance (Department of Expenditure). It has been decided that in supersession of Para -4 of the O.M., ibid, dated 2.12.1996, the share of children from illegally wedded wife in the family pension shall be payable to them in the manner given under sub-rule 7(c) of Rule 54 of CCS (Pension) Rules, 1972, along with the legally wedded wife.

It has also been decided that in past cases, no recovery from the previous beneficiary should be made. On receipt of an application from eligible child/children of the deceased Government employee/pensioner born to an ineligible mother, a decision regarding division or otherwise of family pension may be taken by the competent authority after satisfying himself / herself about veracity of facts and entitlement of the applicants(s).

4. As regards pensioners/family pensioners belonging to the Indian Audit and accounts Departments, these Orders will be issued after consultation with the Comptroller and Auditor General of India.

5. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their I.D.No.,530/E.V/2012 dated 23.11.2012.

[G.I.Dept. of Pen. & P.W., O.M.No.1/16/1996 (E) (Voll.II) dated the 27th November, 2012)].

12. From the above quoted office memorandums, it is made clear that even though opposite party no.5

had not enclosed any certificate of second marriage to her application, but reliance was placed on the legal heir certificate issued by the competent authority, namely, Tahasildar, Baranga, declaring Santilata Mohanty as the widow and the opposite party no.5 as daughter of the deceased government employee, late Bansidhar Mohanty. Needless to say, the fact that the first wife, the petitioner herein-Jyotsna Rani Mohanty, was not living with the late Bansidhar Mohanty, and the opposite party no.5's mother was living with him and had begotten three children out of their relationship, cannot be brushed aside. Thereby, para-2 of O.M. dated 27.11.2012, as quoted above, is applicable to the case of opposite party no.5 and as such, she has already got decree of divorce from the Family Court, which is placed on record. That apart, her mother and brother have sworn to an affidavit, that the family pension can be given to her, needs to be taken into consideration. After perusing the records and the provisions of law laid down by the OMs, as quoted above, this Court is of the considered view that the tribunal is well justified in

holding that opposite party no.5 is entitled to a share of family pension of the deceased government employee, as the pension has already been paid to the petitioner since 2014, after the death of the government employee, and, therefore, rightly directed opposite party no.2 to sanction family pension in favour of opposite party no.5 prospectively from the date of passing of the order by splitting the pension equally between the legally wedded wife and the opposite party no.5, the divorced daughter of deceased government employee, namely, Bansidhar Mohanty subject to condition that such family pension will be made available to them till their death or remarriage, whichever is earlier.

13. In the above view of the matter, this Court does not find any illegality or irregularity committed by the tribunal in passing the order impugned so as to warrant interference with the same. Accordingly, the order passed by the tribunal in the original application is confirmed. The same shall be implemented forthwith.

14. In the result, the writ petition merits no consideration and the same is hereby dismissed. However, there shall be no order to cost.

.....
DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

.....
SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 13th April, 2022, Ashok/GDS

