A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13241 of 2021

Pushpalata Sarangi …. ***Petitioner***

-versus-

State of Odisha &Ors. …. ***Opp. Parties***

Advocates appeared in the case:

For Petitioner : *Mr. S.B. Mohanty, Adv.*

-versus-

For Opp. Parties : *Mr. Nilambara Jena, SC (for O.Ps.1 to 3)*
Mr. S.K. Das, Adv. (for O.P. 4)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-29.08.2022
DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. The Petitioner, daughter of an Ex-State retired Primary School Teacher through the aforementioned Writ Petition has challenged the letter of the Principal Accountant General (A&E), Orissa dated 20.6.2020 issued through Senior Accounts

Officer and order of Govt. dated 16.3.2021 being contrary to the settled position of law rendered by the Tribunal and High Court and inter alia prays for sanction of Family Pension in view of Rule 56 (5) (d) of O.C.S. Pension Rule, 1992 inserted vide F.D. Notification dated 23.07.2011.

I. **FACTUAL MATRIX OF THE CASE:**

2. Shorn of unnecessary details, the factual matrix of the case in short, is that the petitioner's father late Satyanarayana Sarangi was a Primary School Teacher under the Princely State of Athamallick. After merger of ex-States to the State of Odisha, the employees and their service conditions remained unregulated with respect to their position as Non-Govt. Primary School Teacher or Govt. Primary School Teachers. The Teachers of different ex-States like Athamallick, Dhenkanal, Nayagarh, Keonjhar, Boudh, Kalahandi, Khandapada, Barmba, Sonepur and Hindol filed writ petitions before this Court claiming that they had been absorbed as Govt. Servants under the State Govt. on the merger of the Ex-States with the province of Orissa and as such were entitled to all the benefits available to the Govt. servants of the state including Retirement benefits. On transfer of different O.J.C to the State Administrative Tribunal after effectiveness of Administrative Tribunal Act, 1985, the said O.J.C.s were renumbered as different Transfer

Applications wherein the petitioner's father's O.J.C. was 1231/1979 which was nomenclatured as T.A. 181/1987 tagged with other Transfer Applications.

3. The learned Tribunal by a common Judgment dated 23.08.1988 declared that the Ex-State Primary School Teachers are considered as Government Servant consequent upon their services were taken over by the State Government and they are entitled to avail all the benefits of teachers of Government Primary School. In case the petitioners have already retired, they will be deemed to have retired as Government servants and benefits be given at par with the Retired Primary School Teachers of Government Schools.

4. The petitioner's father, prior to pronouncement of the above Judgment, had already retired on 07.06.1976 and was in receipt of Pension under Government Primary School Teachers Triple Benefit Scheme, 1966. While he was in receipt of pension under T.B.S. Scheme, 1960, the said Judgment was pronounced on 23.08.1988. As per official procedure the front page of the P.P.O. would have been corrected and in place of T.B.S. Teacher his status and Designation should have been re-designated as Retired Government Primary School Teacher, but, due to administrative lapses it was not rectified. After the death of the petitioner's spouse, the petitioner as an unmarried daughter and legal heir of deceased Government

servant applied for Family Pension in view of Finance Department Notification dated 23.07.2011 where under it is specifically mentioned that in the case of an unmarried daughter even after attaining the age of 25 years, she shall be entitled to get Family Pension subject to satisfaction of other grounds.

5. In response to the above amended Rule of Finance Department, the Department of School & Mass Education vide Notification dated 08.03.2018 has extended the benefits of Family Pension to the unmarried/ Widow divorced, disabled widow / disabled divorced daughters of deceased employees/ pensioners after the age of 25 years in respect of the employees of Aided Educational Institutions functioning under School & Mass Education Department. In the said Notification the Principal Secretary to Govt. has clarified that unmarried daughter even after age of 25 years like all the Regular State Government Employees, shall get Family Pension as per Finance Department Notification dated 23.07.2011.

6. On due consideration of the applications of the petitioner as a legal heir of deceased Government Servant, the Block Education Officer, Athamallick sent the Family pension proposal to the Accountant General for authorisation and payment, but the Senior Accounts Officer functioning under

the Principal, A.G. vide letter dated 26.6.2020 declined to authorise Family pension with an observation that the Retired T.B.S. Teacher is not eligible to transfer his right to the succeeding legal heir to get Family pension as the T.B.S. Teachers are Non-Govt. Primary School Teacher and they are not at par with the Govt. servant. Hence, the applicability of Notification dated 08.03.2018 issued by the School and Mass Education Department regarding authorisation of Family pension in case of Non-Government Primary School Teacher does not arise and the letter was communicated to the petitioner with regard to non-granting of Family pension.

7. Against the wrong decision of the A.G regarding rejection of the prayer, changing her father's status and designation, the petitioner approached the Government on 03.07.2020 keeping in view the Judgment of the Tribunal dated 23.08.1988 whereby the petitioner's father has been declared as a Retired Govt. Servant and entitled to get all service and pensionary benefits at par with the Government Servants. However, when her representation was not attended, she approached this Court in W.P.(C) No.23570 of 2020 for appropriate order. Upon hearing the parties this Court disposed of the writ petition on 19.10.2020 with a direction to the Opposite party No.1 that the petitioner was to file a comprehensive representation before the Opposite party No.1 within a period

of two weeks alongwith a copy of the order. In the event, such representation is filed before the Opposite party No.1, they are supposed to take a decision on the same within a period of three months from the date of receipt of such representation in accordance with law and communicate the result of such exercise to the petitioner.

8. As per direction of this Court, the petitioner submitted the Comprehensive representation alongwith order copy on 02.11.2020 with proper acknowledgement before the Opposite party No.1. After receipt of representation, as per the order of this court, the Secretary, Department of School and Mass Education, in a very mechanical manner and without applying the Judicial mind, has rejected the prayer of the petitioner on 10.03.2021 reiterating the views as given by the Accountant General in the impugned letter dated 20.06.2020. It was observed that the petitioner's father was receiving pension under Non-Government Aided Teachers Triple Benefits scheme 1966 hence not eligible. On being aggrieved of the same, the petitioner has filed this writ petition.

II. **PETITIONERS' SUBMISSIONS:**

9. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of their contentions:

10. The Principal Secretary, Department of School and Mass Education while disposing of the representation of the

petitioner has not taken into account the Judgment of the learned Tribunal dated 23.8.1988 passed in T.A. No.181/1987 with other connected Transfer Applications wherein the petitioners father having been stood in Sl.No.1 was an applicant vide T.A. No. 181/1987 .The learned Tribunal by virtue of the Judgment has categorically held that the ex-states primary school Teacher of Athamallick, Dhenkanab, Nayagarh, Keonjhar, Bough, Kalahandi, Khandapada, Badamba, Sonepur and Hindol, consequent upon their merger with the province of Orissa, have been declared as Government Servant and all the benefits admissible to a Government Servant will be extended to such ex-states teachers.

11. In the concluding observation as made in Para-9 of the Judgment, it is further held that in cases where the petitioners (ex-states primary Teachers) have already retired, they will be deemed to have retired as Government servants and given benefits available to retired Primary School Teachers of Government Schools.

12. In the pension payment order of petitioner's father, there is an endorsement that her father was granted pension under Non-Government Primary School Teacher Triple Benefit Scheme, 1966. The pension payment order was issued in the year 1970, but the Judgment of the Tribunal came into force after its

pronouncement on 23.08.1988. Therefore after such judgment, the status and designation of the petitioner's father was changed and he became a Retired Government Servant. Consequently, in the pension payment order the official endorsement should have been rectified and instead of being declared as T.B.S. Teacher he should have been considered as a Retired Government Teacher.

III. **SUBMISSIONS OF OPPOSITE PARTY NO.4:**

13. Per *contra*, learned counsel for the Opp. Party intently made the following submissions:

14. The Learned Orissa Administrative Tribunal, Bhubaneswar by a common judgment dated 23.08.1988 (Annexure-I of the Writ) ordered that the Ex-State Primary School Teachers working under province of Orissa are considered as Government servant under State of Orissa after their merger and their services taken over by the State Government will be entitled to all benefits available to Teachers of Government Primary Schools including the petitioners already retired. Accordingly, this Opposite Party released family pension in favour of the father of the petitioner on 27.03.1992 as due and admissible against said PPO No. 30588/TBS.

15. The father of the petitioner while drawing pension against his Pension Payment Order (PPO) expired on 12.01.2012. His spouse had predeceased him. After death of the father of the

petitioner, the Pension Sanctioning Authority i.e., the Block Education Officer, Athamallik submitted family pension papers of the petitioner for authorisation of family pension in her favour as unmarried daughter of the deceased Government servant as per Government of Odisha, Finance Department Notification No.32745 dated 23.07.2011. It is apt to mention that the said Notification dated 23.07.2011 extended benefit of family pension with certain conditions to the un- married/widowed/divorced daughter etc., of the deceased Government servants to receive family pension in respect of the employee retired under OCS (Pension) Rules, 1992 which came into force with effect from 23.07.2011. There is no mention about extending family pension to the un-married/widowed/divorced daughter etc., of the Primary School Teacher retired under TBS Rules 1966 in the said Notification dated 23.07.2011. As such, this Opposite Party could not authorise family pension in favour of the petitioner.

16. The Government in School and Mass Education (S&ME) Department vide their Notification No. 4805 dated 08.03.2018 extended family pension to the un-married/ widowed/ divorced daughter etc., in respect of employees of Aided Educational Institutions of S and ME Department as per Government of Odisha, Finance Department Notification dated 23.07.2011 who actually draw pension under the

Odisha Aided Educational Institutions Employees Retirement Benefits Rules, 1981 (OAEIRB Rules, 1981) and the Odisha Aided Educational Institutions Non-government fully Aided Primary School Teachers Retirement Benefits Rules, 1986(OAEIRB Rules, 1986). But nothing has been mentioned about the teaching staff of Primary Schools who retired prior to 01.04.1982.

17. While disposing the judgment dated 08.08.2017 passed in WP(C) No.15782/2017, the Government in School and Mass Education Department Odisha vide order No. 9369 dated 01.05.2018 (S1.3) has categorically stated that the Notification No.4805 dated 08.03.2018 of S & ME Department is not applicable in respect of the employees of the Aided Educational Institutions covered under TBS Rules 1966.

18. The office of the OP No.4 vide letter No. 4062 dated 20.11.2018 had sought for clarification from the Principal Secretary, School and Mass Education Department Bhubaneswar regarding admissibility of family pension in favour of the petitioner followed by reminder dated 04.12.2019. The Government in School and Mass Education Department vide letter No.7977 dated 04.06.2020 intimated that necessary guidelines for extension of family pension to the un-married/widowed/divorced daughter etc., have already been issued vide their Notification No.4805 dated 08.03.2018. He

further submitted that this Opposite Party had already intimated the petitioner vide letter No. 52 dated 26.06.2020 that she is not entitled for family pension as per S&ME Department Notification dated 08.03.2018 and order dated 01.05.2018.

19. Prior to filing of the present Writ Petition, the petitioner had filed WP(C) No.23570 of 2020 for sanction of family pension in her favour. This Hon'ble Court vide order dated 19.10.2020 (Annexure-7 of the Writ) disposed of the said Writ Petition with a direction to the Opposite Party No.1 to take a decision on the representation of the petitioner regarding sanction of family pension within a period of three months from the date of receipt of the representation in accordance with law and communicate the result of exercise to the petitioner. Accordingly, the Government in S & ME Department on 16.03.2021 ordered that "*the claim of the petitioner is not coming under the purview of the S&ME Department Notification dated 08.03.2018 being her late father i.e., Satyanarayan Sarangi was receiving under Triple Benefit Scheme (TBS) Rules, 1966, hence, the representation of the petitioner deserves no consideration and is hereby rejected.*"

20. The petitioner vide paras 13 to 16 of the Writ Petition has averred that due to judgment of the Learned Tribunal dated 23.08.1988 (Annexure-1 of the Writ) declaring her father as

Government servant, the TBS Rules, 1966 will not be applicable to his case and accordingly she is entitled for family pension as un-married daughter as per Finance Department Notification dated 23.07.2011. But, as submitted in foregoing paragraphs, the Notification dated 23.07.2011 is applicable to the employees who are governed under OCS (Pension) Rules, 1992 only. The father of the petitioner who retired from service with effect from 08.06.1976 as Primary School Teacher does not come under the purview of OCS (Pension) Rules, 1992, rather comes under TBS Rules, 1966. In view of the submissions in foregoing paragraphs the present Writ Petition may be dismissed as against this Opposite Party No. 4 being devoid of merit under rules in force.

IV. **SUBMISSIONS BY OPPOSITE PARTY NO.3:**

21. Learned counsel for the Opp. party intently made the following submissions:

22. As per Sl. 15 (A) of TBS Rules, 1966, there were three categories of Non-Government Primary School Teacher as detailed below:

> ***Category-1*** *Retirement in between 01.04.1964 to 31.03.1982-TBS Rules 1966.*
>
> ***Category-2*** *Retirement in between 01.04.1982 to 31.03.1985- OAEL Employee Retirement Benefits Rules 1981.*

Category 3 Retirement on or after 01.04.1985- OAEI (Non-Govt., fully Aided Primary School Teachers), Retirement benefits rules 1986.

23. SI. No. 15 (C) of TBS Rules, 1966 further states that the Primary School Teachers retired prior to 01.4.1982 are governed under this scheme were initially allowed pension and gratuity only without the benefit of T.I on pension and family pension. Accordingly, the Opposite Party No. 4, A.G., Orissa, authorized pension in favour of the father of the petitioner vide PPO No.30588 TBS dated 23.11.1976.

24. Subsequently, the Learned Orissa Administrative Tribunal, Bhubaneswar by a common judgment dated 23.08.1988 ordered that the Ex-State Primary School Teachers working under province of Orissa are considered as Government servant under State of Orissa after their merger and their services taken over by the State Government will be entitled to all benefits available to Teachers of Government Primary Schools including the petitioner already retired. Accordingly, this Opposite Party released T.I on pension and family pension in favour of the father of the petitioner on 27.03.1992 as due and admissible against said PPO No. 30588/TBS.

25. The Notification No.4805 dated 08.03.2018 of S & ME Department is not applicable in respect of the employees of the Aided Educational Institutions covered under TBS Rules

1966. Therefore, the Order No.9369/SME, dated 01.05.2018, rejecting the prayer of the petitioner on the ground that the Notification dated 08.03.2018 is not applicable to the petitioner is lawful and doesn't suffer from any legal infirmities.

V. **Conclusion:**

26. It is well-settled that salaries and pensions are due as a matter of right to employees, and, as the case maybe, to former employees who have served the State. Since, the petitioner rendered his services till superannuation as a government servant, his entitlement to the payment of salary is intrinsic to the right to life under Article 21 and to right to property which is recognized by Article 300A of the Constitution.

27. The Supreme Court in the case of ***State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari***[1] observed that

> *"The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the*

[1] Civil Appeal No. 399 of 2021 (Supreme Court)

applicable rules and regulations which govern the service of the employees of the State."

28. In ***State of Kerala and others vs. V.Padmanabhan Nair***[2], the Supreme Court held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It was further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. The relevant paragraphs are as follows:

> *"The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i.e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite LP.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 1 86, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any*

[2] (1985) 1 SCC 429

justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent's favour.

Unfortunately, such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant."

29. In ***Dr.Uma Agarwal v. State of U.P.***[3], the Supreme Court held that:

"We have referred in sufficient detail to the Rules and instructions which prescribe the time- schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are

[3] (1999) 3 SCC 438.

occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

30. However, it is well established by law that while allowing the pensionary benefits, the same has to be in compliance with the rules of the state. The learned Tribunal by a common Judgment dated 23.08.1988 declared that the Ex-State Primary School Teachers are considered as Govt. Servant consequent upon taken over their service by the State Govt. and they are entitled to avail all the benefits of a Government Primary School and in case the petitioners have already retired, they will be deemed to have retired as Government servants and benefits be given at par with the Retired Primary School Teachers of Govt. Schools. This fact has not been contradicted by the Opposite Party.

31. The petitioner's father prior to pronouncement of the above Judgment had already retired on 07.06.1976 and was in receipt of Pension under on Government Primary School Teachers Triple Benefit Scheme, 1966. While he was in receipt of pension under T.B.S. Scheme, 1960, the above Judgment was pronounced on 23.08.1988. In fact, as per the official

procedure the front page of the P.P.O. would have been corrected and in place of T.B.S. Teacher, his status and Designation should have been re-designated as Retired Government Primary School Teacher. The Opposite Party has contended that the petitioner's deceased father should still receive benefits under the Government Primary School Teachers Triple Benefit Scheme, 1966 under which there is no provision for the unmarried daughters to be the legal heirs. However, they have not challenged the order of the learned Tribunal dated 23.08.1988 and therefore the contention of the petitioner shall sustain and the petitioner's deceased father was deemed to have retired as Government servant and benefits be given at par with the Retired Primary School Teachers of Government Schools.

32. Summing up, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance in his life. It is a measure of socio-economic justice which ensures economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially

defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus, the pension payable to a Government employee is earned by rendering long and efficient service and therefore, can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

33. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane.

34. In light of the aforesaid discussion and having regard to the present position of law, this Court is of the opinion that letter of the Principal Accountant General (A&E), Orissa dated 20.6.2020 issued through Senior Accounts Officer is required to be quashed and the Opposite Party is directed to sanction the Family Pension in favour of the petitioner in view of Rule 56 (5) (d) of O.C.S. Pension Rule, 1992. The said pension shall be released within a period of three months from today.

35. Accordingly, this Writ Petition is disposed of. No order as to cost.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 23rd Dec. 2022/B. Jhankar