ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 14718 OF 2015

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

AFR

State of Odisha and others ..... Petitioners

-Versus-

Sushanta Chandra Sahoo and others ..... Opp. Parties

For Petitioners : Mr. B.P. Tripathy, Addl. Govt. Advocate

For Opp. Parties : M/s. Ranjit Mohanty, S. Pattnaik, H. Mohanty & K.C. Panda, Advocates. [O.P. No.1]

Mr. S.K. Das, Advocate [O.P. No.2]

P R E S E N T:

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

Date of hearing: 27.04.2022: Date of judgment: 06.05.2022

DR. B.R. SARANGI, J. This is a writ petition filed by the State and its functionaries seeking quashment of the order dated 05.05.2014 passed in O.A. No. 3318 of 2013 under Annexure-3, by which the Orissa Administrative Tribunal, Principal Bench, Bhubaneswar has directed petitioner no.1 to take immediate steps for sending of pension papers of opposite party no.1, including the papers relating to gratuity and other retiral benefits to the office of the Accountant General, Odisha for finalization of his pension, gratuity and other retiral benefits, and ensure payment of such benefits to the opposite party no.1, within a period of six months, and that the gratuity amount payable to the opposite party no.1 shall carry interest at the rate of 7% per annum for the period from 01.11.2013 to the date of actual payment. The petitioners further seek to quash the order dated 04.02.2015 passed in R.P. No.05 of 2015 and L.P. No. 2 of 2015 (arising out of O.A. No. 3318 of 2013) dismissing the review petition filed by the petitioners by directing them for full compliance of the order within a period of two months.

2. The factual matrix of the case, in brief, is that opposite party no.1, while continuing as Asst. Engineer

(Civil) under the Executive Engineer, Quality Control Division, Dhenkanal, on attaining the age of superannuation, retired from service w.e.f. 31.10.2012. In November, 2012, the petitioner submitted his pension papers before the authorities for its onward transmission to the Government. Petitioner no.3 forwarded such pension papers of opposite party no.1 to the office of petitioner no.2 on 06.12.2012 along with the required documents, including final no dues certificate (NDC). The office of petitioner no.3 submitted the proposal on 06.12.2012 to the petitioner no.2 for sanction of leave encashment benefit in faovur of opposite party no.1. Thereafter, on inquiry from the official source about release of pension and other pensionary benefits, opposite party no.1 came to know that since he was involved in Bhubaneswar Vigilance P.S. Case No.7 dated 08.03.2007, the pension and other retiral benefits have been withheld. Bhubaneswar Vigilance P.S. Case No. 7 dated 08.032007 was lodged against 36 persons, of whom 8 persons, including opposite party no.1, were government employees, for the alleged occurrence which had taken place in the year 2000. Due to non-release of pensionary benefits in the name of pendency of Vigilance P.S. Case No. 7 dated 08.03.2007, opposite party no.1 approached the Orissa Administrative Tribunal on 19.11.2013 by filing O.A. No. 3318 of 2013, relying upon Rule-66 (1) and (2) read with Rule-7(1) and (2) of the OCS (Pension) Rules, 1962 and judgment of this Court in the case of ***Braja Sundar Pattnaik v. State of Orissa***, 2008 (1) OLR 384. The opposite party no.1 also relied upon the order dated 27.07.2011 passed by the tribunal in O.A. No. 845 of 2011 in the case of ***Krushna Chandra Pattnaik v. State of Odisha***, in which the applicant Krushna Chandra Pattnaik had retired from government service as an Assistant Engineer (Civil) and whose name also had been placed in the F.I.R. dated 08.03.2007 along with the opposite partyno.1. In the said case, by order dated 27.07.2011, the tribunal had allowed the original application and the authorities have implemented the order of the tribunal and paid the pension and other retiral benefits to the said applicant.

2.1 In the counter affidavit filed by the present petitioners before the tribunal, it was specifically asserted that charge sheet in Bhubaneswar Vigilance P.S. No.7 of 2007 was filed before the court vide C.S. No. 18 dated 22.07.2013. Despite that, the tribunal, vide order dated 05.05.2014, allowed the O.A. No. 3318 of 2013 filed by opposite party no.1 and directed the petitioners to take immediate steps for sending the pension papers of the opposite party no.1, including the papers relating to gratuity and other retiral benefits to the office of the Accountant General, Odisha for finalization of his pension, gratuity and other retiral benefits, and ensure payment of such benefits to the opposite party no.1, within a period of six months and that the gratuity amount payable to the opposite party no.1 shall carry interest at the rate of 7% per annum for the period from 01.11.2013 to the date of actual payment. Being aggrieved by such order, petitioner no.1 filed review petition bearing R.P. No. 05 of 2015, which was also dismissed vide order dated 04.02.2015. Hence this application.

3. Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State-petitioners contended that by the time opposite party no.1 was superannuated from service, Bhubaneswar Vigilance P.S. Case No.7 of 2007 was registered against him and on completion of investigation, charge sheet was submitted on 22.07.2013. Even though by the time the charge sheet was submitted, opposite party no.1 had already superannuated from service on 30.10.2012, as per Rule-7(2)(d) read with explanation (b)(i) of OCS (Pension) Rules, 1992, opposite party no.1 is entitled to get provisional pension. It is further contended that proviso to Rule-49(5)(a) of OCS (Pension) Rules, 1992 provides that no gratuity shall be paid to the government servants against whom departmental/ judicial proceeding are pending. As per Rule-4 of OCS (Commutation of Pension) Rules, 1992, no commuted value of pension can be paid to opposite party no.1 during pendency of vigilance proceeding. It is further contended that though opposite party no.1 had admitted in the original application that he was getting

provisional pension, but erroneously the tribunal observed that provisional pension has not been paid to opposite party no.1, which itself is an error apparent on the face of record. It is further contended that Rule-7 (2) (d) of OCS (Pension) Rules, 1992 provides that in case of government servant, who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Clause-(a) and (b), provisional pension as provided in Rule-66 shall be sanctioned. Rule-66(2) provides that no gratuity shall be paid to the government servant until conclusion of departmental or judicial proceedings and issuance of final order thereon. Rule-66 (3) provides that the provisional pension shall be authorized during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceeding, final orders are passed by the competent authority. It is further contended that Rule-66(4) provides that the authority competent to sanction pension shall be the authority competent to sanction provisional pension. It is further contended that since provisional pension has been sanctioned and opposite party no.1 has been receiving the same, instead of sanctioning of final pension because of pendency of vigilance case, as per Rule-66(2), on conclusion of judicial proceedings, opposite party no.1 shall be entitled to get such benefit, as release of final pension and gratuity is dependent upon conclusion of judicial proceedings. It is further contended that Rule-7(2) of Orissa Civil Service (Pension) Rules, 1992 stipulates that judicial proceeding shall be deemed to be instituted on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance. In view of above clear provision, the tribunal was not correct to observe that mere filing of FIR or pendency of investigation does not amount to pendency of criminal case for the purpose of pension. It is further contended that once the Court, on perusal of FIR/complaint, is satisfied that the FIR/complaint discloses the commission of an offence and there is no reason to reject the FIR/complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. It is emphatically submitted that "cognizance" means to become aware of and when used with reference to a court or Judge, to take notice of judicially. Thereby, the tribunal is not justified in passing the order impugned directing to pay the benefits admissible to the opposite party no.1. To substantiate his contention, he has relied upon the judgment of the apex Court in the case of ***CREF Finance Ltd. v. Shree Shanti Homes Pvt. Ltd.***, (2005) 32 OCR (SC) 425.

4. Per contra, Mr. Ranjit Mohanty, learned counsel appearing for opposite party no.1 vehemently contended that for the alleged occurrence, which took place in the year 2000, Bhubaneswar Vigilance P.S. Case No. 7 dated 08.03.2007 was lodged against 36 persons, of whom 8 persons, including opposite party no.1, are government employees. The contention raised that mere registration of vigilance P.S. case, opposite partyno.1 is not entitled to get pension and gratuity, cannot sustain in the eye of law. Admittedly, as per the

provisions contained under Rule-7(2)(d) of OCS (Pension) Rules, 1992, opposite party no.1 is getting provisional pension and, as such, he is not disputing such position and had fairly submitted before the tribunal. It is further contended that, referring to explanation (b)(i) of Rule-7(2)(d) read with Rule-49(5)(a) and Rule-4 of OCS (Commutation of Pension) Rules, 1992, the contention made that the gratuity shall become payable to opposite party no.1 only on finalization of criminal proceeding, is totally misconceived one and is liable to be rejected at the threshold. It is further contended that the reliance placed on the judgment in the case of ***CREF Finance Ltd.*** (supra), has no application to the present case, in view of the fact that the Magistrate takes judicial notice of an offence and cognizance is taken only after charge sheet in the criminal is filed which has been duly observed by the apex Court in the said decision. Thus, it is contended that the tribunal is well justified in directing the petitioners to pay pensionary benefits admissible to opposite party no.1, and accordingly he seeks for dismissal of the writ petition.

5. Mr. S.K. Das, learned counsel for opposite party no.2 has contended that opposite party no.1 has been paid provisional pension. But so far as release of final pension is concerned, unless the pension papers of the person concerned from the pension sanctioning authority is received, opposite party no.2 cannot be able to disburse the same and that, as and when they receive the complete pension papers from the present petitioners, compliance thereof shall be made in accordance with law.

6. This Court heard Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State-Petitioners; Mr. Ranjit Mohanty, learned counsel appearing for opposite party no.1; and Mr. S.K. Das, learned counsel appearing for opposite party no.2 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. Indubitably, a vigilance case was instituted against opposite party no.1 vide Bhubaneswar Vigilance P.S. Case No.7 dated 08.03.2007, relating to an occurrence which took place in the year 2000, in which 36 persons were involved, of whom 8 persons, including opposite party no.1, are government employees. Opposite party no.1, while continuing as Asst. Engineer (Civil) under Executive Engineer, Quality Control Division, Dhenkanal, on attaining the age of superannuation, retired from service w.e.f. 31.10.2012. Thereafter, the office of petitioner no.3 forwarded the pension papers of opposite party no.1 to the office of opposite party no.2 on 06.12.2012 with no dues certificate. Accordingly, petitioner no.3 submitted the proposal to the office of petitioner no.2 to sanction the leave encashment benefit in favour of opposite party no.1. When there was delay in releasing the pensionary benefits, on inquiry being made by opposite party no.1, he came to know that because of pendency of Vigilance

P.S. Case No.7 dated 08.03.2007, the pensionary benefits have not been extended to him. As a consequence thereof, he approached the tribunal by filing O.A. No. 3318 of 2013 and, as such, by the time the petitioner was superannuated from service, i.e., on 31.10.2012, no departmental or judicial proceedings were pending against him and interestingly one of the co-accused namely, K.C. Pattnaik, who was also working as Asst. Engineer (Civil) and whose name found place in the F.I.R. No.7 dated 08.03.2007, approached the tribunal by filing O.A. No. 845 of 2011 and vide order dated 27.07.2011, the tribunal, by categorically holding that institution of an F.I.R., or pendency of investigation basing on an FIR, does not amount to pendency of a judicial/criminal proceeding for the purpose of pension rules, directed the authorities for release of pensionary benefits, which was also implemented by the authorities.

8. In the above scenario, for just and proper adjudication of the case, the relevant provisions of OCS (Pension) Rules, 1992 are quoted below:

*“7. **Right of Government to Withhold or Withdraw Pension-***

(1) The Government reserve to themselves the right of withholding a pension or gratuity, or both either in full or in part, or withdrawing a pension in full or in part, whether permanently or for specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence in duty during the period of his service including service rendered on re-employment after retirement:

Provided that the Odisha Public Service Commission shall be consulted before any final orders are passed:

Provided further that when a part of pension is withheld/withdrawn, the amount of such pension shall not be reduced below the amount of minimum limit.

(2) (a) Such departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that when the departmental proceedings are instituted by an authority, subordinate to Government that authority shall submit a report recording its findings to the Government.

(b) such departmental proceedings as referred to in sub-rule (1) if not instituted while the Government servant was in service, whether

before his retirement or during his reemployment-

(i) Shall not be instituted save with the sanction of Government;

(ii) shall not be in respect of any event which took place more than four years before such institution ; and

(iii) shall be conducted by such authority and in such place as the Government may, direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service;

(c) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(d) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceeding are instituted or where departmental proceedings are continued under clauses (a) and (b), a provisional pension as provided in rule 66 shall be sanctioned.

(e) Where the Government decide not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

Explanation*-For the purpose of this rule,-*

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant or pensioner, or if the

Government servant has been placed under suspension from the date of his suspension; and

(b) judicial proceedings shall be deemed to be instituted,-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made; and

(ii) in the case of civil proceedings, on the date of presentation of the plaint in the Court.

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GRATUITY PAYABLE ON DEATH OR RETIREMENT

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.

66. ***Grant of provisional pension where departmental or judicial proceeding is***

> ***pending-*** *(1) Where departmental or judicial proceedings are pending in respect of a Government servant on the date of his retirement, referred to in, he shall be paid a provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant; or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.*
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> *(2) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:-*
>
> *Provided that where departmental proceedings have been instituted under rule 16 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 for imposing any of the penalties specified in clause (i), (ii) and (iii-A) of rule 13 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant."*

9. On perusal of aforementioned provisions, it is made clear by Rule-7(2)(c), Explanation–(b) that judicial proceedings shall be deemed to be instituted from the date when in a criminal proceedings, on the complaint or report of a police officer the Magistrate takes cognizance. As per Rule-49(5)(a), where the sanction of payment of gratuity is delayed for more than a year from the date it is due under Sub-rules (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. Similarly, Sub-rule (1) of Rule-66 provides that where departmental or judicial proceedings are pending in respect of government servant on the date of his retirement, he shall be paid a provisional pension, whereas in Sub-rule (2), which is supplement to Sub-rule (1) of Rule-66, provides that no gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon. On cumulative reading of both the sub-rules, referred to above, it appears that the same will apply only when on the date of retirement of government employee, departmental or judicial proceedings are pending against him. But these rules will not apply where there are no departmental or judicial proceedings against government servant. But in the instant case, the petitioners have categorically stated that Vigilance P.S. Case No.7 dated 08.03.2007, by way of FIR, though was pending on the date of retirement of the opposite party no.1, i.e., 31.10.2012, but the judicial proceeding was started, pursuant to such Vigilance P.S. Case No.7 dated 08.03.2007, after the charge sheet was submitted on 22.07.2013, i.e., much after his retirement and, as such, no cognizance was taken by the time the opposite party no.1 had retired from service. Therefore, mere lodging of an FIR cannot be construed that a judicial proceeding is pending against opposite party no.1. As it appears, though for an incident of the year 2000, Bhubaneswar P.S. Case No.7 dated 08.03.2007, was lodged against the opposite party no.1, but charge-sheet in the said case was submitted on 22.07.2013. Thereby, by the date the opposite party no.1 retired from service, i.e., on 31.10.2012, it can safely be construed that neither departmental proceeding nor any judicial proceeding was pending before the authority for debarring opposite party no.1 from getting pensionary benefits as due and admissible to him.

10. The word "cognizance" indicates that at the point of time when the Magistrate or Judge first takes

judicial notice of the offence. More so, cognizance is being taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom prima facie case is made out. More so, cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint/FIR is satisfied that the complaint/FIR discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter.

11. The case of ***CREF Finance Ltd.*** (supra), which was relied by Mr. B.P. Tripathy, has no assistance to him as the apex Court while considering the word "cognizance", held that if any judicial proceeding is started, it should be considered from the date of taking cognizance by the Magistrate not prior to that. Therefore, applying the same to the present

context, even if the FIR was lodged on 08.03.2007 in Bhubaneswar Vigilance P.S. Case No. 7, but the charge sheet was submitted on 22.07.2013 and till that date the Magistrate had not taken cognizance of the same. Therefore, it cannot be said that a judicial proceeding was pending, so as to deprive opposite party no.1 of getting the pensionary benefits, as due and admissible to him. Nothing has been placed on record by the petitioners to indicate that cognizance had been taken by the Magistrate before opposite party no.1 had retired from service. In absence of any material to such extent, it can safely be concluded that no judicial proceeding was pending at the time the opposite party no.1 had retired from service. Even after submission of charge sheet, if the Magistrate does take cognizance it cannot be construed that judicial proceeding was pending before the Court. Therefore, withholding of pensionary benefits as well as gratuity of opposite party no.1, cannot sustain in the eye of law and, as such, the tribunal is well justified by issuing direction to the petitioners to pay the pensionary benefits to opposite party no.1 along with interest.

12. In ***Gorakhpur University v. Shital Prasad Nagendra***, AIR 2001 SC 2433, the apex Court, relying upon the earlier decisions in the case of ***R. Kapur v. Director of Inspection (Painting and Pulication) Income Tax***, (1994) 6 SCC 589, ***State of Kerala v. M. Padmanavan Nair***, AIR 1985 SC 356 and ***Som Prakash v. Union of India***, AIR 1981 SC 212, observed that pension and gratuity are no longer matters of any bounty to be distributed by Government, but are valuable rights acquired and property in their hands and any delay in settlement and disbursement thereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Thereby, this Court is of the considered view that the tribunal is well justified in awarding interest of 7% per annum for delayed payment on the pensionary benefits admissible to opposite party no.1. But as regards the pension, interest @ 7% per annum shall be calculated and paid to opposite party no.1 on the

differential amount of pension, as he is receiving provisional pension.

13. Considering from other angle, it appears that one similarly situated employee, namely, K.C. Pattnaik, who was also working as Asst. Engineer (Civil) and whose name also found place in the Bhubaneswar P.S. Case No.7 dated 08.03.2007, approached the tribunal by filing O.A. No. 845 of 2011, which was disposed of vide order dated 27.07.2011. In paragraphs-6 and 7 of the said order, the tribunal, keeping in view the provisions of law, categorically holding that institution of an F.I.R. or pendency of investigation basing on an FIR, does not amount to pendency of a judicial/criminal proceeding for the purpose of pension rules, directed the authorities for release of pensionary benefits, including the final pension, and accordingly the order of the tribunal has been fully carried out by the present petitioners.

14. Therefore, opposite party no.1, having stood in the same footing with that of K.C. Pattnaik, should

not have been denied his pension and gratuity in the name of pendency of judicial proceeding against him on the date of retirement, i.e., 31.10.2012. Though Rule-66(2) specifically provides that gratuity shall be released on conclusion of judicial proceeding, but fact remains, even though the opposite party no.1 has been receiving the provisional pension, he has not been paid his final pension, nor anything has been placed on record to indicate that on the basis of such FIR the Magistrate has taken cognizance of the offence, when the charge-sheet was submitted on 22.07.2013 much after his retirement on 31.10.2012, so as to construe that there is pendency of a judicial proceeding. In absence of any such material, this Court is of the considered view that the tribunal is well justified in passing the order impugned dated 05.05.2014 allowing O.A. No. 3318 of 2013 and dismissing R.P. No. 05 of 2015, which was filed for review of the said order, vide order dated 04.02.2015, which do not require any interference of this Court. Accordingly, the petitioners are directed to comply with the order dated 05.05.2014 passed by the tribunal in O.A. No. 3318 of 2013, within a period of three months from the date of receipt of copy of this judgment.

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

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 6th May, 2022, Ashok/GDS