

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 24917 of 2011

*Principal Accountant General
(A&E), Orissa, Bhubaneswar*

.....

Petitioner

Mr. S.K. Das, C.G.C.

Vs.

Dr. Samar Gupta and another

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

09.03.2022

Order No.

3.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Das, learned counsel for the petitioner.

3. The petitioner has filed this writ petition seeking to quash the order dated 19.08.2009 passed by the Odisha Administrative Tribunal in O.A. No.1784 (C) of 2004, the order dated 01.03.2011 passed by this Court in W.P.(C) No.16152 of 2010 as well as the order dated 07.07.2011 passed by the Odisha Administrative Tribunal in CP (C) No.42 of 2010, and to declare that opposite party no.1 is not entitled to get any relief as directed by the tribunal and upheld by this Court, because of pendency of vigilance proceeding against him.

4. Mr. S.K. Das, learned counsel for the petitioner contended that opposite party no.1, as applicant, filed O.A. No. 1784 (C) of 2004 before the Odisha Administrative Tribunal seeking direction to the petitioner to finalize his pension and release the same, as because he was getting provisional pension only. It is contended that in a proceeding, opposite party no.1 was imposed with penalty of deduction of 5% of pension and recovery of Rs.32,200/-, but it was not placed on record that a vigilance case was pending against

him. More so, the present petitioner-Principal Account General (A&E), Orissa was not made a party to the said original application. It is contended that without impleading the present petitioner as an opposite party, the original application was disposed of with the direction for payment of pensionary benefits to the present opposite party no.1 within a period of three months, failing which the payable amount will carry 9% interest per annum. Against the said order, the writ petition was preferred by the State before this Court bearing W.P.(C) No. 16152 of 2010 and this Court, while declining to interfere with the order passed by the tribunal with regard to payment of pension, disposed of said writ petition, vide order dated 01.03.2011, directing that the gratuity payable to the opposite party no.1 be held up in accordance with rules pending investigation of the vigilance case. After disposal of the writ petition, the opposite party no.1 filed C.P.(C) No. 42 of 2010, which was disposed of vide order dated 07.07.2011, directing the Principal, A&E Orissa to take the order dated 01.03.2011 of this Court and order dated 19.08.2009 of the tribunal into account and ensure payment by 12.09.2011, failing which suo motu contempt of Court proceedings shall be initiated against the petitioner. As such, when this fact was brought to the notice of the Principal, Accountant General (A&E) Orissa, i.e., the present petitioner, he approached this Court stating that opposite party no.1 is not entitled to get any relief in view of Rule-66 of Orissa Pension Rules, which reads as under:-

“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.

(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.

(3) 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 proceedings, final orders are passed by the competent authority.

(4) The authority competent to sanction pension shall be the authority competent to sanction provisional pension.

(5) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

5. Sub-rule (1) of Rule-66, as quoted above, clearly 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 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. It is not in dispute that the opposite party no.1 has been paid provisional pension. As opposite party no.1 has already received the provisional pension, there is sufficient compliance of the provisions as envisaged under sub-rule (1) of Rule-66 of Orissa Pension Rules. So far as sub-rule (2) of Rule-66 of Orissa Pension Rules is concerned, it 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. As a consequence thereof, since vigilance case is pending against the opposite party no.1, question of release of gratuity amount does not arise. As such, this provision was not brought to the notice of this Court as well as before the tribunal when the order was passed.

6. In such view of the matter, the order dated 19.08.2009 passed by the tribunal in O.A. No.1784 (C) of 2004, and consequential order dated 01.03.2011 passed by this Court in W.P.(C) No.16152 of 2010 against the present petitioner, who was not impleaded as party to the proceedings, as well as the consequential order dated 07.07.2011 passed by the tribunal in CP (C) No.42 of 2010, cannot sustain in the eye of law and the same are liable to be quashed and are hereby quashed. Since the opposite party no.1 is receiving the provisional pension, he has to wait till disposal of the vigilance proceeding and in the event he succeeds in the vigilance proceeding, then he may bring to the notice of the Principal, Accountant General (A&E), Orissa, who shall take care of the issue and pass appropriate order in accordance with law.

7. Accordingly, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok