IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. Nos.16 and 17 of 2005

Smt. Banabasini Palo .... ***Appellant***
(In W.A. No.16 of 2005)

Mr. R. K. Bose, Advocate

-versus-

Executive Engineer, Jeypore Electrical Division, Jeypore and others .... ***Respondents***

Mr. R. N. Acharya, Advocate

Smt. Prafulla Kumari Nayak .... ***Appellant***
(In W.A. No.17 of 2005)

Mr. R. K. Bose, Advocate

-versus-

Executive Engineer, E.H.T. Construction Division, Jeypore and others .... ***Respondents***

Mr. R. N. Acharya, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA

ORDER
14.03.2022

Order No.

06. 1. W.A. No.17 of 2005 is taken up by a separate notice.

2. These two appeals i.e. W.A. Nos.16 and 17 of 2005 are directed against a common judgment dated 16th October, 2004 passed by the learned Single Judge in OJC No.5102 of 1996 and OJC No.4354 of 1996 respectively.

3. By the said impugned judgment, learned Single Judge allowed the writ petitions filed by the Opposite Parties 1 and 2 i.e. the Executive Engineer, Jeypore Electrical Division, Jeypore and the Secretary, Grid Corporation of Orissa Ltd., Bhubaneswar (GRIDCO), challenging the orders dated 30th November, 1995 and 30th December, 1995 passed by the Presiding Officer, Labour Court, Jeypore in I.D. Misc. Case No.99 of 1994 and I.D. Misc. Case No.92 of 1993 respectively filed under Section 33-C (2) of the Industrial Disputes Act, 1947 (ID Act) filed by the present Appellants.

4. The husbands of the two Appellants had died while working as driver and treasury guard on 15th January, 1983 and 20th October, 1969 respectively. Family pension was claimed by the Appellants for the death of their respective husbands during the course of the employment by filing the aforementioned applications under Section 33-C (2) of the ID Act in the Labour Court.

5. The case of the Opposite Parties was that neither of the deceased was an employee of the organisation and, therefore, the ID Act could not have been invoked.

6. One of the issues that arose was whether the pension scheme which came into force on 1st April, 1990 would be applicable in the case of the deceased husbands of the two Appellants. The Labour Court held as under in paras 10 and 11 of the impugned orders:

"Para-10. The memorandum of Settlement dated 1.10.1986 clearly indicates introduction of pension scheme for the employee of the Board and the same should be placed before the Board for approval by 31.12.1986. It does not indicate that the pension scheme would be given effect to 1.4.1985. There is nothing to show in the Settlement entered between the parties that any cut off date was fixed to give pensionary benefits to the workman. It is held in the case law reported in 1994 Vol.1 O.L.R. at page 439, that the persons, who retired prior to the cut off date to be entitled to the family pension. So, in view of the aforesaid discussion, I hold that the Pension Regulation, 1992 can be made applicable to the petitioner with effect from 1.4.1990. Thus, the petitioner is entitled to the family pension from 1.4.1990 and not from April 1, 1985.

11. There is no dispute that the husband of the petitioner worked under the State Electricity Board from 20.11.1963 to 20.10.1969 and as such he has rendered service for 6 years. The pension amount has been computed as per Rule 69 of the Orissa Pension Rule 1977 from April 1985 to July 1993. But as per my finding the petitioner is entitled to get family pension from 1.4.1990 onwards. She is also entitled to get D.C.R. Gratuity as per Rules 74 and 75 of the Orissa Pension Rules, 1977. The petitioner is to refund employees share of P.F. Rs.250/- as a precondition to entail her the family pension. Since the computation furnished by the petitioner in the annexure to the application is not correct as per my finding the O.P. is directed to compute, determine and pay the same as per O.S.E.B. Pension Regulation 1992 read with Orissa Pension Rules, 1977 within six months from the date of receipt of this order, failing which, the petitioner shall be liberty to file fresh application u/s 33-C(2) of the I.D. Act properly computing the amount as per this order."

7. Aggrieved by the above orders of the Labour Court, Opposite Parties 1 and 2 filed the aforementioned OJC No.4354 of 1996 and OJC No.5102 of 1996, which came up for hearing before the learned Single Judge along with a batch of writ petitions involving the same issues.

8. The case of the Opposite Parties 1 and 2 was that the settlement arrived at inter se between the Management and the Workers' Union on 1st October, 1986 did not confer any right to receive pension. Under the said settlement, it had only been agreed that, as a gesture of good will, a proposal for introduction of pension scheme for the employees of the Electricity Board would be placed before the Board by 31st December, 1986. Such a resolution in fact was placed at a meeting of the Board held on 17th March, 1992. The resolution was approved by the Board under Section 79(c) of the Electricity (Supply) Act, 1948. The learned Single Judge then held as under:

> "12. Perusal of the decision, thus, clearly reveals that this Court held unambiguously that the said petitioner having retired prior to 1.4.1990 could not claim pensionary benefits. Judicial discipline and propriety demands that a Bench consists of a Single Judge should follow the decision of a Division Bench and more so, when there is no divergent or contradictory decision. While deciding the issue, a Bench consisting of a Single Judge cannot doubt the correctness of a decision arrived at by a larger Bench. The decision of a larger Bench binds a Single Judge of the same court and the judicial discipline obliges the Single Bench to follow it regardless of any doubt about its correctness. The only situation when a Single Judge can refer a matter directly to a Full Bench is there being earlier conflicting judgments and/or when the Bench

> comes to a conclusion that the judgment is so incorrect that in no circumstance can it be followed.
>
> 13. Keeping in mind the aforesaid dictum, after considering the materials available and submissions advanced by the learned counsel for the parties, I have no hesitation to hold that I am bound by the conclusion arrived at by the Division Bench of this Court in the case of *Purna Chandra Nanda* (Supra). The Division Bench has clearly held that an employee of the O.S.E.B. who retired to 1.4.1990 would not be entitled to pension. The said decision being clear and unambiguous, the principle of sub-silentio will not apply to the present case.
>
> 14. In view of the ration of the aforesaid decision of a Division Bench of this Court, the conclusion arrived at and the direction issued by the Presiding Officer, Labour Court cannot be sustained. Accordingly, the writ applications are allowed and the impugned orders, Annexure-1 respectively in all the cases are quashed. The parties to bear their own costs."

9. This Court has heard the submissions of Mr. R. K. Bose, learned counsel for the Appellants and Mr. R. N. Acharya, learned counsel for the Respondents.

10. According to the learned counsel for the Appellants, employees of the Board at a regular establishment would be deemed to be regular employees under the Board. It is pointed out that the service rendered by the regular employees on the work charged establishment should count towards pensionary benefits if they have been brought over to the regular establishment after rendering a minimum period of five years of continuous service. It is submitted that the welfare provisions should be applicable to employees irrespective of any cut-off date. Learned counsel for the Appellants placed extensive

reliance on the judgment of the Supreme Court of India in ***D.S. Nakara v. Union of India AIR 1983 SC 130*** and submitted that even though the husbands of the present Appellants had died before 1st April, 1990, they would be entitled to pension from 1st April, 1990 onwards.

11. On the other hand, the contention on behalf of the Respondents is that it is only pursuant to a settlement between the Union that a resolution was tabled before the Board proposing pension for retired employees. It is submitted that 1st April, 1990 is the date from which the pension scheme was made operational. It is submitted that the matter was completely covered by the judgment of ***Purna Chandra Nanda v. Grid corporation of Orissa Ltd. 87 (1999) CLT 827,*** which recognizes the aforementioned date of 1st April, 1990 as the marker for the retired employees who are entitled to pension.

12. Having perused the judgment in ***Purna Chandra Nanda*** *(supra)*, the Court finds that the learned Single Judge was in fact bound by the said judgment since it was a judgment of the Division Bench. It would not have been open to the learned Single Judge to question the correctness of the above decision of the Division Bench. As far as this Court is concerned, it finds the reasoning in ***Purna Chandra Nanda*** *(supra)* not to be suffering from any illegality so as to doubt its correctness.

13. Although grant of pension is a welfare measure, an employee is certainly entitled to determine the date from which it will become applicable i.e. to employees who retired after that date

and not to those who retired prior thereto. The Court is unable to find any error in the impugned judgment of the learned Single Judge that calls for interference. The appeals are accordingly dismissed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M. Panda