

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 17516 of 2015

State of Odisha and Others

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Petitioners

*Mr. S. Jena, Standing Counsel for
S&ME Deptt*

Vs.

*Pratap Kishore Chhotaray
and Others*

.....

Opposite Parties

*Mr. Dinesh Malik, Advocate on behalf
of Mr. T.K. Mohanty, Advocate
(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

30.06.2022

Order No.
06.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel for S&ME Department appearing for the Petitioners and Mr. D. Malik, learned Counsel appearing on behalf of Mr. T.K. Mohanty, learned Counsel for Opposite Party No.1.

3. In compliance to the order dated 11.05.2022, learned Standing Counsel for S&ME Department contended that Opposite Party No.1 has got Provisional Pension after filing of the Charge Sheet and after being superannuated from service, during pendency of the Vigilance Case against him.

4. The State Authorities have filed this Writ Petition challenging the Order dated 29.10.2014 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 1973 of 2014, by which the Tribunal taking note of Rule-66 of O.C.S. (Pension) Rules, 1992 directed the present Petitioners to sanction and disburse the final

pension along with retiral benefits including the D.C.R.G. as due and admissible to Opposite Party No.1 within a period of six months from the date of receipt of a copy of the order, provided there is no other legal impediment in terms of pending of Disciplinary Proceeding against Opposite Party No.1. The Tribunal had further directed that the D.C.R.G. payable to Opposite Party No.1 shall carry @ 7% interest per-annum with effect from 01.03.2007, till the date of actual payment.

5. Mr. Jena, learned Standing Counsel for S&ME Deptt. appearing for the Petitioners contended that the direction given by the Tribunal is absolutely erroneous one in view of the fact that against Opposite Party No.1, one Vigilance Case is pending and even if he had retired, the entire financial benefit as due and admissible to him cannot be released in his favour, save and except the Provisional Pension, for his sustenance. As such, the said Provisional Pension has also been paid to Opposite Party No.1, which has not been disputed by learned counsel for Opposite Party No.1. So far as other benefits are concerned, the same cannot be extended to Opposite Party No.1. To substantiate his contention, he relied upon the judgment of Kerala High Court at Ernakulam, in the case of *State of Kerala v. Sugunan*, 2019 SCC OnLine Ker 1024.

6. Mr. Dinesh Malik, learned Counsel appearing on behalf of Mr. T.K. Mohanty, learned Counsel for Opposite Party No.1 contended that since at the time of retirement of Opposite Party No.1, no Departmental or Criminal Proceeding was pending against Opposite Party No.1, he is entitled to get all the benefits as due and admissible to him, on his retirement and the Tribunal has not committed any error apparent on the face of the record, so as to call for any interference by this Court at this stage.

7. Having heard learned counsel for the parties and after going through the records, it appears that Opposite Party No.1 entered into Government service on 04.08.1967 and after serving for long 38 years under the State Government, finally he retired from Government service w.e.f. 28.02.2006 on attaining the age of superannuation, while he was functioning as Deputy Director (Maintenance) in the office of Director, Text Book Production & Marketing, Bhubaneswar. Thereafter, he submitted his Pension Papers before Petitioner No.3 on 16.11.2005 along with relevant documents. After receipt of the Pension Papers of Opposite Party No.1 from the office of Petitioner No.3, the Petitioner No.1 sanctioned the provisional pension in favor of the Opposite Party No.1 w.e.f. 01.03.2006 at Rs.6,138/-+ T.I as admissible vide its Office Order No. 15726 dated 01.08.2006. But, Opposite Party No.1 was not paid his Regular (Final) Pension, Commuted Value of Pension and D.C.R.G. amount despite the fact that no Criminal or Disciplinary Proceeding was pending against Opposite Party No.1 on or before of his retirement from Government Service. Pursuant to an F.I.R lodged before the Bhubaneswar Vigilance Police Station vide F.I.R. No.15 dated 29.03.2000, the Vigilance Authority conducted raid in the house of Opposite Party No.1 in March 2000 and, thereafter, the Vigilance Authority submitted the Charge Sheet against Opposite Party No.1 before the C.J.M., Vigilance, Bhubaneswar on 29.06.2004/30.10.2004. Though the Charge Sheet was submitted before the C.J.M., Vigilance, Bhubaneswar by the Investigating Agency on 29.06.2004/30.10.2004, but actually cognizance was taken in the Vigilance Case against the Opposite Party No.1 on 14.03.2007 i.e. more than one year of his retirement from Govt. service. As such, neither any Criminal Proceeding nor Departmental Proceeding was pending against Opposite Party No.1 on the date of his retirement from Government

Service i.e. on or before 28.02.2006.

8. As per Rule 7 of O.C.S.(Pension) Rules, 1992 the power has been vested with the Government to withhold the D.C.R.G. amount or Pension or both either in full or in part, or withdraw the Pension in full or in part, whether permanently or for a specified period and order for recovery from 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 found guilty of grave misconduct or negligence in duty during the period of his service including service rendered on re-employment after retirement. The explanation

(b) to the said Rule reads as follows:-

- “(i) in the case of criminal proceedings, on the date on which the complaint of 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.”

9. Consideration Clause-(b) (ii) of Rule 7 of the O.C.S. (Pension) Rules, 1992, the Tribunal came to a conclusion that since no Criminal Proceeding or Departmental Proceeding was pending against Opposite Party No.1 on the date of his retirement, Opposite Party No.1 is entitled to get entire benefit as due and admissible to him. Rule-66 of the O.C.S. (pension) Rules, 1992 provides that where a Departmental or Judicial Proceeding is pending in respect of Government Servant as on the date of his retirement, he shall be paid 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 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, in such case, no gratuity shall be paid to the Government Servant until the

conclusion of the Departmental or Judicial Proceeding and issue of final order thereof.

10. In compliance to Rule-66 of the OCS (Pension) Rules, 1992, Opposite Party No.1 has been paid the provisional pension. So far other financial benefits are concerned, the same has not been granted, though reliance had been placed in the case of ***Union of India and Others Vrs. K.V. Jankiraman & Others***, (1991) 4 SCC 109, wherein it has been held that “*it is only when a charge-memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee*”.

11. Admittedly, no Disciplinary or Criminal Proceeding was initiated or pending against the Petitioner at the time of his retirement from service, but thereafter, a Vigilance Case was instituted against him and cognizance was also taken and the said case is still pending consideration. In that view of the matter, as per Rule-66, since the Petitioner has only been paid the Provisional Pension, the question of payment of full pension is not admissible.

12. In ***State of Kerala v Sugunan*** (supra), it has been held by the Kerala High Court that the statutory provision enables the Government to pay only Provisional Pension to the person concerned and withhold his Gratuity until the conclusion of the proceeding. Whether there has been any pecuniary loss to the Government or any part of the pension be recovered are matters to be considered after the verdict as per Rule 3 of Part III of the Kerala Service Rules. Therefore, the Court held that it will not be equitable to direct the Government to pay the entire retiral benefits to the employee, even before the culmination of the proceedings. The Kerala High Court

passed the order observing that as the petitioners have already disbursed the Death-Cum-Retirement Gratuity to the respondent pursuant to the earlier interim order though not obliged under Rule 3A of Part III of the Kerala Service Rules, the payment of Provisional Pension to the Respondent at this stage cannot be faulted with and the Tribunal was not justified in directing disbursement of the entire benefits. Interest of Justice would be met by directing the Vigilance Court to dispose of the Vigilance Case at the earliest since a pensioner cannot be kept on tenterhooks for long.

13. Taking into consideration the ratio of the said judgment and by applying the same to the present case, since Opposite Party No.1 has already received the Provisional Pension, so far as the direction given by the Tribunal to pay the final Pension along with retiral benefits including D.C.R.G. and interest of 7% on the D.C.R.G., cannot sustain in the eye of law. Thereby, the Tribunal has committed error apparent on the face of the record to pass such an order, when admittedly the Vigilance Case is pending against Opposite Party No.1, even after his retirement.

14. Accordingly, this Court modifies the order passed by the Tribunal to the extent that Opposite Party No.1 is only entitled to get the Provisional Pension and not other benefits as directed by the Tribunal, which shall be subject to outcome of the Vigilance Case.

15. The writ petition stand disposed of accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE