

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**W.P.(C) No.18059 of 2022**

***Hemalata Barik***

....

***Petitioner***

*Mr. Subash Chandra Puspalka, Adv.*

*-versus-*

***State of Odisha and Ors.***

....

***Opposite Parties***

*Mr. Debasis Mohapatra, SC*

*(for S & ME Deptt.)*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**Order**  
**No.**

**ORDER**  
**05.08.2022**

01. 1. This matter is taken up through hybrid arrangement.
2. Heard.
3. The petitioner, in this Writ Petition, challenges the order dated 26.07.2021 passed by the opposite party No.2- Director of Elementary Education, Odisha, Bhubaneswar rejecting her prayer for sanction of pension and family pension on the ground that the qualifying service of the deceased husband of the petitioner was more than 7 years but less than 10 years.
4. Learned counsel for the petitioner submit that in the impugned order it has been stated that as per Sub-Rule-2 (b) of Rule 47 of Orissa Civil Services (Pension) Rules, 1992 the deceased husband of the petitioner was not

eligible to get the pension as he had not completed 10 years of qualifying service and in view of that the petitioner is not eligible to get the family pension. Being aggrieved, the petitioner has filed the present Writ Petition praying for quashment of the impugned order dated 26.07.2021 passed by the opposite party No.2- Director of Elementary Education, Odisha, Bhubaneswar with a direction to the opposite parties to consider her case for grant of pension in favour of her husband and family pension in her favour by taking into account the past service rendered by her husband as Sikhya Karmi before regularization of his service against the post of regular primary teacher.

5. He further submits that the petitioner is the widow of one Golekha Charan Barik who was serving as the Assistant teacher under the then District Inspector of Schools, Patamundai and was retired from his service upon attaining the age of superannuation on 31.10.2002 from Kirtanpur Primary school under Jagatsinghpur district. Grievance of the petitioner is that her husband was eligible to get pension and after his death being the widow, she is entitled for family pension. But the said benefit has not been extended to her.

6. He further submits that the husband of the petitioner having requisites qualification was appointed as Siskhya Karmi on 13.10.1990 at Balavadrapur U.G.M.E. School vide order dated 12.10.1990 issued by the then District Inspector of School Pattamundai. Thereafter, pursuant to the letter No.4356 dated 21.03.1995 of the Director of Elementary Education, Orissa, Bhubaneswar and with reference to the office letter No.5054 dated 22.12.1994 addressed by the District Inspector of Schools, Pattamundai to the Director, the husband of the petitioner was appointed as a regular Primary School teacher in the scale of pay 1080-30-1440-E.B-30-1800 with usual D.A with effect from the date the husband of the petitioner joined in the school as notified. In response to the order dated 20.04.1995, the husband of the petitioner joined as a regular Primary School Teacher at Balabhadrapur U.G.M.E. School on 22.04.1995 and upon attaining the age of superannuation, he retired from his service on 31.12.2002 from Kirtanpur Primary School in the district of Jagatsinghpur.

7. It is also submitted that after regularization of service her husband and others filed O.A.NO.391 of 1996 before the Orissa State Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar with a prayer to direct the opposite

parties/ respondents to give the salary for the period they had worked as Siskhya Karmi at par with the salary admissible to the regular primary school teachers and the Hon'ble Tribunal allowed the same and against that order the State preferred an appeal before the Supreme court which was dismissed.

8. Learned counsel for the petitioner further submits that by virtue of that judgment the service rendered by the husband of the petitioner and others as Siskhya Karmi was counted towards regular service and the benefit for that period was given to them and it was also counted towards the pension. The husband of the petitioner submitted the pension papers for sanction and release of the pension immediately after his retirement and when the same was pending for consideration, he passed away on 10.08.2013.

9. After the death of her husband, the petitioner approached the authority for sanction of pension of her husband and for family pension time and again. But till date her grievance has not been considered.

10. It is further submitted that the husband of the petitioner was eligible for pension from 01.11.2002 to 09.08.2013 and from 10.8.2013 onwards, the petitioner is eligible for family pension as per Rule-56 of the Orissa

Civil Services (Pension) Rules, 1992. But the same was not granted to her husband during his life time and to the petitioner after the death of her husband.

**11.** It is also submitted that as the claim of the petitioner was not considered for sanction and release of pension in favour of her husband and family pension in her favour, she approached this Court in W.P.(C) No.24136 of 2020 with a prayer to direct the opposite parties to consider her grievance and sanction and release the pension for the period from 01.11.2002 to 09.08.2013 and the family pension from 10.08.2013 to onwards. This Court vide order dated 02.11.2020 disposed of the said Writ Petition directing the opposite party No.2- Director Elementary Education, Odisha, Bhubaneswar to take a decision within a period of one and half months from the date of communication of the order along with the copy of the Writ Petition. As no action was taken by the opposite party No.2- Director Elementary Education, Odisha, Bhubaneswar to comply the order dated 02.11.2020 passed in W.P.(C) No.24136 of 2020, the petitioner filed CONTC No. 1794 of 2021 which was disposed of vide order dated 31.03.2021 with a direction that if the earlier order dated 02.11.2020 has not been complied with in the meantime, the same may be complied with within a

period of three months from the date of communication/production of the certified copy of the order. In the meantime, opposite party No.2- Director Elementary Education, Odisha, Bhubaneswar has considered the grievance of the petitioner and rejected the same on the ground that the husband of the petitioner has not rendered 10 years of qualifying service to get the pension/ family pension as per Sub-Rule-2 (b) of Rule- 47 of Orissa Civil Services (Pension) Rules, 1992.

**12.** Learned counsel for the petitioner contends that the husband of the petitioner joined as a Sikhya Karmi on 13.10.1990 and retired from service on 31.12.2002. Therefore, he had completed more than 10 years of service and he was eligible to get the pension and the petitioner after the death of her husband is eligible to get the family pension.

**13.** Learned Standing Counsel for the Department of School and mass Education submits that though the husband of the petitioner had serve for more than ten years, but he had not served as a regular teacher for that period. He served as a regular teacher only for more than seven years i.e. from 22.04.1995 till 31.12.2002. Therefore, he was not entitled to get the pension as per Sub-Rule-2 (b) of Rule- 47 of Orissa Civil Services (Pension) Rules,

1992 and accordingly, the petitioner is also not entitled to get family pension.

14. It is apposite to refer to Sub-Rule-2 (b) of Rule- 47 of Orissa Civil Services (Pension) Rules, 1992 to understand the provisions for recipient of the financial benefits arising out of the service of the deceased. The same is quoted hereunder:

*“47. Amount of pension- the amount of pension that may be granted shall be determined by the length of completed six monthly periods of service rendered by the retired Government servant.*

*(2) xx xx xx xx*

*(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (1) and in no case amount of pension shall be less than [ rupees one thousand two hundred seventy-five]*

*(c) xx xx xx xx xx xx.”*

15. A plain reading of the aforesaid provision reveals that in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount

of pension admissible under Clause (1) and in no case amount of pension shall be less than [rupees one thousand two hundred seventy]. Hence, a plain reading of the provisions signifies that a Government employee who has completed more than 10 years of service is eligible to get the pension.

16. Having considered the matter in aforesaid perspective, this Court rejects the petition.

17. The Writ Petition is, accordingly, disposed of being dismissed. There shall be no order as to costs.

( Dr. S.K. Panigrahi )  
Judge

BJ

