

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 24411 of 2019

Nibas Chandra Rout

....

Petitioner

*Mr. L.K. Mohanty,
Advocate*

-Versus -

State of Odisha and others

Opposite Parties

....

*Mr. P.K.Panda,
Standing Counsel (S&ME.
Deptt.)*

CORAM:

JUSTICE SASHIKANTA MISHRA

**ORDER
26.09.2022**

Order No.

4.

1. These matters are taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner was appointed as a Physical Education Teacher (PET) by the Managing Committee of Durga Devi B.N.T. Bidyapitha, Baramba in the district of Cuttack by order dated 08.07.1981. The school received grant-in-aid in the year 1989 and was subsequently taken over by the State with effect from 07.06.1994. The petitioner retired from service on attaining the age of superannuation with effect from 30.11.2017. Provisional pension was released in his favour by order dated 11.01.2018 passed by the District Education Officer, Cuttack. It is his grievance that the final

pension has not been released in his favour as yet. As such, he has approached this Court seeking the following relief:-

“It is therefore prayed that this Hon’ble Court may graciously be pleased to issue notice to Opp. Parties, calling upon them to file show cause as to why a direction shall not be issued for release of pension and pensionary benefits in favour of the petitioner and after hearing the parties Hon’ble Court be pleased to direct the Opp. Parties to release the pension and pensionary benefits of the petitioner in Matric C.P.Ed scale of pay as under Annexure-7 along with 7% in interest from the date of retirement.”

4. In the counter affidavit filed by the State authorities it has been stated that the I.A. certificate submitted by the petitioner at the time of claiming I.A.C.P.Ed. scale of pay was subsequently found to be forged as per communication made by the Utkal University with the Directorate of Secondary Education, Odisha. It is further stated that basing on such information, FIR was lodged against the petitioner leading to registration of Barang P.S. Case No. 143 (04.09.2019) for commission of offence under Sections 420/468/471/465 of IPC. In view of pendency of the said criminal case, the full pension cannot be released in favour of the petitioner.

5. In course of hearing, it is stated at the bar that in the meantime, charge sheet has been submitted in the criminal case on 16.10.2019. It is argued by Mr. L.K.Mohanty, learned counsel for the petitioner that the authorities have committed an illegality in not releasing the pensionary benefits to the petitioner on the ground of pendency of the criminal proceeding. As per Rule 66 (1) and (2) of the Pension Rule, the retired government employee shall be paid only provisional pension, if any departmental or judicial proceedings are

pending as on the date of his retirement. Mr. Mohanty, referring to the above provision submits that as on 30.11.2017 admittedly, no proceeding either departmental or criminal was pending against the petitioner. Since the charge sheet was submitted on 16.10.2019, the criminal proceeding can only be treated as pending from that date in view of the law laid by the Apex Court in the case of ***Union of India vs. K.V. Jankiraman***, reported in AIR 1991 SC 2010. Mr. Mohanty has also relied upon two decisions of this Court. In the case of ***Brajasundar Patnaik vs. Government of Orissa and others***, reported in 2008 (I) OLR-384, a Division Bench of this Court held that the Rule 66 would not apply where no departmental or judicial proceedings are pending on the date of retirement against the Government Servant. Similar view was also taken by a coordinate bench of this Court in the case of ***Krushna Chandra Mallick vs. State of Orissa and others*** as per judgment rendered on 26.07.2022 (W.P.(C) No. 22572 of 2019). This Court finds that the above aspects had neither been placed before the authorities nor considered by them. Since the authorities concerned are to take a decision in this regard at the first instance, the writ petition is disposed of granting liberty to the petitioner to approach the concerned authority, i.e. opposite no.3 by submitting a representation within a period of three weeks. If such a representation is submitted, the opposite party no.3 shall do well to consider the same in accordance with law as also the observations made in this order and dispose of the same after granting opportunity of hearing to the petitioner within a period of three weeks thereafter. If, on consideration of the relevant facts, the

petitioner is found entitled to full pension and other pensionary benefits, necessary order shall be passed to release the same in his favour without any further delay.

6. The writ petition is disposed of accordingly.

7. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

B.C. Tudu

