IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3475 of 2016

In the matter of an application under Section 19 of the Administrative Tribunal Act, 1985.

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Smt. Ranjita Biswal & Anr. .... **Petitioners**

-versus-

State of Odisha & Others .... **Opposite Parties**

For Petitioner : M/s.P.K.Mishra, K.L.Kar & S. Mishra.

For Opp. Parties : Standing Counsel Mr. M.K.Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:08.08.2022 and Date of Order:23.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. P.K.Mishra, learned counsel for the Petitioners and Mr. M.K.Balabantaray, learned Standing Counsel for the State-Opposite Parties.

3. The Petitioners have filed the Present Writ Petition With the following relief:-

> (i) The respondents be directed to take immediate action for sanction and payment of DCRG, un-utilized leave salary, final GPF and the un-disbursed arrear

salary for the period from 01.12.2012 to 07.01.2014 with interest as he respondents have illegally withheld said benefits without any legal basis and reasons and furthermore the respondents have been acting in contrary to the provisions of Orissa Pensionary Rule as well as in violation of the constitutional rights to life of the applicants.

(ii) Pass any other order or orders as would deem fit and proper and allow the original application".

4. It is submitted by the learned counsel for the Petitioners that while the Petitioner No.1 is the wife of deceased Government employee late Shyam Sundar Biswal, Petitioner No.2 is the son of the said deceased employee.

5. It is submitted that the deceased employee while continuing as Head Clerk in the Office of B.D.O., Nuagaon, died on 08.01.2014.

6. It is further submitted that after the death of the deceased employee, the Petitioners when were not released with the pensionary benefits as due and admissible as well as the arrear salary for the period from 01.12.2012 to 07.01.2014, the present Writ Petition was filed.

7. It is submitted that the Petitioners were not extended with the benefit of pension and other retrial benefits as well as the salary for the aforesaid period on the ground that in the audit report submitted on 20.09.2014, it has been found that the deceased employee has misappropriated a sum of Rs.14,38,900/-.

8. Mr. Mishra, learned counsel for the Petitioners submitted that since prior to the death of the employee no proceeding was ever initiated for the alleged misappropriation, the withholding of the retirement benefits as well as leave salary on the ground of such misappropriation is illegal and liable to be interfered with by this Court.

9. Mr. Mishra further submitted that basing on the audit report, no recovery is also permissible.

10. Mr. Mishra in support of his aforesaid stand relied on the decision of this Court reported in 2016(I) OLR-651. In paragraphs 5 & 10 of the said reported decision, this Court has held as follows:-

> ***"5.*** *On the basis of facts pleaded, it appears that the petitioner was admittedly retired from service on attaining the age of superannuation on 31.07.2002 and he has not been p aid is retirement benefits of gratuity as well as leave salary as due and admissible to him. Though the gratuity as well as leave salary have been sanctioned vide letter dated 15.5.2009, the same have been withheld due to the fact that on the basis of the internal audit conducted by the corporation, an amount of Rs.5,81,131/- in total recoverable from the petitioner, out of which Rs.61,053,29/- has been recovered. Therefore, the Chief Audit Officer submitted a report on 3.5.2005 showing an outstanding of Rs.5,20,077.25/-. Since the Triangular Committee has not finalized the audit report involving recovery of Rs.5,81,131/-, the sanctioned amount such as gratify as well as leave salary have not been released in favour of the petitioner and no proceeding has been initiated against the petitioner while he was in employment for recovery of outstanding dues pursuant to the report of the Chief Audit Officer dated 3.5.2005. Per contra, all the Divisional Managers, under whom the petitioner has served during his service period have submitted No Due Certificates and No objection Certificates. Therefore, withholding the retirement benefits admissible to the petitioner such as gratuity as well as leave salary without initiating any disciplinary proceeding to determine the liability, only on the basis of the audit report after his retirement is without authority of law. More so, the ground taken that the entitlement of the petitioner such as gratuity and leave salary have been sanctioned and shall be released after final settlement of outstanding dues i.e. Rs.5,81,131/- by the Triangular Committee in the light of the judgment of this court in W.P.(C) NO.16071 of 2006* ***(Raghabananda Das v.***

> ***O.F.D.C., Ltd***., *disposed of on 1.9.2008) is not tenable. Whether the Triangular committee has taken a decision or not is not a ground to withhold the retirement benefit of the petitioner when as per the service rule applicable to the O.F.D.C, Ltd. No disciplinary proceeding will be initiated against the petitioner after his retirement.*
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> ***10.*** *In view of the ratio decided by the apex Court in Bhagirathi Jena and Dev Prakash Tewari (supra) as well as this Court in Sukadev Behera, Sarat Chandra Das and Nityananda Prusty (supra), this court is of the considered opinion that without initiating any disciplinary proceeding against the petitioner withholding the gratuity and leave salary amount sanctioned by the authority on 15.05.2009 cannot sustain in the eye of law. Therefore, the authorities are directed to pay the retirement dues, namely, gratuity as well as the leave salary amount admissible to the petitioner which have been sanctioned by the authority vide letter dated 15.05.2009 along with interest @ 12% per annum to the petitioner within a period of four months from the date of passing of this judgment".*

11. It is submitted that since during the lifetime of the deceased employee, no proceeding was ever initiated to determine the liability, no recovery can be made from the retiral benefits and the present petitioners being the legal heirs of the deceased employee they are eligible and entitled to get the same.

12. Mr. Balabantaray, learned Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that the deceased employee while working as Senior Clerk in Tirtol Block and acting as a Cashier for the period from 01.10.2005 to 30.06.2012, he has misappropriated the Government money meant for old age pension to the tune of Rs.14,38,900/- and the said misappropriation was detected by the audit party during audit of the Accounts in the year 2013-14.

13. It is also submitted that prior to the death of the deceased employee, he was intimated on 17.06.2013 to be present before the audit party to comply the requirement and the said employee never presented himself pursuant to such intimation.

14. It is also submitted that the audit party issued half margin memo on 06.01.2014 pointing out a sum of Rs.9,36,000/- and Rs.3,78,300/- outstanding against the deceased employee.

15. It is submitted that since the employee concerned died on 07.01.2014, there was no occasion to initiate any proceeding to determine the said liability.

16. Accordingly, it is submitted that the Petitioners are not entitled to get the retirement benefits and the salary for the period, unless and until they pay back the outstanding shown against the deceased employee to the tune of Rs.14,38,900/-.

17. Heard learned counsel for the Parties.

18. Perused the materials available on record. This Court after going through the same finds that during life time of the deceased employee no proceeding whatsoever was initiated in determining the liability. Though in the counter affidavit a stand has been taken that basing on the audit report the deceased employee was issued with a notice on 17.06.2013 to appear before the audit party to comply the requirement and the said deceased employee never presented himself before the audit party, but no explanation has been given in the counter affidavit as to why a proceeding was not initiated against the deceased employee for the said misappropriation. Therefore, the stand taken by the learned counsel for the Petitioner that basing on the audit report only, no recovery can be made, this Court finds force in his submission.

19. In the reported decision cited by Mr. Mishra, this Court has also held that in absence of a duly constituted disciplinary proceeding no recovery can be effected basing on the audit report. Therefore, in view of the said decision of this Court, the prayer made by the Petitioners in the present writ petition is liable to be allowed.

20. While allowing the prayer, this Court directs the opposite parties to sanction and disburse the retiral benefits as well as undisbursed arrear salary for the period from 01.12.2012 to 07.01.2014 within a period of four months from the date of receipt of this order.

21. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 23rd of August, 2022/Subrat