

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAS) No.41 of 2015

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

.....

Maithali Dandia

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : Ms. S.K. Purohit(Advocate)

For Opp. Parties : Mr. N.N. Satapathy
Standing Counsel
(S & M.E. Department)

PRESENT:

THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 16.12.2022 and Date of Order:21.12.2022

Biraja Prasanna Satapathy, J.

1. This writ petition was filed inter alia with the following prayer:-

*"1) Hon'ble Tribunal may kindly direct the Respondents to
pay all retirement dues i.e. final pension, DCRG, Leave
encashment dues, commuted value of pension and arrear
salary to the applicant within a time bound period with 18%*

interest on these dues for the period of delay from 1.7.2010 till the date of actual payment without any recovery from the DCRG or from any dues of the applicant as per Judgment of Hon'ble Supreme Court of India cited above.

2) Hon'ble Tribunal may kindly grant any other relief(s) to the Applicant considering the facts stated vide Para-6 of this application as the Hon'ble Tribunal consider just and proper.

3) To kindly allow this application with cost."

2. The factual matrix giving rise to the filing of the writ petition is that even though the Petitioner while continuing as Headmistress in Govt. Girls' High School, Barpali in the district of Bargarh retired from her service on 30.06.2010 on attaining the age of superannuation, but when her retiral benefits were not released in spite of several requests and persuasion, the present writ petition was filed with the prayer as indicated hereinabove. Not only that it was the apprehension of the Petitioner that in view of the order passed by the O.P. No. 2 on 01.06.2015 under Annexure-15, the retiral benefits of the Petitioner were not released though in the said order no recovery amount was indicated.

2.1. It is the case of the Petitioner that the Petitioner entered into service as an Asst. Teacher in Private Girls' High School, Bamara, where she joined on 17.09.1975. The Petitioner while so continuing and on completion of 7

years of teaching experience as a trained graduate teacher, she was promoted to the post of Headmistress (Sr. S.E.S.) and the Petitioner accordingly joined as such on 17.09.1982. The Petitioner while so continuing as a Headmistress in Bamara Girls' High School, the school was taken over by the Govt. w.e.f.07.06.1994 and subsequently the Petitioner was promoted to the post of OES Class II, where she joined on 07.01.2005. On such promotion to the cadre of OES Class II the Petitioner for the purpose of fixation of pay opted to come over to the higher scale from 02.09.2005 by retaining the Sr. SES scale up to the date of her increment which fall due on 01.09.2005.

2.2. The Petitioner while so continuing in the rank of OES Class II, she was allowed to retire on attaining the age of superannuation on 30.06.2010 vide order under Annexure-7. Subsequent to her retirement the Petitioner though submitted the pension papers and other relevant documents for sanction of pension and other retiral benefits on 28.02.2011 under Annexure-8, but no action was taken even though the pension papers along with the last pay certificate were forwarded by the Headmistress of Govt. Girls' High School, Barpali to O.P. No. 4 on 28.02.2011 itself under Annexure-9.

2.3. Thereafter, when vide order dtd.29.03.2012 the scale of pay of the Petitioner was fixed differently, the Petitioner made a representation before the O.P. No. 2 under Annexure-11 on 02.05.2012 with the following prayer:-

- “1. To fix up my pay up to the date of my retirement.*
- 2. To process my pension papers, which is pending since 1.7.2010 for finalization.*
- 3. To waive out the recovery of excess payment if any as provided under Rule-7(4) of O.R.S. Rules, 1998.”*

2.4. In spite of the prayer made under Annexure-11 when nothing was materialized, the Petitioner once again moved the O.P. No. 2 on 12.08.2014 with a prayer to finalize his pension case and to pay the pensionary benefits in her favour under Annexure-12. The claim of the Petitioner subsequently vide Annexure-13 was forwarded to the O.P. No. 1 for taking necessary action, but no action was also taken.

2.5. Thereafter, vide his letter dtd.23.02.2015 under Annexure-14 O.P. No. 3 though requested the O.P. No. 2 to cancel the order dtd.29.03.2012 issued under Annexure-10 and to take step accordingly, but no action was also taken in redressing the grievance of the Petitioner. Instead of that O.P. No. 2 issued a letter on 01.06.2015 under Annexure-15 with a direction on the O.P. No. 3 to take step for recovery of the excess payment

made in favour of the Petitioner. But on the face of all such communications, when the retiral benefits of the Petitioner were not released, even though she was allowed to retire on 30.06.2010, the Petitioner approached the learned Tribunal in O.A. No. 41(S) of 2015. The Tribunal vide order dtd.16.11.2015 while issuing notice of the matter also passed an interim order to the effect that no recovery be made from DCRG of the Petitioner in terms of the order at Annexure-15 till filing of the counter.

2.6. Even though notice of the matter was issued on 16.11.2015 and the matter was listed before the Tribunal on different dates, but neither counter affidavit was filed nor the retiral benefits of the petitioner were released. On transfer of the matter to this Court, vide order dtd.05.05.2022, though last chance was granted for filing of the counter affidavit, but the same was never filed. This Court accordingly taking into account the fact that the retiral benefits of the Petitioner has not been released even though the Petitioner has retired since 30.06.2010, passed the following order on 07.07.2022:

“2. Heard Mr. Purohit, learned counsel for the Petitioner and Mr. Sangram Jena, learned counsel appearing for the Department.

3. It is submitted by Mr. Purohit, learned counsel for the Petitioner that even though the Petitioner has retired since 30.06.2010, but basing on the order passed by O.P. No. 2 on 01.06.2015 under Annexure-15 all

his retiral dues has been held up. A perusal of Annexure-15 shows that no recoverable amount is indicated in the said order. Not only that the order at Annexure-15 has also been stayed by this Court while issuing notice of the matter on 16.11.2015. No counter affidavit has also been filed for the last six (6) years.

4. In view of such position and taking into account the fact that the Petitioner has retired since 30.06.2010, this Court directs the personal appearance of O.P. No.2 to explain the reason for withholding the retiral benefits of the Petitioner. Let him appear before this Court on 11.07.2022 at 10.30 a.m.”

2.7. Pursuant to the order passed by this Court on 07.07.2022 O.P. No. 2 not only appeared before the Court in Person, but also filed an affidavit. When this Court was not satisfied with the stand taken in the initial affidavit filed on 11.07.2022, another affidavit was filed by the said O.P. No. 2 and in Para 2 of the said affidavit dtd.11.07.2022 it was submitted as follows:-

“That, it is humbly submitted that pursuance to the order dated 07.07.2022, this deponent has filed an affidavit and stated in the affidavit that during pendency of the case, the claim for leave encashment salary has already been extended in favour of the petitioner on 25.06.2021 and so far as other retirement dues i.e. Final Pension, DCRG and Commuted Value of pension has already been processed. The District Education Officer, Bargarh vide Letter No. 5803 dated 07.07.2022 and No. 5841 dated 08.07.2022 has already submitted the final pension papers of the petitioner to the Directorate of Secondary Education, Odisha, for further action and the same will be placed before the State Government and

thereafter, forwarded to the Controller of Accounts, Odisha, for grant of final pension. Therefore, this deponent undertakes to grant all retiral benefits in favour of the petitioner within one month. The copy of the Letter No. 5803 dated 07.07.2022 and No. 5841 dated 08.07.2022 of District Education Officer, Bargarh.”

2.8. As reflected in the affidavit dt.11.07.2022, the pension papers of the Petitioner were not only processed vide letter issued by the O.P. No. 3 on 07.07.2022 and 08.07.2022 under Annexure-C/2 series, but also the Petitioner was sanctioned with the final pension and gratuity vide Pension Payment Order and Gratuity Payment Order dtd.10.08.2022 vide Annexure-A/2 enclosed to the compliance affidavit filed by the O.P. No. 2 on 22.08.2022.

2.9. Learned counsel for the Petitioner though accepted regarding release and payment of the final pension and gratuity on 10.08.2022, but submitted that in view of such inordinate delay in releasing the final pension and gratuity as well as other retiral dues the Petitioner is entitled to get interest on all such admissible amount.

2.10. Learned counsel for the Petitioner in support of his aforesaid stand relied on the decision of this Court in the case of ***Dhruba Charan Panda & Ors. Vs. State of Odisha & Ors. ((1999) II OLR 433)***. This Court

relying on the decision of the Hon'ble Apex Court ultimately in Para 18 of the said Judgment has held as follows:-

“18. We dispose of this application with a direction to the State Government to administratively instruct all the Heads of Departments and the concerned officials to ensure that different steps prescribed to be taken under the Rules are rigidly followed and any non-observance thereof is to be strictly viewed. If there is any delay in payment of pension the pensioner shall be entitled to 18% interest per annum for the period of delay and this interest shall be recovered from the person/persons responsible for the delay. While fixing the rate of interest, we have kept in view the minimum bank rate of interest charged for borrowing from bank. This aspect shall also be notified to all concerned. We are sure, if such stringent steps in addition to those, which the State Government may feel necessary to impose, are taken there shall be strict compliance of the requirement of law and in future the old retired persons shall not be required to move in the corridors of the Courts with tears in their eyes and a faint ray of hope of getting remedy early, and not posthumous. We record our appreciation for the able and fair assistance rendered by all learned counsel who appeared in the case for various parties. No costs.”

2.11. Similarly, learned counsel for the Petitioner relied on another decision of this Court reported in the case of ***Debendranath Mohanty Vs. Union of India & Ors. ((2022) II OLR 537)***. This Court by following the decisions of the Hon'ble Apex Court as well as this Court in Para 28 of the said Judgment passed the following order:-

“28. In the above premises, the Order dated 18.05.2020 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00869 of 2016 in Annexure-6 cannot be sustained in the eye of law and the same is liable to be quashed and hereby quashed. The Opposite Parties are directed to pay interest @ 12% for the delayed payment of retirement dues along with other admissible dues as expeditiously as possible, preferably within a period of three months from the date of communication/production of the Judgment.”

2.12. Mr. S.K. Purohit, learned counsel for the Petitioner also relied on another decision of the Hon’ble Apex Court reported in the case of ***Vijay L. Mehrotra Vs. State of U.P. & Ors. (AIR SC 3513)***. Hon’ble Apex Court in Para 3 & 4 of the said order has held as follows:-

“3 In case of an employee retiring after having rendered service, it is expected that all the payment of the Commuted pension Detained amount Rs. 20,484.00 Rs. 45,000.00 retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

XXX XXX XXX

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e. 31st August, 1997 till the date of payments.”

2.13. Mr. Purohit, learned counsel for the Petitioner in his brief note filed on 16.12.2022 indicated the amount which was due on 01.07.2010, but payment was made only during the month of August & October 2022 save and except the payment of unutilized leave salary on 03.08.2021. The same is reproduced hereunder:-

All retiral dues admissible from 1.7.2010

	Date of Payment	Amount
Gratuity Statutory interest 7% (as per Rule 49(5) of OPCS(P) Rules)	20.8.22	Rs.3,40,353.00
Arrear from 1.1.16 to 31.12.22	23.8.22	Rs.3,86,447.00
Arrear from 1.1.16 to 31.7.22 60% Arrear of 2006	23.11.22	Rs.5,94,147.00
Pay fixation	14.11.22	Rs.1,08,266.00
Unutilized leave	3.8.21	Rs.2,43,173.00

3. Mr. N.N. Satapathy, learned Standing Counsel on the other hand submitted that because of non-fixation of the pay of the Petitioner and non-submission of the pension papers in time the Petitioner could not be paid with her retiral benefits and only the unutilized leave salary has been paid on 25.06.2021. It is also contended that O.P. No. 3 processed and submitted the final pension papers to the O.P. No. 2 vide letter No. 5803 dtd.07.07.2022 and 5841 dtd.08.07.2022. It is also contended that after such processing of the pension papers the final pension and gratuity has been released with passing of the order on 10.08.2022. Accordingly, it is contended that though there is delay in making the payment of the retiral benefits of the Petitioner, but the delay cannot be attributable to the Opp. Parties only and the Petitioner has also got latches in that regard by not submitting the pension papers immediately after her retirement on 30.06.2010.

4. I have heard Mr. S.K. Purohit, learned counsel for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties. On the consent of the Parties the matter was finally heard at the stage of admission and disposed of by the present order.

5. Having heard learned counsel for the Parties and after perusing the materials available on record, this Court finds that even though the

Petitioner retired from her service on 30.06.2010 and submitted the pension papers initially on 28.02.2011, but in view of the dispute with regard to fixation of pay of the Petitioner, the pension papers of the Petitioner were never processed in spite of several approaches made by the Petitioner and the request made by the O.P. No. 3 vide letter dtd.23.02.2015 under Annexure-14. It is also found that even though vide order dtd.01.06.2015 O.P. No. 2 directed for recovery of some amount with fixation of pay, but no recoverable amount was indicated in the said order nor the Petitioner at any point of time was issued with any such order showing the amount to be recovered from her.

5.1. It is also found that even though learned Tribunal while issuing notice of the matter on 16.11.2015 passed an interim order directing to the effect that no recovery can be made in terms of the order passed under Annexure-15, but the Opp. Parties in spite of receipt of notice neither processed the pension papers of the Petitioner nor filed the counter affidavit till this Court passed the order on 07.07.2022 directing for personal appearance of the O.P. No. 2. Only after passing of the order on 07.07.2022 pension papers of the Petitioner were processed vide letter issued on 07.07.2022 and 08.07.2022 under Annexure-C/2 series to the affidavit dtd.11.07.2022 and the Petitioner was sanctioned with the final

pension and gratuity vide order dtd.10.08.2022 under Annexure-A/2 to the compliance affidavit filed on 22.08.2022.

5.2. Therefore, from the aforesaid position, it is the view of this Court that the Opp. Parties never took any complete step to settle the claim of the Petitioner towards her entitlement to get the pension and other retiral benefits. This Court found that the amount due to the Petitioner on 01.07.2010 were only released on 20.08.2022, 23.08.2022, 14.11.2022 and 23.11.2022 save and except the release of the unutilized leave salary on 03.08.2021.

Taking into account the sufferings inflicted on the Petitioner and the admitted delay on the part of the Opp. Parties in not releasing the pension and other retiral benefits of the Petitioner which were due on dt.01.07.2010, this Court placing reliance on the decisions as cited (supra), held the Opp. Parties liable to pay interest @ 9% per annum on the amount so released in favour of the Petitioner on 20.08.2022, 23.08.2022, 14.11.2022, 23.11.2022 and 03.08.2021 for the period from 01.07.2010 to the date of release. O.P. No. 2 is directed to calculate the interest as due and admissible and release the same in favour of the Petitioner within a period of three (3) months from the date of receipt of this order.

The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 21st of December, 2022/Sneha

