

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.151 of 2012

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

.....

Susama Mohanty & Ors.

....

Petitioners

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : Mr. Ranjit Mohanty(Advocate)

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

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 08.12.2022 and Date of Order:22.12.2022

Biraja Prasanna Satapathy, J.

1. The present writ petition has been filed inter alia with the following
prayer:-

*"i. The Hon'ble Tribunal be pleased to direct the respondents
to finalise the pension case of the applicant and to release the
gratuity amount and final pension in favour of the applicant
within a time bound period without any further delay along*

with the interest @ 10% per annum for the delay, from the date the same is due to him till the date of its actual payment; and

ii. The Hon'ble Tribunal be pleased to declare and direct that the date of birth of the applicant is 05.06.1945 as has been rightly recorded in the service book and the transfer certificate and accordingly the applicant is entitled to pension and gratuity on the basis of his retirement from Govt. service w.e.f. 30.06.2003.

iii. The Hon'ble Tribunal be pleased to pass such other order/orders as is deemed fit and proper under the facts and circumstances of the case.”

2. The factual matrix giving rise to the filing of the writ petition is that the deceased Petitioner entered into service as a primary school teacher on 16.01.1964 in Chikima Upper Primary School under D.I. of Schools, Jeypore in the district of Koraput. Subsequently, the Petitioner was promoted to the rank of Headmaster on the recommendation of the DPC and as per the order of D.I. of Schools, Jeypore dtd.21.09.1998. The deceased Petitioner while continuing as such in the rank of Headmaster, he was allowed to retire from his service on attaining the age of superannuation w.e.f.30.06.2003 taking into account his date of birth so recorded in his service book i.e. 05.06.1945. In the service book annexed vide Annexure-1/1 the date of birth of the deceased Petitioner is also recorded as 05.06.1945 and the deceased Petitioner as per order under Annexure-1 was allowed to retire w.e.f.30.06.2003 on attaining the age of superannuation. The Petitioner was so allowed to retire from his

service w.e.f.30.06.2003 basing on the order passed by the B.D.O., Baipariguda on 30.06.2003 under Annexure-2.

2.1. After his retirement from service a communication was issued to him by the D.I. of Schools, Jeypore-O.P. No. 3 on 27.01.2004, wherein he was requested to submit his educational certificate for the purpose of verification of his date of birth under Annexure-3. The Petitioner submitted the transfer certificate in original on 02.09.2004 issued by the Headmaster, Madhusagar Vidyapitha, Angulai of the then Cuttack district on 04.09.1963 along with an application under Annexure-4 & 4/1. The D.I. of Schools, Jeypore-O.P. No. 3 on being satisfied with the genuineness of the Date of birth of the Petitioner, issued a letter to the B.D.O., Baipariguda-O.P. No. 4 on 18.10.2005 under Annexure-5 with a request to submit the pension papers of the deceased Petitioner. In the said letter it was also indicated that the pensionary benefits of the deceased Petitioner has been abnormally delayed.

2.2. On receipt of such letter and after about 2 years, O.P. No. 4 submitted the pension papers of the deceased Petitioner vide letter dtd.09.08.2007 before the D.I. of Schools, Jeypore under Annexure-6. D.I. of Schools, Jeypore on receipt of the same forwarded the pension papers of the deceased Petitioner to the office of O.P. No. 5 vide letter dtd.19.05.2008. On receipt of the pension papers O.P. No. 5 raised objection with regard to the date of birth of the deceased Petitioner reflected in his service book and accordingly returned the

service book and pension papers with a request to the D.I. of Schools, Jeypore to obtain the approval of the Govt. regarding correct date of birth as provided under Rule 65 of OGFR vide letter dtd.21.08.2008 under Annexure-7. On receipt of the same O.P. No. 3 vide his letter dtd.18.03.2009 requested the O.P. No. 2 to take necessary step for approval of the correct date of birth of the deceased Petitioner and for early finalization of the pension claim. Along with the said letter dtd.18.03.2009 O.P. No. 3 enclosed the original service book, original transfer certificate and original affidavit of the deceased Petitioner with regard to his Date of birth as well as the objection raised by the O.P. No. 5.

2.3. Subsequently, without finalizing the claim, the D.I. of Schools, Jeypore- O.P. No. 3 through O.P. No. 4 issued a letter to the deceased Petitioner on 27.11.2010 under Annexure-9 with a request to submit the admission register of the School, O.P. No. 4 also requested the Headmaster, Madhusagar Vidyapitha, to provide the admission register of the deceased Petitioner. On receipt of such request the Headmaster, Madhusagar Vidyapitha vide his letter dtd.10.03.2011 intimated the Inspector of Schools, Kendrapara Circle, Kendrapara that due to unavailability of the admission register which has been destroyed because of natural calamity like flood and cyclone, he is unable to produce the same. On receipt of such report from Headmaster, Madhusagar Vidyapitha, the Inspector of Schools, Kendrapara Circle

intimated the said fact to the O.P. No. 3 vide letter dtd.29.03.2011 under Annexure-10/1. The D.I. of Schools, Jeypore-O.P. No. 3 vide letter dtd.31.03.2011 intimated all the facts to the O.P. No. 2 by enclosing the letter of the Inspector of Schools, Kendrapara Circle and letter of the Headmaster, Madhusagar Vidyapitha for taking necessary action in the matter.

2.4. Thereafter, when no action was taken for finalization of the claim of the deceased Petitioner, the deceased Petitioner moved the O.P. No. 1 on 08.10.2011 under Annexure-12. In spite of taking all steps when the pension and pensionary benefits of the deceased Petitioner was not released, the Petitioner claiming for the same along with interest as provided under Rule 49(5) of the OCS (Pension) Rules, 1992 moved the learned Tribunal in O.A. No. 151 of 2012. After abolition of the Tribunal the matter was transferred to this Court.

3. Mr. Ranjit Mohanty, learned counsel for the Petitioner contended that in the service book of the deceased Petitioner available under Annexure-1/1, the date of birth of the deceased Petitioner is clearly reflected as 05.06.1945. Basing on the said date of birth so recorded in his service book the deceased Petitioner was allowed to retire on attaining the age of superannuation w.e.f.30.06.2003 vide order under Annexure-2 and he was relieved by the order of B.D.O., Baipariguda dtd.30.06.2003. After such retirement w.e.f.30.06.2003 when O.P. No. 3 vide his letter dtd.27.01.2004 under

Annexure-3 requested the Petitioner to provide the educational qualification certificate (transfer certificate) for verification, the Petitioner vide letter dtd.02.09.2004 vide Annexure-4 submitted the transfer certificate issued by the Headmaster, Madhusagar Vidyapitha on 04.09.1963 under Annexure-4/1. In the said transfer certificate the date of birth of the deceased Petitioner was also reflected as 05.06.1945.

3.1. It is contended that in spite of providing the transfer certificate wherein the date of birth of the deceased Petitioner is clearly reflected as 05.06.1945, the claim of the deceased Petitioner to get his pension & pensionary benefits was never finalized even after the same was forwarded by the D.I. of Schools, Jeypore under Annexure-5. The Pension papers of the deceased Petitioner subsequently was forwarded by the O.P. No. 4 to O.P. No. 3 vide letter dtd.09.08.2007 under Annexure-7 and O.P. No. 3 vide his letter dtd.19.05.2008 forwarded the pension papers to the O.P. No.5. But O.P. No. 5 returned the pension papers by indicating therein that the date of birth of the Petitioner was initially recorded as 08.06.1943 and subsequently changed to 05.06.1945. Therefore, necessary approval of the Govt. is required with regard to correct date of birth of the deceased Petitioner as provided under Rule 65 of OGFR.

3.2. On receipt of the pension papers vide letter under Annexure-7 O.P. No. 3 vide his letter dtd.18.03.2009 requested the O.P. No. 2 to take necessary step

in the matter and for approval of the correct date of birth of the deceased Petitioner for early finalization of his pension claim. Subsequently, O.P. No. 3 vide his letter dtd.27.11.2010 under Annexure-9 when requested the deceased Petitioner to provide the admission register from the Headmaster, Madhusagar Vidyapitha and the Headmaster was also requested by the Inspector of Schools, Kendrapara Circle to provide the same, vide letter dtd.10.03.2011 under Annexure-10, the Headmaster, Madhusagar Vidyapitha intimated that the admission register is not available as the same is destroyed by natural calamity like flood and cyclone. The said fact was also brought to the notice of O.P. No. 3 by the Inspector of Schools, Kendrapara Circle vide letter dtd.29.03.2011 under Annexure 10/1. On receipt of such information vide letter dtd.31.03.2011, O.P. No. 3 though requested O.P. No. 2 to do the needful, but no action was taken in finalizing the pension claim of the deceased Petitioner. The deceased Petitioner thereafter though moved the O.P. No. 1, but no action when was taken, the present writ petition was filed with the prayer as indicated hereinabove.

3.3. It is vehemently contended by the learned counsel for the Petitioner that since in the service book of the Petitioner the date of birth of the deceased Petitioner is clearly reflected as 05.06.1945 and he was allowed to retire on attaining the age of superannuation on 30.06.2003 by taking the said date of birth into account, the non-disbursal of the pension and pensionary benefits is

legally not sustainable. It is also contended that on being asked the deceased Petitioner also produced the transfer certificate in original issued by the Headmaster, Madhusagar Vidyapitha under Annexure-4/1, wherein the date of birth of the deceased Petitioner is reflected as 05.06.1945. In spite of such submission of the information, when the deceased Petitioner was again directed to produce the admission register from the Headmaster of the School vide letter under Annexure-9, the Petitioner as well as the Inspector of Schools, Kendrapara Circle moved the Headmaster, Madhusagar Vidyapitha to provide the same. But vide letter dtd.10.03.2011 under Annexure-10 the Headmaster, Madhusagar Vidyapitha expressed his inability to provide the admission register and on receipt of such information though the O.P. No. 2 vide letter dtd.31.03.2011 under Annexure-11 was requested to take a final a decision on the claim of the deceased Petitioner, but no action was taken.

3.4. Since the deceased Petitioner retired from his service w.e.f.30.06.2003 and he was not paid with his retiral benefits, he not only approached the Tribunal in O.A. No. 151 of 2012 but also filed an interim application in M.P. No. 510/2012. In consideration of such application in M.P. No. 510/2012, the Tribunal passed an order on 13.12.2012 to the following effect:-

“The applicant retired from Govt. service w.e.f.30.6.2003 on attaining the age of superannuation on the basis of his date of birth as 5.6.1945, as recorded in his service book. He has been in receipt of provisional pension after his retirement. His final pension has not yet been sanctioned and D.C.R.G. amount payable to him, has not yet been

released. The respondents have withheld his gratuity on the ground that his actual date of birth is "8.6.1943" and not "5.6.1945" as claimed by him. The claim of the respondents to this effect has been challenged by the applicant in this original application.

The applicant has come up with this present M.P. with a prayer for a direction to the respondents, to sanction regular pension and release of all other pensionary benefits such as gratuity, assuming his date of birth to be 8.6.1943, subject to the final result of the O.A. Since there is no dispute that the applicant is a retired Govt. servant and is entitled to regular pension and DCRG on his retirement, there can be no objection to sanction of regular pension and gratuity in his favour. Whether the date of birth of the applicant is 8.6.1943 or 5.6.1945 shall be decided at the time of final disposal of this O.A.

On hearing the learned counsel for the applicant and the learned standing counsel, S&ME the M.P. is disposed of with a direction to the respondents to sanction the regular pension and release the gratuity in favour of the applicant assuming his date of birth to be "8.6.1943" within a period of three months from the date of receipt of a copy of this order. This shall however, be without prejudice to the claim of the applicant to treat his date of birth as 5.6.1945.

The respondents have not yet filed counter. Let them file the counter in the O.A. within four weeks."

3.5. It is contended that on receipt of the order from the Tribunal the Petitioner was released with his pension and gratuity by taking his date of birth as 08.06.1943, without prejudice to the claim of the deceased Petitioner. But an amount of Rs.1,76,318/- (Rupees One lakh seventy six thousand three hundred eighteen) was kept withheld i.e. the salary drawn by the deceased Petitioner from July 2001 to July 2003.

3.6. It is contended that since the date of birth of the deceased Petitioner was never changed from 05.06.1945 to 08.06.1943 by the Opp. Parties by conducting a detailed enquiry, the Date of birth of the deceased Petitioner was required to be taken as 05.06.1945 and the deceased Petitioner is accordingly entitled to get the retiral benefits. It is also contended that since the Petitioner discharged his duty till 30.06.2003, the amount kept withheld towards salary for the period from July 2001 to July 2003 as recoverable amount by the B.D.O., Baipariguda-O.P. No. 4 vide letter dtd.30.10.2013 is not sustainable in the eye of law.

4. Mr. R.N. Acharya, learned Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit. It is contended that in the service book of the deceased Petitioner the date of birth was originally recorded as 08.06.1943 and the same was corrected by the B.D.O., Baipariguda-O.P. No. 4 on 01.09.1990 as 05.06.1945 suo moto and without assigning any reason. It is contended that the correction of the date of birth is also apparent on the face of Annexure-A/3. It is also contended that since the deceased Petitioner joined in his service on 16.01.1964 with his date of birth being recorded as 08.06.1943, the same cannot be changed to 05.06.1945 after more than 26 years of his service. The said change of date of birth after completion of 26 years of service is also not permissible in view of the decisions of the Hon'ble Apex Court reported in the case of *State of U.P. &*

Ors. Vs. Gulaichi ((2003) 6 SCC 483). Hon'ble Apex Court in Para 8, 12, 14 & 15 of the said Judgment has held as follows:

“8. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

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12. In the instant case the Rules and the Amendment Rules referred to above clearly indicate the permissible area for correction of the date of birth. In view of the specific provisions made, it was not permissible to effect any change. Additionally, the first appellate court and the High Court seem to have lost sight of the fact that the person who endorsed changes was not authorized to do so. The original service-book was produced before us by the learned counsel for the appellants. Though the learned counsel for the respondent submitted that we should not look into it, for the purpose of arriving at the truth, we overruled the objection and looked at the original document, which undisputedly was exhibited during trial. The entry i.e. 31-7- 1929 appears to have been made simultaneously by one and the same person at the time when other entries were made in FR Form 13. The respondent has herself signed the page at Serial No. 8, whereas the entry relating to the date of birth is at Serial No. 5.

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14. Above being the factual and legal position, the conclusion is inevitable that the First Appellate Court and the High Court were not justified in their conclusions to the effect that the date of birth of the respondent was 31-7-1939. The trial court was correct in its analysis by holding that the date of birth is 31-7-1929.

15. The order of the High Court is set aside. The date of birth of the respondent has to be taken for all purposes to be 31-7-1929 and not 31-7-1939 as claimed by her. The appeal is allowed to the extent indicated above. There will be no order as to costs.”

4.1. Mr. Acharya, learned Standing Counsel also relied on another decision of the Hon’ble Apex Court reported in the case of ***Punjab & Haryana High Court Vs. Meghraj Garg & Anr. ((2010) 6 SCC 482)***. The Apex Court in Para 12 of the said Judgment has held as follows:-

“12. An analysis of the above reproduced rule makes it clear that the declaration of age made at the time of or for the purpose of entry into government service is conclusive and binding on the government servant. The only exception to this is that the government servant can make an application for correction of age within two years from the date of entry into service. This necessarily implies that an application made by a government servant for correction of age after two years of his entry into service cannot be entertained by the competent authority. However, the competent authority can, at any time, correct the age recorded in the service book or in the history service of a gazetted government employee if it is satisfied that the age has been so recorded with a view to give undue benefit to the employee/officer, like continuance in service beyond the age of superannuation. Of course, while undertaking this exercise, the competent authority is bound to comply with the rule of audi alteram partem and give a reasonable opportunity to the employee/officer

concerned to represent his cause against the proposed change in the recorded age/date of birth. In other words, while there is a complete bar to the making of an application by the government servant for correction of his recorded age after two years from the date of his entry into government service, the competent authority can make correction at any time if it is found that the age recorded in the service book is incorrect and has been so recorded with a view to enable the employee concerned to continue in service beyond the age of superannuation or gain any other advantage.”

4.2. Placing reliance on the aforesaid decisions, Mr. Acharya, learned Standing Counsel submitted that since the O.P. No. 3 without assigning any reason suo moto corrected the date of birth of the deceased Petitioner as 05.06.1945 in place of 08.06.1943, the Petitioner's date of birth cannot be treated as 05.06.1945. Since by manipulating such date of birth the deceased Petitioner continued in his service beyond the age of superannuation from July 2001 to July 2003, the deceased Petitioner is liable for refund of the salary amounting to Rs.1,76,318/- (Rupees One lakh seventy six thousand three hundred eighteen) as indicated in the letter dtd.30.10.2013 of the O.P. No. 4. It is also contended that by taking the Date of birth of the deceased Petitioner as 08.06.1943 and taking into account the order passed by the Tribunal on 13.12.2012, the pension and other pensionary benefits save and except the withholding amount of Rs. 1,76,318/- (Rupees One lakh seventy six thousand three hundred eighteen) since has already been released in favour of the deceased Petitioner, no further direction needs to be issued by this Court while considering the claim of the present Petitioners.

5. Mr. Ranjit Mohanty, learned counsel for the Petitioners on the other hand taking into account the submissions of Mr. Acharya, submitted that since the deceased Petitioner continued in his service up to 30.06.2003, he is eligible and entitled to get the salary for the period from July 2001 to July 2003. Therefore, the amount withheld by the Opp. Parties amounting to Rs. 1,76,318/- (Rupees One lakh seventy six thousand three hundred eighteen) cannot be recovered as the deceased Petitioner has discharged his duty for the said period. It is also contended that since the date of birth of the deceased Petitioner on the face of Annexure-1/1 and Annexure-4/1 is 05.06.1945, the deceased Petitioner is eligible and entitled to get the pension and other pensionary benefits by treating the said date of birth and the date of Superannuation as 30.06.2003. Mr. Mohanty in support of his stand regarding entitlement of the deceased Petitioner to get the salary for the overstayed period from July 2001 to July 2003 relied on a decision of this Court passed on 12.08.2022 in W.P.C.(OAC) No. 3189 of 2015. This Court in Para 18, 19 & 20 of the said order has held as follows:-

“18. Since this Court finds that prior to directing for recovery of the amount, the petitioner was never given an opportunity, the action of the opposite party No.3 in directing for such recovery is also illegal on the ground of non-compliance of the principle of natural justice. Not only that for the period July, 2003 to February, 2008, the original petitioner has discharged his duty.

19. Therefore, this Court finds that since the original petitioner has discharged his duty for the period 01.07.2003 to 20.02.2008, no recovery is permissible in the eye of law.

20. Therefore, this Court is inclined to quash the direction of the opposite party No.3 to recover a sum of Rs.6,68,572/- from the retiral benefit of the original pensioner. While quashing the same, this Court directs the Opposite Party No.3 to sanction all retiral benefits as due and admissible to the original petitioner in favour of the substituted petitioner. The substituted petitioner who happens to be the wife of the deceased employee be also sanctioned with the original family pension. The entire exercise be completed by the Opposite Party No.3 within a period of three months from the date of receipt of this order.”

6. I have heard Mr. Ranjit Mohanty, learned counsel for the Petitioners and Mr. R.N. Acharya, learned Standing Counsel appearing for the Opp. Parties. On the consent of the learned counsel appearing for the parties, the matter was taken up for disposal at the stage of admission and disposed of by the present order.

7. This Court after going through the materials available on record finds that in the service book enclosed by the deceased Petitioner vide Annexure-1/1, though date of birth is reflected as 05.06.1945 and the said fact is corroborated by the transfer certificate issued by the School in question under Annexure-4/1, this Court is not inclined to accept the stand taken by the Opp. Parties that the Date of birth of the deceased Petitioner is 08.06.1943. Even if accepting the submission of the learned Standing Counsel that the date of birth of the Petitioner was corrected from 08.06.1943 to 05.06.1945 by the

then B.D.O., Baipariguda on 01.09.1990 suo moto and without assigning any reason, but this Court finds that on coming to know about such illegality/irregularity, no action has been taken by the Opp. Parties to determine the actual date of birth by causing a detailed enquiry and by giving due opportunity of hearing to the deceased Petitioner. On being asked, though the deceased Petitioner produced the original transfer certificate under Annexure-R/1, wherein the date of birth of the deceased Petitioner is clearly reflected as 05.06.1945, the said fact having not been disputed through a properly constituted enquiry, the stand of the Opp. Parties that the date of birth of the deceased Petitioner is 08.06.1943 is not legally sustainable. The decision cited by the learned counsel for the Opp. Parties is also not applicable to the facts of the present case as at no point of time the deceased Petitioner prayed for change of his date of birth.

7.1. From the records it is found that the then B.D.O., Baipariguda-O.P. No. 4 on being satisfied changed the Date of birth of the deceased Petitioner from 08.06.1943 to 05.06.1945 on 01.09.1990. The said fact though is reflected under Annexure-A/3, but no action was taken by the Opp. Parties to determine the actual date of birth on coming to know about such illegality/irregularity. Therefore, in absence of the same this Court is inclined to accept the date of birth of the deceased Petitioner as 05.06.1945. Accordingly, while holding so, this Court directs the Opp. Parties to sanction

and disburse the differential pension and pensionary benefits as due and admissible to the deceased Petitioner in favour of the substituted Petitioners. Not only that this Court also held that since the deceased Petitioner has rendered his service up to 30.06.2003, he is entitled to receive the salary up to 30.06.2003 and no recovery can be effected for the period from July 2001 to July 2003 as reflected in the letter dtd.30.10.2013 of O.P. No. 4. This Court also directs the Opp. Parties to release the withheld amount of Rs.1,76,318/- (Rupees One lakh seventy six thousand three hundred eighteen) in favour of the substituted Petitioners. This Court further directs the Opp. Parties to re-calculate the pension and pensionary benefits and release the differential amount. This Court directs O.P. No. 1 to comply with the directions of this Court as indicated hereinabove within a period of three (3) months from the date of receipt of this order.

8. The writ petition is disposed of with the aforesaid observation and directions. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 22nd of December, 2022/Sneha