

ORISSA HIGH COURT : C U T T A C K

WPC(OA) NO.1550 OF 2017

In the matter of an application under Articles 226 & 227 of the Constitution of India.

A F R

Smt.Gayatri Pattanaik

: Petitioner

-Versus-

State of Odisha & Others

: Opp.Parties

For Petitioner

:

Mr.P.Mohapatra

For O.Ps.

:

Mr.S.Mishra, ASC

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & Judgment :: 06.09.2022

1. This Petition was originally filed before the Odisha Administrative Tribunal, Bhubaneswar registered as O.A. No.1550/2017. On the Tribunal being abolished, the matter was transferred to this Court for disposal. The Petition involves the following prayer :-

“The applicant humbly prays that this Hon’ble Tribunal be graciously pleased to –

- i) Admit and allow this O.A.
- ii) Direct respondents to sanction and disburse Family Pension and Death Gratuity in favour of the applicant within a period of one month along with arrear.

And

- iii) Pass such other order/direction as may be deemed appropriate in the interest of justice.”

2. Background involving the case is the Petitioner being the legally married wife of the employee, Arjun Kumar Pattanaik approached the Competent Authority for release of benefit including pensionary benefit to the applicant on the premises that her husband was a Government Servant entered into service on 13.3.1996 and posted as Excise Constable. This fact has been established through Annexure-1 appearing to be the extract of the employee's Service Book. It is pleaded by the wife of the employee involved that her husband while working as Excise Constable at Ujalpur in the district of Sundargarh under the administrative control of Respondent No.2 herein disappeared from his working place without any information to anyone including the present Petitioner. Finding no trace of her husband, the Petitioner appears to have lodged a missing F.I.R. on her husband on 24.2.2013, vide Annexure-2. It further reveals from the pleading that on the basis of such F.I.R., Lephripada P.S. Case No.S.D.E. No.456 dated 24.2.2013 got registered. Pleading further reveals, finding no development through such F.I.R., there has been drawing of attention of the Inspector and finally the O.I.C., Lephripada Police Station after investigation reported that the husband of the Petitioner remained untraceable as appearing from Annexure-8. The Petitioner while bringing this fact to the notice of O.P.2 requested it for considering her case for sanction of family pension as well as death

gratuity involving her husband. On the premises that the Petitioner finding no respite from the Employer in the matter of release of gratuity as well as family pension approached the Tribunal for appropriate relief.

3. Mr.Mohapatra, learned counsel for the Petitioner for the factual background of the case and reading through the report of the concerned Police Station communicated to the Superintendent of Police, Sundargarh, vide Annexure-8 reading together through the provisions at Rule 56(19) & (20), particularly the provision at Rule 56(19)(II) and the provision at Sub-Rule (20) therein of the Orissa Pension Rules attempted to establish the entitlement of the Petitioner and in the circumstance, Mr. Mohapatra alleged, first of all there has been no proper attention to the claim of the Petitioner at least release of pension and retiral dues in terms of the above legal provisions and secondly, even in filing counter here, there has been illegal attempt to block the benefits already flowing to the Petitioner for no legal grounds. Mr.Mohapatra, learned counsel for the Petitioner in addition to the above submission also brought to the notice of this Court that for the provision in the Evidence Act, once a person is missing for nearly seven years, there is civil declaration of death. Thus, Mr.Mohapatra alleged, the missing of the person involved having taken place in 2012 from the Office premises, thus there is sufficient presumption of declaration of death of such person and in the above legal

background, learned counsel for the Petitioner also claimed, the Petitioner is already entitled to the benefits and has been illegally deprived of the same and under unlawful manner. In the circumstance, Mr.Mohapatra, learned counsel for the Petitioner requested this Court for allowing the application and passing suitable direction facilitating family pension and death gratuity in favour of the Petitioner at an early date.

4. In his opposition, Mr.S.Mishra, learned Additional Standing Counsel for the O.Ps. reading through the counter averments submitted that undisputedly there is pendency of a disciplinary proceeding involving the husband of the Petitioner, who is facing charge of unauthorised absence. Mr. Mishra contended, unless the disciplinary proceeding involving the husband of the Petitioner gets concluded, there is no possibility of considering the relief claimed by the Petitioner herein. Further taking this Court to the provision of Note-4 of Rule 20 of the Orissa Pension Rules, Mr.Mishra admitted, there is some sort of obstruction in attending the claim of the Petitioner unless the proceeding involving the husband of the Petitioner gets lawfully concluded, there is no scope acceding to request of the Petitioner. It is in the circumstance, Mr.Mishra, learned Additional Standing Counsel attempted to justify the action of the O.P. involving non-release of the gratuity as well as family pension, if any. There is of course no denial to the existence of the final

report of the IIC involved reporting husband of the Petitioner not traceable.

5. Heard the submission of the learned counsel for the Parties at length. Keeping in view the entire backdrop herein, this Court finds, there is relevancy in the provision at Rule 19(ii) and Rule 20 including Note-4, which are placed herein as follows :-

“(19)Family Pension and death gratuity to the family members of the government employees who disappears or absconded from the Government service shall be as follows :

- (i) xxx
- (ii) After the elapse of a period of one year, other benefits like death gratuity/family pension including arrears shall also be granted to the family provided that the concerned family shall initiate the fact of disappearance of the Government servant to the Head of Office under where the Government servant served last for the purpose of sanction of the benefits. Where the Head of Office is not the pension sanctioning authority of the disappeared Government servant he will send the papers with recommendation/comments to the pension sanctioning authority who will sanction the benefits under Sub-rule (2) or (4), as the case may be, after observing the following formalities, namely :
 - (a) An F.I.R. should be lodged with the nearest Police Station under intimation to the concerned Head of Office. The Head of Office should obtain a report from the Police Station through the District Police Officer that the employee has not been traced out after all efforts made by police.
 - (b) An indemnity Bond in (Form-Q) shall be taken from the dependants of the employee that all payments will be adjusted against the payments due to the

employee in case he appears on the scene and makes any claim.

20.(A) When a retired Government servant disappears leaving his family, the family shall be paid in the first instance, the amount of arrear salary and leave encashment due, if any. The house rent, if any, for the month(s) in respect of which the salary is due shall be recovered from the amount of salary payable to the family.

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xxx

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Note-4. The benefits covered under Sub-rules (19) and (20) shall only be admissible in the genuine cases of disappearance under normal circumstances and not the cases in which officials disappear after committing frauds, etc. In latter type of cases the family pension can be sanctioned only to the Government employee/pensioner being acquitted by the Court of law or after the conclusion of the disciplinary proceedings etc., as the case may be.”

6. Before advertng to the question of entitlement of the Petitioner though the above provisions of law, this Court makes it clear that for there is no dispute that the employee involved is missing since 2012 as per the F.I.R. dated 24.2.2013 and the report of non-traceable of such employee by the Competent Authority, vide Annexure-8 since 2.6.2016, this Court finds, there is declaration of civil death of the husband of the Petitioner automatically and since the Disciplinary Proceeding involving the Petitioner was initiated after the Petitioner’s husband reported to be missing, there is no purpose for continuing with such disciplinary proceeding any further. It has to get a logical end no doubt with dropping of such proceeding maximum holding abandonment of service by an

employer and considering releasing of consequential service benefits and also involving a decision on entitlement of family pension to the wife in the circumstance the husband is not traceable and no pension can be provided to such person. This observation of the Court is made here keeping in view that the charge of unauthorised absence involving the employee came to exist after the Employer knowing fully that the employee is not attending to his Office and reported to be missing and further in between there is already an F.I.R. of his missing from the Society. Further to add to this, on investigation by the appropriate Agency competent, there is already reporting since 2016 disclosing the person involved is not traceable any further.

7. In the circumstance, this Court finds strange in the attitude of the Employer in still continuing Departmental Proceeding involving unauthorised absence involving the nature of absence here any further. There should be only declaration of dropping of the proceeding. This Court expects, on receipt of copy of this order, the Employer shall drop the proceeding by passing appropriate order within a period of seven days of receipt of copy of this order. Consequent upon such declaration, necessary order must be passed in the releasing of the retiral benefits and family pension in favour of the Petitioner.

8. Now coming to the entitlement of the Petitioner even during pendency of the disciplinary proceeding, this Court here finds from the provision taken note herein above, particularly the provision of Sub-Rule 19 (ii), there is sufficient mechanism already provided in the matter of grant of gratuity and family pension in the circumstances involved herein even within one month of lodging of missing F.I.R. This Court thus observes, there is already illegal detention of entitlements of the Petitioner. Further for the provision at Sub-Rule (20) Rule 56 of the Orissa Pension Rules through Note-4, this Court finds the only obstruction in the grant of benefits flowing through Sub-Rules (19) & (20) of Rule 56 of the Orissa Pension Rules in the event the disappearance of the employee after committing fraud and entitlement involved in such case shall only be made after there is clearing of such dispute by the court of law, which is not the case here, and therefore, there is lawful obstruction in the release of gratuity and family pension in favour of the petitioner undisputedly the wife of an employee.

Looking to the nature of absence involved herein, this Court finds, this restriction does not apply to the case at hand. Thus this Court finds, in all probability there should not have been at least a day delay even in releasing the financial benefit of the Petitioner, such as gratuity as well as family pension since the Employer has already come to notice the report

of the O.I.C. of Lephripada P.S. intimating all concerned on non-availability of such missing person. There is sufficient delay in considering the release of gratuity as well as family pension and it can be well assessed the suffering of a wife and family members of such an employee in the meantime. Be that as it may since this Court finds, the Petitioner is already in entitlement of gratuity and family pension after the all concerned are noticed about the non-traceability of such person being reported by the Police, vide Annexure-8, rendering the Departmental Proceeding un-attendable, this Court directs the Employer to calculate the arrear family pension at least from the date of expiry of one year of the F.I.R. and release the same at least within a period of one month. For the miserable suffering of the Petitioner on no account of her, she will also be entitled to interest @ 5% on the arrear from the date of entitlement all through. For the Petitioner is likely to get sufficient amount, after entering into necessary calculation, she may be released with Rs.2.50 lakh (rupees two lakh fifty thousand only) pending release of the final benefit towards delay payment of gratuity and part arrear of family pension, which amount shall however be adjusted from the final payment.

9. To avoid any further complication keeping in view the statement made by Mr.S.Mishra, learned Additional Standing Counsel for the State that there is requirement of Indemnity Bond under Rule 19 and looking to

the matter involving disappearance of the person involved and untraceable, the Petitioner is directed to serve an Indemnity Bond along with copy of this judgment on the Employer within ten days for their working in terms of the direction hereinabove.

10. The Petition succeeds. No cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 6th September, 2022/**M.K.Rout, A.R.-cum-Sr.Secy.**

