IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23920 of 2026
(CNR No.ODHC010522632026)

Koushalya Mahananda …. **Petitioner**

Mr. A.K. Mishra, Advocate

-Versus-

State of Odisha & others …. **Opposite Parties**

Mr. S.K. Parhi, ASC

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
04.11.2026

Order No.

03. 1. Heard Mr. Mishra, learned counsel for the petitioner and Mr. Parhi, learned ASC for the State.

2. No notice is issued to opposite party No.5 as the matter is disposed of at the stage of admission.

3. Instant writ petition is filed by the petitioner for a direction to the opposite parties to consider release of family pension and all other retiral dues of the deceased husband in favour of her children on the grounds stated.

4. Mr. Mishra, learned counsel for the petitioner refers to the legal heir certificate as at Annexure-2 to claim that the petitioner is the wife of the deceased employee. The further submission is that the petitioner's children and also the children from the first marriage of the deceased employee are entitled to family pension in accordance with OCS (Pension) Rules, 1992 (hereinafter referred to as 'the Rules') and therefore, necessary

direction may perhaps be issued to opposite party No.4 to process and transmit the pension papers and also refers to an order of this Court in **Nirmali Samal Vrs. State of Orissa and others** in W.P.(C) No.3453 of 2013 dated 8th July, 2015. The submission is that the children born out of the wedlock between the petitioner and the deceased employee are entitled to family pension and in view of the decision (supra) along with them with the children of first marriage are also equally entitled to the same besides the gratuity, provident fund and other retiral dues payable.

5. On the other hand, Mr. Parhi, learned ASC for the State refers to the counter affidavit filed by opposite party Nos.3 & 4 and submits that the marriage of the petitioner with the deceased employee is during the subsistence of the first marriage and hence, such marriage is void and in so far as the children born out of such wedlock, only the legitimate children may have certain rights under Rule 56 of the Rules and such claims are required to be strictly verified with reference to their eligibility as prescribed thereunder. Further referring to the decision in **Nirmali Samal** (supra), the submission is that this Court referred to Rule 56(6) of the Rules and observed that after commencement of the Hindu Marriage Act, 1955, any second marriage, contracted by a Hindu woman during the life time of the first wife, shall be void and therefore, the second wife would not be entitled to family pension and under such circumstances, the petitioner, who happens to be and claiming wife of the deceased employee being a second wife cannot have

any legitimate right to demand family pension. In response to the above, Mr. Mishra, learned counsel would submit that the petitioner is pleading for family pension and other retiral dues of the deceased husband equally apportioned between the children born from out of both the marriages.

6. Having gone through the facts pleaded on record and the counter affidavit filed by opposite party Nos.3 & 4 and the settled position of law about a second marriage during subsistence of first one is invalid and void and therefore, the second wife cannot be allowed family pension and other retiral dues of the deceased employee, but in so far as the children born out of such second marriage, considering the counter affidavit of opposite party Nos.3 & 4 and the decision in **Nirmali Samal** (supra) relied on by Mr. Mishra, learned counsel, it has to be concluded that the children of the petitioner and born from the first marriage may be allowed to apportion the family pension, gratuity etc. in equal share in accordance with the provisions of the Rules. This Court is of the view that the case of the petitioner herein is similarly situated as in **Nirmali Samal** (supra), however, with a direction therein that the Authority concerned shall examine such claim of the second wife and thereafter, to allow the family pension to the children in accordance with Rules on proper verification and upon production of legal heir certificates. Taking into account the decision in **Nirmali Samal** (supra), this Court is of the view that a similar direction is required to be issued herein for considering the release of family pension and other retiral

dues to be apportioned among the children of first marriage and also of the petitioners' by opposite party No.4 with a proper notice to both the sides followed by a decision in that regard at the earliest preferably within a period of eight weeks from the date of receipt of a copy of this order having regard to the decision in **Nirmali Samal** (supra).

7. Accordingly, it is ordered.

8. In the result, the writ petition stands disposed of with the direction as aforesaid for compliance by opposite party No.4 soon after receiving a copy of this order but within the stipulated period as has been fixed hereinabove.

9. Issue urgent certified copy as per rules.

(R.K. Pattanaik)
Judge

Alok

Signature Not Verified
Digitally Signed
Signed by: ALOK RANJAN SETHY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 09-Nov-2026 13:59:29