

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22660 of 2016

Application under Articles 226 and 227 of the Constitution of India.

AFR

Subashini Patnaik

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Petitioner

-Versus-

State of Orissa & others

.....

Opp.Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. L.K. Mohanty, B. Barik,
P. Shagat, P.M. Rao & Advocates

For Opp. Parties: Mr. N. Pratap,
Addl. Standing Counsel.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

26th April, 2023

SASHIKANTA MISHRA, J. The petitioner has approached this

Court with the following prayer:

“The petitioner, therefore, most humbly prays that this Hon’ble Court may graciously be pleased to issue a writ in the nature of writ of mandamus or any other appropriate writ(s)/direction(s)/order(s) by directing the opposite party Nos.1 to 4 to release the pensionary benefits in favour of the petitioner as the petitioner is only the legal heir and widow of Late Sarat Chandra Patnaik who was working

as a M.E. School teacher, died on 08.01.1974 and to pay the same so as to maintain herself;

And further the Hon'ble Court be graciously pleased to direct the opposite party Nos. 3 & 4 to pay the arrear dues/pensionary benefits to the petitioner within a stipulated period as would be deemed fit and proper in the facts and circumstances of this case;

And for this act of kindness the petitioner shall as in duty bound ever pray."

2. The facts of the case are that the husband of the petitioner, late Sarat Chandra Patnaik joined as Assistant Teacher in Loknath M.E. School, Mahagab on 01.08.1948, which is an Aided Educational Institution. He died on 08.01.1974 while continuing in service. As per the Odisha Aided Educational Institutions Employees' Retirement Benefit Rules, 1981, (in short '1981 Rules') the benefit of pension was made available to Aided Primary School Teachers w.e.f. 01.04.1982. Further, benefit of family pension to the family of the teachers was introduced w.e.f. 01.09.1988. By another resolution dated 23.03.1989, pension and pensionary benefits were granted to Primary School Teachers of Aided Institutions at par with their counter parts in Government Schools. By another notification dated 18.10.2001 the benefit of family pension

was extended to the family of teachers who died on or after 01.09.1988. A Single Judge of this Court in the case of **Subarna Dibya and 61 others vs. State of Orissa** and others, reported in 2005 (1) OLR 168 held that family members of teachers dying in harness shall also be entitled to family pension. The petitioner submitted representation for grant of family pension but the same was not considered, for which she approached this Court in W.P.(C) No. 9097 of 2003. This Court, vide order dated 18.01.2005 directed the petitioner to file another representation and also directed the opposite parties to dispose of the same by passing a reasoned order in light of the ratio of the decision in Subarna Dibya (supra). The opposite party authorities did not act upon such order, for which the petitioner filed CONTC No.1135 of 2005 before this Court, wherein the present opposite party No.1 appeared and submitted that the representation of the petitioner had been disposed of on the ground that the judgment in Subarna Dibya (supra) had been challenged before the Supreme Court of India in SLP(C)CC No.5993-6054/2005 (**State of Odisha vs.**

Subarna Dibya & 61 others) and that the Supreme Court had stayed operation of the same. The petitioner was thus asked to wait till disposal of the SLP. Ultimately, the SLP was dismissed by order dated 19.02.2015. Despite such dismissal of SLP, as the opposite parties did not grant her family pension, she was constrained to approach this Court in the present writ application.

3. The stand of the opposite parties is that the husband of the petitioner died much prior to coming into force of the 1981 Rules, whereas the said Rules are applicable only to the employees of Aided Educational Institutions under the Direct Payment Scheme receiving full grant-in-aid and retiring on or after 01.04.1982. The benefit of family pension was introduced for the first time vide Notification dated 05.12.1989 amending the 1981 Rules. The same was also applicable to persons who retired or died on or after 01.09.1988. The said Notification was however, quashed by this Court in the case of **Bhimsen Prusty and Others vs. State of Odisha and Others** reported in 1994 I OLR 439 : 78 (1984) CLT 357. As such,

there was no provision applicable under the 1981 Rules to grant family pension. By way of an amendment in the year 2001, Rule-8(2)(b) of the 1981 Rules was amended to make the family of a pensioner or the family of an employee, who died on or after 01.09.1988, entitled to family pension.

In Subarna Dibya (supra), this Court has defined the meaning of 'pensioner' which implies pensioner under the Odisha Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit Rules, 1986 (in short '1986 Rules') and also includes pensioners under the 1981 Rules, which was applicable to Primary School Teachers from 01.04.1982 till 01.04.1985, the date on which 1986 Rules came into force. The 1981 Rules therefore, ceased to apply to the persons specified in sub- Rule(1) w.e.f. 01.04.1985. The husband of the petitioner having died much earlier, i.e., in the year 1974 was not eligible as on the date of his death to receive pension and thus, cannot be treated as pensioner within the meaning of the Rules. Such being the factual position, his family members would also not be eligible to receive

family pension.

4. Heard Mr. L.K.Mohanty, learned counsel for the petitioner and Mr. N. Pratap, learned Additional Standing Counsel for the State.

5. Mr. Mohanty has heavily relied upon the observations made in Subarna Dibya (supra) in paragraphs 18 and 19 to buttress his argument that had the husband of the petitioner not died, he would have superannuated in April, 1986, which is after 01.04.1982. As such, he would have been eligible to receive pension as per 1981 Rules. In such view of the matter, the petitioner being his widow cannot be deprived of family pension more so, as the judgment in Subarna Dibya (supra) has been confirmed by the Apex Court in view of the judgment in SLP filed against it by the State.

6. Mr. N. Pratap, on the other hand, submits that since the fact of death of the deceased on 08.01.1974 is not disputed, the question is, was he eligible to receive pension as on that date. According to Mr. Pratap, the answer can

only be in the negative. Such being the fact, the petitioner cannot be held eligible to receive family pension.

7. This Court finds that the issue relating to grant of pension and family pension to the employees of recognized non-Government Educational Institutions and their family members was the subject matter in the case of Subarna Dibya (supra). After examining the relevant Rules and Notifications issued by the Government in this regard as also the earlier decisions of this Court and the Apex Court, the Court ultimately held that in view of the amendment of Rule-8(2)(b) in the 1981 Rules in the year 2001, the family of a pensioner and the family of an employee, who died on or after 01.09.1988, would be entitled to family pension. For immediate reference, the relevant paragraph of the judgment is quoted herein below:

“16. Heard the learned counsel for the parties patiently, noticed the submissions carefully, perused the materials meticulously and considered the matter diligently. It is well settled rule of interpretation that the Court while interpreting a rule should as far as possible avoid the construction which attributes irrationality and the Court must obviously prefer a construction which renders a statutory provision constitutionally valid, viable and operative rather than that which makes it void and inoperative. The amendment to the

1981 Rules introduced by the impugned Notification dated 18th October, 2001 substituting Rule 8(2)(b) clearly stipulates :-

"The family of a pensioner or the family of an employee who died on or after the 1st September, 1988 shall be entitled to get family pension as admissible to the family of his counterpart in the State Government Service."

(Emphasis supplied)

Thus, there are two categories of persons who are entitled or eligible to receive family pension. The first category is the family of a pensioner and the second category is the family of an employee, who died on or after 1st of September, 1988. Any person, who satisfies either of the above two criteria would be eligible to receive family pension. The word 'pensioner' used in the aforesaid Rule shall mean a primary school teacher of an aided educational institution who was receiving pension and shall also include one who was otherwise eligible to receive pension, but for some reason or other pension was not paid to him. In other words, 'pensioner' shall also bring within its ambit an employee who was entitled and/or in consonance with the Rules was eligible to be covered under the pension scheme. According to the 2001 Amended Rules, the family members of such employees shall be entitled to receive family pension. I, therefore, find no ambiguity in the aforesaid Amended Rules."

8. What is relevant to note from the aforesaid observation is that an extended meaning was given to the word 'pensioner' to include in its ambit an employee who was entitled and/or in consonance with the rules was eligible to be covered in the pension scheme. In the instant case there is no dispute that the husband of the petitioner

was not a pensioner as on the date of his death and he died much before, i.e. on 01.09.1988. However, the question is, would he have been eligible to receive pension had he lived. As already stated, the husband of the petitioner joined in service on 01.08.1948. His date of birth is said to be 10.08.1926. As such, had he lived, he would have retired in August 1984, which is after 01.04.1982.

9. In Subarna Dibya (supra) this Court also considered the case of the family members of an employee, who died in harness and observed as follows:

“18. The only other question, which needs to be answered, is as to whether the family members of an employee who died in harness would be eligible to receive family pension or not. In such eventuality, the decision will differ from case to case. It is needless to say that in consonance with the Orissa Pension Rules and other provisions the family of an employee who dies in harness would be entitled to pension or proportionate pension as would be admissible taking into consideration the number of years of service rendered by him and other eventualities. Rule 8 of the 1986 Rules stipulates that an employee shall be eligible for pension, gratuity or death-cum-retirement gratuity as the case may be in certain eventualities; one of the same being retirement before superannuation on medical ground or permanent incapacity for further service. If an employee is entitled to pension having retired prematurely on being permanently incapacitated, there can be no reason to extend the benefit of family pension to an employee who

dies in harness. In such cases, the authorities shall first decide as to whether the employee was eligible to receive proportionate pension in consonance with the Rules and if it is found that, in fact, the employee was entitled to receive pension, take a decision with regard to extending the benefit of family pension to the family of such employee, who was otherwise eligible to receive pension if he would have superannuated in usual course, but unfortunately died in harness in the light of Rule 4(3) of the 1986 Rules.”

10. This Court has already held that had the petitioner not died in harness, he would have superannuated ordinarily in August 1984. By such time the benefit of family pension granted as per the 1981 Rules w.e.f. 01.04.1982 had already come into force. As such, he would have been eligible to receive pension. As a natural corollary thereof, the petitioner would be entitled to family pension as per the Rules.

11. For the foregoing reasons therefore, this Court holds that the petitioner has made out a good case for grant of the relief claimed.

12. Resultantly, the writ petition is allowed. The opposite party authorities are directed to pass necessary orders extending the benefit of family pension to the

petitioner in accordance with the Rules, if there is no other legal impediment. Having regard to the fact the petitioner is an old lady, aged about 80 years necessary orders shall be passed as directed within a period of four weeks.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 26th April, 2023/ A.K. Rana, P.A.

