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**(2018) 04 OHC CK 0036**  
**In the Orissa High Court**  
**Case No : W.P.(C) NO. 690 OF 2003**

ANUPAMA BEHERA

APPELLANT

Vs

GRIDCO REPRESENTED BY ITS CHAIRMAN AND OTHERS

RESPONDENT

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**Date of Decision :** 06-04-2018

**Acts Referred:**

Orissa Civil Services (Pension) Rules, 1992 — Rule 65, 76

**Citation :** (2018) 04 OHC CK 0036

**Hon'ble Judges :** B.R. SARANGI

**Bench :** Single Bench

**Advocate :** M.K. Mohanty, B.P. Routray, S. Samal, M.K. Padhy, B. K. Patnaik, P.K. Sahoo, P. Sinha, R.K. Nayak

**Final Decision :** Allowed

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## Judgement

DR. B.R. SARANGI, J.

1. The petitioner, being widow of the deceased employee Khagendra Behera, has filed this application to quash the communication dated 15.04.2000

in Annexure-6 issued by Asst. Manager (Personnel), HiraKud Industrial Works Limited, Bhubaneswar, by which an amount of Rs.2,17,288.52 has

been directed to be recovered from the final dues of her deceased husband and paid to HiraKud Industrial Works Limited, Bhubaneswar. She further

seeks direction to opposite party no.1 to release the gratuity amount of her husband and regularize the family pension with all consequential benefits as

due to her.

2. The factual matrix of the case is that the husband of the petitioner late Khagendra Behera was working as Asst. Engineer under Grid Corporation

of Orissa (hereinafter referred to as "GRIDCO")-opposite party no.1. In the year 1996, he was deputed to the Project Wing of HiraKud Industrial

Works Limited-opposite party no.3, which is a subsidiary unit of Industrial Development Corporation Limited-opposite party no.2. While he was discharging his duty, he became ill and made representation to go back to his parent organization. On consideration of the same, opposite party no.1, vide orders dated 06.07.1998 and 17.07.1998, directed him to hand over the charges with up-to-date site account to Sri P.K. Pal, Assistant Executive Engineer, Hirakud Industrial Works Limited, Paradeep within seven days from the date of order, and he was further directed to join in his new assignment under opposite party no.1, vide order dated 27.07.1998. In compliance of the same, the petitioner handed over all the charges of the Project Wing of Hirakud Industrial Works Limited with up-to-date site account to Sri P.K. Pal and he was relieved, vide order dated 01.09.1998, with effect from the said date to enable him to join in his new assignment. Consequentially, he joined in his parent organization, i.e., GRIDCO in the office of the Chief Engineer, EHT(M), Bhubaneswar.

2.1 To the misfortune of the petitioner, while her husband was discharging his duty, he died on 09.01.1999. After the death of her husband, she applied for family pension and on scrutiny of the same, the Deputy Manager(HR), GRIDCO stated that there was nothing outstanding against late husband of the petitioner so far as GRIDCO is concerned and the Non-drawal Certificate of the Government would be issued after receipt of the same from the Department of Energy, which was sought for vide letter dated 28.01.2000. During life time of the husband of the petitioner, nothing was communicated to him by Hirakud Industrial Works Limited regarding any outstanding amount, but all on a sudden on 15.04.2000 vide Annexure-6, opposite party no.3 communicated to opposite party no.1 stating that an amount of Rs.2,17,288.52 was lying outstanding towards the cost of materials issued to her late husband, which may be recovered from his final dues and paid to Hirakud Industrial Works Limited. As a result, on consideration of the family pension papers of the husband of the petitioner, which were submitted to the Assistant Engineer, HR(Pension), GRIDCO for finalization, the Deputy Manager (HRD), vide letter dated 22.11.2002, intimated that the petitioner would only be allowed to draw the provisional family pension, pending regularization of the case and receipt of the final NDC (No Dues Certificate) in accordance with Rules-65 and 76 of the Orissa Civil Services

(Pension) Rules, 1992. Consequentially, while withholding gratuity dues, provisional family pension was released pending finalization of the amount

claimed by opposite party no.3, hence this application.

3. Mr. M.K. Mohanty, learned counsel for the petitioner strenuously contended that on the basis of the representation submitted by the husband of the

petitioner, he was allowed to join under GRIDCO-opposite party no.1 by handing over all the charges. While handing over the charges, at no point of

time, it was pointed out that he is liable to pay the amount outstanding, as claimed subsequent to his death. More so, there is no determination of

amount due by following prescribed procedure, which is claimed by opposite party no.3 to be deducted by opposite party no.1 from the dues of the

deceased employee. It is contended that the claim so made, without determination of the amount due, cannot sustain in the eye of law. Therefore,

since the amount so claimed by opposite party no.3 cannot be recovered from the final dues of the husband of the petitioner, the amount so withheld

be paid and family pension of the petitioner be regularized. To substantiate his contentions, learned counsel for the petitioner has relied upon the case

of State of Jharkhand v. Uma Prasad, (2009) 16 SCC 767.

4. Mr. B.K. Pattnaik, learned counsel appearing for opposite party no.1 has admitted that the husband of the petitioner was an employee of GRIDCO-

opposite party no.1 in the rank of Asst. Engineer(Electrical) and his services were placed under opposite party no.3 on deputation for the period from

03.01.1996 to 07.09.1998 and thereafter he was reverted back, pursuant to notification dated 06.07.1998 issued by opposite party no.1, on

consideration of his representation, and after reverting back, while he was continuing under the GRIDCO, he died on 09.01.1999. But, however, he

contended that opposite party no.3, after death of the husband of the petitioner, vide letter dated 15.04.2000 in Annexure-6, intimated that an amount

of Rs.2,17,288.52 was outstanding towards the cost of materials issued to him and requested to recover the said amount from his final dues and pay to

opposite party no.3. Pending settlement of the said amount, the petitioner has been sanctioned provisional family pension, save and except stating that

an amount of Rs.2,17,288.52, which was outstanding towards cost of materials issued to her husband, has been claimed by opposite party no.3 from

opposite party no.1 to be recovered from the dues of the petitioner. It is

contended that the retiral benefits, such as death-cum-retiral gratuity and family pension, are being regulated under the Orissa Civil Services (Pension) Rules, 1992, which empowers the employer to withhold and recover the amount outstanding against an employee from his death cum retiral gratuity and pension.

5. Though M/s P. Sinha, P.K. Sahoo and R.K. Nayak, advocates have entered appearance for opposite party no.3, none was present at the time of

call. They have filed counter affidavit on 25.08.2004, which is on record. Since it is an old case of the year 2003 and, in the meantime, more than 14

years have elapsed, without awaiting for the counsel appearing for opposite party no.3, this Court, taking into consideration the counter affidavit filed

by opposite party no.3, proceeded with the matter. In the said counter affidavit, opposite party no.3 has stated that the petitioner's husband, while

working in the Project Wing of opposite party no.3, had taken various materials for execution of project works, but he handed over the site account up

to July, 1998 and had not handed over the charge for the subsequent period and submitted the utilization certificate of the materials received by him.

As it was found that an amount of Rs.2,17,288.52, towards the cost of materials, was to be recovered from the husband of the petitioner, opposite

party no.3 intimated to opposite party no.1 to recover the said amount and transmit the same to opposite party no.3 forthwith. As such, the demand

made by opposite party no.3 is well within its competence and the husband of the petitioner is liable to pay the said amount.

6. In the rejoinder affidavit filed by the petitioner, it has been specifically mentioned that when the husband of the petitioner handed over the charge, at

no point of time either any objection was raised or it was stated that the amount claimed is to be recovered from him. Needless to say that after the

death of the husband of the petitioner on 09.01.1999, for the first time, a communication was made on 15.04.2000 to opposite party no.1 by opposite

party no.3 claiming the amount of Rs.2,17,288.52 from the husband of the petitioner.

7. This Court heard learned counsel for the parties and perused the records. Pleadings having been exchanged between the parties, with the consent

of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

8. The facts delineated above are undisputed. Husband of the petitioner was an employee of GRIDCO-opposite party no.1 in the rank of Assistant

Engineer(Electrical) and his services were placed under opposite party no.3 for the period from 03.01.1996 to 07.09.1998. Thereafter, he was

reverted back to opposite party no.1, pursuant to notification dated 06.07.1998 issued by opposite party no.1, on consideration of his representation. As

the husband of the petitioner was suffering from liver cancer, he died on 09.01.1999. After his death, a demand of Rs.2,17,288.52 has been raised by

opposite party no.3, vide letter dated 15.04.2000 addressed to opposite party no.1, to be recovered from final dues of the husband of the petitioner.

Even though the petitioner has already been paid provisional pension, gratuity has not been released and final family pension has not been regularized,

thereby it has caused penury to the petitioner. But fact remains, neither opposite party no.1, nor opposite party no.3, has produced any material before

this Court in support of determination of amount of Rs.2,17,288.52 which is stated to be recoverable from the deceased husband of the petitioner. To

be more specific, no such determination has been made by any authority by following due procedure of law and no whisper has been made in the

counter affidavits filed by the respective opposite parties nos.1 and 3, with regard to initiation of proceeding or any other mode of determination of the

amount sought to be recovered from the outstanding dues of the petitioner.

9. As a matter of course, any recovery to be made from any employee has to be in accordance with law and by following due procedure. Even

otherwise, there is no pleading available in the record itself indicating that the amount so claimed was ever admitted by the husband of the petitioner

towards shortage of any material or any proceeding was initiated against him for such outstanding dues. Eventually, when the husband of the petitioner

was reverted back on 06.07.1998 to GRIDCO and was continuing there, he suffered from liver cancer and died on 09.01.1999. After his death, for

the first time, on 15.04.2000 vide Annexure-6, opposite party no.3 communicated to opposite party no.1 claiming the amount of Rs.2,17,288.52 to be

recovered from the final dues of the husband of the petitioner. But nothing has been indicated therein as to how the amount is payable to opposite

party no.3. In para-5 of the said communication, it has been indicated as follows:

â??5. Other outstanding Dues An amount of Rs.2,17,288.52

(Rupees two lakhs seventeen thousand two hundred eight and paise fifty two) only is lying outstanding towards the cost of materials issued to Late

Behera which may be recovered from his final dues and paid to Hirakud Industrial Works Limited, Bhubaneswar. Copy of the details of material

account is enclosed. From the extracted paragraph it would only be evident that an amount of Rs.2,17,288.52 is lying outstanding towards the cost

of materials issued to the deceased husband of the petitioner, which may be recovered from his final dues. As such, no determination or adjudication

has been made by the authority for claiming such amount and such amount has never been ascertained by giving opportunity of hearing to the husband

of the petitioner. No such material has been produced before this Court to indicate wherefrom the amount of Rs.2,17,288.52 was arrived at, save and

except towards the cost of materials issued in favour of the husband of the petitioner. Needless to say, to substantiate the said contention, which has

been raised in the letter itself, no material has been produced before this Court to satisfy that the material costing Rs.2,17,288.52/- are to be recovered

and, as such, neither opposite party no.1, nor opposite party no.3 has taken any decision with regard to determination of liability against the husband of

the petitioner. But all on a sudden, by only allowing provisional family pension to the petitioner, the opposite party no.1 has withheld gratuity for a quite

long period, i.e., from the death of the husband of the petitioner till date. Unless the amount due is determined by following due procedure, the same

cannot be recovered at the whims and caprice of the authority concerned.

10. In Ahmedabad Pvt. P.T. Association v. Administrative Officer, AIR 2004 SC 1426 the apex Court held as follows:

“The expression ‘gratuity’ itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. It is an

amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without

recompense. It is sort of financial assistance to tide over postretiral hardships and inconveniences.”

11. In Delhi Transport Corporation Retired Employees Association v. Delhi Transport Corporation, AIR 2001 SC 1997, the apex Court held that

“Gratuity is a reward for good, efficient and faithful service rendered for a considerable period.

12. Similarly in *Indian Hume Pipe Co. Ltd. v. Workmen*, AIR 1960 SC 251, the apex Court held that "Gratuity" is a kind of retirement benefit like

the provident fund or pension gratuity paid to workmen is intended to help them after retirement whether the retirement is the result of the rules of

superannuation or of physical disability. Essentially "Gratuity" is a bounty or a gift to an officer on retirement. In view of the above settled position

of law, it can safely be construed that in the instant case by withholding gratuity amount great prejudice has been caused to the petitioner, who is in

harness due to premature death of her husband while in employment.

13. In *Uma Prasad* mentioned supra, the apex Court, taking note of the fact that no charge-sheet was submitted against deceased Birendra Prasad,

who was suspended but it was revoked after 2 years and he died 4 years later while in employment, held that there could be no recovery of any

amount from retiral benefits of the deceased employee.

14. As already stated, in the instant case, the husband of the petitioner was an employee under opposite party no.1. He was deputed to work under

opposite party no.3 for the period from 03.01.1996 to 07.09.1998, and thereafter reverted back to opposite party no.1, pursuant to notification dated

06.07.1998 issued by opposite party no.1, on consideration of his representation, and thereafter died on 09.01.1999. Neither he faced any proceeding

nor any amount was determined during his tenure and, above all, no charge-sheet has been submitted claiming recovery of any such amount sought to

be recovered now. Therefore, applying the principle decided in *Uma Prasad* (supra), there could be no recovery of any amount from the final dues of

deceased husband of the petitioner.

15. In the above view of the matter, the communication dated 15.04.2000 seeking recovery of Rs.2,17,288.52 out of the final dues of the husband of

the petitioner and to pay the same to opposite party no.3 is absolutely unwarranted and uncalled for. Therefore, the same is liable to be quashed.

Accordingly, the communication dated 15.04.2000 in Annexure-6 is hereby quashed. Consequentially, this Court directs opposite party no.1 to release

gratuity amount and finalise family pension and pay the same to the petitioner as expeditiously as possible, preferably within a period of three months

from the date of communication of this judgment.

16. The writ petition is accordingly allowed. No order as to costs.