
(2005) 07 OHC CK 0033
In the Orissa High Court
Case No : CONTC 394 of 2003

Ashalata Senapati

APPELLANT

Vs

Shri Sahadeb Sahoo and Another

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2005) 100 CLT 213 : (2005) 107 FLR 402

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : M.M. Basu and D. Dey, for the Appellant; P. Acharya and S.R. Pati, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—The present petitioner, who was the petitioner in O.J.C. 5233 of 1994, has filed this application for punishment u/s 12 of Contempt of Courts Act for willful disobedience of the order/ judgment dated 30.10.2002 passed in the said case.

2. Husband of the petitioner, who was the retired Chief Librarian of the Orissa University of Agriculture and Technology, Bhubaneswar initially filed O.J.C. No. 5233 of 1994 for a direction to his employer to grant him the revised scale of pay with effect from 1.1.1974 to 31.12.1980, as admissible to the post of Chief Librarian with all consequential retiral benefits.

3. During the pendency of the Writ Petition, he passed away and the petitioner was substituted. That Writ Petition was disposed of on 30.10.2002 and this Court held that the petitioner was entitled to get scale of pay Rs. 1000-1530/- from 1.1.1974 till 31.12.1980. The contesting opposite parties were directed to work out the differential amount payable, refix his last pay drawn and grant him consequential retiral benefits including family pension. It was further directed that the payment may be made to the widow within three months from the date

of receipt of the order.

4. In the present proceeding by order dated 18.12.2003 notice was issued only to opposite party No. 2-Registrar, O.U.A.T., Bhubaneswar, to show cause as to why contempt proceeding will not be initiated against him for violation of Court's order. Opposite party No. 2 pursuant to the above direction of this Court filed his show cause on 27.8.2004 inter alia stating therein that the University has fixed the scale of pay of the original Writ Petitioner in the scale of pay of Rs. 1000-1530/- with effect from 1.1.1974. Accordingly, the differential arrears salary in the revised scale of pay from 1.1.1974 till 31.3.1985 amounting to Rs. 37,221/-, differential leave salary of Rs. 540/- and the arrears towards reappointment period amounting to Rs. 778/- totaling an amount of Rs. 38,539/- was disbursed to the petitioner vide Cheque No. 144 dated 21.6.2003. It was also stated therein that the late husband of the petitioner has received an amount of Rs. 17,910/- towards gratuity on C.P.F. scheme of the O.U.A.T. after he retired from service with effect from 31.3.1985. Besides that, on the basis of revised scale of pay, her husband was to get Rs. 19,020/- towards gratuity and the differential gratuity amounting to Rs. 1110/-, which has been sanctioned and paid to the petitioner on 9.9.2003. Accordingly all the financial benefits as due and admissible have been paid to the petitioner except the family pension to which she is not entitled to get from the University, rather the petitioner has been receiving family pension from the Director, Agriculture and Food Production, Orissa, Bhubaneswar as would be evident from the order communicated to the petitioner's husband vide Memo No. 1340 dated 1.5.1993 as well as from the Pension Payment Order. Husband of the petitioner retired from his service with effect from 31.3.1985. The Pension Scheme of the O.U.A.T. Employees and Conditions of Service Statutes, 1989 became effective with effect from 1.4.1985. That Statute 35 of 1989 of O.U.A.T. provides that every employee who has retired on or after the first day of April, 1985 shall have the right to exercise his option to come over to the pension scheme within a period of six months from the date of these statutes came into force subject to certain conditions as mentioned in the Statute 36 of 1989. Late husband of the petitioner neither comes within any of the provisions contained in Statute 35 nor Statute 36 of 1989 so as to get pensionary benefits from the University in view of the fact that her husband retired from service with effect from 31.3.1985 and the pension scheme of the O.U.A.T. came into force with effect from 1.4.1985. Husband of the petitioner was drawing pension from the State Government till his death. Accordingly, the present petitioner has been receiving the family pension from the State Government. Husband of the petitioner while joined in O.U.A.T. opted for C.P.F. as it was prevalent then and he has received all the benefits of C.P.F. on his retirement and after his death as per the order of this Court the balance of the revised C.P.F. amount has already, been paid to the present petitioner as stated above. Opposite party No. 2 deeply regretted for the delay caused in implementing the Court's order and has stated that his delay for compliance of the order was neither intentional nor deliberate; rather because of the official

process it took some more time to comply the same. Opposite party No. 2 has also tendered his unconditional apology for his unintentional delay caused for implementing the Court's order and prayed to drop the Contempt proceeding.

5. The petitioner has not filed any rejoinder rebutting the statement made by opposite party No. 2 in his show cause.

6. Keeping in view of the fact that originally the husband of the petitioner in O.J.C. No. 5233 of 1994 has prayed for a direction to the erstwhile employer to allow him revised scale of pay with effect from 1.1.1974 with all retrospective/consequential benefits besides the retiral benefits as were applicable to him and prayed for the revised pension, but while disposing of the Writ Petition, this Court keeping in view of the fact that the original petitioner has died in the meantime, directed the opposite parties to work out the differential amount payable to the petitioner in the scale of pay of Rs. 1000-1530/- from 1.1.1974 till 31.12.1980, refix his last pay drawn and grant him consequential retiral benefits including family pension. As it appears while disposing of the Writ Petition, it was not brought to the notice of this Court that the petitioner is not entitled for the pension/family pension from O.U.A.T. since her husband has availed C.P.F. benefits for the period he worked under O.U.A.T. as well as he was getting pension from the State Government where he was working earlier and accordingly the substituted petitioner was also getting family pension from the State Government as per her entitlement.

7. Considering the submissions made by the Learned Counsel for both the parties and after going through the show cause filed by opposite party No. 2, we are of the view that the order of this Court has been complied with substantially and part of the order regarding payment of family pension even though not complied with by opposite party No. 2 cannot be treated as willful disobedience of the order of this Court, keeping in view of the fact that the petitioner is getting family pension from the State Government as per her entitlement, her husband was availing C.P.F. benefit from the O.U.A.T. on exercising his own option and as such he was not entitled for pension from O.U.A.T., accordingly the petitioner is also not entitled to get family pension from O.U.A.T. as because in our considered view once an employee opted for certain service benefit and availed the same during his lifetime, such service benefit cannot be altered or changed to any other form of benefit after the death of the concerned employee at the request of his wife or otherwise.

8. In view of the above, the present petition merits no consideration and is accordingly rejected. However, in case the petitioner has got any further grievance in the matter, she is at liberty to approach the appropriate authority for redressal of her grievance in accordance with law.

P.K. Tripathy, J.

9. I agree.