

(2007) 01 OHC CK 0055
In the Orissa High Court

Capt. Pramod Chandra Mishra

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Citation : (2007) 113 FLR 834 : (2007) 1 OLR 295

Hon'ble Judges : N. Prusty, J;A.K. Ganguly, J

Bench : Division Bench

Judgement

A.K. Ganguly and N. Prusty, JJ.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner challenging the order dated 15.5.2006 passed by the State Administrative Tribunal for review of its earlier order dated 5.10.2005.

3. From the order which has been passed by the Tribunal it appears that the petitioner was an Ex-Service man who was appointed under the State Government on retirement from active duty. The petitioner is aggrieved by non-finalisation of his pension and non-release of gratuity for the reason that there is a case of defalcation of Rs. 5,100/- initiated against him by the Vigilance Department. The proceeding initiated by the Vigilance Department is under investigation and the said investigation has not yet been completed.

4. Under these circumstances, the petitioner requested opposite party No. 1 represented through its Principal Secretary to Government of Orissa, Home Department, Bhubaneswar on 21.2.2005 to grant his normal pension and release the gratuity after deducting an amount of Rs. 5,100/-. It appears that on such representation being made, the matter was referred to the Director-cum-Addl. Director General of Police (Vigilance), Orissa who has replied to the same vide Annexure-3. The Director-cum-Addl. Director General of Police (Vigilance), Orissa gave a reply to the Principal Secretary to Government of Orissa, Home Department, Bhubaneswar to the effect that he has no objection to such prayer being, allowed. On those-circumstances the petitioner made further

representation to the Principal Secretary to finalize his pension claim and disburse the gratuity after deducting Rs, 5,100/-. The Tribunal after taking note of the aforesaid facts in its judgment dated 5.10.2005 made it clear that this is a reasonable proposal and directed the respondent to finalize the pension of the petitioner and release the gratuity after keeping Rs. 5,100/- until finalisation of the vigilance case of the petitioner. Before the said order could be worked out, the State filed a review petition before the Tribunal seeking review or modification of the orders of the Tribunal passed on 5.10.2005 under Rule 66 of the Orissa (Civil Services) Pension Rules, 1992 and the State took a stand that when a judicial proceeding is pending the respondent was not be able to finalize pension claim of the applicant. The Tribunal after perusing the materials in the review petition held, "we find no basis to review our orders as there is no ambiguity or prima facie error on the face of the facts". Saying this, the Tribunal disposed of the review petition,

5. The State Government however on the basis of the said observations in the review petition did not carry out the previous order of the Tribunal dated 5.10.2005.

6. We have heard learned Counsel for the parties. We are of the opinion that for the ends of justice and in the peculiar facts and circumstances of the case, there is no justification for withholding the pension claim of the petitioner as also the gratuity after the amount of Rs. 5,100/- is deducted. Learned Counsel for the petitioner has also placed reliance on Rule 7(1) and (2) of Orissa Pension Rules, 1992. According to said Rule, the Government reserves to themselves the right of withholding a pension or gratuity, or both, either in full or in part when the proceeding is pending against the petitioner.

7. Without saying anything on the merits of the said proceeding which is pending against the petitioner for quite some time, we find that the purpose of the said Rule will be achieved if the amount of Rs. 5,100/- is withheld from the petitioner's gratuity and rest of the gratuity is released. We are passing this order since admittedly the proceeding is pending against the petitioner for the alleged defalcation of Rs. 5,100/-. We are clearly of the opinion that for the alleged defalcation of that amount the entire pension and gratuity amount cannot be withheld. If we allow the State to do so, in that case we will be permitting them to act in an unjust and unreasonable manner. We therefore affirm the order passed by the Tribunal dated 5.10.2005 and we make it clear that no observation made in the subsequent order dated 15.5.2006 on the review petition should be given effect to.. We, therefore, direct the respondents to calculate the petitioner's pension on the basis of the last pay drawn and the pension of the petitioner should be made available to him within a period of two months from today. Since there has been delay on the part of the Government, we direct the respondents to release the gratuity amount after deducting Rs. 5,100/- along with interest at the rate of 10% from the date of withholding the same till the amount is actually paid. We further make it clear that instead of provisional

pension regular pension should be paid to the petitioner within two months as mentioned hereinabove.

8. The writ petition along with Misc. Case Nos. 12319 & 12320 of 2006 and 322 of 2007 are disposed of.