(2025) 03 OHC CK 1365

In the Orissa High Court

Case No : Writ Petition (C) No. 18596 Of 2024

Hrudananda Mall & Anr APPELLANT

Vs

State Of Odisha And Ors Vs RESPONDENT

Date of Decision : 07-03-2025

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2025) 03 OHC CK 1365

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : Akshyangshu Sekhar Nandy, Sasmita Nayak

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J

1. The present Writ Petition has been filed by the Petitioners with a limited prayer for a direction to the Opposite Parties to pay interest at the rate of 18% per annum for the delayed period of payment of family pension as well as gratuity as the authorities have admittedly paid the same after a lapse of five and half years from the date of death of the Government employee till receipt of the family pension and gratuity amount on 10.05.2022 in terms of the provisions contained under OCS (Pension) Rules, 1992. He also prayed for quashing of the order dated 30.12.2023 passed by the Opposite Party No.1 under Annexure-13 to the Writ Petition.

2. The factual background leading to filing of the present Writ Petition is as follows:

The wife of the present Petitioner No.1 late Dr.Bijaya Bhanja, while working as Doctor under the Government of Odisha engaged in ESI Hospital, died on 22.01.2017. Initially she joined as Insurance Medical Officer on 16.04.1981 and she was supposed to retire on 28.02.2017. After the death of the wife of Petitioner No.1 the Petitioner No.1 submitted a representation before the authority on 12.05.2017 with a request to sanction commuted leave and other pensionary benefits. Thereafter, again on 06.06.2017 he submitted another representation before the authority claiming provisional gratuity, provisional family pension, unutilised leave salary and other terminal dues as is due and admissible to the late wife of petitioner No.1. The pleadings further reveals that the authorities sanctioned the provisional pension on 06.11.2017. Thereafter, on 26.11.2019 unutilised leave salary was sanction and released.

4. Since the entire service dues and financial benefits were not paid to the petitioner No.1 which the wife of Petitioner No.1 is entitled to, the Petitioner again filed another representation on 12.07.2020 claiming therein family pension and gratuity. Since no action was taken, the Petitioners submitted several reminders to the authorities. Finally on 24.02.2022, the Opposite Parties sanctioned family pension and gratuity and pension papers were sent to the District Treasury Officer, Cuttack. On 10.05.2022 the gratuity and family pension amount was received by Petitioner No.1 after a lapse of five and half years. Since there was admittedly a delay of five and half years, the Petitioner No.1 ventilated his grievance before the Opposite Parties for payment of interest for the delayed period. Since no action was taken, the Petitioners were compelled to approach this Court by filing a Writ Petition bearing W.P.(C) No. 26265 of 2023.

5. This Court disposed of the said writ Petition vide order dated 04.09.2023 thereby quashing the order dated 19.04.2023 under Annexure-12 to the previous Writ Petition with a further direction to Opposite Party No.1 to reconsider the claim of the Petitioners keeping in view the circular of the State Government as well as the judgment referred to by this Court in the order passed in previous Writ Petition. While disposing of the previous Writ Petition, this Court has categorically held that this Court is prima facie satisfied that there is a delay of five and half years, in payment of the dues as is due and admissible to late wife of the Petitioner No.1. This Court further directed the Opposite Parties to consider the claim of the Petitioners keeping in view the law laid down by this Court in OJC No.6886 of 1999 as well as the judgment of the Hon’ble Supreme Court in the case of D.D.Tewari (dead) through Legal Representatives vs. Uttar Haryana Bijli Vitran Nigam Limited & Ors. reported in (2014) 8 SCC 894.

6. After disposal of the aforesaid Writ Petition, the Petitioner again approached the Opposite Party No.1 along with a copy of the order dated 04.09.2023. The representation of the Petitioner so filed pursuant to order dated 04.09.2023 has been rejected vide order dated 30.12.2023 under Annexure-13 to the Writ Petition. Being aggrieved by such rejection of his prayer for grant of interest for the delayed period of payment of the retiral dues, the Petitioner once again approached this Court for a direction to Opposite Party No.1 to pay interest for the delayed payment of dues in terms of the Government circular as well as the OCS (Pension) Rules and the judgment of this Court as well as Hon’ble Supreme Court.

7. Learned counsel appearing for the State on the other hand, referring to the

Counter Affidavit filed by the Opposite Party no.1, contended that after disposal of the previous Writ Petition vide order dated 04.09.2023, the Opposite Party no.1 has duly considered the case of the Petitioner and by order dated 30.12.2023 under Annexure-13 the representation of the Petitioner has been considered and disposed of. He further contended that it has been categorically held that since no laches were found on the part of the administrative authority and that the delay was neither deliberate nor intentional, therefore the State is not liable to pay interest as has been claimed by the Petitioner. In such view of the matter, learned counsel for the State submitted that no fault can be found with the conduct of Opposite Party no.1 in rejecting the claim of the Petitioner for grant of interest in respect of delayed period of payment as has been claimed by the Petitioner.

8. She further submitted that in the Counter Affidavit, the Opposite Parties have explained as to how the matter was handled by the administrative authority, therefore the blame cannot entirely be put on the Opposite Parties for the delay if any in disbursing the dues as is payable to the Petitioner. In such view of the matter, learned counsel for the State submitted that the Opposite Parties have not committed any illegality in refusing to pay interest to the Petitioner. Since the Petitioner has failed to establish that the delay in making payment is attributable to the State-Opposite Parties, no such direction could be issued for payment of interest amount as claimed in the Writ Petition. As such the Writ Petition is devoid of merit and accordingly the same should be dismissed.

9. Heard learned counsel for the Petitioners as well as learned Additional Standing Counsel. Perused the pleadings of the respective parties as well as the documents and materials on record.

10. On a careful examination of the impugned rejection order dated 30.12.2023 under Annexure-13, this Court observes that the claim of the Petitioner was adjudicated by the Opposite Party No.1 pursuant to the order dated 04.09.2023 passed in W.P.(C) No.26265 of 2023 by this Court. The Petitioner No.1 has received the financial benefits after a delay of five and half years. The rejection order under Annexure-13 reveals that the claim of the Petitioner has been denied on the ground that the delay in making payment cannot be attributed solely to the Opposite Parties. Therefore, the question which falls for determination in the present Writ Petition is as to whether the Opposite Parties are liable to pay interest to the Petitioner on the delayed payment of the financial benefit as is due and admissible to the Petitioner No.1.

11. Before adjudicating the aforesaid question, this Court is required to decide the issue as to whether there was any delay in sanctioning and disbursing the financial benefit as is due and admissible to Petitioner No.1. In the aforesaid context, this Court would like to refer to Rule-74(a)(v). The said Rule provides for determination of the amount of family pension under the said Rules shall be done within one month of the receipt of intimation of the death of the Government servant. Further Rule 76(1) of OCS(Pension) Rules, 1992 provides

for sanction, drawal and disbursement of provisional family pension and gratuity. The language employed in the said Rule reveals that the legislatures were aware of the urgency of the matter and for early payment of the dues to the family members of the deceased Government employee.

12. Similarly, Rule 49(5)(a) provides that where the sanction of payment of gratuity is delayed for more than a year from the date from which it is due under Sub-Rule(1) or (2), as the case may be, and such delay is attributable to administrative lapses, interest at the rate of 7% per annum for the period beyond one year shall be payable on the amount of gratuity. On a careful analysis of the provisions contained in OCS(Pension) Rules, 1992, this Court observes that the same has not been adhered to by the Opposite parties while processing the claim of the present Petitioner. With regard to the delay in processing the claim, which the Opposite Parties have shifted on to the Petitioner, this Court further examined the provisions contained in Rule 62 of the OCS (Pension) Rule, 1992. On perusal of the said Rule, it appears that neither the Government employee, nor the Petitioner has any role in the processing of the pension papers. On the contrary, the provisions contained in Rule 62(2)(i) provides that it shall be the sole responsibility of the Pension sanctioning authority to forward the pension papers to the Accountant General in time in the prescribed manner failing which such sanctioning authority shall be liable for disciplinary action.

13. Learned Additional Standing Counsel appearing for the State-Opp.Parties although took a stand that the Opposite Parties are not responsible for the delay in disbursal of the pensionary benefits to the Petitioner, however, the same has not been substantiated by referring to the records. Moreover, the impugned rejection order dated 30.12.2023 does not justify the delay of five and half years to the satisfaction of this Court. In the ultimate analysis, this Court is of the view that the delay in making payment is solely attributable to the authorities, who are involved in the process of sanctioning the benefit like family pension, gratuity etc. In such view of the matter, this Court has no hesitation in coming to a conclusion that the Opposite Parties are solely responsible for the delay in making payment to the Petitioner No.1.

14. In D.D.Tewari’s case (supra), the Hon’ble Supreme Court of India while deciding an identical issue of payment of interest on delayed payment retiral benefits has observed that pension and gratuity are not a bounty to be distributed by Government to its employees on their retirement, but are valuable rights and property in its hand, and any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest. Moreover, denial of such interest from the date of entitlement till date of payment has resulted in miscarriage of justice. This observation by the Hon’ble Supreme Court of India is reiteration of the observation made earlier in the case of State of Kerala vs. M.Padmanabhan Nair, reported in (1985) 1 SCC 429. This Court, at this stage, would like to add further that when the Government charges

interest to the citizen on any statutory dues paid belatedly, therefore, the Government must pay interest to its employees on delayed payment of dues payable by Government to such employees.

15. In such view of the matter, keeping in view the provisions contained in OCS(Pension) Rules, 1992 as well as the circulars of the Government, further relying upon the judgment of the Hon'ble Supreme Court in D.D.Tewari (dead) through Legal Representatives-v. Uttar Haryana Bijli Vitran Nigam Limited & Ors. reported in (2014) 8 SCC 894., this Court has no hesitation to quash the order dated 30.12.2023 under Annexure-13 to the Writ Petition. Accordingly, the same is hereby quashed. Since a duty is cast upon the Opposite Parties to pay the retiral dues as well as the pensionary benefit within a stipulated period of time and the Opposite Parties having failed to do so and further such failure not being supported by any justifiable reason, this Court has no reason not to direct the opposite Parties to pay interest to the Petitioner No.1 on the delayed payment of the dues as is due and admissible to the petitioner No.1 as per the circular under Annexure-12. Moreover, not giving interest for delayed payment made to the Petitioner No.1 would be highly unfair and unjust to him.

16. Accordingly, it is directed that the Opposite Party no.1 shall pay interest at the rate of 7% per annum on the delayed payment of gratuity dues to the Petitioner and interest at the rate of 9% on the delayed payment of pensionary benefit in terms of the Department's circular under Annexure-12 within a period of two months from the date of communication of a certified copy of this order by the Petitioner No.1. Failing which the Opposite Parties are liable to pay penal interest @ 18% on the total amount due from the date of expiry of two months from today and the same shall be recoverable from the person responsible for such delay, subject to following due procedure of law. However, there shall be no order as to costs.

16. With the aforesaid observation/direction the Writ Petition is disposed of.

……………………………………

