
(2006) 01 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 12811 of 2003

Prasana Kumar Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 17(A)(2)
Orissa Civil Services (Pension) Rules, 1992 — Rule 32

Citation : (2006) 1 OLR 156

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Himansu Sekhar Mishra, M. Agrawal, Standing Counsel Central, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner, a former Judge of this Court, has filed this writ application for a direction to the opposite parties to sanction death-civm-retirement gratuity of Rs. 3,50,000/-instead of Rs. 2,50,000/- and pay differential amount of Rupees one lakh and also for extension of medical facilities to him and his family members.

2. The petitioner joined in Judicial Service (Class-II) and served in different capacities from August, 1968 to March, 1981- He was promoted to the post of Subordinate Judge (OJS Class-I) and served as such in different capacities from March, 1981 to November, 1985. He was then promoted to the post of Chief Judicial Magistrate (Orissa Superior Judicial Service, Junior Branch) on 4.11.1985 and served as such till March, 1987. Thereafter, he was promoted to the post of District Judge (Orissa Superior Judicial Service, Senior Branch) and served in different capacities from March, 1987 to June, 1999. The petitioner was elevated to the Bench as Additional Judge of this Court and took oath as such on 17.6.1999. Thereafter the petitioner was appointed as Judge of this Court in June, 2000 and took oath as a Judge of this Court on 7.7.2000. After serving for

about two years and eight months the petitioner retired as Judge of this Court on superannuation on 21.2.2002. As is evident from the above, the petitioner had rendered qualifying service in the Orissa State Judicial service for about 28 years and was granted service benefits for a period of one year and six months by the Government of Orissa in relaxation of Rule 32 of the Orissa Civil Services (Pension) Rules, 1992 vide memo dated 17.7.2000. The petitioner having served as a Judge of this Court for about two years and eight months he had total qualifying service of 33 years to his credit and as such was entitled to full pension. Grievance of the petitioner is that his service conditions as a Judge of this Court are covered under High Court Judges (Salaries and Conditions of Service) Act, 1954 and Part-III of the First Schedule of the said Act is applicable to the petitioner being a Judge elevated from Judicial service. Case of the petitioner is that the Government of India in the Ministry of Personnel, Public Grievance and Pension revised the Retirement Gratuity/Death Gratuity provisions in respect of Central Government Employees, fixing the maximum limit of Rs. 3.5 lakhs by raising the same from Rs. 2.5 lakhs in October, 1997. A copy of this office memorandum to the above effect is annexed to this writ application as Annexure-1. The said Department also vide letter dated 18.2.1998 issued instructions for grant of revised pension and computation of death-cum-retirement gratuity of Part-III and Part-1 Judges with effect from 1.1.1996. However, in para-3 of the said letter (Annexure-2) it was mentioned that if the concerned State Government has not adopted the provisions as contained in the Office Memo vide Annexure-1 or have not issued any independent orders for revising the pensionary benefits to the employees of the State including the members of the State Higher Judicial service then the pensionary benefits to the Judges belonging to Part-III of that State will not be revised. Further case of the petitioner is that in the case of M.L. Jain and Another Vs. Union of India and Others, the Apex Court directed the State Government to adopt the revised pension allowed to the Central Government Pensioners in respect of its employees including the members of the State Higher Judicial Service so that revised pension may also be granted to the service Judges under Part-III of the First Schedule of the Act. Pursuant to the aforesaid decision of the Apex Court the Central Government vide letter dated 2.4.1998 directed the State Government to revise the pension admissible to the Service Judges under Part-III of First Schedule of the Act, with effect from 1.1.1996 as has been done in the case of the employees of the Central Government. In spite of the direction of the Central Government which was based on the decision of the Apex Court, the Government of Orissa did not revise the death-cum-retirement gratuity of a retired Service Judge in terms of the circular dated 27.10.1997 under which Class-1 officers of the Central Government are entitled to enhanced death-cum-retirement gratuity of Rs.3.5 lakhs instead of Rs.2.5 lakhs. On the basis of above a prayer has been made for a direction to the State Government authorities to enhance death-cum-retirement gratuity of retired Service Judge from Rs.2.5 lakhs to Rs.3.5 lakhs.

3. So far as prayer for medical facilities are concerned, at the time of hearing of the writ application it was contended by the learned Counsel for both parties that earlier this Court has already allowed a writ application filed by some of the retired Judges of this Court and payer for extension of medical facilities to a retired Judge and his family members had been allowed in the said writ application. It is, therefore, not necessary to decide the second prayer made by the petitioner since the matter has already been decided by this Court.

4. A counter-affidavit has been filed by the State authorities, opposite parties 1 and 2. It is stated in the counter affidavit that the State Government had revised gratuity from Rupees one lakh to Rs. 2.5 lakhs on the recommendation of the 5th Central Pay Commission in the light of the instructions of the Government of India contained in their office memorandum dated 27.10.1997 and the same has been communicated to the Ministry of Law and Justice, Department of Justice, Government of India. It is also stated in the counter affidavit that the petitioner is entitled to get death-cum-retirement gratuity as per the provisions contained in Section 17(A)(2) of High Court Judges (Salaries and Conditions of Service) Act, 1954 read with para-2(a) and (b) of Part-III of First Schedule. The stand taken in the counter affidavit for not enhancing gratuity to Rs.3.5 lakhs is that resource crunch and financial conditions of the State Government do not permit to do so. This stand taken in the counter affidavit is repeated at many places, such as paras 3,8 and 13.

5. A counter affidavit has been filed by the opposite party No.4, Department of Justice, Ministry of Law and Justice, New Delhi. In para-3 of the said counter affidavit it is stated that pursuant to the recommendation of the 5th Central Pay Commission the Central Government raised the limit of retirement/death gratuity from Rs.2.5 lakhs to Rs. 3.5 lakhs in the case of its employees and All India Services Officers with effect from 1.1.1996 vide its letter dated 27.10.1997. It is also stated that the State Government of Orissa is yet to adopt the aforesaid Office Memorandum dated 27.10.1997 and unless the same is adopted a Judge covered under Part-III of Schedule-I of the Act is not entitled to the benefit under the said letter. In para-5 of the counter affidavit it is stated that a decision to make upward revision in the ceiling of D.C.R.G. rates for the retired High Court Judges who have opted pension under Part-III of the First Schedule of the Act vests with the State Government alone and the Union cannot make any law in that regard. It is apparent from the counter affidavit of the opposite party No.4 that though the State Government have been requested vide letter dated 27.10.1997 to adopt enhancement of death-cum-retirement gratuity, the State of Orissa having not adopted the same, claim of the petitioner cannot be entertained. The opposite party No.6 who is the Accountant General of Orissa has filed a separate counter-affidavit stating that the Office Memorandum dated 27.10.1997 (Annexure-1) having not been adopted by the State of Orissa in respect of its employees including the members of the State Higher Judicial Service, the petitioner is only entitled to gratuity of Rs.2.5 lakhs.

6. It is clear from the counter affidavit filed by the opposite party No.4 that pursuant to the recommendation of the 5th Central Pay Commission the Central Government had revised the limit of retirement-cum-death gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs in case of its employees and All India Services Officers with effect from 1.1.1996 vide Office Memo dated 27.10.1997. Said Office memo is annexed to the writ application as Annexure-1. Para-6 of the office memorandum clearly provides that the maximum limit of retirement/ death gratuity shall be Rs.3.5 lakhs and shall not exceed the aforesaid amount. First and second paragraphs of the Office Memo provide that on the recommendation of the 5th Central Pay Commission modifications in the rules regulating pension, DCRG and Family Pension under the CCS (Pension) Rules, 1972 and commutation of Pension under CCS (Commutation of Pension) Rules, 1981 have been brought in and that the same shall be made applicable to Central Government Employees covered under the CCS (Pension) Rules, 1972. In Annexure-2 the opposite party No.4 has intimated the Accountant General of all the States that Death-cum-retirement Gratuity in case of Part-III Judges of High Courts and Supreme Court be calculated as per the provisions of Section 17-A(2) of the Act, 1954 i.e. as per the rules/orders/notifications of their earlier pensionable service under the Union or state. Accordingly, in case of the concerned State Government adopts the Department of Pension and P.W., Office Memo dated 27.10.1997 in respect of the employees including the members of State Higher Judicial Service, then such Judges of High Court or Supreme Court, would also be entitled to the DCRG as per the said Office Memo. The only ground taken in the counter affidavit by the opposite parties 1 and 2 is that due to financial crunch it has not been possible on the part of the State Government to adopt the Office Memorandum dated 27.10.1997 (Annexure-1).

Now the question that arises for consideration is that how far the stand taken by the opposite parties 1 and 2 is justifiable or not. As admitted by the learned Counsel for both parties, number of retired Part-III Service Judges in the State shall not be more than 7 to 8 and all that the State has to pay is Rs.7 lakhs to Rs.8 lakhs to the Service Judges who retired after 1.1.1996. If the stand of the State Government that it does not have financial resources to spare Rs.7 lakhs to Rs.8 lakhs for the Service Retired Judges who retired after 1.1.1996 it will be one of the most unfortunate statement. There is no denial that the officers in the All India Services have been granted benefit under the Office Memorandum dated 27.10.1997 and there is no reason as to why the State Government should raise an objection and take a stand that the financial resources do not permit enhancement of death-cum-retirement gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs, which as a matter of fact, involves an additional expenditure of Rs.7 lakhs to 8 lakhs for the present. It has been the experience that hardly one or two Service Judges retire in a year and additional burden on the State Government will be only to the extent of Rupees one lakh to two lakhs in a year and therefore it is difficult to accept the contention raised in the counter affidavit that the financial resources of the State Government do not permit payment of additional

Rs. 1 to Rs.2 lakhs per year to the Service Judges who are likely to retire in future.

7. In view of the reasons stated above, I allow the writ application and direct the opposite parties 1 and 2 to enhance Death-cum-Retirement Gratuity from 2.5 lakhs to Rs.3.5 lakhs and pay differential amount of Rupees one lakh to the petitioner within a period of three months from the date of communication of this order.

Requisites for communication of this order to the opposite parties 1 and 2 be filed within three days.