

(1998) 12 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 553 of 1997

Pravasini Panda (Smt)

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:

Orissa Civil Services (Pension) Rules, 1992 — Rule 56(19)

Citation : (1999) 87 CLT 205 : (1999) 3 LLJ 804 : (1999) 1 OLR 254

Hon'ble Judges : Susanta Chatterji, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : D.N. Lenka, R. Samal and M.K. Dash, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—This writ petition is a story of an untold misery. Petitioner, Smt. Pravasini Panda, is the unfortunate wife of a Class-IV employee in the Court of Sub-Divisional Judicial Magistrate, Chhatrapur who has come to this Court for the second time seeking the following reliefs:

".....issue a Rule Nisi calling upon the opposite parties to show:--

(i) as to why the family pension and D.C.R.G. and other service benefits shall not be sanctioned and payable to the petitioner in terms of the Finance Department Memorandum dated November 30, 1987 under Annexure-5 forthwith;

(ii) as to why the order dated April 20, 1985 passed by the learned District Judge in dismissing the petitioner's Husband from service shall not be quashed in view of his disappearance from service under normal circumstances ;

(iii) as to why the order dated August 6, 1996 in rejecting the petitioner's claim for family pension and D.C.R.G. under Annexure-8 shall not be quashed ;

(iv) as to why the other legal dues viz. leave encashment, contribution made to G. P. Funds, Gratuity and the benefit under Group Insurance Scheme shall not be

paid forthwith or within a time to be stipulated by this Hon''ble Court;

(v) as to why the interest " 18% per annum shall not be paid on the aforesaid amounts;

(vi) if the opposite parties fail to show cause or show insufficient cause to make the said Rule Nisi absolute by issuing a writ of mandamus/certiorari or any other writ (s), order (s), direction (s) to the opposite parties and quash the order dated August 6, 1996 passed by opposite party No. 4 in rejecting the petitioner's claim for family pension and D. C. R. G. and further be pleased to direct the opposite parties to sanction and release the family pension and D.C. R G. in favour of the petitioner alongwith the other dues, viz. leave encashment, contribution to the G. P. Fund, Gratuity and the benefits under Group Insurance Scheme forth-with or within a time to be stipulated by this Hon''ble Court and further be pleased to quash the order dated April 20, 1985 passed by the learned District Judge, Ganjam in culminating dismissal of the petitioner's husband from service ; and pass such other order(s)/direction (s) in the facts and circumstances of the case in order to give complete relief to the petitioner....."

2. Petitioner's husband Purusottam Panda, Process Server employed in the Court of the Sub-Divisional Judicial Magistrate Chhatrapur, Dist. Ganjam while was on duty to serve process on December 19, 1983 at Rambha did not come back and was found missing. It appears from the materials on record that immediately on December 19, 1983, as alleged in the writ petition, the petitioner's wife filed an application before the learned Magistrate praying, inter alia, to direct for an enquiry into the matter of disappearance of her husband with effect from December 13, 1983 when he had proceeded to Rambha to process.

3. It is stated in the writ petition that pursuant to the application, the S. D. G. M., Chhatrapur vide his letter dated December 20, 1983 intimated this fact to the then District Judge, Ganjam, Simultaneously, the S.D.J.M. also directed the O.I.C., Rambha Police Station to make an investigation in that regard. It is further averred in the writ petition that while the matter stood thus, the District Judge, Ganjam without taking any proper step to find out the whereabouts of the petitioner's husband initiated a Disciplinary Proceeding against the petitioner's husband Purusottam Panda and framed the following charges against him.

- (1) Wilful absence,
- (2) Disobedience of order,
- (3) Carelessness in duty,
- (4) Gross negligence in duty; and
- (5) Misconduct.

4. It appears that the charges could not be served on the petitioner's husband since he had disappeared w. e. f. December 13, 1983 while on official tour to Rambha beat. Accordingly the charges served on the petitioner's husband

returned as unserved. On June 7, 1984 the said charges were published in Berhampur local daily newspaper "Dainik Asha". As there was no response to the said publication the authority proceeded with further courses of enquiry into the matter and on the basis of the findings of the Enquiring Officer, the District Judge on January 19, 1985 directed issue of second show cause notice to Purusottam Panda, petitioner's husband. Said second show cause notice was also returned unserved due to the same reason of disappearance while on official duty. The second show cause notice was also published in daily Newspaper "Dainik Asha" on March 1, 1985. In the said publication direction was given to Purusottam Panda, Process Server to appear in person before the learned District Judge, Ganjam within 15 days of publication of the notice. As there was no appearance of Purusottam Panda, the District Judge finally passed an order of his dismissal from service on April 20, 1985 with immediate effect. For better appreciation the entire order dated April 20, 1985 is quoted herein below :

"Order dated April 20, 1985 :--This order is pursuant to the order dated January 19, 1985. The second show cause notice along with enquiry report was sent to the delinquent through the S.D.J.M, Chhatrapur and also by registered post which were returned unserved as "whereabouts of the delinquent is not known". The notice was published in daily newspaper "DAINIK ASHA" on March 1, 1985 inviting the explanation from the delinquent within 15 days from the date of publication. The delinquent neither furnished the explanation nor appeared in person. The delinquent remained absent since December 14, 1983 and did not return the processes entrusted to him for service. In the absence of any explanation to the charges, I do not see any reason to differ from my finding and the proposal noted on January 19, 1985. Dismissal of the delinquent from service will meet the ends of justice. So the delinquent is dismissed from service with immediate effect. Inform the concerned, accordingly."...."

5. The petitioner made several representations for consideration of the relevant facts about the disappearance of her husband and appraised the District Judge, Ganjam of her piteous condition with her children. Finding no assistance from the District Judge, Ganjam the petitioner and her children came to this Court by filing a writ petition bearing O. J. C. No. 3162 of 1990. In paragraph 13 of the present writ petition it is stated in detail about the filing of the said O.J. C. No 3162 of 1990 and the order of this Court disposing of that case on September 19, 1990. It had been specifically directed by order dated September 19, 1990 that the District Judge, Ganjam should dispose of petitioner's representation within a month of receipt of the order in accordance with law.

6. We specifically observe that by Annexure- 4, copy of the representation dated June 26, 1990 made by the petitioner to the District Judge, Ganjam, the petitioner had narrated her searching for her missing husband by visiting all near and dear relations, her untold financial hardships, her mental agony, the conditions of her children and praying for kind orders of the District Judge, Ganjam granting her family pension and D.C. R. G. to the family members of the

Government Servant due to disappearance from Government service after one year from the date of disappearance as per G.O. No. Pess-69/87/ 56895/F dated November 30, 1987 of Finance Department. The petitioner had also prayed to absorb her son in a job under the Rehabilitation Assistance Scheme.

7. We are really shocked to find that a counter affidavit has been filed by opposite parties 2, 3 and 4, respectively the District Judge, Ganjam, S.D. J. M., Chhatrapur and the Registrar, Civil Court, Berhampur. Paragraphs 6 and 7 deals with the averments made in paragraphs 13 to 18 of the writ petition. For proper appreciation we quote paragraph-7 of the counter affidavit which would indicate, inter alia, how in a lacadiscal manner the authorities dealt with the matter:

"That in reply to paras 13 to 18, it is most humbly stated that after lapse of 11 years the petitioner lodged a report at the P.S. praying for investigation into the disappearance of her husband only to create a cause of action for filing of this writ."

8. This Court is not only shocked and surprised but also with great pain observes that the authorities who are Judicial Officers should not take the facts alleged lightly. The averments made in the writ petition if not controverted specifically would amount to admission. Thus opposite parties being Senior Judicial Officers are not only aware of this aspect but in a heartless manner they have dealt with the petitioner's case. They have not explained as to how the direction of this Court in the earlier writ petition had been complied with. Till today even the learned District Judge has not sent any intimation as to what happened about the order of this Court regarding disposal of the representation of the petitioner. It is not only utter negligence but also carelessness on the part of the authority to keep the matter in dark. Even at the time of filing of the counter affidavit, we understand, they have not applied their minds to the specific prayer in Annexure-4.

9. We have perused the materials on record. We have not been able to appreciate how the matter as to disappearance of petitioner's husband which was brought to the notice of the S.D.J.M., Chhatrapur as early as immediately i.e. on December 19, 1983 and also brought to the notice of the District Judge, Ganjam averred in paragraphs 4 & 5 of writ petition has been dealt with in the counter affidavit and the same is quoted as under:

"3. That the petitioner's husband Sri Purusottam Panda, Ex-Process Server of the Court of S.D.J. M., Chhatrapur on December 13, 1983 was entrusted with 86 Nos. of processes for service with a direction to return the served copies of processes by December 14, 1983. Sri Panda, thereafter, never returned to office. In letter No. 7125 dated December 21, 1983 the S.D.J.M., Chhatrapur informed the matter to the Officer-in-Charge, Rambha Police Station and asked him to submit a report. He also reported this fact to the District Judge.

"4. That on being reported of this fact by the S.D.J.M., Chhatrapur the disciplinary authority (District Judge) started a departmental proceeding against

Sri Panda in D. P. No. 5/84 for carelessness in duty, disobedience of order and wilful absence from duties together with gross misconduct. As the charges levelled against him could not be served, it was published in an Oriya daily Newspaper circulated in the area and finally as the delinquent did not appear and file show cause the matter was heard ex parte and finally he was dismissed from service by the District Judge in his order dated April 20, 1985."

10. These two paragraphs clearly indicate the admission on the part of the opposite parties that immediately the incident of missing of the process server who was on duty was brought to the notice of the higher authorities. But we fail to understand that without taking any action to trace out the person whether he was murdered or killed or dealt with otherwise and without waiting for an investigation by the police authorities and without referring the matter to proper forum, the authorities thought it fit to initiate a disciplinary proceeding and publish the matter in a local newspaper to wash their hands in order to meet the ends of justice.

11. This Court has similarly dealt with an incident in another case reported in Smt. Puspa Gurang Vs. Joint Assistant Director (Welfare) C.R.P.F. and Others, . In the said case wife of a Jawan whose whereabouts was not known since 8 years prayed for rehabilitation of employment and compensation and the Court considered all the relevant facts. It has been held that the authorities without trying to find out the whereabouts of the Jawan proceeded hurriedly to dispense with his service by dismissing him. This aspect was however, deprecated by this Court observing that the authorities who had the responsibility to proceed in a responsible manner had neglected their duties by causing serious harm and prejudice to the interest of the public servant concerned. But in this case we are concerned with the activities of the Judicial Officers and how, they have dealt with the life of their own employees. They should have proceeded more cautiously and carefully as well as sympathetically. With much anguish we record that the authorities concerned proceeded with a step-motherly attitude as if a missing step son is better to be lost than to be alive. The process server disappeared while he was on duty. The job of a process server is very risky. He has to serve processes on many persons who may be unwilling to receive. Many people not only refuse to accept the process, but also create trouble for effective discharge of duties of the process server. When the process server was not found, the authorities should have given much more attention and should have asked the police authorities to take effective steps to trace him out. Before taking steps to initiate disciplinary action, the employer has the responsibility to take all effective steps to trace out the employee who might be suffering during the course of his employment or duty, and ultimately if the result is otherwise, the employer may be free to take any action. But the facts of the present case shock the conscience of the Court how the authorities, opposite parties 2,3 and 4, hurriedly initiated the disciplinary proceeding against their own employee without taking any step to trace him out. The facts detailed above and as disclosed in the writ petition, convince us that even after this Court's direction in

1990 in the earlier writ application of the petitioner to the District Judge to consider her representation, the opposite parties did not properly consider the said representation and rejected the same. The S.D.J.M., Chhatrapur vide his letter No. 3251 dated June 29, 1996 wrote to the Registrar, Civil Court, Ganjam, Berhampur soliciting necessary instruction as to whether Pravasini Panda, wife of absconder Purusottam Panda, was entitled to get any family pension as per Rule 56(19) and (20) of the Orissa Civil Services Pension Rules, 1992. Be that as it may, on perusal of the Rules we are surprised as to how the same have been applied to the present case. For better appreciation, we quote Rule 56(20)(A) which runs as follows:

"56(20)(A) When a retired Government servant disappears leaving his family, the family shall be paid in the first instance, the amount of arrear salary and leave encashment due, if any. The house rent, if any, for the month(s) in respect of which the salary is due shall be recovered from the amount of salary payable to the family."

For better appreciation we also quote Note 4, of Rule 56(20) which runs as follows :

"The benefits covered under Sub-rules (19) and (20) shall only be admissible in genuine cases of disappearance under normal circumstances and not the cases in which officials disappear after committing frauds, etc..... In latter type of cases the family pension can be sanctioned only to the Government employee/pensioner being acquitted by the Court of law or after the conclusion of the disciplinary proceeding etc., as the case may be."

12. It is not appreciated by this Court that by referring to Rule 56(20)(A) and Note 4 the authorities might think that the present case is not a genuine disappearance and as such family pension might not be sanctioned. Sub-rule (19) of Rule 56 of the Orissa Civil Services (Pension) Rules, 1992 deals with family pension and death gratuity to the family members of the Government employee who disappears or absconds from the Government Service which runs as follows :

"(19) Family pension and death gratuity to the family members of the Government employee who disappears or absconds from the Government service shall be as follows:--

(i) When an employee disappears or absconds while in service leaving his family, the family shall be paid at the first instance the amount of arrear salary due if any and leave encashment due. The house rent, if any for the month(s) in respect of which the salary is due shall be recovered from the amount of salary payable to the family.

(ii) After the elapse of a period of one year, other benefits like death gratuity/family pension including arrears shall also be granted to the family provided that the concerned family shall intimate the fact of disappearance of the Government

servant to the Head of Office under whom the Government servant served last for the purpose of sanction of the benefits. Where the Head of Office is not the pension sanctioning authority of the disappeared Government servant he will send the papers with recommendation/comments to the pension sanctioning authority who will sanction the benefits under Sub-rule (2) or (4), as the case may be, after observing the following formalities, namely:--

(a) An F.I.R. should be lodged with the nearest Police Station under intimation to the concerned Head of Office. The Head of Office should obtain a report from the Police Station through the District Police Officer that the employee has not been traced out after all efforts made by police.

(b) An Indemnity Bond in Form 19 shall be taken from the dependants of the employee that all payments will be adjusted against the payments due to the employee in case he appears on the scene and makes any claim.

(iii) The Head of Office shall assess all Government dues outstanding against the Government servant and effect their recovery in accordance with Rule 68 of these rules and any other instruction in force for effecting recovery of Government dues.

(iv) The family shall apply to the Head of the Office of the Government servant for grant of family pension and death gratuity after one year from the date of disappearance of the Government servant in accordance with the prescribed procedure."

13. Mr. Lenka has submitted that neither Sub-rule (20) nor Sub-rule (19) of Rule 56 has strictly any application to the present case and even Note 4 of Rule 56(20) is not squarely applicable. Mr. K. Patnaik, learned Addl. Government Advocate for the State has although tried to support the stand of the State yet has made the position clear that it is open to the Court to draw its own conclusion by going through materials on record.

14. Very patiently we have heard the submissions. Very diligently also we have considered the matter. We have appreciated the sequence of events. We have visualised the misery and the chill penury suffered by the wife and children of a person who is not traceable having gone on Government duties. On further perusal we are fully convinced that the acts done and/or caused to have been done by the District Judge, Ganjam in initiating disciplinary proceeding without waiting for the investigation report by the police authorities regarding the absconding aspect of Purusottam Panda are misuse of power. The alleged charges are without substance. The proceeding ex facie is vitiated and the purported punishment including show cause notice are bad in law and cannot stand judicial scrutiny. The entire proceeding is deemed to be non est in the eye of law and we quash the same accordingly. It is not only an error, but it amounts to sin as the authorities remained silent after the order of this Court passed in September 19, 1990 in O.J.C. No. 3162 of 1990 directing the District Judge, Ganjam to reopen the matter and consider the representation of the petitioner

wife in proper perspective. Even thereafter the authorities remained silent and that cannot outweigh the judicial consideration as we do in the instant case.

15. For the foregoing reasons we allow the writ petition, quash the entire proceeding made ex parte against Purusottam Panda since absconding, as his whereabouts are not known in spite of best efforts. In accordance with law he has met his civil death after his whereabouts were not traceable for 7 years from the date of his disappearance i.e. from December 3, 1983 or as the case may be. It would be construed that Purusottam Panda continued in service till the date of his death and he was entitled to his salary upto the date of his death i.e. till seven years from the date of his disappearance till his civil death. We direct proper calculation be made to release all retirement benefits and family pension in terms of Rule 56(19) in favour of the petitioner, who is the wife of Purusottam Panda. The District Judge, Ganjam should also consider the question of employment of an eligible son of the petitioner on compassionate ground if there is vacancy within a period of six months from the date of communication of the order. We also award cost of Rs. 10,000/- to be paid to the petitioner from the State exchequer for the sufferings and in this regard.

D.M. Patnaik, J.

16. I agree.