
(2009) 01 OHC CK 0030
In the Orissa High Court

Snehalata Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (2009) 1 OLR 768

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—The petitioner, in this writ petition, has prayed for a direction to the opposite parties for payment of Family Pension to her under Rule-56 (19) of the Orissa Civil Services (Pension) Rules, 1992 by setting Order No. 5 dated 12.10.2006 passed in O.A. No. 1999 (C) of 2006 by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack.

2. The husband of the petitioner namely, Late Ramesh Ch. Pradhan was working as Senior Assistant in the Office of the Revenue Divisional Commissioner (N.D.), Sambalpur and was suffering from mental depression from time to time and undergoing treatment at the V.S.S. Medical College and Hospital Burla in Psychiatric Department. On 20.2.1993 he resumed duty after being found fit and was attending office regularly. On 28.5.1993, he left his quarter to attend the morning office but did not come back. On enquiry by his wife, it was revealed that he did not attend the office on 28.5.93. A search was started for him in all probable places but he could not be located. During search, it was revealed that he visited Gopalijee Math near Samleswari Temple on 29.6.93 and took "PRASAD" and spent night there. But thereafter his whereabouts were not known. A First Information Report was lodged in Dhanupali Police Station in the district of Sambalpur by the son of the petitioner namely, Susanta Ku. Pradhan on 31.5.93 and at that time, his father's age was 48 years. The petitioner informed the Revenue Divisional Commissioner (ND), Sambalpur vide application

dated 31.12.1997 to the effect that her husband namely, Ramesh Ch. Pradhan, who was working in the office since 28.7.64 suffered from psychiatric trouble from early 1990 and was under treatment and was periodically declared fit to perform his official duties. But all of a sudden, he, on 28.5.93, left the house for the office in the morning as usual but did not return and that her son lodged missing person report in Dhanupali Police Station with a copy to the Superintendent of Police, Sambalpur. Although police took all possible steps to trace out him but in vain. She also informed that she and her son were leading pitiable life due to lack of income source and requested for family pension. But in the meaning, a charge-sheet was issued against the late husband of the petitioner calling his explanation and written statement of defence as to why he may not be dismissed from Government service or otherwise be suitably punished for the lapses committed by him i.e., the absence from duty. The memo of charge was pasted at the quarters of the petitioners husband but as her husband had already disappeared, nobody was there to give reply. On 3.1.98, through newspaper also by way of advertisement, copies of the proceedings were published. Thereafter, as usual in the absence of any explanation, the Revenue Divisional Commissioner, vide his order dated 7.2.98, removed the late husband of the petitioner from service and in the order or removal from service, it was mentioned that in spite of thorough search by the Superintendent of Police, Sambalpur by way of publication in the weekly Crime Bulletin vide his office bulletin No. 23/98 and publication through C.I.D., C.B., Orissa, Cuttack, the whereabouts of the delinquent is not yet traced out as reported by S.P., Sambalpur vide his letter No. 6899/CR dated 19.10.1995 and presumption was drawn that he had absconded from duty. The relevant parts of the impugned order dated 7.2.98 are quoted as under.

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In spite of thorough search by the Superintendent of Police, Sambalpur by way of publication in the weekly Crime Bulletin vide his office bulletin No. 23/98 and publication through C.I.C., C.B., Orissa, Cuttack, the whereabouts of the delinquent is not yet traced out as reported by S.P., Sambalpur vide his letter No. 6899/CR dated 19.10.1995.

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It is revealed from the report of his son Sri Susanta Kumar Pradhan submitted on 31.5.93 and copy of the F.I.R. lodged by his son on 31.5.93 at Dhanupali Police Station and the report of the Superintendent of Police, Sambalpur submitted in his letter No. 6899/CR dt. 19.10.95 that on 28.5.93, the delinquent was said to have left his quarters to attend the morning office but did not turn upto duty and finally absconded from Sambalpur. The delinquent could not be traced out by his family members as well as by the police throughout the State of Orissa.

3. An appeal was also filed by the petitioner but that too was dismissed. Thereafter the petitioner approached the Orissa Administrative Tribunal, Cuttack

Bench, Cuttack in O.A. No. 1999(C) of 2006 which was disposed of without deciding the case on merits to the effect that the entire application be sent to respondent No. 1 to take into account all facts and circumstances of the case and decide the prayer of the applicant for her entitlement of family pension on the basis of the evidence available on record and in accordance with the rules.

4. Ultimately, she approached this Court by filing the instant writ petition.

5. Before proceeding further, it is necessary to consider the provisions of Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 under which the disciplinary proceeding was initiated and the order for removal from service passed against the delinquent, whose whereabouts are not known since 28.5.93.

Rule 15 of the O.C.S. (C.C.A.) Rules, 1962 is relevant and the relevant parts of the same are reproduced as under.

15. Procedure for Imposing major penalties:

1. Without prejudice to the provision of the Public Servants (Inquiry) Act, 1950, no order imposing on a Government servant any of the penalties specified in Clauses (vi) to (ix) of Rule 13 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided.

Sub-Rule (4) of Rule 15 of the O.C.S. (C.C.A.) Rules, 1962 provides that on receipt of the written statement of the defence or, if no such statement is received within the time specified, the disciplinary authority may itself enquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a board of inquiry or an enquiring officer for the purpose.

6. In view of the above provisions, even if the delinquent-employee is absent, the enquiry shall be conducted irrespective of his absence. Absence of the delinquent does not give a free signal to the disciplinary authority or the enquiring officer to give its opinion without conducting an enquiry. Rule 15 of the O.C.S. (CCA.) Rules, 1962 does not permit to impose a major penalty without conducting an enquiry even if the delinquent is absent.

7. In the instant case, no inquiry was conducted rather the disciplinary authority has passed the impugned order of removal from service in which the letter of the C.I.D., C.B., Orissa, Cuttack dated 19.10.2005 was relied upon by which the whereabouts of the delinquent were not known. The disciplinary proceedings were initiated in the month of November, 1997. The letter of the C.I.D., C.B., Orissa, Cuttack was two years before the initiation of the disciplinary proceeding. Therefore, it was the duty of the Revenue Divisional Commissioner i.e. the disciplinary authority to conduct an enquiry taking into account all the evidence available on record on the date of issuance of memo of charge and also fixing a date to conduct an enquiry under intimation to the delinquent. Merely because the delinquent did not give any reply to the charge would not disentitle him to appear during the course of enquiry and as -such even if it is presumed that the delinquent at that time was deliberately avoiding to attend the office or to give

reply, at least a chance should have been given to him to lead evidence during the course of enquiry or to have been provided a copy of the enquiry report for giving his explanation for the purpose of punishment as laid down the case of Union of India and others Vs. Mohd. Ramzan Khan, .

Further in view of Section 108 of the Indian Evidence Act, 1872, a person is presumed to be dead if those who would have naturally heard of him, if he had been alive have not heard him for seven years.

In the case of Har Nand Vs. The Commissioner, Ambala Cantt and Others, it has been held that although there is no presumption under the provisions of Section 108 of the Indian Evidence Act that a person not heard of for a period of more than seven years died on a particular date, the proposition that if he is shown not to have been so heard of prior to the commencement of a proceeding in which the question of his being alive or dead is in issue he may be presumed to have died at the latest on the commencement of that proceeding.

8. Besides above, Sub-Rules 19 & 20 of Rule 56 of the Orissa Civil Services (Pension) Rules, 1992 are also liable to be perused and the same are quoted hereunder:

19. Family pension and death gratuity to the family members of the Government employees who disappears or absconded from the Government service shall be as follows:

(i) When an employee disappears or absconded 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 where 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 person 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 appeals on the scene and makes any claim;

(iii) The Head of Office shall assess all Government dues outstanding against the Government servants 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 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.

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, from the month(s) in respect of which the salary is due shall be recovered from the amount of salary payable to the family.

(B) After the elapse of a period of one year from the date of disappearance, other benefits like family pension, retirement gratuity and arrears of pension, if any, shall also be granted to the family provided that the concerned family shall intimate the fact of disappearance of the retired Government employee to the Head of Office under whom the employee served last for the purpose of sanction of the benefits. Where the Head of Office is not the pension sanctioning authority of the disappeared retired employee he shall send the papers with recommendation/comments to the pension sanctioning authority who shall sanction the benefits after observing the following formalities, namely:

(a) The family must have lodged a report with the concerned Police Station and obtained a report to the effect that the retired employee has not been traced after all effects had been made by the Police.

(b) An Indemnity Bond in Form 20 shall be taken from the dependants who will receive the said benefits of the retired employee that all payments will be adjusted against the payments due to the retired employee in case he re-appears and makes any claim.

(c) The Head of Office shall assess all Government dues outstanding against the retired employee and effect recovery of the same in accordance with Rule 68 of these Rules, and any other instructions/orders in force.

(d) The family shall apply to the concerned Head of Office of the retired employee for grant of family pension, retirement gratuity, if any, and arrears of pension, if any, after one year from the date of disappearance of the retired employee in accordance with the prescribed procedure.

Note-1. In both the cases covered under Sub-rules (19) and (20) *ibid*, the date of disappearance of the employee/pensioner will be reckoned from the date of lodging the First Information Report of one year after which the benefits of family pension normal/enhanced rate and gratuity are to be sanctioned will also be calculated from date of F.I.R. The benefits to be sanctioned to the family etc., of

the missing employee, pensioner will be based on the rules applicable as on the last date of his/her duty including authorized period of leave. The emoluments for this purpose are as specified in Rule 48.

2. In the case of missing pensioner, the family pension at the rates indicated in the Pension Payment Order shall be payable as authorized by the Accounts Officer. Where the Pension Payment Order does not contain this information, the pension sanctioning authority shall take necessary action to sanction the family pension as due at Note 1 above.

3. Death gratuity shall also be payable to the families but not exceeding the amount which would have been payable as retirement gratuity if the person had retired. The difference between retirement gratuity and death gratuity shall be subsequently payable either after the death is exclusively established or on the expiry of seven years from the date of missing.

4. 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 proceedings etc., as the case may be.

9. In view of the above facts and circumstances, we are of the opinion that the impugned order removing the late husband of the petitioner from service passed by the Revenue Divisional Commissioner, (ND), Sambalpur was against the provisions of law and is liable to be quashed and the matter is liable to be remitted to the disciplinary authority for action in accordance with law.

10. Therefore, the writ petition is allowed and the impugned order dated 12.10.2006 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1999(C) of 2006 is quashed and the order removing the late husband of the petitioner from service is also quashed and the matter is remitted to the disciplinary authority i.e. the Revenue Divisional Commissioner, (ND), Sambalpur to pass appropriate orders treating the husband of the petitioner as dead and also provide the benefits of arrears of salary and pension etc. in accordance with law with the Rules, notification and circulars of the Government in this regard.

Sanju Panda, J.

11. I agree.