

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.23326 of 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Kailash Chandra Das ... **Petitioner**

- Versus -

State of Odisha and others ... **Opposite parties**

For Petitioner ... M/s. Anil Kumar Das,
K. Mohanty & N. Patra

For Opposite Parties ... Mr. N.K. Praharaj,
Additional Government Advocate
(O.P. Nos.1 to 4)

Mr. S.K. Patra, Standing Counsel
(O.P. No.5)

PRESENT:

THE HONOURABLE SHRI JUSTICE A.K. MOHAPATRA

Date of hearing & judgment : 04.01.2024

A.K. Mohapatra, J.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard Mr. Anil Kumar Das, learned counsel appearing for the Petitioner as well as Mr. N.K. Praharaj, learned Additional Government Advocate appearing for the State-Opposite Parties. Perused the pleadings of the parties as well as the documents annexed thereto.

3. The present writ petition has been filed by the Petitioner with a prayer for a direction to the Opposite Parties to sanction and release the final pensionary benefits, gratuity, unutilized leave salary, commuted value of pension and G.P.F. which has been withheld by the Opposite Parties even after his retirement from service w.e.f. 30.06.2018.

4. The factual background leading to filing of the present writ petition, in gist, is that the Petitioner was initially appointed as a Welfare Extension Officer on 25.09.1979. Pursuant to such appointment, the Petitioner joined in the office of the B.D.O., Chikiti in the district of Ganjam. While working as such, the Petitioner was promoted to the post of Assistant District Welfare Officer on 31.10.2010 and thereafter he was promoted to the post of District Welfare Officer on 21.2.2011.

5. While the Petitioner was working as District Welfare Officer in Boudh Collectorate, on attaining the age of superannuation on 30.6.2018, the Petitioner has retired from

service. During his incumbency as District Welfare Officer, Boudh, in the year 2013, a recruitment process to the post of R.I. was conducted in respect of the Boudh district under the Chairmanship of Collector, Boudh. The Petitioner was also a Member of the Selection Committee and he was entrusted with the work of scrutinizing the caste certificates of the candidates. During the process of such selection to the post of R.I., an allegation was made against the Petitioner relating to certain irregularities in the aforesaid recruitment process and, accordingly, a vigilance case was registered against the Members of the Selection Committee including the present Petitioner. The said case was registered as Berhampur Vigilance Case File No.89 of 2016. The list of accused persons appended to the Berhampur Vigilance File reflects the name of the Petitioner at Serial No.10. Since the Petitioner got entangled in the aforesaid vigilance case, the Petitioner has not been paid his retiral dues including pensionary benefits, gratuity etc. despite the fact that the Petitioner has retired from service on attaining the age of superannuation w.e.f. 30.6.2018. Being aggrieved by such illegal conduct of the Opposite Parties, the Petitioner has approached this Court by filing the present writ petition.

6. Learned counsel for the Petitioner in course of his argument submitted before this Court that in the aforesaid vigilance case, the investigation has not been concluded as of now and no charge sheet has been filed against the Petitioner. He further contended that the aforesaid Vigilance File was initiated on the basis of the allegation of certain irregularities in the recruitment process. He further contended that there is no allegation against the Petitioner of accepting any illegal gratification or the Petitioner having demanded or having been paid any money as bribe. Thus, it was contended by the learned counsel for the Petitioner that the allegations made in the Vigilance File, referred to hereinabove, are all baseless and the same has not been established by leading evidence.

7. He further submitted that withholding of the retiral as well as pensionary benefits only on the basis of the aforesaid Vigilance File which has been created against Selection Committee members including the Petitioner, the Opposite Parties have not acted within their authority to withhold the retiral dues as well as pensionary benefits as is due and admissible to the Petitioner as per law. Moreover, it was also emphatically contended that the allegations made against the Petitioner are baseless and fake, as the same have not been established as of now. He further contended that in a criminal

proceeding unless a charge sheet is filed, it cannot be presumed that the Petitioner is prima facie involved in the alleged offence. Therefore, the bar under the rule with regard to withholding of the service as well as pensionary benefits is to be made applicable only in the event it is found that the Petitioner is prima facie involved in a criminal case. Since no charge sheet has been filed indicating therein the name of the Petitioner, in such eventuality the Opposite Parties have no jurisdiction and authority to withhold the retiral as well as pensionary benefits of the Petitioner.

8. In the aforesaid context, learned counsel for the Petitioner referring to the judgment of this Court in *State of Odisha and others v. Sushanta Chandra Sahoo and others* (W.P.(C) No.14718 of 2015 decided on 06.05.2022), submitted that a Division Bench of this Court has succinctly discussed the law on the point and after a threadbare discussion of the provisions applicable to the facts of an identical case has come to a conclusion that it is only in the event of filing of the charge sheet as provided under Rule-7(2)(c) and Explanation-(b) appended thereto of the O.C.S. (Pension) Rules, 1992, it shall be presumed that a judicial proceeding is deemed to have been instituted from the date when the Magistrate takes cognizance in such criminal cases.

For better appreciation, relevant portion of the aforesaid judgment in para-9 is quoted herein below:-

“9. On perusal of aforementioned provisions, it is made clear by Rule-7(2)(c), Explanation-(b) that judicial proceedings shall be deemed to be instituted from the date when in a criminal proceedings, on the complaint or report of a police officer the Magistrate takes cognizance. As per Rule-49(5)(a), where the sanction of payment of gratuity is delayed for more than a year from the date it is due under Sub-rules (1) or (2), as the case may be, and such delay is attributable to administrative lapses, interest at the rate of 7 per cent per annum for the period beyond one year shall be payable on the amount of gratuity. Similarly, Sub-rule (1) of Rule-66 provides that where departmental or judicial proceedings are pending in respect of government servant on the date of his retirement, he shall be paid a provisional pension, whereas in Sub-rule (2), which is supplement to Sub-rule (1) of Rule-66, provides that no gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon. On cumulative reading of both the sub-rules, referred to above, it appears that the same will apply only when on the date of retirement of government employee, departmental or judicial proceedings are pending against him. But these rules will not apply where there are no departmental or judicial proceedings against government servant. But in the instant case, the petitioners have categorically stated that Vigilance P.S. Case No.7 dated 08.03.2007, by

way of FIR, though was pending on the date of retirement of the opposite party no.1, i.e., 31.10.2012, but the judicial proceeding was started, pursuant to such Vigilance P.S. Case No.7 dated 08.03.2007, after the charge sheet was submitted on 22.07.2013, i.e., much after his retirement and, as such, no cognizance was taken by the time the opposite party no.1 had retired from service. Therefore, mere lodging of an FIR cannot be construed that a judicial proceeding is pending against opposite party no.1. As it appears, though for an incident of the year 2000, Bhubaneswar P.S. Case No.7 dated 08.03.2007, was lodged against the opposite party no.1, but charge-sheet in the said case was submitted on 22.07.2013. Thereby, by the date the opposite party no.1 retired from service, i.e., on 31.10.2012, it can safely be construed that neither departmental proceeding nor any judicial proceeding was pending before the authority for debarring opposite party no.1 from getting pensionary benefits as due and admissible to him.”

9. The Hon’ble Division Bench after taking note of several judgments in the above mentioned case has categorically come to a conclusion that grant of pension and gratuity are no longer matters of any bounty to be distributed by Government as per their own sweet will, but their valuable rights accrued in favour of the employees who have put in their service for a number of years while working under the Government. In the aforesaid reported judgment, the Hon’ble Division Bench

while dismissing the State appeal against the order dated 05.05.2014 passed by the Tribunal in O.A. No.3318 of 2013 has dismissed the writ application preferred by the State-Opposite Parties. Further a direction was also given to the Opposite Parties to comply with the order of the Tribunal dated 05.05.2014 within a period of three months.

10. Learned Additional Government Advocate appearing for the State-Opposite Parties, on the other hand, referring to the counter affidavit filed by the State-Opposite Parties, submitted before this Court that the State-Opposite Parties have lawfully withheld the final pension, gratuity, unutilized leave salary, commuted value of pension and G.P.F. of the Petitioner, as the Petitioner was found to be involved in a vigilance case. Learned Additional Government Advocate further contended that the G.A. (Vigilance) Department vide their letter dated 03.10.2018 intimated that a vigilance case has been initiated against the Petitioner vide Berhampur File No.89/16 for showing undue official favour in appointment of Junior Stenographers, R.I., ARI & Amin in Boudh District violating the Government order, notifications.

11. He further contended that the inquiry in the aforesaid case is still pending as has been intimated by the G.A. (Vigilance) Department vide their letter dated 7.2.2022 and

letter dated 26.08.2022. In the aforesaid context and referring to Rule-7 & 66(1) of O.C.S. (Pension) Rules, 1992, the learned Additional Government Advocate submitted that where a departmental or a judicial proceeding is pending against a Government servant on the date of his retirement, he shall be paid a provisional pension not exceeding the minimum pension which would have been admissible on the basis of his qualifying service. It was also contended by learned Additional Government Advocate that Rule-7 of the O.C.S. (Pension) Rules, 1992 authorizes the Government to withhold the pensionary benefits. Further, referring to the para-8 of the counter affidavit, it was submitted by the learned Additional Government Advocate that the G.A. (Vigilance) Department, vide their letter dated 03.11.2022, has forwarded the letter dated 28.10.2022 along with the a report from the DSP, Vigilance, Phulbani.

12. In the aforesaid background, learned Additional Government Advocate contended that since serious allegations have been made against the Petitioner for committing irregularities in the recruitment of R.I. in the Boudh District and the role of the Petitioner in scrutinizing the caste certificates for such recruitment is being investigated and on the basis of such allegation, a vigilance inquiry is still

pending, the Opposite Parties have rightly withheld the financial as well as pensionary benefits of the Petitioner under Rule-7 of the O.C.S. (Pension) Rules, 1992. In such view of the matter, learned Additional Government Advocate further contended that the writ petition at this stage is devoid of merit and, accordingly, the same deserves to be dismissed.

13. Having heard the learned counsels appearing for the respective parties and on a careful consideration of their submissions as well as upon a careful scrutiny of the pleadings of the respective parties and the materials on record, this Court observes that the only dispute that is required to be adjudicated in the present writ petition is with regard to the conduct of the Opposite Parties in withholding the financial as well as pensionary benefits, as is due and admissible to the Petitioner, in the event of his retirement from service. Furthermore, this Court is also of the prima facie view that such benefits can be withheld by authority of law and not otherwise.

14. The Petitioner has approached this Court by filing the present writ petition for a direction to the Opposite Parties to pay the financial as well as the pensionary benefits which he is entitled to, as per the law, in the event of his retirement. The same is being contested by the Opposite Parties on the

ground that the Petitioner is involved in a pending vigilance inquiry. Therefore, in view of the Rule-66 of O.C.S. (Pension) Rules 1992, the Petitioner is only entitled to provisional pension till the conclusion of the aforesaid criminal proceeding. Therefore, this Court is required to adjudicate whether the conduct of the Opposite Parties in withholding the pensionary as well as financial benefits as is due and admissible to the Petitioner is legal and valid.

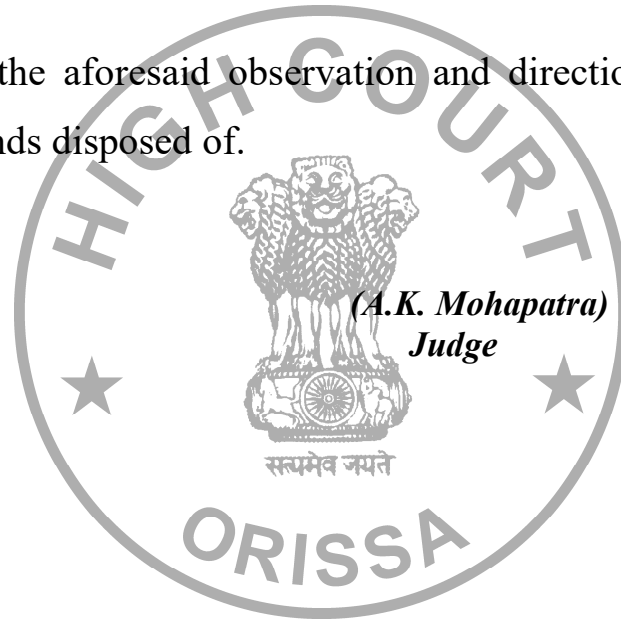
15. To answer the aforesaid question, this Court is required to examine the Rule-7 as well as Rule-66 of the O.C.S. (Pension) Rules, 1992. The aforesaid rules have been elaborately discussed and analyzed by the Division Bench of this Court in its judgment in *Sushanta Chandra Sahoo's* case (supra). The relevant portion of the judgment in *Sushanta Chandra Sahoo's* case (supra) has already been extracted hereinabove. Therefore, this Court is bound by the ratio laid down by the Division Bench in *Sushanta Chandra Sahoo's* case (supra) and in such view of the matter, no further analysis of the aforesaid provision and the factual background is required. In the aforesaid factual as well as legal scenario, this Court is of the considered view that the case of the Petitioner hinges upon the facts that whether a charge sheet has been filed in the meantime and as to whether cognizance

has been taken in the criminal case or not. In such view of the matter and considering the submissions made by the learned counsel for the Petitioner, who has emphatically submitted that no charge sheet has been filed, this Court is of the view that the case of the Petitioner is covered by the judgment of the Division Bench of this Court in ***Sushanta Chandra Sahoo's*** case (supra). Moreover, the departmental proceeding was admittedly initiated after retirement of the Petitioner, i.e., on the date of Petitioner's retirement such proceeding was not in existence. However, on the other hand, the learned Additional Government Advocate appearing for the State-Opposite Parties submitted that, from the counter affidavit, it appears that the name of the Petitioner appears in the Vigilance Case and on such ground the service as well as pensionary benefits of the Petitioner has been withheld by the authorities.

16. In view of the aforesaid factual background, this Court deems it proper to dispose of the writ petition by directing the Opposite Party No.1 to ascertain as to whether a charge sheet was filed and whether cognizance was taken by the court on the date the Petitioner has retired from service on attaining the age of superannuation, i.e., 30.06.2018. In the event it is confirmed that no charge sheet was filed and no cognizance

was taken on 30.06.2018 and there was no disciplinary proceeding pending against the Petitioner as on the date, then Opposite Party No.1 shall do well to consider the case of the Petitioner in light of the law laid down by the Division Bench of this Court in ***Sushanta Chandra Sahoo's*** case (supra) and, accordingly, the Petitioner be extended all financial as well as pensionary benefits within a period of three months from the date of communication of a certified copy of this order by the Petitioner.

17. With the aforesaid observation and direction, the writ petition stands disposed of.



Orissa High Court, Cuttack
The 4th January, 2024/D. Aech, Secretary.