

**IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) No.6146 of 2004**

(In the matter of an application under Articles 226 & 227 of the Constitution of India).

**Laxmipriya Pattnaik** .... **Petitioner**

*-versus-*

**The Central Bank of India and others** .... **Opposite Parties**

**For Petitioner** : **Mr. S.K. Dash, Advocate**

**For Opposite Parties** : **Mr. P.C. Rath, Advocate**  
**M.K. Routray, Advocate**

**CORAM:**

**JUSTICE V. NARASINGH**

**DATE OF FINAL HEARING : 19.12.2023**

**DATE OF JUDGMENT : 20.12.2023**

**V. Narasingh, J.**

1. Petitioner a widow, who lost her husband 26 years ago has filed the writ Petition seeking intervention of this Court under Article-226 and 227 of the Constitution of India, for quashing Annexure-6 and 9 to the writ Petition denying her family pension and other terminal dues.

2. Heard Mr. Susant K. Dash, learned counsel for the petitioner.

3. None appeared for the opposite parties though the names of the counsel is on record.

4. This Court perused the counter affidavit filed on behalf of the Central Bank of India and its functionary opposite parties controverting the allegation in the writ Petition and seeking dismissal thereof, sworn to by the Assistant Regional Manager.

5. It is contended by the petitioner that Late Tushar Kanti Patnaik, husband of the petitioner as ex-servicemen was selected as Assistant Cashier-cum-Go down Keeper on 10<sup>th</sup> February, 1973 to serve opposite party Bank, after he was discharged from Indian Air Force. Thereafter he got promotion to the rank of Assistant Manager scale-I during the year 1994. While continuing as such the husband of the petitioner applied for voluntary retirement due to personal reasons on 17<sup>th</sup> February, 1998 in terms of regulation 29 of the Central Bank of India Employees (pension) Regulation 1995 (Hereinafter referred to as “Regulation 1995”) which provided for an employee to opt for voluntary retirement on completion of 20 years of service by giving notice of not less than 3 months.

6. Such request of the Petitioner’s husband was accepted by the Opposite Party number-3 as per order dated 16.3.1998, and vide Annexure-4 the petitioner’s husband was advised to be relieved from the Bank at the close of office hours on 17.5.1998. The same is extracted hereunder for convenience of ready reference:

“xxx            xxx            xxx

We advise that the competent authority has accepted the Notice of Voluntary Retirement given by Shri Tushar Kanti Patnaik. Emp. No.39333, Asstt. Manager, w.e.f. 17.05.1998, under Pension Regulations.

Please, therefore, relieve the member from the Bank at the close of office hours on 17.05.1998 under

advice to all concerned and arrange for settlement of his terminal dues at an early date.

xxx xxx xxx”

7. As per such decision the petitioner’s husband was allowed to voluntary retire on **17.05.1998** in terms of Regulations 1995. However before pecuniary benefits could be disbursed after acceptance of voluntary retirement, as ill luck would have it, the petitioner’s husband unfortunately expired on **26.06.1998**.

8. Despite repeated approaches, the family pension which had accrued in her favour on account of death of her husband was not paid. She was only paid a part of Provident fund on 29<sup>th</sup> January, 1999.

9. Opposite Party number-3 issued a letter to the petitioner on 30<sup>th</sup> March, 1999 to be present before him with 2 recent passport size photographs for quick disposal of her claim relating to family pension. Thereafter the petitioner was further instructed to provide original death certificate as per letter dated 23<sup>rd</sup> March, 2000. Since no follow up action was taken despite complying the requirements as per instructions the petitioner submitted a representation on 04.04.2000 with a request for early release of her pension and other terminal benefits.

10. To her surprise and dismay she was communicated with a letter dated 11.7.2000 under Annexure 6, impugned herein, by which she was intimated by the Opposite Party No. 3 that she is not entitled to family pension as her husband had not rendered 20 years of qualifying service. The same is extracted hereunder:

xxx xxx xxx

“As per instruction of our Regional Office, Bhubaneswar, we inform you that, as Mr. Late T.K. Pattanaik has not completed the minimum

qualifying 20(Twenty) years of service his family  
is not eligible for Family Pension.”

XXX XXX XXX

11. Being aggrieved with the same the petitioner preferred appeal to the General Manager i.e. opposite party No.1 on 11.07.2000(Annexure-7).

12. Even though the claim of the Petitioner was recommended vide recommendation letter dated 27.09.2000(Annexure-8) but no follow up actions was taken for redressal.

13. On the other hand the opposite party No.2(Zonal Manager) at Annexure-9, dated 23.11.2000 instructed the opposite party No.3(Regional Manager) to submit the required information along with his views relating to the entitlement of the petitioner. Annexure-9 which is assailed is quoted hereunder:

“XXX XXX XXX

May we invite your careful attention to the referred letter on captioned subject. The reply to which is till awaited by us.

We request you to realize the crux of the seriousness and importance of the issue. Your inordinate delay to expedite the submission of required information along with your view and comments has put us in an awkward position.

A copy of our letter dated 11.07.2000 is enclosed for your ready reference.

Your earliest reply will be appreciated.

XXX XXX XXX”

14. The opposite parties have submitted a counter affidavit controverting the averments in the writ petition. It is contended by the Opp. Party that as per the Regulation-29 of Regulation-1995 voluntary retirement by an employee is permissible only when one has rendered 20 years of qualifying service excluding

the period of leave availed by the concerned employee during his service career.

14A. Since the husband of the petitioner is a habitual absentee in the office and he had not completed 20 years of qualifying service therefore, he is not entitled for pensionary benefits and consequentially the petitioner is also not entitled for family pension. The husband of the petitioner being an officer of the Bank it was incumbent upon him to go through the rules and regulations and the service condition of the Bank before submitting his application for voluntary retirement and since he had not completed 20 years of qualifying service deducting the period of leave he had taken during his service career, his family members are not eligible for family pension.

14B. For convenience of ready reference para-11 of the counter filed on behalf of the opposite parties is extracted hereunder:

★ “XXX XXX XXX ★

That the averment made in Sub-Para-1 & 2 of Para-11 of the Writ Application has no comment by the Opp. Parties and annexure-6 has been correctly replied to the representation made by the petitioner and as per sub-para-3,4 & 5, the husband of petitioner being an officer of the bank should go through the rules and regulations of the service condition and before submission of voluntary retirement application. As the husband of petitioner has not been completed 20 years of qualifying service, hence his family members were not eligible for family pension.

XXX XXX XXX”

15. Chapter-7 of the “Regulations 1995” deal with family pension. Regulation-39(1), which is germane for just adjudication is culled out hereunder:

“xxx                      xxx                      xxx

**39. Family Pension:**

1. Without prejudice to the provisions contained in these regulations where an employee dies-

a) after completion of one year of continuous service; or

b) before completion of one year of continuous service provided the deceased employee concerned immediately prior to his appointment to the service or post was examined by a medical officer approved by the Bank and declared fit for employment in the Bank; or

c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance;

the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with Appendix III.

Provided that in respect of employees who were in the service of the bank on or after the 1st day January, 1986 and had died while in service on or before the 31st day of October, 1987 or had retired on or before 31st day of October 1987 but died later, the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with Appendix V.

xxx                      xxx                      xxx”

16. It is not disputed by the Opposite Parties that petitioner’s husband joined the Bank as Assistant Cashier-cum-Go down Keeper on 10th February 1973 thereafter he was promoted to the officer cadre on 19.12.1994 and was allowed to retire voluntarily from service as Assistant Manager and relieved on 17.05.1998. And, admittedly was governed by the Central Bank of India

Pension (Employees') Pension Regulations 1995. Regulation-29 which is relevant is quoted below:

XXX XXX XXX

**29. Pension on Voluntary Retirement -**

1. On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement;

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (I) of regulation 2.

2. The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

3(a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) On receipt of a request under clause (a) the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

4. An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, **shall be precluded from withdrawing his notice except with the specific approval of such authority;**

XXX XXX XXX”

17. Regulation-52 of “Regulation-1995” deals with the date from which pension become payable. Regulation-52(2) & (3), which is relevant is extracted hereunder.

“XXX XXX XXX

(2) Family Pension shall become payable from **the date following the date of death of the employee or the pensioner.**

(3) Pension including family pension shall be payable for the day on which its recipient dies.

Pension should be paid on due date as per schedule. However, in case of delay in payment, interest may be paid for overdue period at Bank rate.

XXX XXX XXX”



18. In this context it is also apt to note regulation-14 and 15 which deals with qualifying service. The same is extracted hereunder:

“XXX XXX XXX

**Qualifying Service** – Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension

**Commencement of qualifying service** – Subject to the provisions contained in these regulations, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis.

XXX XXX XXX”

19. Relying on the aforementioned regulations dealing with family pension it is submitted by the learned counsel for the Petitioner, Mr. Das that since the Petitioner’s husband has admittedly worked for almost 18 years even otherwise she is entitled to family pension even assuming that her husband was not entitled to opt for voluntary retirement.

20. It is apt to note the Petitioner’s contentions in this regard in paragraph-15.2 of the writ petition as well as the reply of the opposite party in paragraph-14 of the counter. The same is extracted hereunder.

" XXX XXX XXX

15.2 Alternatively in case the petitioner's late husband offered for voluntary retirement through Annexure-2 stands unaccepted, because of the mistaken order (Annexure-4) of the by Opp. Party No.2, the deceased employee shall be deemed to be continuing in service date of his death and he having rendered much more

than the qualifying period, service as of prescribed in Regulations 14 of "Regulation 1995" his family is entitled to family pension, the break period between 17.5.98 to 26.6.98 ought to have been treated as extraordinary leave and the employee having died in harness, for computing the family pension, the length of military service should have been accounted.

xxx xxx xxx”

### **Counter**

“xxx xxx xxx

14. That the averment made in Para-15 of the writ Application is totally false and baseless and has no leg to stand and the petitioner has to put strict proof of the same.

xxx xxx xxx”

21. The Prime issue which is required to be considered in this lis is whether the petitioner is entitled for the family pension and the terminal benefits accrued in her favour on account of service rendered by deceased husband, once her husband was allowed to avail voluntary retirement and even otherwise since her husband had served for more than the minimum period of qualifying service, as per the contention of the learned counsel for the Petitioner.

22. It is the stand of the opposite party that since the Petitioner had availed 928 days of leave on loss of pay which is more than two(2) years and in the absence of any order to treat the same as qualifying service in terms of regulation-17 as quoted hereinabove, the authorities did not count such period of leave as qualifying service. Thereby the total qualifying period of service of the petitioner comes down to less than 19 years of service for the purpose of pension. Since there is a statutory restriction for payment of pension on voluntary retirement which is payable only when an employee has completed 20 years of qualifying

service in terms of Regulation-29, the employee concerned (Petitioner's husband) is neither entitled for pension on account of voluntary retirement nor his family members including the present petitioner are entitled for the family pension.

23. To answer this issue it is relevant to note here that the Regulation 29 of "Regulation-1995" permits an employee to apply for voluntary retirement by giving 3 months notice in case he has served for a period of more than 20 years of qualifying service to his credit. Since the mere application for voluntary retirement is not to be treated as deemed acceptance unless and until the competent authority accepts the same, Hence, it is incumbent upon competent authority to accept or reject the proposal for voluntary retirement. Once the competent authority has decided the matter accepting the voluntary retirement request of an employee (the Petitioner's husband) it is deemed that the employee had satisfied the pre-conditions laid down in Regulation-29.

24. It is apposite to take note of regulation-29.4 of Regulations, 1995, at this juncture. The same reads thus:

“xxx xxx xxx

29.4. An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority;

xxx xxx xxx”

And, it is submitted by the learned counsel for Petitioner Mr. Dash that in terms of the said regulation the Petitioner's husband is deemed to have been voluntarily retired in terms of the order dated 16.03.1998(Annexure-4) extracted in paragraph-5

above and the stand of the opposite party bank to the contrary is without any substance.

25. This Court is of the considered view that the Bank authorities have deliberately misinterpreted Regulation-29 of Regulation,1995 and over jealously tried to justify the unjustifiable. Regulation 29 deals with the option available to the employee to ask for voluntary retirement and the competent authority to verify the same to accept or reject such request for voluntary retirement. Rather once the competent authority has applied his mind and accepted the proposal of volunteer retirement submitted by an employee and after verifying the service records arrived at a conclusion that it is a fit case for acceptance of volunteer retirement, then unless and until the order of voluntary retirement is withdrawn treating it to be illegal or unsustainable or contrary to any statute, the employee concern is entitled for the benefit to be derived by treating him as a retired employee. And admittedly in the case at hand no such action has been taken and in the considered opinion of this Court could not have been taken once the order of voluntary retirement has been passed in terms of Regulation-29.4 quoted above.

26. As already noted the opposite party bank has admitted in their counter that the husband of the Petitioner, was relieved on acceptance of his request for voluntary retirement.

26A. As such, the order of voluntary retirement of the Petitioner's husband attained finality. By virtue of which the status of the husband of the Petitioner was that of a retired employee.

27. Even otherwise since undisputedly the husband of the Petitioner has rendered service of about 18 years, the Petitioner is entitled to family pension taking into account Rule-39 of the

Regulation which stipulates that even after completion of one year of service, family of the deceased employee shall be entitled to family pension. Such Rule-39 of the regulation is once again extracted hereunder at the cost of repetition for convenience of ready reference.

**“39. Family Pension:**

1. Without prejudice to the provisions contained in these regulations where an employee dies-

a) after completion of one year of continuous service; or

b) before completion of one year of continuous service provided the deceased employee concerned immediately prior to his appointment to the service or post was examined by a medical officer approved by the Bank and declared fit for employment in the Bank; or

c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance;

the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with Appendix III.

Provided that in respect of employees who were in the service of the bank on or after the 1st day January, 1986 and had died while in service on or before the 31st day of October, 1987 or had retired on or before 31st day of October 1987 but died later, the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with Appendix V.”

28. In the case of **V.Sukumaran vs. State of Kerala and Anr**, reported in **(2020)8 SCC 106** the Apex Court while dealing with the claim for pension held thus:

“Pension is succor for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee.”

28A. Entitlement of an employee to pension engaged the attention of the Apex Court on several occasion starting from the celebrated judgment of **D.S. Nakara and Others V. Union of India** reported in (1983) 1 SCC 305 wherein the constitution Bench of the Apex Court held:

“Pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment.”

28B. Such view has been reiterated in the case of **State of Kerala & Others vs. M.Padmanabhan Nair [1985 (1) SCC 429]** and in the case of **Dr. Uma Agrawal v. State of U.P. and Anr., 1999(3) SCC 438.**

28C. Recently the Apex Court in **R. Sundaram Vs. The Tamil Nadu State Level Scrutiny Committee & Ors** reported in 2023 SCC online SC 287 restated such principles relating to pensionary benefits and quoted its earlier judgment in the case of **State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava & Another: (2013)12SCC 210.** Paragraph-11 of the judgment of **R. Sundaram (Supra)** is extracted hereunder:

XXX XXX XXX

11. Keeping in mind the submissions of both the parties, at the very outset we would like to state that the right to pensionary benefit is a constitutional right and as such cannot be taken away without proper justification as has been held in the case of **State Of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr.**<sup>1</sup>.

The relevant paragraph of the judgment is being extracted herein:

*“15. In State of W.B. v. Haresh C. Banerjee [(2006)7SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a*

*fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.*

*16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in “property”...Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.*

XXX स XXX जयते XXX”

29. On consideration of materials on record, in the light of the dictum of the Apex Court as noted, this Court is of the considered view that annexures-6 and 9 denying the entitlement of the Petitioner to family pension and terminal benefit of her deceased husband is malafide due to non-application of mind, not sustainable and accordingly quashed.

30. In the case at hand not only the authorities arbitrarily denied family pension to the Petitioner-widow but have been uncharitable in their approach towards her legitimate claim. In as much as, in paragraph-G of the counter, it has been stated thus:

“XXX XXX XXX

g) That the bank was magnanimous in allowing to Mr. Patnaik to continue in the bank even after his continued irregularity and he has not attend the office since 1<sup>st</sup> March 1998 and the case of Mr. Patnaik was a fit case for dismissal the bank was magnanimous enough to pay gratuity of Rs.96,000/-

XXX XXX XXX”

31. Regulation- 52(2) & (3) of the bank which has already been noted is extracted hereunder for convenience of ready reference:

**“(2) Family Pension shall become payable from the date following the date of death of the employee or the pensioner.**

**(3) Pension including family pension shall be payable for the day on which its recipient dies.**

**Pension should be paid on due date as per schedule. However, in case of delay in payment, interest may be paid for overdue period at Bank rate.”**

32. In terms of regulation-52(3), this Court directs that the opposite party bank shall release all pecuniary benefits such as family pension and other terminal benefits in favour of the Petitioner treating her to eligible to get the same from 26.06.1998, the date on which on which her husband passed away with the prevailing rate of interest in the year 1998 in terms of regulation-52(3) quoted above.

33. In the event such family pension along with accrued interest and other terminal benefits are not paid by the opposite party Bank within a period of three months from the date of receipt/ production of the copy of this order, the same shall carry



interest at the rate of 12% from 26.06.1998 (date of death of Petitioner's husband) till its actual payment.

34. Accordingly, the writ Petition stands disposed of. No costs.

**( V.Narasingh )**  
**Judge**

*Orissa High Court, Cuttack,*  
*Dated the 20<sup>th</sup> of December, 2023/soumya*

