

ORISSA HIGH COURT : CUTTACK

W.P. (C) No. 10925 of 2007

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

Kumudini Devi	...	Petitioner
Versus		
State of Orissa and others	...	Opposite parties

<i>For petitioner</i>	-	<i>M/s. Hrudananda Tripathy, B.P.Rath, Ashok Das and S.R.Tripathy</i>
<i>For opposite parties</i>	-	<i>Addl. Government Advocate (for opp.party no.1) Mr. J. K. Mishra, Asst. Solicitor General of India (for opp.parties 2 and 3) and Mr. S.K.Das, Central Government (for opp.party no.4).</i>

Counsel

P R E S E N T

THE HONOURABLE MR. JUSTICE S.K.MISHRA

<i>Date of hearing – 29.03.2012</i>	<i>:</i>	<i>Date of judgment - 27.04.2012</i>
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S.K.Mishra, J. In this writ application, the petitioner prays for payment of arrear and current family pension, which was withheld from January, 1996, along with interest at the rate of prevailing bank rate.

2. The facts are not disputed. The husband of the petitioner Pandit Kulamani Mishra was a Government servant serving as a Lecturer in Sri Sadasiv Kendriya Sanskrit Sansthanam, Puri under the opposite party no.2 for the period

16.07.1945 to 14.08.1971. Thereafter, the employees of the said Bidyapitha were absorbed under the Rastriya Sanskrit Sansthanam. Accordingly, the petitioner served under opposite party no.3 from 15.08.1971 to 30.04.1979 and retired from service on superannuation.

3. After retirement, Pandit Kulamani Mishra expired on 19.02.1990. As per the terms and conditions mentioned in Annexure-1, the petitioner is entitled to family pension on the day following the death of Pandit Kulamani Mishra till her death. The petitioner was also receiving family pension at the rate of Rs.675/- per month through State Bank of India, Puri till December, 1995. Suddenly, payment of family pension of the petitioner was discontinued/stopped by the S.B.I., Puri. In this connection, the authorities have verbally intimated the petitioner that the opposite party no.4 i.e. the Accountant General of Odisha, Bhubaneswar has directed for discontinuance of the family pension of the petitioner, but could not assign any reason therefor.

4. The petitioner submits that as per the terms and conditions of the absorption of the Government employees under the Rastriya Sanskrit Sansthanam, widow of the Government employee is entitled to the benefit of family pension by virtue of his service under the State Government, such family pension could be payable by the Sansthanam, who had taken over the service and permanently absorbed the employee. Accordingly, the writ application has been filed.

5. Counter affidavit has been filed by the opposite parties 2 and 3 i.e. Principal, Sadasiv Kendriya Sanskrut Bidyapitham, Puri and Deputy Director (Admn.), Rastriya Sanskrit Sansthanam, New Delhi *inter alia* contending that the petitioner may be entitled to get family pension from State Government of Orissa as late Kulamani Mishra was in service for about 26 years under the State Government but he was under opposite parties 2 and 3 only for a period of less than eight years. As per the pension rule, the family pension cannot be granted to the wife of the deceased employee since his service was about eight years under the Rastriya Sanskrit Sansthanam. The petitioner may get family pension from the

State Government if Act or Rule provides. No counter affidavit has been filed by the state Government.

6. The Accountant General has filed a counter affidavit, wherein a specific plea has been taken. It is contended that as per paragraphs 4(a) and 9 the terms and conditions envisaged in letter No. admn.1/5RSKS/72-73/8559 dated 2.2.1973, which provides for deputation of officers and staff of State Government to Shri Sadasiba Kendriya Sanskrit Vidyapith, Puri, the Government will have no liability for the family pension.

7. In course of hearing of the writ application in essence two contentions have been raised by the learned counsel for the petitioner, firstly it is contended that pension is not a bounty and it is a right of the employee. Similarly, family of the deceased employee is also allowed to get pension and, therefore, family pension cannot be stopped on the basis of a circular unless the rule is amended. Secondly, it is contended that the petitioner was getting pension and without issuing any notice to show cause, the pension has been sopped without any rhyme and reason. It is therefore contended that the action of the opposite parties is violative of the principles of natural justice. Learned counsel appearing for the Accountant General, on the other hand, argued that the petitioner is not entitled to receive family pension as the terms and condition of the absorption do not provide for the same.

8. In **State of West Bengal v. Haresh C. Banerjee and others**, (2006) SCC 651, the Supreme Court has held that right to receive pension is valuable right of the Government servant, which does not depend upon the sweet will of the Government. Similarly in **Deokinandan Prasad v. The State of Bihar and others**, AIR 1971 SC 1409, the Supreme Court held that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant. It is further held that right to receive pension is property under Article 31 (1) (f) of the Constitution of India and by a mere executive order the State has no power to withhold the same. In the meantime time, Article 31 has been repealed by the Constitution (44th Amendment) Act 1978 w.e.f. 20.06.1979. However, right

to property is a legal right under Article 300-A, which provides that no person shall be deprived of his property save by authority of law. Therefore, if a person is to be deprived of his property, then he must be heard. Property of a person cannot be taken away from him/her without following the procedure established by law.

9. In that view of the matter, this Court comes to the conclusion that the withholding of family pension only on the basis of terms and conditions of the taking over of the employees of the Bidyapitha shall not over ride the effects of the common law, which is guiding payment of pension. Therefore, the opposite parties 2 and 3 are liable to pay the pension.

10. Secondly, it is seen that the petitioner was receiving pension but without any notice, all on a sudden in the year 1995 the same was stopped. The action of the Accountant General in directing stoppage of family pension is violative of the principle of natural justice. Accordingly, the same is liable to be set aside.

11. Thus, on the basis of the aforesaid discussions, this Court comes to the conclusion that the petitioner is entitled to receive family pension. Opposite party no.4 is directed to pass necessary orders to pay the family pension of the petitioner from the date of stoppage of the same i.e. on 01.01.1996 along with interest @ 6% per annum on the outstanding amount within a period of one month from the date of receipt of notice of this order. The order be communicated to the opposite parties at the cost of the petitioner. The petitioner is directed to file requisites within three days.

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S.K.Mishra, J.

*Orissa High Court, Cuttack,
Dated, the 27th April, 2012/JNS.*