IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) No.34267 of 2025

Kusuma Mala Mishra	**.....**	***Petitioner*** Mr. N. Rath, Advocate
	-versus-	
State of Odisha &Ors.	**.....**	***Opposite Parties*** Mr. S.P. Das, ASC

CORAM:
THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY
ORDER
24.02.2026

Order No.07

1. This matter is taken up through hybrid mode.

2. Pursuant to order dtd.19.01.2026, learned Addl. Standing Counsel produced the instruction so provided by the Department vide letter dtd.21.02.2026. The same be kept in record.

3. Heard Mr. N. Rath, learned counsel appearing for the Petitioner and Mr. S.P. Das, learned Addl. Standing Counsel appearing for the Opp. Parties.

4. The present writ petition has been filed inter alia with the following prayer:-

> *"In view of the facts stated above the Petitioner prays that this Hon'ble Court may graciously be pleased to issue a writ in the nature of writ of Mandamus directing the Opp. Parties to immediately sanction commuted value of pension, final pension and gratuity as the petitioner has retired from government service w.e.f. 31.1.2023 and the Opp. Parties be directed to take a decision with regard to exemption of the petitioner from realization of the amount*

as per the audit objection and the impugned order at Annexure-13 may be quashed.

And Further, the para-4 of IAR No.18 of 2022-23 at Annexure-3 be quashed with respect to the recovery from the petitioner as observed therein and further declaring the action of Opp. Parties to persuade the petitioner to submit the pension papers without exemption from recovery of the balance amount of Rs. 10,42,968/- at Annexure-13 on the basis of audit report as illegal, unjustified and unsustainable.

And further, the Opp. Parties be directed to release all the above-mentioned pension and pensionary benefits along with 18% interest due to delay caused by the authorities without any justified reason in the interest of justice.

And further be pleased to issue pass any other order/orders as the Hon'ble Court deems fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray."

5. It is contended that even though Petitioner has retired from his services on attaining the age of superannuation on 31.01.2023, but on the ground of the objection raised for recovery of an amount of Rs.10,42,968/- basing on audit objection, Petitioner's retiral benefits has been withheld, save and except sanction of the provisional pension.

5.1. It is contended that since no recovery can be made basing on the audit objection, which is a settled position, non-release of the retiral benefits on the ground that Petitioner is liable to pay back the aforesaid amount basing on audit objection, is not sustainable in the eye of law. It is accordingly contended that appropriate direction be issued to the Opp. Parties to release the retiral benefits of the Petitioner as due and admissible without any further delay along with interest.

6. Basing on the instruction, learned Addl. Govt. Advocate contended that since after due audit, it has been found that Petitioner is liable to pay back a sum of Rs.10,42,968/- and the said amount was also decided by giving opportunity of hearing to the Petitioner, the Department in the meantime while forwarding the pension paper of the Petitioner to the office of Accountant General, has requested to release all the retiral benefits by withholding the recovery amount of Rs.10,42,968/- till finalization of the audit para. Instruction so provided reads as follows:-

> *"In inviting a reference to your office letter dt.17.02.2026 on the above subject, I am directed to say that the Petitioner was afforded an opportunity to present her case during the joint hearing held on 04.01.2025 with regard to the audit recovery amounting to Rs. 10,42,968. After due consideration, it was decided to recover the said amount from the Petitioner in view of huge loss caused to the Government.*
>
> *However, the matter has since been re-examined and referred to the Finance Department for its considered views regarding the recovery of the aforesaid amount from the Petitioner.*
>
> *In the meantime, the Department has already recommended to the O/o the AG (A&E), Odisha, Bhubaneswar vide Ref Id No. 202419514924 for sanction of the final pension, commuted value of pension and gratuity of the Petitioner withholding the objectionable amount of*

Rs.10,42,968.00 till finalization of Audit Para. The final decision on the recovery shall be taken upon receipt of views of the Finance Department.

It is, therefore, requested that the above facts may kindly be submitted before the Hon'ble High Court with a prayer to grant one month time to intimate the final decision regarding the audit recovery."

6.1. It is accordingly contended that since Petitioner is liable to pay back a sum of Rs.10,42,968/- because of audit objection, now all the retiral benefits as due and admissible will be released, save and except the aforesaid amount, subject to the view of the Finance Department.

7. To the instruction so provided, learned counsel appearing for the Petitioner contended that since the amount in question has not been determined by following due procedure of law and no proceeding was ever initiated against the Petitioner during his service career or after his retirement, basing on audit objection, the amount in question cannot be withheld from the retiral dues of the Petitioner.

8. Having heard learned counsel appearing for the Parties, considering the submission made and the instruction so provided, this Court finds that after retirement of the Petitioner on 31.01.2023, the retiral benefits of the Petitioner was not released on the ground that Petitioner is liable to pay a sum of Rs.10,42,968/- basing on audit objection. Since it is not disputed by either of the Parties that the aforesaid recoverable amount has not been determined in accordance with law with initiation of due proceeding, it is the view of this Court that basing on audit

objection with any amount due from the Petitioner, retiral benefits of the Petitioner could not have been withheld.

8.1. Therefore, this Court while disposing the writ petition, directs Opp. Party Nos. 1 and 6 to release the retiral benefits as due and admissible in favour of the Petitioner without making any recovery basing on audit objection.

8.2. However, considering the submission made by the learned Addl. Standing Counsel that Petitioner is required to pay the aforesaid amount, this Court permits the Opp. Party No. 1 to take appropriate action against the erring officials because of whom such an amount could not be recovered from the Petitioner during his service career with due initiation of proceeding, both civil and criminal or recover the amount from the Petitioner by initiating appropriate proceeding, if it is so permissible in the eye of law at present.

9. With the aforesaid observation and direction as well as liberty, the writ petition stands disposed of.

(BIRAJA PRASANNA SATAPATHY)
Judge

Sneha

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Reason: Authentication
Location: High Court of Orissa, Cuttack
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