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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37529 of 2025

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

.....

Biswanath Mahanta

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : *Mr. N. Rath, Advocate*

For Opp. Parties :

Mr. A. Tripathy, AGA

Mr. S.K. Patra, Adv. for O.P.4

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:25.03.2026 and Date of Judgment:25.03.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel appearing for the Parties.



3. The present Writ Petition has been filed *inter alia* with the following prayer:-

“It is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased Admit the writ application, to issue rule Nisi calling upon the opposite parties to show cause as to why the prayers made hereunder shall not to be allowed, upon showing insufficient cause/ no cause make the said Rule absolute, Issue writ/ writs in the nature of mandamus directing the opposite parties to sanction and release the regular pension, gratuity, unutilized leave salary, commuted valued of pension and other retirement dues as due and admissible to the petitioner within a stipulated period as would be fixed by this Hon'ble Court;

And to grant 18% interest on the unpaid amount of the petitioner for undue harassment and mental agony despite no legal hurdle to sanction and disburse the aforesaid amount in favour of the petitioner;

And/or may pass such other writ/writs, order/orders, direction/directions as this Hon'ble Court may think fit and proper for the ends of justice.

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

4. It is contended that while continuing in service as Deputy Director of Mines, Sambalpur Circle, Sambalpur, Petitioner retired from his services on attaining the age of superannuation on 30.11.2023.

4.1. It is contended that even though Petitioner by the time retired from service on attaining the age of superannuation, there was no proceeding pending against him either departmental or criminal, but Petitioner after his retirement, was only sanctioned



with the provisional pension vide order under Annexure-3.

4.2. It is however contended that Petitioner was not sanctioned with the benefit of pension and other pensionary benefits, on the ground of pendency of two numbers of vigilance cases in Berhampur (Vigilance) P.S. Case No.37 of 2012 and 38 of 2012.

4.3. It is contended that since by the time, Petitioner retired on attaining the age of superannuation, cognizance in both the vigilance proceedings had not yet been taken and the same was only taken on 12.02.2025 and 22.02.2025 respectively as reflected in Annexure-5, it has to be held that as on the date of retirement, no proceeding was pending against the Petitioner in the eye of law.

4.4. It is accordingly contended that since no proceeding was pending against the Petitioner as on the date of retirement, with-holding of the retirement benefits of the Petitioner is not sustainable in the eye of law.

5. In support of his submission, reliance was placed to a decision of this Court passed on 11.03.2026 in ***W.P.(C) No.26820 of 2025 (Biranchi Narayan Behera vs. State of Odisha & Another)***. This Court in Para-6 to 6.3 of the said order has held as follows:-



“6. Having heard learned counsel for the parties and considering the submissions made, this Court finds that petitioner retired on attaining the age of superannuation on 28.02.2019. It is found that on the date of retirement no Departmental Proceeding was pending against the petitioner and petitioner was only implicated in Bhubaneswar Vigilance P.S. Case No.45 dated 18.11.2014 for the offence under Section-13(2) r/w 13(1)(e) of the PC Act, 1988. It is not disputed that by the time petitioner retired on 28.02.2019, no charge-sheet was filed in the aforesaid Vigilance Proceeding which was only submitted on 29.02.2020 and cognizance was taken against the petitioner vide order dated 21.07.2021.

6.1. Placing reliance on the stipulation contained in the Circular issued by the G.A. and P.G. Department on 12.12.2019 under Annexure-8 and the Home Department on 22.08.2024 under Annexure-9 and so also the Notification issued by the Finance Department on 19.05.2025 under Annexure-12, since as on the date of retirement, neither any Departmental Proceeding was pending and in the Vigilance Proceeding, charge-sheet was only filed on 29.02.2020 much after the retirement, it is the view of this Court that petitioner is eligible and entitled to get the retiral benefits and it cannot be withheld on the ground of pendency of the Vigilance Proceeding where admittedly cognizance has been taken only on 21.07.2021.

6.2. In view of the aforesaid analysis, this Court while disposing the Writ Petition, directs Opp. Party No.1 to release all the retiral benefits as due and admissible to the petitioner within a period of 3 (three) months hence. However, release of the said benefits shall be subject to final outcome of the Vigilance Proceeding.

6.3. This Court while disposing the matter however deprecates the action of the Vigilance Authority, in not filing the charge-sheet till 29.02.2020 even though proceeding was initiated on 18.11.2014 and thereby giving a scope to the petitioner to raise his claim to get the benefits. Learned Addl. Standing Counsel is directed to provide copy of the orders passed in the present Writ Petition as well as in the connected W.P.(C) No.28021 of 2025 to the concerned



Department as well as the Directorate of Vigilance for information and necessary action.”

5.1. Reliance was also placed to another order passed by this Court on 05.09.2023 in **W.P.(C) (OA) No.73 of 2018 (Harihara Behera vs. State of Odisha & Ors.)**

This Court in Para-4.3. and 6 has held as follows:-

“4.3. In support of his aforesaid submission vis-à-vis the explanation given to Rule 7(2), Mr. Rath relied on a decision of this Court so passed on 06.05.2022 in W.P.(C) No. 14718 of 2015. This Court after going through the provisions contained under Rule 7(2) vis-à-vis the explanation appended thereto came to the following conclusion in Para 9 & 10 of the Judgment:-
“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. 10. The word “cognizance” indicates that at the point of time when the Magistrate or Judge first takes judicial notice of the offence. More so, cognizance is being taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom prima facie case is made out. More so, cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint/FIR is satisfied that the complaint/FIR discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter.”

6. Having heard learned counsel appearing for the Parties and after going through the materials available on record vis-à-vis the submissions made, this Court finds that Rule 7(2) of the OCS (Pension) Rules prescribes the modality and the right of Govt. to withhold or withdraw pension. Rule 7(2)(a) to (e) prescribes the modalities and cases in which the Govt. can withhold pension and other pensionary benefits. But this Court finds that in the explanation given to Rule 7(2), it has been held that judicial proceeding shall be deemed to be instituted on the



date on which the complaint or report of a police officer, of which the Magistrate takes cognizance. Since in the present case as on the date of the retirement only the case has been instituted vide Cuttack Vigilance P.S. Case No. 76 of 2016 and no charge sheet is filed with taking of cognizance as contended by the learned counsel for the Petitioner, placing reliance on the explanation to Rule 7(2) and the decision as cited (supra), this Court is of the view that the Petitioner is eligible and entitled to get the benefit of pension and other pensionary benefits. While holding so, this Court directs Opp. Party No. 1 to sanction and release the final pension and other retiral benefits as due and admissible in favour of the Petitioner. Such an exercise shall be undertaken and completed within a period of three (3) months from the date of receipt of this order. However, the extension of pension and other pensionary benefits shall be subject to final outcome of the vigilance case in question”.

6. It is further contended that the order passed by this Court in the case of ***Harihara Behera*** in the meantime has already been implemented and he has already got the retiral benefits as due and admissible to him.

6.1. It is accordingly contended that Opposite Parties be directed to release the pension and other pensionary benefits as due and admissible in favour of the Petitioner.

7. Learned Addl. Government Advocate for the State on the other hand basing on the instruction contended that, since by the time Petitioner retired from his services on attaining the age of superannuation on 30.11.2023, two vigilance proceedings were pending against him in Berhampur (Vigilance) P.S. Case No.37



and 38 of 2012, Petitioner was sanctioned with the provisional pension vide order under Annxure-3.

7.1. It is further contended that the Department when moved the Government in the GA (Vigilance Department), Cuttack with regard to the status of the vigilance proceedings, vide letter under Annexure-5, it has been indicated that cognizance has been taken in both the proceedings on 12.02.2025 and 22.02.2025 respectively.

7.2. It is accordingly contended that since by the time Petitioner retired from service on 30.11.2023, two nos. of Vigilance Proceeding were pending against him and cognizance in both the proceedings has already been taken, release of the pensionary benefits will only be made after disposal of both the vigilance proceedings.

8. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that the Petitioner while continuing as a Deputy Director in the Department of Steel & Mines Government of Orissa, he retired from his services on attaining the age of superannuation on 30.11.2023 and on such retirement of the Petitioner, he was only sanctioned with the provisional pension and other retirement benefits were not released on the ground of pendency of two vigilance proceedings pending against



him in Berhampur (Vigilance) P.S Case No.37 and 38 of 2022.

8.1. However, as found from Annexure-5, cognizance in both the vigilance proceedings were taken on 12.02.2025 and 22.02.2025 respectively. Since by the time Petitioner retired, no cognizance had been taken, in view of the Resolution issued by the GA & PG Department on 12.12.2019, Home Department on 22.08.2024 and Finance Department on 19.05.2025, so relied on by this Court in its order dtd.11.03.2026 in the case of **Biranchi Narayan Behera** so cited (supra), it is the view of this Court as on the date of retirement, no proceeding was pending against the Petitioner in the eye of law.

8.2. Therefore, placing reliance on the decision in the case of **Biranchi Narayan Behera** as well as **Harihara Behera** so cited (supra), this Court is of the view that Petitioner is eligible and entitled to get all his retiral benefits. While holding so, this Court directs Opposite Party No.1 to release the retiral benefits of the Petitioner as due and admissible within a period of four (4) months from the date of receipt of this order. However, such release of the retiral benefits shall be subject to final outcome of both the vigilance proceedings.



9. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 25th March, 2026/Subrat