

S U P R E M E      C O U R T   O F      I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).32010/2010

(From the judgement and order dated 08/12/2009 in  
of The HIGH COURT OF ORISSA AT CUTTACK)

WP No. 7310/2007

STATE OF ORISSA & ORS.

Petitioner(s)

VERSUS

MANORAMA GHOSE

Respondent(s)

(With prayer for interim relief and office report )  
(For Final Disposal)

Date: 12/08/2011      This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA  
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s)

Mr. Shibashish Misra, Adv.

For Respondent(s)

Mr. Anukul Chandra Pradhan, Adv.  
Mr. Saurabh Mishra, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed to the aforesaid extent and  
disposed of accordingly in terms of the signed order.

(DEEPAK MANSUKHANI)

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

(RENU DIWAN)

Court Master

CIVIL APPEAL NO. 6961 OF 2011  
(Arising out of SLP(Civil) No. 32010 of 2010)

STATE OF ORISSA & ORS.

Appellant(s)

VERSUS

MANORAMA GHOSE

Respondent(s)

O R D E R

Leave granted.

This appeal is directed against the judgment and order  
dated 8.12.2009 passed by the Orissa High Court whereby the High  
Court has dismissed the writ petition filed by the appellants  
herein.

Our attention has been drawn to the said order dated 8.12.2009 passed by the Division Bench of the High Court. By filing the said appeal, the respondent herein has prayed for a direction to the State to sanction and pay family pension benefit to the respondent with effect from 11.12.1994 along with all other admissible dues of the husband of the respondent. The Tribunal heard the original application which was filed before it with the aforesaid prayer and allowed the same. When the appellants approached the High Court, the Division Bench dismissed the writ petition filed by the appellants without recording any reasons for its decision but only observing that the High Court is not interfering with the order passed by the Tribunal. The same was also dismissed on the ground that it was filed after a long lapse of time.

The husband of the respondent herein was working as a work-charged employee but was not regularised and, therefore, the appellants has taken a stand that the wife is not entitled to any family pension. The husband of the respondent was appointed as a work-charged employee on 6.3.1975 and he died on 11.12.1994.

It

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further appears from the records that after the death of the husband of the respondent, son of the respondent has been provided with Government service as Store Keeper, Grade III under the Rehabilitation Assistance Scheme and he joined on 12.2.1996. It is also the case of the appellants that there was as no sanctioned post of Truck Driver under the regular establishment and, therefore, the husband of the respondent was never brought over to the regular establishment. It also transpires from the records that the respondent applied for family pension after the lapse of 9 years from the date of death of her husband. Considering the existing rules which is called Orissa Pension Rules, 1977 which did not permit payment of any pension to a work-charged employee, the request of the respondent for payment of family pension was rejected by the appellants.

Reliance is placed by the counsel appearing for the respondent on the resolution of the Government of Orissa dated 22.1.1965 and also on the notification dated 6.3.1990. The aforesaid resolution and the notification deal with the conditions of service of work-charged employees under various departments towards their claim for pension. Learned counsel appearing for the respondent submitted that all posts sanctioned in work-charged establishment under different departments of Government which had completed five years of continuous existence on the date of issue of the order and were likely to continue in future and the work for which the posts had been sanctioned are of permanent nature, should be brought over to regular establishments in terms of the aforesaid Resolution as also the circular. It is submitted by him that the husband of the respondent had worked in that work-charged establishment for more than 10 years and, therefore, the aforesaid resolutions are applicable to the husband of the respondent. On closure scrutiny

of aforesaid circulars, we find that only those posts which were sanctioned posts in work-charge establishment were given some benefit under the aforesaid policy decision but no such order was passed in the case of the husband of the respondent bringing him

to the regular establishment. The aforesaid Orissa Pension Rules, 1977 does not make any provision for payment of a ny pension to a person who had worked as work-charged establishment as against the post which were also not sanctioned posts.

In this connection, we may refer to the decision of this Court in Uttar Haryana Bijli Vitran Nigam Ltd. and Others Vs. Surji Devi reported in 2008(2) SCC 310 wherein it was laid down by this Court that if statutory provisions debar grant of family pension in favour of the family members as the deceased employee is a work-charged employee and not a permanent employee or temporary employee, no such pension could be paid for the period during which the employee worked as a work-charged employee. Such period could be taken into consideration when his services are regularised and he becomes a permanent employee of the establishment, in which case only, the pension rules would become applicable.

In our considered opinion, the aforesaid decision applies to the facts of the present case in full force and, therefore, we set aside the order passed by the High Court and also by the Tribunal. By this Order we dismiss the original application filed by the respondent. It is an admitted position that the son of the deceased has been given an appointment by the appellant in their establishment on compassionate ground. If the son of the respondent is not working as a regular employee and is only working as a work-charged employee, the State shall consider his case for giving him regular appointment in accordance with law on a representation filed by the son of the respondent.

The appeal is allowed to the aforesaid extent and disposed of accordingly.

.....J.  
(DR. MUKUNDAKAM SHARMA)

.....J.  
(ANIL R. DAVE)

NEW DELHI  
AUGUST 12, 2011.