The State Of Odisha vs Manju Naik on 4 December, 2019

Equivalent citations: AIR 2020 SUPREME COURT 94, AIRONLINE 2019 SC 1670, 2020 LAB IC 682, (2019) 17 SCALE 471, 2020 (1) KLT SN 4.2 (SC), (2020) 1 SCT 261, (2020) 1 SERVLR 333, AIR 2020 SC (CIV) 764, AIRONLINE 2019 SC 2677

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Bench: Hrishikesh Roy, A.S.Bopanna, R.Banumathi

[REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9204 OF 2019
(Arising out of SLP(C) No.16283 of 2017

STATE OF ODISHA & ORS. APPELLANT(S)

VERSUS

MANJU NAIK RESPONDENT(S)

J U D G M E N T

Hrishikesh Roy, J.

Leave granted.

2. This appeal arises out of the judgment and order dated 29.11.2016 in W.P. (C)No. 14413 of 2016 whereunder the High Court of Orissa has dismissed the appellants' challenge to the order dated 3.8.2015 of the Odisha Administrative Tribunal (hereinafter referred to as "the Tribunal") under which the authorities were directed to consider sanction of invalid pension in favour of late Sagar Naik (husband of the respondent) and thereafter settle family pension in favour of the applicant, under the provisions of the Orissa Civil Services (Pension) Rules- 1992 (hereafter referred to as "the Pension Rules").

3. The respondent filed the OA No. 18(B)/2010 before the Tribunal praying for fixation of pay of late Sagar Naik and for disbursal of his accrued financial benefits with effect from 1.1.1996 until he was retired on 6.7.1996 on being mentally incapacitated. The applicant also prayed for sanction of family pension from the date of death of her husband i.e. 24.7.1996.

4. The applicant projected before the Tribunal that her husband on being found incapacitated was made to retire from service on 6.7.1996 and he died soon thereafter on 24.7.1996 and therefore, the widow is entitled to family pension. She also tried to make out a case for grant of invalid pension in favour of her late husband.

5. Opposing the prayers, the Government Advocate on behalf of the State contended before the Tribunal that the applicant's husband had not rendered the qualifying period of service so as to make him eligible for pension. Opposing the claim for invalid pension for the deceased husband, the appellants contended that Rule 39 of the Pension Rules governing invalid pension has to be read together with Rule 47 which specifies the qualifying service of ten years for grant of pension and accordingly it was argued that the applicant is disentitled to any relief from the Tribunal.

6. Notwithstanding the State's above contention, the Tribunal concluded that the applicant's husband is entitled to invalid pension under Rule 39 of the Pension Rules and accordingly, the authorities were directed to sanction the invalid pension for the applicant's husband and after his death, to settle the family pension for the applicant, after regularizing the services of the deceased employee.

7. The above decision was challenged by the appellants through W.P.(C) No. 14413/2016 where the State projected that Rule 39 has to be read jointly with Rule 47 of the Pension Rules and if Rules are applied as it should be, conjointly, the deceased government employee is ineligible for invalid pension. However, without adverting to the specific contention raised by the appellants, the High Court observed that a reasoned order was passed by the Tribunal declaring entitlement for the invalid pension and accordingly the Tribunal's impugned order was left undisturbed and the writ petition came to be dismissed.

8. Representing the State of Odisha and other appellants, Ms. Anindita Pujari, learned counsel submits that the deceased government employee was unauthorizedly absent from service from 1.2.1995 to 23.7.1995 and was under suspension from 24.7.1995 to 6.7.1996 and this period cannot be counted for determining the qualifying service. Thus, in his credit, the deceased employee had net qualifying service of 4 years 6 months and 29 days until he was superannuated on 6.7.1996. The learned counsel then refers to the provisions of Rule 47(2)(b) and 47(5)(i) to argue that without completing the qualifying service of ten years, the deceased employee is ineligible for pension. Due to such non-entitlement, the widow was granted the alternate benefit i.e., the service gratuity amount by computing the entitlement under Rule 47(5)(i)of the Pension Rules.

9. On account of the short duration of service rendered by the deceased employee, the State's counsel then argues that the respondent's husband cannot be granted invalid pension under Rule 39 as the provision has to be conjointly read with Rule 47 and Rule 56 of the Pension Rules which

specify the qualifying service of ten years and also the consequences for those who do not satisfy the eligibility criterion for qualifying service.

10. Per-contra, Mr. Kedar Nath Tripathi, learned counsel for the respondent/applicant, would however argue that the government employee was allowed to retire from service on 6.7.1996 on the ground of mental incapacity and since invalid pension is envisaged under Rule 39 of the Pension Rules for such prematurely retiring employees suffering permanent incapacity, the Tribunal and the High Court have rightly ordered for grant of invalid pension for the respondent's husband.

11. The learned counsel then submits that since the government servant died within few days of retirement, firstly he must be paid the invalid pension under Rule 39 and after his death on 24.7.1996, the respondent as the widow, should be held entitled to family pension.

12. The issue to be considered here is whether the minimum qualifying service prescribed under the Pension Rules can be ignored for the purpose of consideration of invalid pension under Rule 39 of the Pension Rules. As a corollary, whether the Tribunal or the High Court erred in directing invalid pension for a government employee who did not have the qualifying service, prescribed under the Pension Rules.

13. At this stage, the relevant provisions of the Pension Rules are extracted hereinbelow for ready reference:-

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> 39. Invalid Pension – (1) invalid pension may be granted if a Government servant retires from the service on account of bodily or mental infirmity which permanently incapacitates him for the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely : -

(a) Medical Board, in the case of all Gazetted and specially declared Gazetted Government servants, and

(b) A Chief District Medical Officer or Medical Officer of equivalent status in case of other Government servants.

47. Amount of pension (1) ******** ******** **** 2 (a) **** **** ******** ****

(b) In the case of Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than the minimum amount of pension admissible.

******** ******** **** ******** ******** **** (5)(i) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be paid at a uniform rate on half month's emoluments for every completed six monthly period of service.

56. Family Pension :

> **** **** **** **** **** **** **** (2) Without prejudice to the provisions contained in Sub-rule (4) where a Government servant dies-

**** **** **** **** **** **** ***** (c) After retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter IV other than the pension referred to in rules 43 and 44 the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with the table below.

. . . . . ."

14. The respondent's husband, late Sagar Naik was appointed on 22.8.1989 under the Rehabilitation Assistance Scheme as his father late Suri Naik died in harness, while serving in the M.K.C.G. Medical College and Hospital. The appointee was however found to be suffering from mental incapacity and accordingly, on the basis of the medical certificate issued by the HoD of the Psychiatric Department of the S.C.B. Medical College, Cuttack, the employee was retired from service on 6.7.1996 on the ground of mental incapacity. The case paper reveals that the service of the employee was erratic, as he remained absent from 1.2.1995 to 23.7.1995 and was under suspension from 24.7.1995 to 6.7.1996. Thus his net qualifying service for the benefits under the Pension Rules was taken as 4 years 6 months and 29 days only.

15. For government servants not completing ten years qualifying service prescribed in Rule 47(5)(i) of the Pension Rules, the service gratuity is to be paid at a uniform rate of half month's emolument for every completed six months period of service. Such gratuity benefit as also the other terminal benefits like GPF, unutilized Earned Leave, Death-cum-Retirement Gratuity (DCRG), etc. were sanctioned and paid to the widow of the employee. Moreover, respondent was also appointed as a sweeper under the Rehabilitation Assistance Scheme and she is in regular government service, since 12.6.2006.

16. The gratuity and other benefits and the compassionate appointment was accepted by the respondent without raising any additional claim towards invalid pension for her deceased husband, who retired on 6.7.1996.Long after his death on 24.7.1996, the respondent approached the Tribunal to belatedly pray for firstly, fixation of pay for her husband in the revised scale with effect from 1.1.1996 till his superannuation and also to sanction family pension benefits for the applicant, following the death of the government employee (on 24.7.1996) along with all consequential and terminal benefits. The respondent never however prayed for invalid pension before the Tribunal. Yet, the Tribunal ordered for invalid pension for the respondent's husband, under Rule 39 of the Pension Rules.

17. When the Tribunal's decision was challenged in the High Court, the State specifically contended that Rule 39 has to be read together with Rule 47 of the Pension Rules and the specified qualifying service must be satisfied even for claiming invalid pension. But the High Court without adverting to the specific contention raised by the appellants, dismissed the writ petition with a cryptic order observing that the Tribunal has passed a reasoned order and that the husband of the respondent is entitled to invalid pension under Rule 39 of the Pension Rules.

18. The requirement of completing the qualifying service of ten years for receipt of pension is prescribed under Rule 47(2)(b) and for those government employees who retire before completing the qualifying service, alternate relief is envisaged under the Pension Rules itself. How the service gratuity is to be computed, is also prescribed in Rule 47(5)(1) of the Pension Rules.

19. The respondent's husband was retired on the ground of mental infirmity and hence the service gratuity was paid and the widow had received the same, without any demur. She never raised any claim for invalid pension either at the time of retirement on 6.7.1996 or even when she approached the Tribunal i.e. 14 years later in the year 2010. Nevertheless, the Tribunal went beyond the prayers in the O.A. No. 18(B)/2010 and ordered for invalid pension for late Sagar Naik and then following his death, ordered for family pension for the widow. In declaring such entitlement the High Court and the Tribunal however ignored the qualifying service of ten years as prescribed in the Pension Rules although the State specifically argued that the qualifying service criterion has to be satisfied not only for the regular pension but also for the invalid pension since both claims are to be considered under the very same Pension Rules.

20. An employee becomes entitled to pension by stint of his long service for the employer and, therefore, it should be seen as a reward for toiling hard and long for the employer. The Pension Rules provide for a qualifying service of 10 years for such entitlement. When the question arises as to how certain provisions of the Pension Rules are to be understood, it would be appropriate to read the provision in its context which would mean reading the statute as a whole. In other words, a particular provision of the statute should be construed with reference to other provisions of the same statute so as to construe the enactment as a whole. It would also be necessary to avoid an interpretation which will involve conflict with two provisions of the same statute and effort should be made for harmonious construction. In other words, the provision of a Rule cannot be used to defeat another Rule unless it is impossible to effect reconciliation between them. Pension as already stated is earned by stint of continuity and longevity of service and minimum qualifying service should therefore be understood as the requirement for invalid pension as well. The Pension Rules can be harmoniously construed in this manner and in that event, there shall be no clash between different provisions in the said Rules.

21. The condition of qualifying service prescribed in the Pension Rules must be satisfied to become eligible for invalid pension and the arguments made to the contrary that invalid pension can be claimed under Rule 39 without satisfying the stipulated qualifying service mentioned in the same Rules, do not appeal to us. The respondent's husband who had served for lesser years then the 10 years qualifying service, was found entitled by his employers to service gratuity only, because of his premature retirement on the ground of mental incapacitation and this is what is prescribed by the

Pension Rules. The dues toward service gratuity was paid accordingly. The Pension Rules definitely envisaged that there could be a situation where an employee may not be eligible for pension benefits for not satisfying the prescribed qualifying service of 10 years. For those with less than 10 years' service, the Pension Rules provide for gratuity payment and therefore, it is difficult for us to conclude that for invalid pension, qualifying years of service, can be ignored.

22. The above view of ours is supported by the ratio in Union of India and Another Vs. Bashirbhai R. Khiliji 1, where this Court was considering claim for invalid pension for an armed constable in the CRPF who suffered from pyrogenic meningitis and neurosensory deafness (bilateral). In that case, the CRPF personnel was declared unfit for active duty, and he was invalidated from service. He applied to authorities for invalid pension but that was rejected on the ground that he had not completed the qualifying service of 10 years. Instead, he was paid service gratuity. The High Court in that case however, took the view that since the CRPF Constable's invalidity was 100 per cent, he was 1(2007) 6 SCC 16 entitled to invalid pension and the stipulation of 10 years of qualifying service could not be invoked to deny him the invalid pension. However, Justice A.K. Mathur, speaking for a two judge Bench of this Court while interpreting similar provisions in the applicable Rules, negated the High Court's view and pronounced on the issue of qualifying service for invalid pension, in the following manner:-

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> 9. We are presently concerned withtwo provisions of the Rules i.e., Rule 38 and
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> 49. Rule 38, as reproduced above, contemplates the invalid pension. The procedure has been mentioned therein i.e. in case an incumbent retires from service on account of bodily or mental infirmity which permanently incapacitated him for the service, then a medical certificate of incapacity shall be given by the authorities concerned and in particular Form 23 the same may be applied before the competent authority. It is true that the qualifying service is not mentioned in Rule 38 but Rule 49 which deals with the amount of pension stipulates that a government servant retiring in accordance with the provisions of these Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six-monthly period of qualifying service.

Therefore, the minimum qualifying service of ten years is mentioned in Rule 49. The word "qualifying service" has been defined in Rule 3(1)(q) of the Rules which read as under:

> "3. (1)(q) 'qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules;"
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> 10. Therefore, the minimum qualifying service which is required for the pension as mentioned in Rule 49, is ten years. The qualifying service has been explained in various memos issued by the Government of India from time to time. But Rule 49

> read with Rule 38 makes it clear that qualifying service of pension is ten years and therefore, gratuity is determined after completion of qualifying service of ten years. Therefore, for grant of any kind of pension one has to put in the minimum of ten years of qualifying service. The respondent in the present case, does not have the minimum qualifying service. Therefore, the authorities declined to grant him the invalid pension. But the amount of gratuity has been determined and the same was paid to him.

. . . . . .” (Underlining added)

23. The above enunciation of the law on requirement of qualifying service for invalid pension by the bench of two judges is reiterated and approved by us.

24. In a case like this, the need for compassion and the compliance of the norms has to be balanced. As earlier noted, the allowable gratuity benefits were granted on account of the respondent’s husband and after he died, the widow was appointed (on 12.6.2006) in a government job under the Rehabilitation Assistance Scheme. Thus, the needed means of sustenance was provided to the deceased’s family.

25. The respondent’s husband had not served for ten years and was therefore, he disentitled for regular pension. For the same reason, he cannot also be held entitled to invalid pension. The different provisions of the Pension Rules cannot be read in isolation and must be construed harmoniously and the requirement of qualifying service cannot be said to be irrelevant for claiming different service benefits under the same Rules. Here the employee did not satisfy the requirement of qualifying service and therefore the invalid pension could not have been ordered for him, under Rule 39 of the Pension Rules.

26. In the above context, it will bear emphasis that the respondent never prayed for invalid pension for her husband in her O.A. and yet the Tribunal as well as the High Court granted her the unclaimed relief. Such additional munificence, in addition to the job provided to the first respondent under the Rehabilitation Assistance Scheme for the sustenance of the deceased’s family, in our view, was unwarranted and the impugned order cannot be sustained.

27. In view of the foregoing, the impugned orders of Tribunal and the High Court are set aside and the Appeal stands allowed. The parties to bear their own cost.

……J. [R.BANUMATHI] ……J. [A.S.BOPANNA] ……J. [HRISHIKESH ROY] NEW DELHI DECEMBER 04, 2019.