IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.P.(C) No.20364 of 2021

In the matter of an application under Articles 226 & 227 of the Constitution of India, 1950.

Subhasree Pattanaik .... ***Petitioner***

-versus-

Union of India & another .... ***Opp. Parties***

Advocates Appeared in this case

For Petitioner - M/s.Sidheswar Mallik, P.C. Das, M.Mallik & S.Mallick, Advocates

For Opp. Parties - Mr.P.K. Parhi, DSGI With Mr.S.K.Samantaray, CGC

CORAM :
MR. JUSTICE DIXIT KRISHNA SHRIPAD
MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 15.01.2026

PER **DIXIT KRISHNA SHRIPAD, J.**

The Petitioner had secured an order at the hands of the Central Administrative Tribunal, partly favourable to her in the sense that reinstatement was ordered with 50% of back

wages. She is knocking at the doors of this Court grieving against denial of remainder of the back wages that has accrued arguably in her favour during the period between dismissal dated 28.08.2017 and reinstatement vide impugned order dated 25.06.2021.

2. Learned counsel for the Petitioner vehemently argues that in the disciplinary proceedings nothing has been recorded as to the charge of throwing her baby into the canal for causing its death and the Criminal Court having acquitted her vide order dated 30.09.2019 in C.T. Case No.03/368 of 2016, she was kept out of employment for no fault of hers and therefore, the Tribunal is not justified in not awarding full back wages instead of 50%.

3. Learned CGC, appearing for the Opposite Parties, opposes the Petition making submission in justification of the impugned order of the Tribunal and also drawing attention of the Court to the observations made by the Criminal Court in the subject criminal case while granting acquittal. He submits that in essence,

"no work no pay" principle becomes invokable in the case and therefore, the Petition is liable to be negatived.

4. Having heard learned counsel for the Parties and having perused the Petition papers, this Court is inclined to grant a limited indulgence in the matter as under and for the following reasons:

4.1. The first charge of throwing her baby into the canal with intent to cause its death and to commit suicide has not been proved against the Petitioner in the disciplinary enquiry. The Criminal Court in the subject criminal case acquitted the Petitioner herein. At Paragraph-9 of the acquittal order, it is observed as under:

> *'From the evidence of the prosecution, it appears that none of the witnesses had seen the accused throwing the child to canal and jumped to canal to commit suicide. The accused pleaded that the child went to the canal for which she jumped to the canal to save her child. The plea of the accused appears to be probable when none of the prosecution witnesses had seen her throwing the child to canal and jumping to the canal to commit suicide. Offence of murder of Sai Shriya Mohanty and attempt to commit suicide are not proved by the prosecution. Prosecution has failed to prove the charge U/s. 302/309 IPC. I hold the accused not guilty thereunder and acquit her U/s.235(1) Cr.P.C. The accused is set at liberty forthwith'.*

4.2. It is a Jewish proverb that "God could not be everywhere and therefore, he made mothers". There is absolutely no material to infer, let alone demonstrate that the Petitioner intended to commit suicide and as a step in aid she had thrown her baby into the flowing waters of the canal. No mother would hurt her child. Adi Shankaracharya in *Devi Aparadha Kshamapana Stotram* says "*Kuputro Jayet Kwachidapi Kumata Na Bhavati*", a bad son may be born somewhere, but a bad mother never is, literally meaning. There are decisions, Courts in civilized jurisdictions which hold that mothers have tremendous instinct to save their children, come what may. Such a presumption can be drawn under Section 114 of the erstwhile Indian Evidence Act, 1872, regard being had to the timeline of the case. If that be so, it becomes un-understandable as to how full back wages could have been denied by awarding only half.

4.3. The contentions of learned CGC that the principle of "no work no pay" is invokable in the case at hand, cannot be agreed

to. It is not that some charges were framed against the delinquent and thereafter the same came to be quashed by the competent Authority, Court or Tribunal. The disciplinary Authority himself recorded a finding of no guilt against the Petitioner. But during the proceedings, she was kept away from employment and, in that there is no element of fault attributable to her. In such a circumstance, ordinarily the rule of "no work no pay" is not invokable. Thus, there is an infirmity in the impugned order of the Tribunal.

4.4. All the above being said, there is nothing on record to infer that the Petitioner was in gainful employment. There is not even a plea taken up by the Opposite Parties as to the gainful employment. Petitioner has lost her baby in the conspiracy of circumstances. *Putra shokam nirantaram* say the Smritikaaras. The pung of children's death is grievous and eternal. This aspect too is a relevant consideration. Keeping all the facts & circumstances of the case, we are of the considered view that 75% of the back wages instead of 50% could have been awarded to the Petitioner, by balancing the competing equities.

In the above circumstances, this Petition succeeds in part. Impugned order of the Central Administrative Tribunal, although in substance is kept intact, is marginally varied to the effect that the Petitioner should be paid 75% of the back wages instead of 50%, within an outer limit of 8 (eight) weeks, failing which the same shall carry interest at the rate of 1% *per mensem* for the first month, and 2% for the period next following. The interest component shall be recoverable personally from the erring officials of the department who cause delay in implementing this order.

Web copy of judgment to be acted upon by all concerned.

(Dixit Krishna Shripad)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 15th Day of January, 2026/Bijay/Sarbani