

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 6277 of 2014,

W.P.(C) No. 6278 of 2014

And

W.P.(C) No. 6279 of 2014

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

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W.P.(C) No. 6277 of 2014

Madan Chandra Nayak

.....

Petitioner

-Versus-

Principal Secretary to Government of Orissa
in Ministry of Water Resources Department
and others

.....

Opp. Parties

For Petitioner : M/s. S. Mallik, P.C. Das
and B.Barik, Advocates.

For Opp. Parties : Mr. S.N. Nayak,
Addl. Standing Counsel

W.P.(C) No. 6278 of 2014

Kailash Behera

.....

Petitioner

-Versus-

Principal Secretary to Government of Orissa
in Ministry of Water Resources Department
and others.

.....

Opp. Parties

For Petitioner : M/s. S. Mallik, P.C. Das
and B.Barik, Advocates.

For Opp. Parties : Mr. T. Patnaik,
Addl. Standing Counsel

W.P.(C) No. 6279 of 2014

Raju Mahanta

..... Petitioner

-Versus-

Principal Secretary to Government of Orissa
in Ministry of Water Resources Department
and others.

..... Opp. Parties

For Petitioner : M/s. S. Mallik, P.C. Das
and B.Barik, Advocates.

For Opp. Parties : Mr. A.K. Mishra,
Addl. Government Advocate.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO**

Date of hearing and judgment: 19.04.2022

DR. B.R. SARANGI, J. The petitioner in W.P.(C) No. 6277 of 2014, who was working as rigger in the office of the Executive Engineer, Rengali Right Canal Division No.1, Baghuabol, Talcher in the district of Angul, had

approached the Orissa Administrative Tribunal, Cuttack Bench, Cuttack on 05.02.2013, in O.A. No. 954 (C) of 2013 seeking to regularize his disengagement period from 01.04.2002 to 03.09.2007 with all financial benefits including promotion and all other benefits which have been granted to his counterpart employees.

2. The petitioner in W.P.(C) No. 6278 of 2014, who was working as Vibrator Operator Gr-IV in the office of the Executive Engineer, Rengali Right Canal Division No.1, Baghuabol, Talcher in the district of Angul, had approached the Orissa Administrative Tribunal, Cuttack Bench, Cuttack on 03.05.2013, in O.A. No. 1292 (C) of 2013 seeking to regularize his disengagement period from 01.04.2002 to 21.08.2007 with all financial benefits including promotion and all other benefits which have been granted to his counterpart employees.

3. The petitioner in W.P.(C) No. 6279 of 2014, who was working as Vibrator Operator Gr-IV in the office of the Executive Engineer, Rengali Right Canal Division No.1, Baghuabol, Talcher in the district of Angul, had

approached the Orissa Administrative Tribunal, Cuttack Bench, Cuttack on 03.05.2013, in O.A. No. 1293 (C) of 2013 seeking to regularize his disengagement period from 01.04.2002 to 26.08.2007 with all financial benefits including promotion and all other benefits which have been granted to his counterpart employee.

4. The Orissa Administrative Tribunal, having heard learned counsel for the parties and gone through the materials available on record, vide identical orders dated 20.03.2013, 20.09.2013 and 20.09.2013 passed in O.A. No. 954 (C) of 2013, O.A. No. 1292 (C) of 2013 and O.A. No. 1293 (C) of 2013 respectively, observed that it has already disposed of a good number of cases of the present nature in respect of land oustees, who were appointed under the Rehabilitation Scheme, in quashing the orders of disengagement which were issued in their favour and directed for their reengagement/ continuity in service. The tribunal further observed that since the opposite parties have already re-engaged the petitioners in their service, no order need be passed for their re-

engagement and they shall be entitled for the benefit of continuity in service. Accordingly, the tribunal directed the authorities to fix up seniority of the petitioners in the work charged establishment taking into account their earlier period of engagement and also the period of disengagement till the date of re-engagement as work charged employees. It was also directed that for all practical purposes, their services are to be treated as continuous one and accordingly the entire period shall be counted for the purpose of regularization of their services, taking into account their initial date of engagement and accordingly the benefits, as have been extended in favour of other similarly placed employees like the petitioners, shall also be extended in their favour, except the financial benefit during the period of their disengagement, keeping in view the settled principle of law “no work no pay”, even though the petitioners had no hand in the order of retrenchment.

5. In view of the aforesaid direction given by the tribunal vide orders passed in respective Original

Applications, referred to above, now the petitioners have sought relief claiming back wages for the disengagement period, i.e. from 01.04.2002 till 03.09.2007 so far as the petitioner in W.P.(C) No. 6277 of 2014 is concerned; from 01.04.2002 till 21.08.2007 so far as the petitioner in W.P.(C) No. 6278 of 2014 is concerned; from 01.04.2002 till 26.08.2007 so far as the petitioner in W.P.(C) No. 6279 of 2014 is concerned, as the same has been denied by the tribunal by applying the principle of “no work no pay”, even though consciously held that the petitioners had no hand in the order of retrenchment. Since the reliefs sought in all the three writ petitions are similar, they are heard together and disposed of by this common judgment.

6. Mr. Sidheswar Mallik, learned counsel for the petitioners in all the three writ petitions, emphatically submitted that the petitioners are displaced persons of fully submerged area of Rengali Multi Purpose Project. As per the scheme of Rehabilitation Assistance, the petitioners were appointed as work charged employees

carrying different posts, as mentioned above. Therefore, they are entitled to be appointed on regular basis. But while they were so continuing, they were wrongly treated as surplus employees and retrenched from service, vide order dated 30.03.2002. As a consequence thereof, they all were disengaged with effect from 01.04.2002. But, subsequently, after realizing the mistake that the displaced people of the project serving as work charged employee should not be retrenched, it was decided by the Government in its meeting held on 12.08.2003, that the displaced persons of a project serving as work charged employee shall not be retrenched. As a consequence thereof, the orders of retrenchment were withdrawn and the petitioners, namely Madan Chandra Nayak, Kailash Behera and Raju Mahanta, were taken back in service with effect from 03.09.2007, 21.08.2007 and 26.08.2007 respectively. But, they were denied the financial benefits for such retrenched period on the plea of “no work no pay”, which was made confirmed by the tribunal in the impugned orders indicated above. It is further contended that if the petitioners were kept away from discharging

their duties, due to the fault of the employer, though they were willing to discharge their duties against their respective posts, in that case, the principle of “no work no pay” will not apply and, as such, they are entitled to get the wages for the period they were placed under retrenchment due to the fault of the employer. To substantiate his contention, he has placed reliance has on the decision of the apex Court in ***Shiv Nandan Mahto v. State of Bihar***, 2013 (11) SCC 626 and of this Court in the case of ***Kuni Sahoo v. State of Orissa and others***, 2011 (I) ILR-CUT-506.

7. Mr. S.N. Nayak, learned Additional Standing Counsel, Mr. T. Patnaik, learned Additional Standing Counsel and Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-opposite parties in the above mentioned three writ petitions, respectively, vehemently contended that since it is the admitted fact that the petitioners were disengaged from service with effect from 01.04.2002 and subsequently the order of the retrenchment were withdrawn and they were

reengaged and allowed to continue in their respective posts with effect from the dates, as indicated hereinabove, i.e. 03.09.2007, 21.08.2007 and 26.08.2007, therefore, for the period they were placed under retrenchment, since they had not discharged their duties, as a consequence thereof, the tribunal is well justified in denying the financial benefits during the said period of disengagement, keeping in view the principle of “no work no pay”, even though observed that the petitioners had no hand in the order of retrenchment. It is further contended that even though original applications were filed beyond the prescribed limitation period, but the tribunal entertained the same and passed reasoned order extending the benefit of regularization of service for the period of disengagement till reengagement as work charged employee and also granted continuity in service, as the similar benefits had already been extended to similarly situated employees like the petitioners, excepting the financial benefits during the period of disengagement. According to them, the tribunal is well

justified in passing the orders impugned, which do not warrant interference by this Court at this stage.

8. This Court heard Mr. S.Mallik, learned counsel appearing for the petitioners in all the three writ petitions; Mr. S.N. Nayak, learned Additional Standing Counsel, Mr. T. Patnaik, learned Additional Standing Counsel and Mr. A.K. Mishra, learned Additional Government Advocate on behalf of State-opposite parties in the three writ petitions in which their names are indicated, by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, these writ petitions are being disposed of finally at the stage of admission.

9. The admitted facts in all these three writ petitions are that the petitioners are displaced persons of fully submerged area of Rengali Multi Purpose Project. As per the scheme of Rehabilitation Assistance, they were appointed as work charged employees, though they were entitled to be appointed on regular basis. While they were so continuing, wrongly treating them as surplus

employees, they were retrenched from service, vide order dated 30.03.2002, by the opposite party no.4. As a consequence thereof, they were disengaged with effect from 01.04.2002. They were paid retrenchment compensation. But subsequently, the Government realized that the displaced people of the project serving as work charged employees should not have been retrenched. Therefore, in a meeting of Water Resources Department held on 12.08.2003, it was decided that; work charged employees can be re-deployed from one project to other project; displaced people of a project serving as work charged employee shall not be retrenched; while retrenching an employee promoted to a higher work possibility of reverting the employee to the lower rank will be examined in individual cases where he has been promoted from Grade-II to Grade-I post; regularization of wages category will be taken up from the remaining staff after retrenchment and specific proposal may be submitted to Finance Department; and cases of retrenched work charged employees who belong to partially submerged category may be referred to a high

power committee. Even though such decision was taken on 12.08.2003, but no consequential action was taken immediately for withdrawal of retrenchment orders. However, the orders of retrenchment were withdrawn and the petitioners were allowed to continue with effect from 03.09.2007, 21.08.2007 and 26.08.2007 as mentioned above, with a condition that they are to deposit the retrenchment benefits in shape of demand draft and after depositing the said amount, the reengagement order will be issued.

10. Sixteen numbers of work charged employees of the fully submerged areas, including the petitioners, were retrenched wrongly showing them as the surplus employees. Pursuant to the proceeding of the meeting dated 12.08.2003 they were re-instated with back wages and other service benefits. But the petitioners and three other similarly situated employees were left out. On 08.06.2007, the office of the Engineer-in-Chief issued a letter to the Chief Engineer indicating therein that the reason for non-consideration of the case of rest four

number retrenched employees is not known and requested the Chief Engineer to consider the case of the four number of employees as per the aforesaid proceeding and comply to the office. Like other employees, the petitioners deposited the retrenchment benefits in shape of bank draft and after depositing such amount, orders were issued by opposite party no.4 on 04.09.2007, 22.08.2007 and 27.08.2007 in respect of present three petitioners and they were reengaged as work charged employee in Rengali Right Canal System, Dhenkanal.

11. After reengagement, the petitioners were treated as fresh employees and no benefit of past service, including back wages and other financial benefits, were given to them. Therefore, they filed O.A. Nos. 954 (C) of 2013, 1292 (C) of 2013 and 1293 (C) of 2013 before Orissa Administrative Tribunal, Cuttack Bench, Cuttack with a prayer to regularize their disengagement period with all financial benefits, including promotion and all other benefit, which has been granted to their counterpart employees. After due adjudication, the tribunal, vide

orders dated 20.03.2013, 20.09.2013 and 20.09.2013, directed the opposite parties to treat the retrenchment period of the petitioners as continuous one and to count the entire period for the purpose of regularization of their service, except financial benefits, during the period of disengagement till reengagement keeping in view the principle of “no work no pay”.

12. Denial of financial benefit to the petitioners for the period of disengagement till reengagement by the tribunal on the principle of “no work no pay” was consciously made stating that the petitioners have no hand in the order of retrenchment. If the tribunal is well aware of the fact that the petitioners were retrenched erroneously or wrongly treating them as surplus employees, those, who were appointed under Rehabilitation Assistance Scheme being displaced persons of fully submerged area of Rengali Project, the financial benefits admitted to the petitioners could not have been denied and as such they have been reengaged due to decision taken by the Government on 12.08.2003

that displaced persons of a fully submerged area, who are working as work charged employees, are not to be disengaged. Thus, the denial of financial benefits admissible to the petitioners applying the principle of “no work no pay”, cannot have any justification. As such, principle of “no work no pay” is not applicable to such cases, where the employees were willing to work, but they were kept out of work by the authorities for no fault of their’s. It is the admitted cases that the petitioners were disengaged wrongly finding them as surplus, though they belonged to fully submerged area of Rengali Project. Realizing their mistake, the Government as a matter of principle took a decision on 12.08.2003 not to disengage any such work charged employees of fully submerged area of Regnali Project. In this circumstance, the denial of financial benefits admissible to the petitioners on the principle of “no work no pay” is nothing, but non-application of mind by the tribunal.

13. The tribunal in the orders impugned observed that it has already disposed of a good number of cases of

this nature in respect of land-oustees, who were appointed under the Rehabilitation Scheme, by quashing the order of disengagement which was issued against them and directed for their reengagement/ continuity in service. In that view of the matter, the tribunal directed that since the opposite parties have already reengaged the petitioners in their service, no order need be passed for their reengagement, but they shall be entitled to the benefit of continuity in service. The tribunal also passed order directing the authorities to fix up seniority of the petitioners in the work charged establishment taking into account their earlier period of engagement and also the period of their disengagement till the date of reengagement as work charged employees. As such, for all practical purposes, their services are to be treated as continuous one and accordingly the entire period shall be counted for the purpose of regularization of their service, taking into account their initial date of engagement. Once the tribunal has granted the continuity of service from the date of their disengagement till the date of reengagement, as a necessary corollary consequential benefits such as,

financial benefits admissible to the petitioners for the period of their disengagement till the date of re-engagement.

14. In **Union of India v. Madhusudan Prasad**, AIR 2004 SC 977, the apex Court, while considering the question of consequential benefits, held as follows:-

“xxxxxx It may be noticed that the respondent was removed from service without any enquiry and he was not even given show cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. x x x “

15. This Court in **Jute Corporation of India Limited v. Judhistira Swain**, reported in (2014) 11 ILR Cut.165, while considering a dispute under the Industrial Disputes Act, in paragraph 11 held to the following effect:-

“In view of the above, “consequential benefit” to a person does not mean only back wages. It includes much more things beyond back wages, such as promotion, fixation of seniority and grant of financial benefits admissible to the post etc. Therefore, if the termination of the opposite party-workman in the guise superannuation has been declared as illegal and unjustified, then the opposite party-workman is entitled to get all the

consequential service benefits admissible to the post. Back wages may be one facet of getting monetary benefits, but that is not the conclusive one. On the other hand, service benefit, which would have accrued to him had he continued in service cannot be denied by the petitioner-Management. Apart from the same, at best, the petitioner-Management may contend that since the opposite party-workmen has not rendered service for the period for which he was not in employment, he may not be entitled to get back wages. The said fallacy is not justified in view of the fact that it is the illegal and arbitrary action of the authorities for which the poor workman was out of employment on the plea of discrepancy in the date of birth. Had it been the out-come of a disciplinary proceeding and a punitive measure, then in that case consideration would have been different. But in the present case, because of the lapses on the part of the petitioner-Management, the opposite party-workman was out of employment and was deprived of discharging his duties. That ipso facto does not disentitle him to get the legitimate claim admissible to the post. xxx “

16. Similarly this Court in the cases of **Akhilanath Sahoo v. Joint General Manager, OSFC and others**, 119 (2015) CLT 281; **Karunakar Khandapani v. State Of Orissa and Others**, 2015 (II) OLR 26; and **Bijayananda Naik v Fakir Mohan University and others**, 2021 (1) OLR 707, in which one of us (Dr. Justice B.R. Sarangi) is a member, held that the petitioners in said cases are entitled to get back wages.

17. In ***Union of India v. K.V. Jankiraman***, AIR 1991 SC 2010, the apex Court held that normal rule of “no work no pay” is not applicable to such cases where the employee although is willing to work is kept away from work by the authorities for no fault of his. He is entitled to get back wages for the said period.

18. In ***Shiv Nandan Mahto*** (supra), the apex Court held that the appellant was kept out of service due to mistake and not on account of suspension, cannot be denied benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. Thereby the principle of “no work no pay” is not applicable and consequentially directed that the appellant is entitled to full back wages for the period he was kept out of service.

19. In ***Kuni Sahoo*** (supra), the Division Bench of this Court, relying upon the case of K.V. Jankiraman also directed to compute the differential back salary of the petitioner from 01.11.1998 to 25.03.2003 and pay 80% of

the said amount to the petitioner within a period of two months from the date of communication of this judgment.

20. In view of the law laid down by the apex Court as well as this Court, if the petitioners were kept away from the work on the ground that they were retrenched as surplus employees and after realizing the mistake, if they were reengaged, they should not have been denied the financial benefits admissible to them for the period of disengagement till reengagement, as they have been allowed the benefit of continuity in service and their services have been treated as continuous one and their entire period shall have to be counted for the purpose of regularization of their services, taking into account their initial date of engagement. Thereby, denying to grant the financial benefit from the period of disengagement till reengagement, in each of the cases mentioned above, on the principle of “no work no pay” cannot sustain in the eye of law, reason being though they were willing to discharge their duty, but they were kept away from

discharging their duty by the wrong done by the employer, namely, the present opposite parties.

21. Therefore, the impugned orders dated 20.03.2013, 20.09.2013 and 20.09.2013 passed by the tribunal in O.A. No. 954 (C) of 2013, O.A. No. 1292 (C) of 2013 and O.A. No. 1293 (C) of 2013 respectively, denying the financial benefits to the petitioners for the period from their disengagement till reengagement on the principle of “no work no pay” cannot sustain. Accordingly to that extent the order is liable to be quashed and hereby quashed. The opposite parties are directed to pay the financial benefits to the petitioners for the period from disengagement till reengagement as mentioned above in respect of each of them, since such benefit has already been extended to similarly situated employees, as expeditiously as possible, preferably within a period of three months from the date of communication of the judgment.

22. Accordingly, the writ petitions are allowed to the extent indicated above. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 19th April, 2022, Arun/GDS

