

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5839 of 2020

State of Odisha & Ors.

.....

Petitioners

Mr. A.K. Mishra, AGA

Vs.

Rabi Padhiary

.....

Opposite Party

Mr. R. Rath, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

Mr. JUSTICE G. SATAPATHY

ORDER

13.09.2022

Order No.

04

This matter is taken up through hybrid mode.

2. Heard Mr. A. K. Mishra, learned Additional Government Advocate appearing for the State-petitioners and Mr. R. Rath, learned counsel appearing for the opposite party.

3. The petitioner has filed this writ petition seeking to quash the order dated 25.02.2019 passed in O.A. No.663 of 2017, by which the Odisha Administrative Tribunal, Bhubaneswar has allowed the said O.A. directing the State-petitioners to regularize the services of the opposite party in a supernumerary post for one day prior to his retirement to fix his salary on notional basis and thereafter to pass necessary orders for release of minimum pension and other retiral benefits considering so much of his service under work-charged establishment in accordance with rule within a

period of three months from the date of communication of the order.

4. Mr. A. K. Mishra, learned Additional Government Advocate appearing for the State-petitioners contended that admittedly, the opposite party was continuing under work-charged establishment. Therefore, his claim for grant of pensionary benefit by treating him regular employee does not arise. As such, the Tribunal has committed grave error in passing the impugned and directing the State-petitioners to regularize the services of the opposite party in a supernumerary post for one day prior to his retirement to fix his salary on notional basis and thereafter to pass necessary orders for release of minimum pension and other retiral benefits considering so much of his service under work-charged establishment in accordance with rule.

5. Mr. R. Rath, learned counsel appearing for the opposite party contended that the opposite party having rendered service for the last 30 years, he is entitled to get the pensionary benefit as due and admissible to him. It is further contended that similar circumstanced employees having been extended with such benefit, the Tribunal has not committed any error allowing the O.A. by passing the order impugned, so as to warrant interference of this Court. Thereby, the writ petition should be dismissed.

To substantiate his contention, he has relied upon the case of *Prahallad Patra v. State of Odisha* (WPC (OAC) No.175 of 2002 disposed of on 29.11.2021), wherein reference has been made the judgment of the Tribunal passed in *Mohan Singh v. State of Orissa* (O.A. No.84 of 1987, disposed of on 18.05.1990), which has been confirmed by the apex Court in

Special Leave to Appeal (Civil) No.12410 of 1990 and the order of the apex Court in ***State of Orissa v. Brindaban Behera (Dead) by LRs. Etc.*** in Civil Appeal No.5575 of 2007.

6. Having heard learned counsel for the parties and after going through the records, it appears that the opposite party was initially appointed as Khalasi in the work-charged establishment under the Executive Engineer, Kendrapara Irrigation Division and he joined the post on 13.12.1970 vide Annexure-1 to the O.A. Subsequently, he was transferred and posted under the control of Executive Engineer, Jagatsinghpur Irrigation Division on 23.1.1987. While so continuing, he was promoted to the post of Road Roller Driver vide order dated 8.7.1987. Even after completion of more than 30 years of service in the work charged establishment, his service had not been regularized. Therefore, he had filed O.A. No. 1870/2001 seeking regularization of his service by bringing him over to wages establishment. The said O.A. was disposed of vide order dated 12.08.2011 directing the State-petitioners to consider, if he can be brought over to any post in regular establishment at least for a day before his retirement, so as to enable him to get minimum admissible pension by adding the rest period from the work-charged service. When the order of the Tribunal was not complied with by the State-petitioners, the opposite party filed Contempt Petition No.221 of 2012, in response to which order dated 5.4.2013 at Annexure-12 to the O.A. was furnished in the Tribunal to the effect that it can never be possible to bring the opposite party to the wages establishment in absence of sanctioned post of the Roller Driver or otherwise. Based on Annexure-12 to the O.A, the C.P. was ordered to be dropped by the Tribunal on 6.5.2016 with liberty to the opposite party to file fresh application against the rejection order, if he is so

advised. Accordingly, the opposite party filed O.A. No.663 of 2017 challenging the order dated 5.4.2013 under Annexure-12 to the O.A. In the meantime, he retired from service on attaining the age of superannuation with effect from 1.5.2005.

7. It is further averred in the O.A. that one Sri Nrusingha Charan Sahu, who was also continuing as Gang Mulia in the work-charged establishment along with the opposite party under Mahanadi South Division within the same Eastern Circle, had approached the Tribunal by filing O.A. No.1869/2001, seeking regularization of his services by bringing him over to regular establishment, which was disposed of on 15.9.2005 with a direction to the State-petitioners to regularize his services in supernumerary post after absorbing him on completion of five years of service and thereafter to pass necessary orders for release of pension and other retirement benefits in accordance with law. Challenging the said order dated 15.09.2005, the State-petitioners filed W.P.(C) No.12470/2006 before this Court and this Court dismissed the said writ petition by upholding the order of the Tribunal vide order dated 11.7.2008 under Annexure-9 to the O.A. Accordingly his service was regularized and he got pension and pensionary benefits.

8. The grievance of the opposite party is that he stands on similar footing with Sri Nrusingha Charan Sahu, applicant in O.A 1869/2001, inasmuch as both of them had been working in the work-charged establishment under the administrative control of Superintending Engineer, Eastern Circle, Cuttack, in view of the statement showing the names of work-charged establishment as at Annexure-6 to the O.A. In the year 2001 he along with Sri Sahu approached the Tribunal by filing O.A. 1870/2001 and O.A. 1869/2001 respectively for regularization

of their services. O.A. No.1869 of 2001 filed by Sri Sahu was disposed of on 15.09.2005 with direction to regularize his services and release of pensionary benefits, which was confirmed by this Court and the apex Court and the order of the Tribunal was complied with by the State-petitioners.

9. Since the opposite party stands on similar footing with Nrusingha Charan Sahu, who has already been extended with the benefit, nothing more has remained to be adjudicated in this writ petition. Apart from the same, in view of the order passed by this Court in ***Prahallad Patra v. State of Odisha*** (WPC (OAC) No.175 of 2002 disposed of on 29.11.2021), wherein reference has been made to the judgment of the Tribunal passed in ***Mohan Singh v. State of Orissa*** (O.A. No.84 of 1987, disposed of on 18.05.1990), which has been confirmed by the apex Court in Special Leave to Appeal (Civil) No.12410 of 1990 and the order of the apex Court in ***State of Orissa v. Brindaban Behera (Dead) by LRs. Etc.*** in Civil Appeal No.5575 of 2007, the opposite party should be extended the benefit.

10. Therefore, the Tribunal has rightly passed the order dated 25.02.2019 in O.A. No.663 of 2017 directing the State-petitioners to regularize the services of the opposite party in a supernumerary post for one day prior to his retirement to fix his salary on notional basis and thereafter to pass necessary orders for release of minimum pension and other retiral benefits considering so much of his service under work-charged establishment in accordance with rule within a period of three months. Therefore, this Court directs the State-petitioners to comply with the order dated 25.02.2019 passed by the Tribunal in O.A. No.663 of 2017 within a

period of three months from the date of production/communication of this order.

11. In that view of the matter, this writ petition merits no consideration and the same is dismissed.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Alok/Subhasmita

