

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5915 of 2022

Jagamohan Sahoo

..... Petitioner
Mr. P.K.Mohapatra, Advocate

-versus-

State of Odisha and others

..... Opposite Parties
Mr.K.K.Nayak, ASC for State

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
07.03.2022

Order No.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. The writ petition has been filed with the following prayer:

“It is therefore, humbly prayed that this Hon’ble Court may graciously be pleased to :-

 - i) Direct the opp. Parties to regularize him in service for a day prior to his superannuation notionally and grant pension and pensionary benefits under the old rule in the light of the decision in the case of state of Odisha vs. Pitambar Sahoo, W.P.(C) No.24041/2017, decided on 20.12.2017, which has been affirmed in SLP(c) Diary No.30806/2018 and Chandra Nandi vs. State of Odisha and others, in W.P.(C) No.19550/2011 decided on 03.02.2021 and Premananda Tripathy vs. State of Odisha in W.P.(C) No.27950/2019 decided on 03.02.2021 and Narusu Pradhan, SLP No.22498/2012, State of Orissa and others vs. Jyostna Rani Patnaik and others, in W.P.(C) No.1534/2008 and State of Orissa vs. Radheshyam Mohanta in W.P.(C) No.12377/2009, which has been affirmed in SLP©

No.36038/2010 as well as the benefits given to similar persons vide Annexure-8. ”

3. The factual matrix, in brief, is that the Petitioner is working as Electrician (Worked Charged) under the Superintending Engineer, Head Works Division, Samal. He was initially engaged as NMR basis on 01.01.1982, on being duly selected in a regular process of selection, being an affected family of submerged area of Samal Project. He continued in the said post continuously and thereafter he was brought over to Work charged establishment as Fitter on 02.09.1993. While continuing as such, he was retrenched from service on 31.3.2003. Since his appointment was made to provide support to the family of affected submerged category (land loser), the State-Opposite Parties considered his case and re-engaged him in service as Electrician under Work charged establishment on 23.07.2012 vide order dated 21.07.2012 of the Chief Engineer & Basin Manager, Samal and as per the condition, the Petitioner has returned back the compensation amount on 22.6.2012 and since then he has been continuing in the post till date. However their engagement from 02.09.1993 as Work charged employee has been counted and in the meantime the Authorities have sanctioned the gratuity in favour of the retired employees taking into consideration their 1st entry into service as Work charged post, i.e. 2.9.1993 befitting to their retrenchment period. It is submitted that gratuity has been granted to the similarly situated persons like the Petitioner under Work Charge establishment. Therefore, the case of the Petitioner may be considered from 2.9.1993 for all purposes as has been accepted in the case of similarly situated persons.

4. It is further submitted that after re-engagement of the

Petitioner, the State-Opposite Parties fixed his pay in the minimum scale of pay instead of fixing his pay on the basis of pay which he was receiving in Work charged Establishment before his retrenchment on notional basis. For which, Petitioner approached the Opposite Party No.2 vide his letter dated 25.11.2016 to recommend their case from Opposite Party No.1. The Petitioner has also submitted a detailed representation to the Opposite Party No.2 on 14.12.2020 for pay protection and other benefits as well as regularization of his service. But till date no steps have been taken on his representation dated 14.12.2020.

5. The further case of the Petitioner is that he has already rendered long service from 01.01.1982 as NMR and then Work charged since 2.9.1993 and now he is at the verge of retirement, i.e. on 31.03.2022. His further grievance is that in spite of several representations, the case of the Petitioner as special category land loser has not been considered till date. Accordingly, he prays indulgence of this Court to redressed his grievance.

6. It is submitted that as per the Govt. of Orissa in Finance Department Resolution dated 22.1.1965, a Work charged employee after completion of 5 years of service in one post is eligible to be regularized in service after completion of five years. The same thing has been reiterated in Office Memorandum No.5483/F, dated 6.3.1990, wherein it has been decided that consequent upon absorption of work charged employees in the corresponding post created in regular establishment, the period of service rendered by him in Work charged establishment, shall count towards pensionary benefit under the Orissa Pension Rules, 1977 subject to the condition that the employees so absorbed should have served continuously for

five years in one worked charged establishment. This decision has not been followed by the Authorities and as a result of which, the Petitioner who has rendered long period of service has been discriminated to be brought over to regular establishment for pension.

7. Learned counsel for the Petitioner has relied upon the judgments of different High Courts as well as Hon'ble Supreme Court of India to strengthen his case, which are as follows :-

1. In the case of ***Prem Singh vs. State of U.P. and others in Civil Appeal No.6798 of 2019.***

2. In the case of ***Harbans Lal vs. The State of Punjab and others in CWP No.2371 of 2010, decided on 31.8.2010***, which has been affirmed by the Hon'ble Supreme Court in SLP© No.23578 of 2012, disposed of on 30.7.2012

3. A judgment of the Division Bench of this Court in the case of ***Brundaban Behera vs. State of Orissa and others in W.P.(C) No.8666 of 2004***, which has been affirmed by the Hon'bl Apex Court in Civil Appeal No.5575 of 2007, dated 22.07.2015;

4. In the case of ***State of Odisha vs. Pitambar Sahoo***, which has been affirmed by the by the Hon'ble Apex Court in SLP© Diary No.30806/2018;

5. In the case of ***Narusu Pradhan***, which has been affirmed by the Hon'ble Apex Court in SLP No.22498 of 2012;

6. In the case of ***State of Orissa and others vs. Jyostna Rani Patnaik*** in W.P.(C) No.1534 of 2008, disposed of on 19.12.2016;

7. In the case of **Satbir Singh** reported in (2013) 1 SCC 390;

8 Lastly, it is submitted by the learned counsel for the Petitioner that the Opposite Party No.3 ought to have considered the ratio decided in the judgments (supra) and Petitioner should have been granted pensionary benefit accordingly.

9. On perusal of records, it is found that no counter affidavit has been filed in the present Petition. However, learned counsel for the State denies all the allegations made by the Petitioner in the Petition. It is averred in the counter that the claim of the Petitioner is a stale claim. Further it is submitted that the cases cited by the Petitioner are different from the grievance of the Petitioner and the principle decided in the said case are not all applicable to the case of the present Petitioner. It is submitted by the learned counsel appearing for the State that the Opposite Party No.3 has given due care and caution towards implementation of orders passed by the learned Tribunal and this Court as well as the Apex Court and the guidelines and circulars issued by the State Government from time to time.

10. The Opposite Party No.3 has also submitted that the work charged establishment is not pensionable service as per Rule-18(2)(ii) of OCS (Pension) Rule, 1992.

11. Heard learned counsel for both sides. Perused the materials available on record. Learned counsel for the Petitioner relies upon the judgment of this Court in the case of **Abhaya Chanrana Mohanty vrs. State of Odisha**, WPC(OAC) No.3494 of 2013 disposed of on 14th July, 2021. In the said case, the Petitioner, who was a work charged employee had claimed the pensionary benefits after his retirement with retrospective effect. This Court relying upon the

order of the Hon'ble Supreme Court of India in Civil Appeal No.21498 of 2012 thereby dismissing the State Government's Appeal and confirming the order dated 19th December, 2011 of this Court passed in W.P.(C) No.5377 of 2010 in the case of one **Narusu Pradhan vrs. State of Odisha** allowed the writ petition and granted pensionary benefits as prayed for in that case.

12. Similarly, learned counsel for the Petitioner has also cited another order of a Division Bench of this Court in the case of **Chandra Nandi vrs. State of Odisha and others** : reported in 2014(I) OLR 734. In the said reported case, this Court had given a direction to notionally regularize service of the Petitioner prior to his superannuation from service and accordingly, calculated the Petitioner's entitlement including the pensionary benefits.

13. So far the case of one Narsu Pradhan is concerned and which has been referred to by this Court in **Abhaya Charan Mohanty** (supra), said **Narusu Pradhan** had filed O.A. No.1189(C) of 2006 praying for retiral benefits. Learned Tribunal allowed the retiral pensionary benefits in his favour vide order dated 11th June, 2009. The order dated 19th June, 2009 was challenged by the State Government before this Court in W.P.(C) No.5377 of 2010. This Court dismissed the writ petition on 19th December, 2021 and confirmed the order passed by the learned Tribunal. Therefore, the State Government preferred an appeal before the Hon'ble Supreme Court of India bearing Civil Appeal No.22498 of 2012. The said appeal was also dismissed on 7th January, 2013 by the Hon'ble Supreme Court of India thereby confirming the orders passed by the learned Odisha Administrative Tribunal as well as this Court. Since the case of **Narusu Pradhan** is a case of work charged employee,

who had worked for more than five years in work charged establishment had been allowed to receive pensionary benefits by virtue of order passed by the learned Odisha Administrative Tribunal, which was ultimately confirmed by the Hon'ble Supreme Court of India, the principle laid down in that case has become a Law of the land as declared by the Hon'ble Supreme Court of India and is binding on this court while deciding cases of similar nature. Therefore, it is no more open to the State Government to take stand contrary to the principle finally approved by the Hon'ble Supreme Court of India.

14. Moreover, even accepting the argument for Opposite Parties that the DOWR resolution dated 7th September, 1995 provides that on completion of ten years of service in work charged establishment, a work charged employee is eligible to be brought over to regular establishment. In the present case, the Petitioner joined as N.M.R. on 2nd April, 1986. It is not known as to what prevented the authorities to bring the Petitioner to work charged establishment. Such delayed action has caused injustice to the Petitioner in the present case.

15. Since the Petitioner is going to retire from service on attaining the age of superannuation by end of this month, the question of his regularization against the regular post be considered expeditiously before retirement and the pensionary benefits payable to the Petitioner i.e. required to be considered and paid to him after regularizing his service. Since the benefits have been granted to other similarly placed work charged employees by actually/notionally considering them as regular establishment employee and as such the pensionary benefits have been given to them, the same benefit needs to be extended to the Petitioner for the services rendered by him

under the State Government for several decades continuously that too on payment of a paltry amount every month. The whole objective of the pension scheme is to support an employee and his family after retirement which is in recognition of his relentless service to the Govt. and such benefits are provided under the Rules on humanitarian considerations.

16. In view of the aforesaid facts and circumstances, the present writ petition is allowed and the Opposite Parties are directed to grant similar benefits to the Petitioner as has been done in the case of *Narusu Pradhan* vide order dated 11th June, 2009 passed in O.A. No.1189(C) of 2006. The Petitioner is directed to appear before the Opposite Party No.4 along with certified copy of this order and all other relevant documents and records for the processing of his claim. The Opposite Party No.4 upon receipt of certified copy of this order shall calculate and pay the benefits payable to the Petitioner, particularly his pensionary benefits, within a period of three months from the date of production of certified copy of this order.

17. With the aforesaid observation, the writ petition is allowed. There shall no order as to cost.

18. Issue urgent certified copy as per rules.

(*A.K. Mohapatra*)
Judge