

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP (C) No.6746 of 2022

Nityananda Nayak

.... Petitioner
Mr.R.K.Bose, Advocate

-versus-

State of Odisha and others

.... Opposite Parties
Mr. Y.S.P.Babu, A.G.A..

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

16.03.2022

Order No.

1. This matter is taken up through Hybrid arrangement (virtual/physical mode).
2. The Petitioner has filed the present writ application with a prayer to quash the Office order dated 06.05.2021 under Annexure-8 and direct the Opposite Party No.2 to regularise the service of the Petitioner prior to his retirement i.e. from 30.11.2019 on the basis of the Resolution of the Government dated 22.01.1965 under Annexure-9, Resolution dated 15.05.1997 under Annexure-2 and letter dated 27.05.2014 under Annexure-3 series by bringing him to the Regular Wages Establishment and also direct the Opposite parties to release regular pension and other pensionary benefits in favour of the Petitioner with effect from December, 2019.
3. The Petitioner was initially joined as an NMR in the Office of the Executive Engineer, Stores & Mechanical Division, Samal.

Subsequently he was taken to the work-charged establishment on 02.09.2013 in the post of Store Assistant. Thereafter he was redesignated as Store Clerk. He was granted all service benefits as a regular employee including the benefits of different pay revisions., but he is denied the regular pension in accordance with Rule-18 o the Orissa civil Service Pension Rule, 1992.

4. The Petitioner represented on 05.08.2019 before the Opposite Party No.3 to bring him into regular (Wages) Establishment before his retirement, but the authority remained silent for which the Petitioner approached this Court by filing W.P.(C) No.35885 of 2020 and the said writ application was disposed of on 18.12.2020 directing to consider the case of the Petitioner for consideration of his entire working period for the purpose of pension. The Petitioner having waited for so many years for being regularised in service, since he was going to be superannuated on 30.10.2019, he submitted a representation on 05.08.2019 before the Opposite Party no.3 to bring him into regular (Wages) establishment before his retirement to enable him to receive the regular pension. As the authority remained silent he approached this Court by filing W.P.(C) No.35885 of 2020 and the said writ application was disposed of on 18.12.2020. The representation of the Petitioner was rejected on 06.05.2021 by the Opposite Party No.2.

5. Learned counsel for the Petitioner relies on a decision of the learned Tribunal in O.A.No.2054 of 1993 dated 15.07.1996 wherein it has been decided that the work charged employees are entitled to receive pension as a regular employee in view of the Government Notification dated 22.01.1965.

6. Learned counsel appearing for the State submits that the work charged establishment is not pensionable service as per Rule-18(2)(ii) of OCS (Pension) Rule, 1992.

7. 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 vs. 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 vs. State of Odisha** allowed the writ petition and granted pensionary benefits as prayed for in that case.

8. Similarly, learned counsel for the Petitioner has also cited another order of a Division Bench of this Court in the case of **Chandra Nandi vs. 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.

9. So far the case of one Nansu 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 Orissa 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.

10. 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 discharged his duties being a work charged employee since

07.01.1982. It is not known as to what prevented the authorities to bring the Petitioner to work charged establishment immediately after the said resolution. Such delayed action has caused injustice to the Petitioner in the present case.

11. Since the Petitioner has retired from service on attaining age of superannuation, the question of his regularization against the regular post does not arise for consideration in the present writ petition. It is a case of pensionary benefits payable to the Petitioner i.e. required to be considered in the present writ petition. Since the benefits have been granted to other similarly placed work charged employees by 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 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.

12. In view of the facts narrated above, the Petitioner is directed to file a fresh representation within a period of two weeks before Opposite Party No.3-Engineer in Chief, Secha Sadahn, Water Resource Department. In the event such a representation is filed, the same shall be considered in the light of the discussion made herein above and the same shall be disposed of by a speaking and reasoned order within a period of three months from the date of production of certified copy of this order. The decision thereon shall be communicated to the Petitioner within a period of 10 days

thereafter.

13. With the aforesaid observation, the writ petition is allowed.

There shall be no order as to cost.

14. Issue urgent certified copy of this order as per Rule.

RKS

(A.K. Mohapatra)
Judge

