

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8008 of 2022

Ramesh Chandra Pradhan ***Petitioner***

Mr. R.C. Mohapatra, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

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

**CORAM:
JUSTICE A.K. MOHAPATRA**

**ORDER
25.04.2022**

Order No.

- 01.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the petitioner as well as learned counsel for the State.
 3. The present writ petition has been filed by the petitioner for a direction to the Opposite Party Nos.1 and 2 to count the Job Contract Service period of the petitioner as qualifying service towards pension and pensionary benefit and as such, the petitioner be extended the benefit of full pension by revising the pension payable to the petitioner and further on the basis of appropriate calculation the arrear as well as current pensionary benefits be fixed, sanctioned and disbursed in favour of the petitioner within a stipulated period of time.
 4. The case of the petitioner, as culled out from the writ petition, is that the petitioner is a retired Peon of the office of the Tahasildar,

Banki under the Revenue Department, Government of Odisha. Initially, the petitioner was appointed as a job contract Chainman in the year 1978 i.e. on 04.03.1978 and thereafter on 22.01.2014 his services were brought over to the regular establishment vide Office Order No.3578/Estt. Dated 31.12.2013. Thereafter, the petitioner has retired from service on attaining the age of superannuation in the year 2017. After retirement, the petitioner has been sanctioned and disbursed with only minimum pension. Although the petitioner has rendered in total 43 years of continuous service, however, the authorities have not taken into consideration the entire service period of the petitioner while calculating the pensionary benefits payable to the petitioner. As such, the petitioner has filed the present writ petition to consider his entire service period and to pay the full pension to the petitioner.

5. Learned counsel for the petitioner submits that the petitioner has rendered in total 43 years of continuous service. However, he was brought over to the regular establishment only w.e.f. 22.01.2014. It is further submitted by learned counsel for the petitioner that persons similarly placed, namely, Bhagaban Patanaik, Dukhisyam Panigrahi, Nityananda Biswal and many others have been extended the benefit of full pension by taking into consideration their entire job contract service period. However, the petitioner has been sanctioned and paid minimum pension after rendering 43 years of service. Therefore, learned counsel for the petitioner submits that the petitioner has been grossly discriminated against and that the conduct of the Opposite Parties are violative of principle as enshrined in Article 14 of the Constitution of India. It is further submitted by learned counsel for the petitioner that the authorities by their conduct have created two

different classes of employees within the same class i.e. by extending the benefit of full pension to one group of employees, who are initially engaged in job contract service while at the same time denying such benefit to another group of job contract employees and only giving them minimum pension. He further contended that such conducts of the authorities are grossly illegal, arbitrary and discriminatory and as such, the same calls for interference by this Court.

6. Per contra, learned Additional Government Advocate representing the Opposite Parties submits that the petitioner no doubt was initially appointed in the year 1978 as a job contract Chainman in the Cuttack Settlement Office, however, he further submits that the petitioner was continuing in job contract service till his regularization in the regular establishment vide office order dated 3578/Estt. Dated 03.12.2013. Therefore, learned Additional Government Advocate submits that by taking into consideration the service rendered by the petitioner in the regular establishment, the petitioner is not eligible to get full pension. He further submits that by applying the law laid down by this court as well as by Hon'ble Apex Court, the petitioner has been extended the benefit of minimum pension by taking into consideration as much of his job contract period towards qualifying period as is required to sanction and disburse the minimum pension to the petitioner as provided under the OCS Pension Rules, 1992.

7. In such view of the matter, learned Additional Government Advocate submits that the Opposite Parties have not committed any illegality by not extending the full pension to the petitioner by taking into consideration the entire job contract service period of the petitioner and as such he urges that the writ petition filed by the

petitioner is completely misconceive and the same is liable to be dismissed.

8. Learned counsel for the petitioner, on the other hand, draws the attention of this Court to the order dated 24.03.1992 passed by this Court in O.J.C. No.2147 of 1991 whereunder the petitioner, who was in job contract service has been extended the pensionary benefits by taking into consideration the entire job contract period for regularization of his service and pensionary benefits. Learned counsel for the petitioner also relies upon the order dated 04.01.2004 passed by the Odisha Administrative Tribunal in O.A. No.3020(C) of 2003 (*Nityananda Biswal vrs. State of Orissa and others*) whereunder the Odisha Administrative Tribunal has directed that the period of engagement of the petitioner in job contract establishment should be taken into account as qualifying service and accordingly, his pending and other pensionary benefits be revised and paid to the petitioner as has been done in the aforesaid O.A. It is further submitted by learned counsel for the petitioner that the order passed in O.A. No.3020(C) of 2003 was also challenged by the State Orissa before this Court in W.P.(C) No.14244 of 2006. This Court by order dated 09.04.2014 dismissed the writ petition preferred by State and accordingly confirmed the order dated 04.01.2004 passed by the Tribunal.

The order of the Tribunal dated 04.01.2004 passed in O.A. No.3020(C) of 2003 in the matter of (*Nityananda Biswal vrs. State of Orissa and others*), which was confirmed by a Division Bench on being challenged by the State of Orissa in W.P.(C) No.14244 of 2006 by order dated 09.04.2014. The order dated 09.04.2014 passed by this Court was further challenged by the State of Orissa before the

Hon'ble Supreme Court by filing Special Leave to Appeal (C) CC No.12573 of 2015. The aforesaid Special Leave to appeal has also been dismissed by the Hon'ble Supreme Court by order dated 13.07.2015. As such, the order passed by the Tribunal dated 04.01.2014 in the case of **Nityananda Biswal vrs. State of Orissa and others** (supra) has attained finality.

9. Learned counsel for the State at this juncture had drawn the attention of this Court to judgment dated 19th April, 2022 passed by Coordinate Bench of this Court in the matter of **Judhistir Padhy vrs. State of Odisha and others** in WPC(OAC) No.2276 of 2012. In the aforesaid matter, learned Coordinate Bench of this Court was called upon to deal with an identical issue similar to the one involved in the present case. The Coordinate Bench of this Court after analyzing the facts in detail and after taking into consideration the provisions of Sub-rule 6 Rule 18 of the OCS Pension Rules, 1992 has rendered the judgment holding that all earlier judgment particularly the judgment rendered in **Nityananda Biswal vrs. State of Orissa and others** (supra) is *per in curiam* in view of the fact that the rule 18 OCS Pension Rule, 1992 was amended vide Notification No.45865 dated 01.09.2001 and Sub-rule (6) of Rule 18 has been added which specifically deals with cases similarly placed with the petitioner. On further scrutiny of the judgment of the coordinate Bench, it is found that in the case of **Nityananda Biswal vrs. State of Orissa and others** (supra) pension was payable under the OCS Rule, 1977. However, in the year 1992 the new Pension Rule came into force and in view of the Rule 18(2) of the New Pension Rules, employees engaged on job contract basis have been paid minimum pension in view of the provisions contained in Rule-18(6) of 1992 Rules.

10. So far as the present petitioner is concerned, he was initially engaged in the settlement organization in the year 1978. He has been discharging his duties continuously without any break till his services were regularized in the year 2014 and finally the petitioner has retired in the year 2017. Therefore, from the record, it is seen that the petitioner has rendered a continuous service of almost 43 years in the settlement organization. Rule 21 of the OCS Pension Rule, 1992 provides for counting of service in Survey and Settlement Organization and the same provides that except any pensionable establishment the service in survey and settlement organization was not to be counted unless it is followed without interruption by qualifying service. In such view of the matter and taking into consideration of the fact of the present case, this Court is of the considered view that the petitioner had rendered his services uninterruptedly since 1978 till his retirement in the year 2017 in the settlement organization. Therefore, applying the principle contained in Rule-21 the entire uninterrupted period of service rendered by the petitioner shall be counted towards calculating the pensionary benefits of the present petitioner.

11. After taking into consideration the facts of the present case and particularly the fact that the petitioner was engaged in settlement organization as a job contract employee in the year 1978 and continued as such till his regularization in the year 2014 without any break, the case of the petitioner is squarely covered under Rule 21 of the OCS Pension Rules, 1992. Therefore, the entire service period of the petitioner has to be taken into consideration while calculating the pensionary benefits payable to the petitioner. Therefore, the judgment delivered by this Court in the case of *Judhistir Padhy vrs. State of*

Odisha and others (supra) is not applicable to the facts of the present case. Moreover, it is submitted by learned counsel for the petitioner that similarly placed many other employees have been extended pensionary benefits by taking into consideration their entire job contract period and they have been allowed to draw the full pension amount. Therefore, this Court is of the considered view that depriving the petitioner to get full pensionary benefits would be directly in conflict with the underlying principle in Article-14 of the Constitution of India. Since this Court is a Court of justice as well as Court of equity, it is duty bound to ensure that similarly placed employees are treated equally and are extended similar service benefits. Therefore, the conduct of the Opposite Parties in denying the petitioner full pension on the basis of the uninterrupted long 43 years of service rendered by him under the settlement organization would be contrary to the rules as well as in conflict with the principle contained in Article 14 of the Constitution of India.

12. In view of the analysis of the facts made hereinabove as well as principle of law discussed, this Court is of the considered view that the petitioner's entire service period is to be taken into consideration for calculation of his pensionary benefits and he should be extended the benefit of full pension as has been given to the many other similarly situated employees, this Court disposes of the writ petition at the stage admission with a direction to the petitioner to file a fresh representation highlighting his grievances along with copies of the relevant documents in support of his claim before the Opposite Parties within a period of two weeks from today. In the event such a representation is filed within the aforesaid period, the authorities concerned shall do well to consider the case of the petitioner and

shall take into consideration the principles of law discussed hereinabove and shall consider the case of the petitioner keeping in view Rule 21 of the OCS Pension Rules, 1992 and shall dispose of the representation of the petitioner as expeditiously as possible preferably within a period of two months from the date of filing of representation by passing a speaking and reasoned order. It is further directed that in event the authorities are satisfied that the petitioner is entitle to get full pension, then the same shall be disbursed in favour of the petitioner within a month thereafter. The entire exercise shall be completed within a period of four months from the date of filing of fresh representation. Any decision taken on the same shall be communicated to the petitioner within a period of two week thereafter.

7. With the aforesaid observation/direction, the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge