

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9445 of 2022

Sri Kalicharan Mishra

.... Petitioner
Mr. Manas Pati, Advocate

-versus-

State of Odisha and others

.... Opposite Parties
Mr. YSP Babu, AGA for State

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
20.04.2022

Order No.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for both sides. Perused the materials available on record.
3. This writ petition has been filed with the following relief:

“The petitioner therefore prays that your lordships may graciously be pleased to quash the order under Anenxure-7 and comply the order under Anenxure-1 and extend the benefits of regularization and release all retiral benefits in favour of the petitioner as has been extended in favour of *Sudhakar Gouda* under Annexure-5 within a stipulated time.”
4. Learned counsel for the Petitioner submits that the Petitioner was initially appointed on NMR basis since 04.04.1979 and continued as such till 1986. In course of engagement, he was engaged as storekeeper on daily wage basis from 01.09.1986. Since there are regular posts of store keepers having service conditions and a fixed

scale of pay, he prayed to the opposite parties to regularize his service. Due to non-consideration of his prayer, he approached the learned Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No.1616 of 1996. Learned Tribunal while disposing of the original application directed the Opposite Party No.2 therein to take steps to absorb the present petitioner within a period of one year. As the said order of the learned Tribunal was not implemented, the Petitioner approached the Opposite Party Nos.2 and 3 for implementation of the order of the learned Tribunal, vide his representation under Annexures-2 & 3.

5. It is submitted that although the case of the Petitioner for regularization of his service was taken up for consideration by the Authorities, but the Petitioner along with others were brought over to work charged establishment vide order dated 31.12.2009 (Annexure-4). The further submission is that Petitioner approached the Opposite Party No.2 by his representation on several occasions, but the Opposite Party No.2 did not consider the case of the petitioner to absorb him as a regular Storekeeper and for other consequential retirement benefits.

6. Referring to the case of one **Sudhakar Gouda**, who was working under the administrative control of Opposite Party No.4, learned counsel for the Petitioner submits that the said **Sudhakar Gouda** filed a writ petition before this Court bearing W.P.(C) No.16203 of 2020, thereafter his case has been considered. However, the Petitioner, who is similarly situated, his case has not been considered by the Authority. Accordingly, the case of the Petitioner has been rejected vide order dated 16.02.2022 (Annexure-7), which

according to the Petitioner is unjust, illegal and uncalled for.

7. Learned counsel for the Petitioner submits that Petitioner has been continued in service since the year 1979 and performed his duty to the satisfaction of the authority for a period of 35 years. It is submitted that as similarly situated persons have been extended the benefits, non-consideration of the petitioner's case is highly discriminatory in nature and illegal.

8. Learned counsel for the Petitioner relies upon the order of the Hon'ble Supreme Court of India in Civil Appeal No.21498 of 2012 whereby the State Government's Appeal has been dismissed by order dated 19th December, 2011 passed in W.P.(C) No.5377 of 2010 in the case of one **Narusu Pradhan vrs. State of Odisha** allowing the writ petition and granting pensionary benefits as prayed for in that case, has been confirmed.

9. 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.

10. So far the case of one **Narusu 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.

11. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that the order dated 16.02.2022 passed by the Executive Engineer, Minor Irrigation Division, Ganjan, Berhampur-Opposite Party No.4 under Annexure-7 is not proper and justified, which is set aside. However, the Authorities are directed to consider the case of the Petitioner for regularization and 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 and as per the order of this Court in the case of *Sudhakar*

Gouda in W.P.(C) No.16203 of 2020. The Petitioner is directed to appear before the Opposite Party No.4 along with certified copy of this order along with 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 consider and dispose of the matter, within a period of three months from the date of production of certified copy of this order by passing a speaking and reasoned order by giving opportunity of hearing to the Petitioner, if necessary.

12. With the aforesaid direction, the writ petition stands allowed..

13. Issue urgent certified copy as per rules.

U.K.Sahoo

