

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9677 of 2022

Sankarsan Sahoo

....

Petitioner

Mr. Laxmikanta Mohanty, Advocate

-versus-

State of Orissa and others

....

Opposite Parties

Mr. YSP Babu, AGA for State

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
09.05.2022

Order No.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. The writ petition has been filed by the Petitioner praying for a direction to the Opposite Parties to release pension and pensionary benefits in favour of the petitioner with effect from 1.6.2018 as per the judgment passed by Hon'ble Apex Court of India in Civil Appeal No.6798/2019 dated 2.9.2019 as well as the order passed by this Hon'ble Court in WPC(OAC) No.3494/2013 dated 14.7.2021 under Annexure-8 and order dated 27.7.2021 passed in CONTC No.270 of 2000 and batch under Annexure-9 and after hearing the parties be pleased to direct the opp. parties to release pension in favour of the petitioner with effect from 1.6.2018 as have already been extended to similarly placed many persons pursuant to order of this Court dated 14.7.2021 under Annexure-8.
3. The factual matrix, in brief, is that the Petitioner while working as Fitter at Samal Barrage in the district of Angul was

brought over to work charge establishment vide order dated 2.9.1993 along with others. The Association of which the Petitioner is a member approached Odisha Administrative Tribunal, Cuttack by filing different O.As. for regularization of services of its members. It is submitted that although the cases were allowed by learned Tribunal vide judgment dated 26.1.1995, but the matter was carried to Hon'ble Apex Court by the Opposite Parties. During pendency of the case and as per the direction of the Hon'ble Apex Court, a policy was framed by the Finance Department vide order dated 15.5.1997 to regularize services of NMR/DLR workers and the State Government filed an affidavit before the Hon'ble Apex Court with assurance to take steps for regularization of services of the work charge employees of Samal Barrage by creating posts. Accordingly, the State Govt. created posts, but no action was taken by the Opposite Parties to regularize the services of the present Petitioner and similarly placed persons. It is further submitted that despite availability of posts, the Petitioner was not brought over to the regular establishment till his retirement dated 31.5.2018. After his retirement, the Petitioner approached this Court in W.P.(C) No.36578 of 2020 with a prayer to grant/release pension in his favour. The said writ petition was disposed of with a direction to the Opposite Party No.1 to consider the grievance of the petitioner within two months. It is also submitted that Petitioner has again approached this Court for a direction to opposite parties to release pension in his favour with effect from 1.2.2021 as the decision of the Hon'ble Apex Court of India rendered in the case of ***Prem Singh and others vs. State of U.P. and others, in Civil Appeal No.6798 of 2019 and batch*** dated 2.9.2019.

4. It is further submitted by learned counsel for the Petitioner that

pension and pensionary benefits be granted under the old rule in the light of decision in the case of *State of Odisha vs. Pitambar Sahoo, W.P.(C) No.24041 of 2017 (decided on 20.12.2017)*, which has been affirmed in *SLP(C) Diary No.30806 of 2018* and *Chandra Nandi vs. State of Odisha and others, W.P.(C) No.19950 of 2011 (decided on 03.02.2021)* and *Premananda Tripathy vs. State of Odisha, W.P.(C) No.27950 of 2019 (decided on 03.02.2021)* and *Narusu Pradhan, SLP No.22498 of 2012, State of Orissa and others vs. Jyostna Rani Pattanaik and others, W.P.(C) No.1534 of 2008, State of Orissa vs. Pitambar Mohapatra, W.P.(C) No.13483 of 2012 and State of Orissa vs. Radheshyam Mohanta, W.P.(C) No.12377 of 2009*, which has been affirmed in *SLP(C) No.36038 of 2020* as well as the benefits given to similar persons.

5. It is also submitted by learned counsel for the Petitioner that Petitioner had discharged his duty under the work charge establishment of Samal Barrage from 2.9.1993 till date of retirement, i.e. 31.5.2018, which is near about 24 years of service. Despite his long continuance of service, he has not been given pensionary benefits on the plea that he has not been brought over to the regular establishment against any pensionable post, which is illegal and arbitrary and intended to deprive the Petitioner from receiving pensionary benefits.

6. The further submission of the Petitioner is that the Govt. has decided to fill up the posts of 569 posts by converting the eligible work charge employee. It is also submitted that 569 posts (newly created) was over and above the regular vacancy available in the department for regularization. It is alleged by learned counsel for the Petitioner that the Opposite Parties are intentionally not regularizing

the work charge employees since the year 2016. It is also submitted that law is well settled by Hon'ble Apex Court of India in a recent decision in the case of ***Prem Singh and others vs. State of U.P. and others in Civil Appeal No.6798 of 2019 (decided on 2.9.2019)*** that an employee continuing under work charge establishment for 10 years or more should have been regularized and it was held that it would be proper to regularize them as others have been regularized, we direct their service be treated as regular one. They are entitled to receive the pension as if they have retired from regular establishment and the services rendered by them right from the day they entered the work charge establishment shall be counted as qualifying service for the purpose of pension. It is also submitted by learned counsel for the Petitioner that this Hon'ble High Court in the case of ***Chandra Nandi vs. State of Orissa and others*** reported in ***2021 (1) OLR 688*** has already decided that the work charge employee on completion of five years of service are to be regularized from that date and accordingly they are entitled for pension and other pensionary benefits by assessing notional fixation of pay in regular establishment by adding annual increments which is due and admissible on such notional basis.

7. It is submitted that this Court in ***WPC(OAC) No.3494 of 2013*** by order dated ***14.07.2021*** analyzing various points of law directed the State Government to regularize the service of eligible persons in the regular establishment from the time such persons completed five years of continuous service in work charge establishment and the period from that time till the date of retirement be counted towards qualifying service for considering the pension and direction was issued to grant pensionary benefits to the employees. He further

submits that in similar matters Government had challenged the order of the learned Tribunal under Annexure-6 by approaching this Court in a writ petition bearing W.P.(C) No.5377 of 2010 and this Court by order dated 19.12.2011 referring the judgment rendered in ***O.J.C. No.1162 of 1999 (State of Orissa vs. Jhuma Parida and others)*** and ***O.J.C. No.11028 of 1999 (State of Orissa vs. Sudarsan Sahoo and others)*** confirmed the order passed by the learned Tribunal and dismissed the writ applications.

8. 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 Charana Mohanty vs. State of Odisha, WPC(OAC) No.3494 of 2013*** disposed of on ***14.07.2021***. In the said case, the Petitioner, who was a work charge 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*** dismissed the State Government's Appeal and reaffirmed the order dated 19.12.2011 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.

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 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.

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 11.6.2009. The order dated 19.6.2009 was challenged by the State Government before this Court in *W.P.(C) No.5377 of 2010*. This Court dismissed the writ petition on 19.12.2021 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 7.1.2013 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 charge employee, who had worked for more than five years in work charge 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 a stand contrary to the principle finally approved by the Hon'ble Supreme Court of India.

11. The only benefit the Petitioner intends to get is his 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 charge employees by notionally considering

them as regular establishment employee and as such the pensionary benefit 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.

12. 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 11.6.2009, passed in *O.A. No.1189(C) of 2006*. The Petitioner is directed to appear before the Appropriate Authority along with certified copy of this order and all other relevant documents and records for the processing of his claim. The Authority 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.

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

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

(A.K. Mohapatra)
Judge