

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 14071 of 2017

Dusasan Rout

.....

Petitioner

Mr. J.R. Kar, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V. NARASINGH

ORDER

11.07.2022

Order No.

13.

This matter is taken up through hybrid mode.

2. Heard Mr. J.R. Kar, learned counsel for the petitioner and Mr. S. Nayak, learned Addl. Standing Counsel for the State Opposite Parties.
3. The Petitioner has filed this Writ Petition seeking to quash the order dated 30.01.2017 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.850 (C) of 2008 under Annexure-6, and to issue direction to the opposite parties to take effective steps in the matter of regularization of the petitioner within a stipulated time.
4. The factual matrix of the case, in hand, is that the petitioner was initially appointed as a work charged employee (Amin) on 10.01.1972 at Salapada Irrigation Circle. In 1989, a new circle, i.e., Dhenkanal Circle was created and he was transferred there. When Angul Irrigation Circle was created, he was again transferred to Angul Irrigation Circle along with many others. Though he served for a long time in the work-charged establishment, but he was not brought over to regular establishment. On 19.10.2005, the Engineer-in-Chief, Water Resources had written to the Superintending Engineer, Angul Irrigation Circle clarifying that 65 posts along with the persons have been transferred to Angul Irrigation Division and accordingly necessary steps may be taken to include the above posts in the sanctioned strength maintained at his level first and thereafter conversion of eligible work charged employees against the available vacant wages establishment be

considered at his level as per the principle laid down by the Government from time to time. The claim of the petitioner was that he was among those 65 persons, who had been transferred to Irrigation Division, Angul, but before the letter dated was issued on 19.10.2005, he had retired on 31.01.2002, without regularization of his service, due to inaction of the authority and, therefore, he should be notionally brought over to the regular wages establishment and accordingly he should be allowed pensionary benefits. Therefore, the petitioner approached the tribunal, by filing O.A. No. 850 (C) of 2008, to notionally regularize his service so as to entitle him to get pensionary benefits. Pursuant to notice issued by the tribunal, opposite parties filed counter affidavit contending that the petitioner had approached the tribunal after four years of his retirement, by filing O.A. No.1744 of 2006, which was disposed of vide order dated 04.08.2006 directing the opposite parties to take a decision with regard to regularization of the service of the petitioner. The opposite parties, after examining the claim of the petitioner, rejected the same vide order dated 31.07.2007 due to non-availability of sanctioned post prior to retirement of the petitioner. To substantiate the same, reliance was also placed on the judgment of the apex Court in SLP (SC) No. 12433 of 1995, wherein it has been held that the O.A. filed before the O.A.T. seeking regularization of service after five years of retirement, should not be entertained. Since the petitioner retired on 31.01.2002, question of entertaining the original application after five years for regularization of service does not arise.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that there is no dispute that the petitioner had joined in the work charged establishment on 10.01.1972 and retired from service on attaining the age of superannuation on 31.01.2002. Nothing has been placed on record to indicate that he has been brought over to the regular establishment, though reliance has been placed on the letter dated 30.04.1983 under Anenxure-2 of the Deputy Secretary to Government to the Engineer-in-Chief, Irrigation,

Bhubaneswar prescribing guidelines for conversion of work-charged posts to regular establishment and for counting work-charged period service towards pension and gratuity of work-charged staff, and office memorandum dated 06.04.1990 of the Finance Department under Annexure-3, giving guidelines for counting the service rendered under the work-charged establishment towards pension. But these two guidelines are of no relevance to the petitioner, as his case can at best be considered in the light of the Finance Department Resolution No.22764 dated 15.05.1997, which is a Scheme for absorption of NMR/DLR/Job Contract workers under regular establishment. As such, the claim of the petitioner cannot be considered due to non-availability of sanctioned post. More so, since the petitioner claims such benefit much after his retirement, the same cannot be sustained in the eye of law, in the light of the order of the apex Court in SLP (SC) No. 12433 of 1995 that seeking regularization of service after five years of retirement should not be entertained.

6. In the above view of the matter, this Court is of the considered view that the tribunal is well justified in passing the order impugned which does call for any interference by this Court.

7. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Balaram

(V. NARASINGH)
JUDGE