HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 5569 OF 2011

(In the matter of an application under Articles 226 & 227 of the Constitution of India.)

Surya N. Pradhan .... **Petitioner**

Versus

STATE & OTHERS .... **Opp. Parties**

For the Petitioner: M/s. G.N. Mishra, S.C.Sahoo & B.Priyadarshi, Advocates

For the Opp.Parties: M/s. A.K.Mishra,A.K.Sharma, M.K.Dash,P.K.Dash & S.Mishra, Advocates for O.Ps.2&3
Mr. P. Mohapatra, ASC

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :20.06.2022
DATE OF JUDGMENT: 20.06.2022

V. Narasingh, J.

1. The petitioner joined the Opposite Party-Orissa State Civil Supplies Corporation Ltd., Bhubaneswar (hereinafter to refer as "the Corporation", in short) in the year 1991 as "Kantawala" on adhoc basis. Alleging discrimination in the matter of grant of financial benefits such as annual increment, D.A., H.R.A., T.A. etc. which have been made available to the employees junior to him has approached this Court in the present writ petition.

2. Uncontroverted facts which are relevant for considering the prayer of the petitioner is stated in brief: the petitioner was temporarily appointed as Kantawala on adhoc basis in the time scale of Rs.750/- to Rs.940/- Per Month for a period of 44 days as per order dated 28.10.1991 of the Corporation at Annexture-1. It is submitted by the learned counsel for the petitioner that though he has been working for more than two decades because of the artificial break of one day in every 44 days of service he is being denied financial benefits, such as annual increments, T.A., D.A. etc. payable to the regular employees. It is submitted though in the resolution of the 71st meeting of the Board such fictional break of one day was discontinued while other similarly circumstanced and even juniors have been extended financial benefits at par with regular employees but such benefits have been denied to the petitioner without any rhyme or reason. The relevant extract of the said resolution is quoted hereunder for ready reference:

> **"***The Board noted that 22 employees were working with the Corporation for a period of 3 years on temporary basis with the retention*

of their appointment after a period of 44 days at a time.

It was decided that an ad hoc appointment of the above personnel on an "Until Further Orders" should be made to avoid repeated renewal of their appointments.**"**

3. In terms of the said resolution the Board in its 142nd meeting resolved that the persons similarly circumstanced with the petitioner were to be given "Until Further Orders" status by eliminating one day break. The only exception was that such benefit was not to be extended to the employees who are involved in misappropriation/defalcation.

4. The learned counsel for the petitioner submitted that in spite of the decision of the Board in its 142nd Board meeting he has been denied the financial benefits which were otherwise extended to the similarly circumstanced.

5. Mr. A.K. Mishra, learned counsel for the Corporation stated that the ground of discrimination as urged is illusory and the petitioner is not entitled to the benefits as claimed.

6. Mr. G.N. Mishra, learned counsel for the petitioner also relied upon a judgment of this Court in the case of ***Santosh Kumar Sahoo Vs. State of Odisha and Ors.***; reported in ***2015(I) OLR 875*** relating to the self-same Corporation and wherein after considering the grievance of the petitioner therein (Santosh Kumar Sahoo), this Court directed all financial benefits to be extended to him.

6(A). Learned counsel for the Corporation within his usual fairness does not dispute that the petitioner's claim being covered by the Judgment of this Court in the case of ***Santosh Kumar Sahoo (supra).***

6A(i). Learned counsel for the petitioner also relied on the Judgment of this Court in the case of ***Gyananendra Ku. Biswal*** dated 12.04.2022 in W.P.(C) No.5568 of 2011 by virtue of which prayer of the petitioner therein was allowed.

6A(ii). It is stated at the bar that the Judgment of this Court in the case of ***Gyananendra Ku. Biswal(Supra)*** has attained finality and that the petitioner is similarly circumstanced.

7. Taking into account the contentions raised by the counsel for the parties and on going through the resolution annexed to the present writ petition, it is clear that the petitioner was initially engaged for a period of 44 days and though he was allowed to continue in service there was a fictional break of one day after 89 days and in some circumstances there was break of one day after spell of 44 days.

8. It is not disputed by the learned counsel for the Corporation that similarly situated persons who were initially engaged on daily wage basis and later on granted time scale pay by virtue of "Until Further Orders" status resolution of the Board,(herein above adverted to) were extended all financial benefits at par with regular employees.

9. In view of such submission of the learned counsel for Corporation the action of the authorities in not granting the petitioner the financial benefits at par with regular employees is patently violative of the equality norm envisaged under Article 14 of the Constitution of India. That apart law is no longer res integra that when the work is of continuous nature denying an incumbent his legitimate dues taking recourse to fictional break of one day after 89 days or 44 days as the case may be suffers from the malady of discrimination as such bad in law.

10. In this context reference may be made to the case of ***Sri Rabinarayan Mohapatra v. State of Orissa and others***, reported in ***AIR 1991 SC 1286***. The ratio in the said judgment deprecating adhocism by making appointment for short spell with one day break in between has been consistently followed by a catena of judgments of the Apex court.

11. Applying the ratio of the principle laid down in the case ***Rabinaryan Mohapatra(supra)*** and other judgments and in view of the judgment of this Court in the case of ***Santosh Kumar Sahoo (supra)*** the action of the Opposite Party Corporation not granting the petitioner financial benefits at par with others with "until Further Orders" status being ex-facie illegal is liable to be set aside.

12. The Opposite Party Corporation is thus directed to extend to the petitioner financial emolument from 2001, the date from which such benefit was admittedly extended to the juniors in terms of Annexure-5 Board resolution of 142nd Meeting of the Board of Corporation at par with the employees who have been conferred the status of "Until Further Orders" within a period of six months from the date of receipt/production of this Judgment.

13. The writ petition is allowed. There shall be no order as to cost.

(V.Narasingh)
Judge

Orissa High Court, Cuttack
Dated the, 20th June, 2022/Santoshi