

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13768 of 2022

Pravarani Roul

.... ***Petitioner***
Mr.S.B.Jena, Advocate

-versus-

State of Odisha and others

.... ***Opposite Parties***
Mr. Y.S.P Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.07.2022

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 Petitioner has filed the above noted writ application with a prayer to quash the order dated 04.03.2022 under Annexure-11 and further direct the Opposite Party No.1 and 3 to treat the Petitioner as a regular employee with effect from the date of his appointment taking into consideration the fact that the Petitioner has been appointed under Rehabilitation Assistance Rule and grant her pensionary benefits.
4. The factual matrix, in brief, is that after the death of the husband of the Petitioner, the Petitioner was appointed as Khalasi under Rehabilitation Assistance Rule, 1990 and allowed to join in her service on 06.11.1993 under work charged establishment. The Petitioner had discharged her duties for more than 27 years under work charged establishment, but she was never brought to regular

establishment.

5. It is submitted by the learned counsel for the Petitioner that from 06.11.1993 till her retirement the Petitioner had been continuing as Khalasi in work charged establishment satisfactorily for which her services ought to be regularised in view of the Finance Department Circular dated 15.05.1997. It is also submitted by the learned counsel for the Petitioner that before retirement of the Petitioner, she submitted a representation to the Opposite Party No.1 to bring her to regular establishment with retrospective effect and make her eligible for pension, but she did not receive any respond. It is also submitted that the Opposite Party No.3 issued appointment under Rehabilitation Assistance Rules, 1990, but the Opposite Party No.4 issued order of appointment on ad hoc basis for 84 days under work charge establishment. It is also submitted that Opposite party no.2 vide Office Order No.2126 dated 05.08.2021 has been pleased to bring similar situated persons from work charged establishment to regular establishment by the Superintending Engineer, Jagatsinghpur Irrigation Division, Jagatsinghpur and discriminated the case of the Petitioner.

6. It is also submitted by the learned counsel for the Petitioner that the action of the Opposite Parties in rejecting the prayer of the Petitioner and not regularizing the services of the Petitioner and not making her eligible for pension and pensionary benefit is illegal, arbitrary and discriminatory for which necessary direction be issued to the Opposite Parties to bring the Petitioner to regular establishment with retrospective effect and grant her pension and pensionary benefit and also grant all consequential service and financial benefit.

7. On the other hand, learned counsel appearing for the State submits that the order dated 04.03.2022 under Annexure-11 has been passed with due care and caution in rejecting the prayer of the Petitioner to regularize her service retrospectively with all consequential service benefits and sanction of pension under regular establishment.

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 Chanrana Mohanty vs. State of Odisha**, WPC(OAC) No.3494 of 2013 disposed of on 14th July, 2021. In the said case, the Petitioner, who was a work charged 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 thereby dismissing the State Government's Appeal and confirming the order dated 19th December, 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 Nansu 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. The only benefit the petitioner is to get her 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 charged employees by notionally considering them as

regular establishment employee and as such the pensionary benefits have been given to them, the same benefit needs to be extended to the Petitioner for 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 order dated 04.03.2022 under Annexure-11 is quashed 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 11th June, 2009 passed in O.A. No.1189(C) of 2006. The Petitioner is directed to appear before the competent authority along with certified copy of this order and all other relevant documents and records for the processing of her 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, the writ petition is allowed. There shall no order as to cost.

(*A.K. Mohapatra*)
Judge