

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13947 of 2022

Chakradhar Gopal

.... ***Petitioner***
Mr.S.K.Das, 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 present writ application with a prayer to quash the order dated 24.12.2021 under Annexure-7 and further direct the Opposite Parties to grant the benefit of pension and other retiral dues to the Petitioner under the OCS (Pension) Rules, 1992 with effect from 09.07.2021 with all consequential benefits within a stipulated period as deem fit and proper.
4. The factual matrix, in brief, is that the Petitioner started his service as Casual Worker/Cook-cum-Attendant on 26.08.1987 in the ST & SC Development Department. On joining he was paid on daily rated basis and worked as a Cook-cum-Attendant in Government SSD Girls High School, Dambosora in the district of Rayagada. It is submitted by the learned counsel for the Petitioner that the Petitioner while was so discharging his duty, uninterruptedly against a sanction

post in a Government establishment, the Government of Odisha in the Finance Department vide Resolution No.31715/F dated 04.09.2012 resolved to bring all those NMR/DLR and job contract workers into the regular establishment as against the regular vacant post of Cook-cum-Attendant (CCA) subject to the condition that such persons were engaged prior to 12.04.1993.

5. It is submitted by the learned counsel for the Petitioner that pursuant to the Finance Department Notification under Annxure-1, the Collector, Rayagada in his letter dated 31.12.2011 under Ammexre-3 has regularized as many as 93 similarly situated persons of different institutions including the Petitioner and allowed him the temporary status. It is also submitted by the learned counsel for the Petitioner that Government has clarified the position with regard to pension to the employees initially appointed as Work Charge DLR/NMR etc., and subsequently regularized. The Petitioner was admittedly appointed on 26.08.1997 on DLR/NMR, but subsequently regularized and thereby he is to get his pension under the OCS(Pension) Rules, 1992. The Petitioner was admittedly appointed on 26.08.1987 on DLR basis and therefore, he was squarely covered by the Government decision with regard to regularization. Since he was against a sanctioned post from the initial date of joining as NMR/DLR, he is entitled to the pension and his case is to be governed under the Old Pension Rules, 1992. It is also submitted that when no action was taken for grant of pension and other retiral dues, he has moved the Collector, Rayagada with a representation and since no action has been taken, the Petitioner filed WP(C) No.30349 of 2021 and the said writ petition was disposed of on 30.09.2021. He also submits that the Collector, Rayagada, Opposite Party No.2

without verifying the facts or the law holding the field, rejected the claim of the Petitioner for grant of pension in his letter dated 24.12.2021 under Annexure-7. It is settled law that the casual/contractual NMR/DLR employees appointed prior to 01.01.2005 and regularized after 01.01.2005 are to get the pension and other retiral dues as per the Old Pension Rule i.e. OCS (pension) Rules, 1992.

6. It is also submitted by the learned counsel for the Petitioner that the Opposite Party No.2 without verifying the facts or the law as well as without assigning any reason, rejected the claim of the Petitioner for grant of pension under Annexure-7, which is illegal, arbitrary and action of the Opposite Parties in rejecting the prayer of the Petitioner and not extended the benefit of pension and other retiral dues to the Petitioner under the OCS(Pension) Rules, 1992 is illegal, arbitrary and discriminatory for which necessary direction be issued to the Opposite Parties to grant him 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 under Annexure-7 has been passed with due care and caution in rejecting the prayer of the Petitioner to grant him Pension with all consequential service benefits.

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 vrs. 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 vrs. 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 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 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 his pension and 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 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 24.12.2021 under Annexure-7 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 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, the writ petition is allowed. There shall no order as to cost.

(**A.K. Mohapatra**)
Judge



RKS