

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14260 of 2022

Bijay Kumar Swain

..... Petitioner

Mr.S.N. Patnaik, Advocate

-versus-

State of Orissa and others

..... Opposite Parties

Mr. YSP Babu, AGA for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

21.06.2022

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 the Opposite Parties to regularize the service of the Petitioner in terms of Finance department Resolution dtd. 6.3.1990 under Annexure-3 series at least one day prior to his retirement on 31.10.2021, if required by creating supernumerary post and as consequential financial benefits including pension and other retirement benefits in favour of the petitioner under the Orissa Civil Services (Pension) Rules, 1992 in the light of the benefit given to similarly placed persons on the basis of his regular service as Khalasi as has been decided vide order dated 22.2.2011 in O.A.No.555(C)/2000, which has been affirmed vide order dated

2.8.2019 in W.P.(C) No.22688/2011 and order dated 19.05.2020 in SLP © Diary No.5782/2020 and his entire service period from 11.11.1986 till 31.12.1999 may be treated as qualifying service for computing the pensionary benefits in the light of the decision in the case of **Narusu Pradhan, O.A. No.1189(c)/2006**, which has been affirmed by this Hon'ble Court in W.P.(C) No.5377/2010 vide order dtd.19.12.2011 and by the Hon'ble Supreme Court in SLP(c) CC No.22498/2012 and the **State of Punjab vs. Harbanslal in SLP(c) No.23578 of 2012** and judgment dtd.26.8.2020 of the Hon'ble Apex Court in Civil Appeal No.3984 of 2010: **V. Sukumaran vs. State of Kerala and others** with all consequential benefits.

Further pension and pensionary benefits be granted under the old rule in the light of the 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.

4. The case of the Petitioner is that the Petitioner had been working as an identified DLR under R.W. Sub-Division, Electrical,

Cuttack having been engaged with the work of a clerical assistant w.e.f. 1.10.1992 since he has acquired requisite qualification of the B.A. for the said post to his credit. While he had been serving as such uninterruptedly, the Govt. in Finance Department as a policy measure have come up with a resolution bearing No.22764, dated 15.05.1997 formulating a scheme for absorption of NMR/DLR job contract workers who were engaged prior to 12.4.1993 under the Regular establishment as per the direction of the Hon'ble Apex Court & High Court of Odisha. The petitioner was one of the DLR candidates coming under the eligibility criteria prescribed to bring him over to regular establishment in the said resolution. Accordingly, he had a reasonable as well as legitimate expectation to get absorbed in the regular post in application of the scheme formulated by the Govt. In the meantime, the name of the petitioner was not figured in the identified DLR list as a result of which he approached this High Court in W.P.(C) No.5399 of 2007 and the matter was disposed of on 31.03.2011 directing the opposite party no.3 who is the present Opp. Party No.4 to consider the grievance of the petitioner within a period of six weeks. Complying with such order dtd. 31.03.2011, the present Opp. Party No.4 disposed of the representation of the Petitioner to count the service of the petitioner recognizing his 1st engagement as on 01.10.1992 and recommended his case for bringing him to the fold of work charge establishment as per the guidelines in vogue. Copy of the letter no.2717 dtd.27.08.2011 issued by the present Opp. Party No.4 communication the present Petitioner under Memo No.2718 dtd. 27.08.2021.

5. That for the aforesaid reasons though the petitioner was supposed to get the benefit of getting into the work charged establishment when his juniors got such benefits w.e.f. 11.2.2011, but the petitioner's case could not be properly considered. In the meantime seniors to him, his counterparts, as well as his juniors were brought over to work charged establishment w.e.f. 11.2.2011 in accordance with the Govt. policy decision.

6. Learned counsel for the Petitioner submits that the Opposite Party No.3 should have kept in mind the Finance Department Resolution and the order of the Hon'ble Apex Court while rejecting the representation of the Petitioner and also taken into consideration the length of service rendered by the Petitioner in the establishment being a work charged employee and continuous service.

7. It is also submitted by the learned counsel for the Petitioner that the learned Tribunal in O.A.No.70(B) of 1997 by order dated 03.05.1999 analyzing various points of law directed the State Government to regularize in a establishment post from the time he completed five years of continuous service in work charged establishment and the period from that time till the date of retirement be counted towards the pension and direction was issued to grant pensionary benefit to the employees. He further submits that the Government challenging the order of the learned Tribunal under Annexure-6 approached this Court in filing OJC No.13552 of 1999 and this Court by order dated 01.05.2001 referring the judgment rendered in OJC No.1162 of 1999 (*State of Orissa vs. Jhuma Parida and others*) and OJC No.11028 of 1999 (*State of Orissa vs. Sudarsan Sahoo and others*) confirmed the order passed by the

learned Tribunal and dismissed the writ application. After dismissal of the writ application, the Government has brought the employee into regular establishment for the purpose of granting pensionary benefit.

8. Lastly, it is submitted by the learned counsel for the Petitioner that the Opposite Party No.3 ought to have considered the ratio decided in the judgments (supra) while rejecting the representation of the Petitioner and should have granted pensionary benefit in favour of the Petitioner.

9. The Opposite Party No.3 has although not filed a counter affidavit denying all the allegations made by the Petitioner in the Petition. It is stated by the learned Additional Standing Counsel in the counter that the claim of the Petitioner is a stale claim. Further it is submitted that the cases cited by the Petitioner are different from the grievance of the Petitioner and the principle decided in the said case are not all applicable to the case of the present Petitioner. It is submitted by the learned counsel appearing for the State that the Opposite Party No.3 has given due care and caution towards implementation of orders passed by this Court as well as the Apex Court and the guidelines and circulars issued by the State Government from time to time.

10. 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 Charan 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.

11. 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.

12. So far the case of one ***Narsu 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 a stand contrary to the principle finally approved by the Hon'ble Supreme Court of India.

13. The only benefit the petitioner is 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 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.

14. 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 11th June, 2009 passed in O.A. No.1189(C) of 2006. The Petitioner is directed to appear before the Opposite Party No.4 along with certified copy of this order and all other relevant documents and records for the processing of his claim. The Opposite Party No.4 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.

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

16. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge