

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15154 of 2021

Dibakar Tripathy

....

Petitioner

Mr. L.K. Mohanty, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.K. Rout, A.G.AC.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

03.11.2022

Order No.

- 03.
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 present writ petition has been filed by the petitioner with the following prayers:-

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to issue notice to the opp.parties calling upon them to file show cause as to why the order dated 09.04.2021 issued by the opp.party no.1 rejecting the claim of petitioner grant of pension shall not be quashed/set aside and after hearing the parties be pleased to quash/set aside the order of rejection dated 9.4.2021 under Annexure-8.

A further direction be issued to the opp.parties to grant pension and pensionary benefits in favour of the petitioner with effect from 1.10.2019 as per the decision of the Hon’ble Apex Court of India in between Prem Singh and others Vrs. State of U.P. and others dated 2.9.2019 passed in Civil Appeal No.6798

of 2019 by counting his period of service rendered under work charge establishment from 2.9.1993 to 31.4.2019.

A further direction be issued to release all the arrears in favour of the petitioner with effect from 1.10.2019 to till date; within a date to be fixed by this Hon'ble Court.

And pass such other order/orders granting complete relief to the petitioner.”

4. The Petitioner has filed the above noted writ application with a prayer for quashing impugned order dated 09.04.2021 under Annexure-8 and to direct the Opposite Parties to regularize him in service for a day prior to his superannuation notionally and to grant pension and all pensionary benefits 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*, 2014(I) OLR 734(DB), W.P.(C) No.19950 of 2011(decided on 03.02.2021), 2021(I) OLR-688 (DB) 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 similar benefits have already been given to similarly placed persons.

5. The factual matrix, in brief, is that the petitioner was appointed as N.M.R. Clerk on 16.09.1981 at Samal Barrage in the

district of Angul. He was brought over to work charge establishment against the sanctioned post of Store Clerk dated 02.09.1993 and retired from service with effect from 30.11.2018. In the present writ application, the petitioner has prayed for quashing of order of rejection of his prayer for grant of pension dated 25.01.2021. The petitioner further prayed for a direction to the opposite parties to release pension and pensionary benefits in his favour as per the decision of Hon'ble Apex Court of India rendered in the case at ***Prem Singh and others vrs. State of U.P. and others*** in Civil Appeal No.6798 of 2019 and batch dated 02.09.2019.

6. Learned counsel for the Petitioner submits that the Opposite Party No.1 should have kept in mind the Finance Department Resolution and the order of the Hon'ble Apex Court as well as the order passed by this Court while rejecting the representation of the Petitioner and should have taken into consideration the length of service rendered by him in the regular establishment being a work charged employee and the continuous service rendered by the petitioner.

7. It is also submitted by the learned counsel for the Petitioner that the learned Tribunal by order dated 03.05.1999 in O.A.No.70(B) of 1997 after analyzing various points of law directed the State Government to regularize the service of the applicant in a regular establishment post from the time the applicant had completed five years of continuous service in work charged establishment and the period from that time till the date of retirement should have been considered for counting the pension and accordingly a direction was issued to grant pensionary benefits to the applicant. He further submits that the Government of Odisha challenging the order of the

learned Tribunal approached this Court in filing OJC No.13552 of 1999 and this Court by order dated 01.05.2001 referring to the judgments rendered in OJC No.1162 of 1999 (**State of Orissa-vrs.- Jhuma Parida and others**) and OJC No.11028 of 1999 (**State of Orissa Vrs. 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 over to 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.1 ought to have considered the ratio decided in the above noted judgments while rejecting the representation of the Petitioner and should have granted pensionary benefits in favour of the Petitioner.

9. The Opposite Parties have although not filed a counter affidavit denying all the allegations made by the Petitioner, however, learned Additional Standing Counsel submitted that the claim of the Petitioner is a stale one and as such barred by time. Further it is stated that the cases cited by the Petitioner are different from the grievance of the Petitioner and as such the principle decided in the said case are not at 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.1 has followed due care and caution while implementing the 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 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 has been pleased to dismiss the State Government's Appeal and confirmed 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*** and allowed the writ petition by directing grant of pensionary benefits to the petitioner 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 vrs. State of Odisha and others*** : reported in 2014(I) OLR 734 and 2021 (I) OLR-688 (DB). In the said reported case, this Court had given a direction to notionally regularize the service of the Petitioner prior to his superannuation from service and accordingly, issued a direction to calculate the Petitioner's entitlement including the pensionary benefits.

12. So far the case of one ***Narusu Pradhan*** is concerned, which has been referred to by this Court in ***Abhaya Charan Mohanty*** (supra), the petitioner had filed O.A. No.1189(C) of 2006 praying for grant of 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. Thereafter, 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* (supra) 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 the 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. Learned counsel for the petitioner relying on a judgment of the Hon'ble Supreme Court of India in the matter of *Prem Singh and others vrs. State of U.P. and others* contended that in the above noted judgment the Hon'ble Supreme Court has categorically held that the period of work charge service rendered by an employee shall be counted towards qualifying services for calculating the pension of such employees. However, this Court upon perusal of the said judgment is of the considered view that the judgment as noted hereinabove in *Prem Singh and others* case (supra) relied upon by the learned counsel for the petitioner that the petitioner may not be

strictly applicable to the facts of the petitioner's case for two reasons. Firstly, ***Prem Singh and others*** case (supra) was considered taking into account of U.P. Retirement Benefit Rules, 1961 and U.P. Civil Servant Regulations. Secondly, the employees, who had appeared before the Hon'ble Supreme Court were regularized in services.

14. The only benefit the petitioner is entitled to get is his pensionary benefits payable to him and the same is 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 the 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.

15. In view of the facts and circumstances discussed hereinabove and further in view of the analysis of law made hereinabove and taking into consideration the fact that many similarly situated employees have been extended similar benefits, this Court is of the considered view that the present writ petition is bound to be allowed otherwise the conduct of Opposite Party No.1 would seriously infringe the fundamental rights of the petitioner as has been guaranteed under Article 14 of the Constitution of India. Accordingly, the impugned order dated 25.01.2021 under Annexure-8 is hereby set aside and it is further directed that the Opposite

Parties shall grant similar benefits to the petitioner as has been done in the case of **Narusu Pradhan** (supra) dated 11th June, 2021 passed in O.A. No.1189(C) of 2006.

16. 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 as is due and admissible to the Petitioner, particularly his pensionary benefits, within a period of three months from the date of production of certified copy of this order.

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

Urgent certified copy of this order be granted on proper application.

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