

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 14980 OF 2018

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR Pramod Chandra Das Petitioner

-Versus-

State of Orissa & Ors. Opp. Parties

For Petitioner : M/s. D.R. Pattanayak,
L.K. Patanayak, N. Biswal
And L. Pattanayak, Advocates

For Opp. Parties : Mr. S.N. Nayak,
Addl. Standing Counsel
[O.Ps.No.1-3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE V. NARASINGH**

DECIDED ON : 11.07.2022

DR. B.R. SARANGI,J. The Petitioner, by means of this writ petition, seeks modification of the order dated 14.03.2018 at Annexure-15 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1116 (C) of 2011 and batch to the extent that the Petitioner, being a senior employee of the Rengali

Irrigation Project, Samal, is entitled to the benefit of Work-charged establishment w.e.f. 02.09.1993 instead of 06.09.2003.

2. The factual matrix of the case, in brief, is that the Petitioner, being a “fully displaced person” of the Rengali Irrigation Project, Samal, was engaged by the Government as NMR employee on 01.10.1983. At the time of his engagement, two sets of employees were engaged by the Government in the same Project, one group was “partly affected persons” and the other was “fully displaced persons”, to which group the Petitioner belonged. Opposite Party No.4, being a “partly affected person”, was engaged as NMR on 01.11.1983. Total 1628 NMR employees were engaged, out of whom 1224 employees, who were partly affected, demanded regularization of their services. Since their request for regularization was not acceded to, the said employees approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, by filing O.A. Nos. 1560(C) of 1993, 1553(C) of 1993, 1562(C) of 1993, 1570(C) of

1993, 1651 (C) of 1993 & 1781(C) of 1993, which were disposed of vide order dated 02.06.1995 with a direction to bring them to the Work-charged establishment w.e.f. 02.09.1993. Challenging the order dated 02.06.1995 passed by the Tribunal in O.A. No.1553(C) of 1993, the State preferred SLP (C) No.5526-5531 of 1996 before the apex Court, which was dismissed on 26.03.1999. As a consequence thereof, the Government of Orissa, Water Resources Department implemented the order dated 02.06.1995 passed by the Tribunal by way of bringing them to the Work-charged establishment w.e.f. 02.09.1993 with all consequential benefits.

2.1. Thereafter, O.A. Nos.2313 (C) of 1993 and 2738(C) of 1993 were filed before the Tribunal by 68 “fully displaced NMR employees”, including the present Petitioner, for regularization of their services, which were disposed of in Lok Adalat, vide order dated 17.04.1999, for consideration of their cases for regularization in terms of Finance Department Resolution dated 15.05.1997. The Government of

Orissa, Water Resources Department, instead of regularizing their services, directed the EIC, Water Resources Department to bring those 68 “fully displaced NMR employees” to the Work-charged establishment on the ground that they were senior to 1224 “partly affected NMR employees”. As a consequence thereof, the Government of Orissa, Water Resources Department passed order on 06.09.2003 bringing those 68 senior (fully displaced) NMR employees of the Rengali Irrigation Project, Samal, including the present Petitioner, over to the Work-charged establishment w.e.f. 06.09.2003 instead of 02.09.1993.

2.2. Aggrieved by the said Order dated 06.09.2003, those 68 senior NMR employees, along with the present Petitioner, filed their grievance petition before the authorities with a prayer to bring them to the Work-charged establishment w.e.f. 02.09.1993, the date from which their counterparts have got the benefit. Opposite Parties No.2 & 3 recommended their case on 16.09.2005 and 12.01.2006 to the Government with a

view that their claim was genuine and justified. But the same having not found favoured with by the Government, the Petitioner approached the Tribunal by filing O.A. No.1523(C) of 2006 with a prayer to bring him to the Work-charged establishment w.e.f. 02.09.1993, the date from which his counterparts got the benefit and the Tribunal, vide order dated 12.07.2006, disposed of the said O.A. directing the Opposite Parties to consider the case of the Petitioner within a period of six months from the date of receipt of the copy of the Order. But Opposite Party No.1 rejected the claim of the Petitioner on 11.01.2007 on the ground that the employees junior to the Petitioner were brought over to the Work-charged establishment w.e.f. 02.09.1993, pursuant to order of the Tribunal affirmed by the apex Court dismissing the SLP filed by the Government.

2.3. Challenging the said Order of rejection passed by Opposite Party No.1 on 11.01.2007, the Petitioner again filed O.A. No.329 of 2007 before the Tribunal,

which was also disposed of on 13.03.2007 with an observation to consider the case of the Petitioner and extend the benefits to the Petitioner by taking a policy decision in this regard. Pursuant thereto, Opposite Party No.3 again recommended the case of the Petitioner with a combined Gradation List for consideration w.e.f. 02.09.1993. But Opposite Party No.1 again rejected the claim of the Petitioner on 05.06.2007 on the selfsame ground that the counterparts of the Petitioner were brought over to the Work-charged establishment w.e.f. 02.09.1993 by virtue of order passed by the Tribunal. Challenging the said order of rejection, the Petitioner, along with others, again approached the Odisha Administrative Tribunal, Bhubaneswar by filing O.A. No.1081 of 2007 and a Division Bench of the Tribunal, vide order dated 30.06.2009, rejected the claim of the Petitioner stating that *"We are also not in a position to take into account the question of financial liability which will arise and who is to bear them"*.

2.4 Aggrieved by the order dated 30.06.2009 passed by the Tribunal in O.A. No.1081 of 2007, the

Petitioner along with others approached this Court by filing W.P.(C) No.10118 of 2009 and this Court vide order dated 17.12.2009 modified the order passed by the Tribunal directing Opposite Party No.1 to look into the letter of Opposite Party No.3 dated 05.06.2007 and consider the claim of the Petitioner, along with others, for bringing over them to the Work-charged establishment w.e.f. 02.09.1993, when their juniors were brought over to the Work-charged establishment. In compliance thereof, Opposite Party No.1 again rejected the claim of the Petitioner, along with others, on 23.07.2010 on the self same ground stating that they stand on a separate footing. Challenging the said order of rejection dated 23.07.2010, the Petitioner, along with others, again approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.1116(C) of 2011 and batch. Pursuant to the notice issued, Opposite Parties filed their Counter Affidavit taking a stand that those 1224 NMR employees got the benefit w.e.f. 02.09.1993 as per the order passed by the Tribunal. Out of those 1224 junior NMR employees

(including Opposite Party No.4), who were brought over to the Work-charged establishment w.e.f. 02.09.1993, some of them were although retrenched but subsequently re-engaged in the project pursuant to order dated 11.07.2012 passed by the Engineer in Chief, Water Resources, Odisha. The Tribunal, vide Order dated 14.03.2018, rejected the claim of the Petitioner, along with others, for bringing over them to the Work-charged establishment w.e.f. 02.09.1993 on the ground that their claim was earlier rejected, vide Order dated 14.03.2018 passed by the Tribunal in O.A. No.1081 of 2007. Hence, this Writ petition.

3. Mr. N. Biswal, learned Counsel appearing for the Petitioner vehemently contended that rejection of claim of the Petitioner, to bring over him to the Work-charged establishment w.e.f. 02.09.1993, by the Tribunal, on the plea that earlier his claim was rejected vide order dated 30.06.2009 passed in O.A. No.1081 (C) of 2007, cannot have any justification. As such, this is an outcome of non-application of mind, which is

arbitrary, unreasonable and contrary to the provisions of law. It is also contended that once the Order dated 30.06.2009 passed by the Tribunal in O.A. No.1081(C) of 2007 was modified by this Court, vide order dated 17.12.2009 passed in W.P.(C) No.10118 of 2009, the order passed by the Tribunal was merged with the order of this Court. As a consequence thereof, the stand taken by the State-Opposite Parties denying the benefit to the Petitioner, in view of the order passed by the Tribunal in O.A No.1081 (C) of 2007, cannot sustain in the eye of law. It is further contended that 68 “fully displaced NMR employees”, including the Petitioner, are senior to the other group of “partly affected employees” like Opposite Party No.4. Those junior employees, who got the benefit of Work-charged establishment w.e.f. 02.09.1993, were retrenched and now they have been re-engaged by the Government as per the order issued by Opposite Party No.2. Therefore, the Petitioner, being a senior employee of the said Project, is entitled to get the status of Work-charged establishment w.e.f. 02.09.1993, instead of 06.09.2003. Denial of such benefit by the Authority

cannot be sustained in the eye of law, being violative of Article-14 of the Constitution of India.

4. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State Opposite Parties sought time to file Counter Affidavit in the present case. Since it is a certiorari proceeding and, as such, earlier this Court had granted time to file Counter Affidavit and it is an old case of the year 2018 and in the meantime four years have passed and many of the employees must have been retired, keeping in view the urgency involved, this Court declines to grant further time to file Counter Affidavit and proceeds to decide the case on the basis of the stand taken by the Government before the Tribunal. At this stage, learned Addl. Standing Counsel vehemently urged before this Court that the Petitioner, along with similarly situated persons, is not entitled to be brought over to the Work-charged establishment with effect from 02.03.1993 at par with the “partly displaced persons”, as they stand on different footing. Therefore, the claim made by the Petitioner, along with other

similarly situated persons, cannot be sustained in the eye of law.

5. This Court heard Mr. N. Biswal, learned Counsel appearing for the Petitioner and Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State Opposite parties by hybrid mode. Since it is a certiorari proceeding, on the basis of materials available on record and as the Petitioner has supplied all the relevant documents, which have been marked as annexures, this Court, instead of adjourning the matter, proceeded to decide whether the Odisha Administrative Tribunal has committed any error in passing the order impugned dated 14.03.2018 in O.A. No.1116(C) of 2011 and batch under Annexure-15.

6. On the basis of factual matrix, as delineated above, the sole question to be considered by this Court is as to whether the Petitioner is entitled to be brought over to the Work-charged establishment w.e.f. 02.09.1993, the date from which “partly affected

persons” have been brought over to the Work-charged establishment, instead of 06.09.2003?

7. It is not disputed that the Petitioner is a “fully displaced person” due to Rengali Irrigation Project, Samal and was initially engaged as NMR on 01.10.1983 prior to engagement of “partly affected persons” on 01.11.1983. It is also not in dispute that 1628 NMR employees were engaged in the aforesaid Project, out of whom 1224 employees were brought over to the Work-charged establishment w.e.f. 02.09.1993, pursuant to common order dated 02.06.1995 passed by the Tribunal in O.A. Nos. 1560(C) of 1993, 1553(C) of 1993, 1562(C) of 1993, 1570(C) of 1993, 1651 (C) of 1993 & 1781(C) of 1993. Even though the Petitioner is senior to those 1224 NMR employees, he was not granted the benefit of the order passed by the Tribunal in the aforesaid O.As. Therefore, 68 “fully displaced employees” including the petitioner, had approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.2313 (C) of 1993 and O.A. No.2738(C) of 1993, which

were disposed of in the Lok Adalat, vide order dated 17.04.1999 with a direction to the authorities to consider their grievance in terms of the Finance Deptt. Resolution dated 15.05.1997. The grievance of those 68 “fully displaced employees” including the petitioner was considered and they were brought over to the Work-charged establishment w.e.f. 06.09.2003. Admittedly, they were not brought over to the Work-charged establishment w.e.f. from 02.09.1993, as was done in case of their counterparts, i.e., “partly affected persons”. Therefore, they made grievance before the authority, which was rejected, and consequentially they approached the Odisha Administrative Tribunal, Bhubaneswar by filing O.A. No.1081 of 2007, which was also rejected, against which the Petitioners and some others approached this Court by filing W.P.(C) No.10118 of 2009, wherein this Court, vide Order dated 17.12.2009, directed Opposite Party No.1 to consider their claim. In compliance thereof, the Government, vide order dated 23.07.2010, rejected their claim. Therefore, they again approached the Tribunal by filing O.A.

No.1116(C) of 2011 claiming similar benefits that they should be brought over to the Work-charged establishment w.e.f. 02.09.1993, the date from which juniors to them were brought over to the Work- charged establishment. But the Tribunal denied such benefit to them, taking into consideration the stand taken by the Government, that they cannot be equated with 1224 NMR employees, who stand on different footing and were brought over to the Work-charged establishment as per common order dated 02.06.1995 passed by the Tribunal, whereas in respect of the Petitioner and others, who were engaged as “fully displaced persons”, the Tribunal came to a conclusion that they are not equal to 1224 NMR employees and were denied the benefit by earlier Order passed in O.A. No.1081 (C) of 2007. By so holding the Tribunal has committed gross error apparent on the face of the records, as because the order dated 30.06.2009 passed in O.A. No.1081 (C) of 2007, against which the Petitioner and others had preferred W.P.(C) No.10118 of 2009 before this Court, vide order dated 17.12.2009, this Court modified the

order passed by the Tribunal and directed Opposite Party No.1 to look into the letter dated 05.06.2007 of Opposite Party No.3 and consider the claim of the Petitioner and others for bringing over them to the Work-charged establishment w.e.f. 02.09.1993, when juniors to the Petitioner and others had already been brought over to the Work-charged establishment. Therefore, the view taken by the Tribunal, by virtue of order passed in O.A. No.1081 (C) of 2007, that the claim of the Petitioner sets at rest, is contrary to the materials available on record. As a matter of fact, a gross discrimination has been made between the “fully displaced persons” and “partly affected persons”, when admittedly “fully displaced persons” were engaged as NMR on 01.10.1983, whereas “partly affected persons” had been engaged as NMR on 01.11.1983. Considering the date of engagement, these “partly affected persons” were juniors to the Petitioner and others, who are “fully displaced persons” of the Project. The Petitioner and other similarly situated persons stand on a higher pedestal than that of the “partly affected persons” and

they are also senior to those persons even though the Petitioner and others were brought over to the Work-charged establishment w.e.f. 06.09.2003, by the time the “partly affected persons” were already brought over to the Work-charged establishment w.e.f. 02.09.1993. Thereby, the Petitioner and others have been grossly discriminated and, more so, their seniority has been ignored while bringing them over to the Work-charged establishment w.e.f. 06.09.2003 instead of 02.09.1993.

8. The concept of equality before law means that among equals the law should be equal and should be equally administered and the likes should be treated alike. All that Art.14 guarantees is a similarity of treatment and not identical statement. The guarantee of equal protection of law and equality before the law does not prohibit reasonable classification.

9. In ***TMA Pai Foundation v. State of Karnataka***, (2002) 8 SCC 481, the apex Court held that conferment of special benefits or protection or rights to a particular group of citizens for rational reasons is

envisaged under Art.14 and is implicit in the concept of equality. There is no abridgement of the content of Art.14 thereby—but an exposition and practical application of such content.

10. In **Onkar Lal v. Union of India**, (2003) 2 SCC 673, the apex Court held that, an order passed without application of mind deserves to be annulled being an arbitrary exercise of power.

11. In **M. Nagaraj v. Union of India**, (2006) 8 SCC 212, the apex Court held that equality is the basic feature of the Constitution. The content of Article 14 was originally interpreted by the Supreme Court as a concept of equality confined to the aspects of discrimination and classification.

12. Every State action should be informed by reasonableness. The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straitjacket formula. Before

an action is struck down, the Court must be satisfied that a case has been made out for exercise of power of judicial review.

13. In **Praveen Singh v. State of Punjab**, (2000) 8 SCC 633, the apex Court held that the administrative or quasi-judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fair play, good conscience and equality.

14. In **Om Kumar v. Union of India**, (2001) 2 SCC 386, the apex Court held that arbitrary action is described as one that is irrational and not based on sound reason or as one that is unreasonable.

15. In **Union of India v. Dinesh Engineering Corporation**, (2001) 8 SCC 491, the apex Court held that any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary

decision and violative of the mandate of Article 14 of the Constitution.

16. In **M.J. Shivani v. State of Karnataka**, (1995) 6 SCC 289, the apex Court held that actions of the State or its instrumentality, uninformed by reason, may amount to being arbitrary and be liable to be questioned.

17. In **Lakshmi Precision Screws Ltd. v. Ram Bhagat**, (2002) 6 SCC 552, the apex Court held that arbitrariness is contrary to rule of law, equity, fair play and justice.

18. Needless to say, the Government of Odisha has framed a policy called "Odisha Resettlement and Rehabilitation Projects Affected Persons Policy, 1994, Clause-9(f)(iv) whereof states that the first priority should be given for appointment to the "fully affected persons" like the Petitioner. But in the present case, 1224 NMR employees, who were "partly affected persons" and juniors to the Petitioner, have been brought over to the Work-charged establishment w.e.f.

02.09.1993, vide order dated 24.05.2001 passed by Opposite Party No.1, whereas the Petitioner and other similarly situated persons, who are senior to those 1224 employees, were brought over to the Work-charged establishment w.e.f 06.09.2003. Thereby, the action of the State Opposite Parties is arbitrary, unreasonable, which violates Article 14 of the Constitution of India.

19. Taking into consideration the ratios decided by the apex Court in the aforementioned cases and applying the same to the present context, it is made clear that action of the State Opposite Parties in bringing over the Petitioner and similarly situated persons, who are senior and “fully affected persons”, to the Work-charged establishment w.e.f. 06.09.2003, is without any application of mind and arbitrary exercise of power, which cannot be sustained in the eye of law. Therefore, by bringing over the junior persons, who are partly affected, to the Work-charged establishment w.e.f. 02.09.1993 the State Opposite Parties have patently violated Clause-9(f)(iv) of “Odisha Resettlement and

Rehabilitation Projects Affected Persons Policy, 1994". Therefore, the Petitioner has been grossly affected by such arbitrary and unreasonable action of the authority and, as such, the Tribunal has committed gross error apparent on the face of the records in rejecting the claim of the Petitioner solely on the principle that there would be financial implication on the State authority.

In view of the above, denial of the benefit of bringing the Petitioner over the Work-charged establishment w.e.f. 02.09.1993, at par with the "partly affected persons", cannot have any justification and the same cannot be sustained in the eye of law.

20. In view of the aforesaid facts and circumstances of the case, the order dated 14.03.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1116(C) of 2011 denying to bring over the Petitioner, who is a "fully affected person", to the Work-charged establishment w.e.f. 02.09.1993, cannot be sustained in the eye of law. Accordingly, the order dated 14.03.2018 at Annexure-15 passed by the

Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1116(C) of 2011 and batch is modified to the extent to **bring the petitioner and other similarly situated persons to the Work-charged establishment w.e.f. 02.09.1993, at par with “partly affected persons”, instead of 06.09.2003.** The State Opposite Parties are therefore directed to grant all consequential benefits to the Petitioner and other similarly situated persons, as due and admissible to them in accordance with law, as expeditiously as possible, preferably within a period of four months from the date of receipt of certified copy of this judgment.

21. The writ petition is accordingly allowed. However, there shall be no order as to cost.

(DR. B.R. SARANGI)
JUDGE

V. NARASINGH, J. I agree.

(V. NARASINGH)
JUDGE