

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22808 of 2022

Bijaya Kumar Rana

....

Petitioner

-versus-

State of Odisha & Another

....

Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
28.09.2022**

Order No

- 1.** 1. This matter is taken up through Hybrid Mode.
- 2.** 2. The petitioner has filed this writ petition seeking direction to opposite parties to sanction pensionary and other retrial benefits by treating the petitioner as a regular employee with retrospective effect after completion of five years of service under work charged establishment, i.e., from the year 1988 and further seeks direction to opposite parties to pay the arrear dues with interest.
- 3.** 3. Mr. T.K.Biswal, learned counsel for the petitioner contended that similar benefit has been extended to one Narusu Pradhan, as stated in paragraph-6.9 of O.A. As such, the petitioner having stood in similar footing, he is entitled to grant all the benefits.
- 4.** 4. Mr. M. Balabantaray, learned Addl. Standing Counsel for the State contended that the petitioner has already retired from service and he was working as a Watchman and he has been paid the benefit in terms of the Appendix-III OPWD Code, Vol-II,

i.e., Odisha Work charged employees (Appointment and Condition of Service) Instruction, 1974, therefore, the claim of the petitioner cannot sustain in the eye of law.

5. Having heard learned counsel for the parties, after going through the records it appears that the petitioner was appointed as Watchman under opposite party no.5 and while working as such, he was appointed as a Watchman under work charged establishment. The said appointment was extended from time to time and finally, the term was extended until further orders. After completion of some years, service book of the petitioner was 2 opened and during his service period he had been given the benefit of revision of pay as per different ORSP Rules. Apart from that he has also been allowed house rent allowance. Thereafter, the petitioner was continuing as Watchman and was granted annual increment from time to time and was also transferred to different divisions in the interest of the Government works during his service period like regular employees. In obedience to the direction of the apex Court, this Court and the Tribunal, the Government of Odisha in Finance Department introduced a guideline bearing Resolution No. 22764 dated 15.05.1997 to brought over the work charged/NMR/DLR personnel to the regular establishment, those who have appointed prior to 12.04.1993. Even though the petitioner fulfilled the criteria, his case was not considered, but the other similar employees have been considered. When the case of the petitioner was not considered to convert his service to regular establishment, he filed several representations before the opposite party no.1, but no action has been taken. Finding no other alternative, he approached

the Tribunal. In the meantime he retired from service on 31.07.2012.

6. As it reveals from the record that one Narusu Pradhan, a similar circumstanced person like the petitioner had filed O.A. No. 1189 (C) of 2006 praying for retrial benefits. The Tribunal allowed the retrial pensionary benefits in his favour vide order dated 11.06.2009, which was challenged by the State before this Court in W.P.(C) No. 5377 of 2010. This Court dismissed the writ petition on 19.12.2011 and confirmed the order passed by the Tribunal. Thereafter against the order passed by this Court, the State has preferred SLP in Civil Appeal No. 22498 of 2012, the same was also dismissed on 07.01.2013. The petitioner has made a specific pleading in paragraph-6.9 and 6.10, which reads as follows:

“6.9. That the case of the applicant is squarely covered by the decision of this Hon’ble Tribunal delivered in the case of Narasu Pradhan Vs. State of Orissa in O.A. No. 1184 (C) of 2012 which was allowed on 11.06.2009. In that case this Hon’ble Tribunal has held that the work charge employees are entitled to get pension and pensionary benefits. This said judgment of Narasu Pradhan was challenged in the Hon’ble High Court of Orissa by the State-respondent and the State-respondent lost there. Thereafter again the State Govt. preferred an appeal before the Hon’ble Supreme Court by filing SLP baring SLP No. 22498 of 2012. The SLP filed by the govt. was also dismissed on 07.01.2013.”

6.10. That after disposal of the case, the law became clear and thereafter the respondent passed the order for sanction of pension and pensionary benefit in favour of the said Narasu Pradhan retired, Electrician Gr.I (work charge) of Bhanjanagar Irrigation Division. The copy of the said is attached to this as Annexure-3 dated 09.05.2013. As the matter is squarely covered by the decision of this Hon’ble Tribunal, hence the applicant is entitled to get pension and pensionary benefit and there is no doubt in it. Besides the above named person, other work charge employees are also getting pension and the applicant is being harassed.”

7. In that view of the matter, the relief claimed by the petitioner is fully covered by the judgment of the Tribunal passed in the case of Narusu Pradhan, which has been confirmed by this Court as well as the apex Court. Thus the petitioner, having stood in similar footing, is entitled to get the benefits which have been extended to Narusu Pradhan and all the differential benefits and consequential benefits, as due and admissible to him, shall be granted to him in accordance with law within a period of four months from the date of communication of this order

(Biraja Prasanna Satapathy)
Judge

Subrat

