

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23398 of 2022

Basanta Kumar Parida

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

16.09.2022

Order No

- 01.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. The present application has been re-registered as WPC(OAC) No.864 of 2018 on transfer of O.A. No.864 of 2018 from the learned Odisha Administrative Tribunal, Odisha, Cuttack Bench, Cuttack to this court after abolition of the OAT.
3. The Petitioner has filed the above noted application with a prayer to direct the Opposite Parties to bring the service of the Petitioner under regular establishment prior to his retirement on 30th April, 2017 and sanction the minimum pension in his favour along with other pensionary benefits and the arrear outstanding pensionary benefits along with interest within a stipulated period of time.
4. The factual matrix, in brief, is that the Petitioner had joined on 31.02.1978, the Petitioner was given appointment to the post of 'Khalasi' under work charged establishment instead of regular establishment. In course of his employment, the Petitioner had

submitted several representations to the authorities to bring him over to the regular establishment but the grievance of the Petitioner remained unheard by the authorities till the date of his retirement on 30th April, 2017. The Petitioner has, therefore, stated that it is due to the sheer negligence and laches on the part of the authorities he was not given appointment in regular establishment. Since at the time of retirement, the service of the Petitioner was not regularized, he has been denied pensionary and other retiral benefits by his employer, which is illegal, arbitrary and discriminatory.

5. It is further submitted by the learned counsel for the Petitioner that the Petitioner had requisite qualification for the post. Although there were existing vacancies at the time of Petitioner's appointment, but he was not given appointment in the regular establishment. Further, the Petitioner was appointed as N.M.R. on 2nd April, 1986 and vide Office Order No.3601 dated 23rd September, 2009 of the Office of the Superintendent Engineer, Angul Irrigation Circle, Angul, the petitioner was brought over to the work charged establishment with a scale of pay and grade pay of Rs.4,440-7,440 and G.P. Rs.1,300/-.

6. It is further submitted by learned counsel for the Petitioner that the Water Resources Department, Government of Odisha vide letter dated 29th March, 2017 communicated to the Chief Engineer, Minor Irrigation (O), Bhubaneswar has mentioned that 63 persons were working as 'Khalasi' in the work charged establishment were brought over to regular establishment (Wages). However, the case of the Petitioner was ignored by the authority although he was eligible to be appointed in the regular establishment.

7. Learned counsel for the Petitioner submits that the Petitioner has worked under State Government since the year 1986 till his retirement in the year 2017 continuously and received salary with scale of pay, increment, grade pay and other service benefits. It is further submitted that the persons similarly situated had earlier approached the learned Odisha Administrative Tribunal as well as this Court for regularization of their services and for payment of pensionary benefits have got the desired result. Some of the orders passed by this Court as well as learned Odisha Administrative Tribunal were carried to the Hon'ble Supreme Court of India at the instance of the State Government. Hon'ble Supreme Court, while rejecting the State Government's appeal directed the State Government to prepare a scheme for regularization of service of such employees. Basing upon said direction, Government of Odisha in the Finance Department vide resolution No.22764 dated 15th May, 1997 prepared a scheme for regularization of such employees, who have continued in service on being appointed prior to 12th April 1993 and completed ten years of regular service and having requisite educational qualification for appointment to the post.

8. In support of his claim, the Petitioner has cited the instance of Housing and Urban Development Department wherein the Executive Engineer, P.H.D. Division-III, Bhubaneswar pursuant to the letter dated 22nd November, 2016 of Government of Odisha have already regularized the work charged employees.

9. It is further submitted by learned counsel for the Petitioner that, relying upon Finance Department resolution No.4419 dated 22nd January, 1965, all posts sanctioned in work charged establishment under different establishment of Government and where the

workmen have completed five years of continuous service and likely to continue and nature of work performed by them are permanent in nature should be brought over to the regular establishment. Hence, the Petitioners claim that he is squarely covered under the Finance Department Resolution dated 22nd January, 1965 and as such he should have been brought over to the regular establishment. May similarly situated persons have been given benefit and brought over to the regular establishment. So far the petitioner is concerned, he has been discriminated against and illegally ignored in violation of Article 14 of the Constitution of India.

10. The counter affidavit filed on behalf of the Opposite Parties, in paragraph-2, states that since the Petitioner has availed alternate benefits in lieu of Finance Department Resolution dated 15th May, 1997, i.e. he has already been brought over to the work charged establishment his claim has no merit. Further in paragraph-3, the Opposite Parties have relied upon DOWR Resolution dated 7th September, 1995 wherein it has been stipulated that employees completing ten years in work charged establishment are eligible to be brought over to the regular establishment. Since the Petitioner has not rendered ten years under work charged establishment, he was not eligible for absorption in the regular establishment. It has been further stated that the services rendered partly as N.M.R. and partly as work charged employee cannot be taken together as per Finance Department Resolution. It is only after completion of ten years of service in the work charged establishment one becomes eligible for regular (wages) establishment subject to availability of regular posts.

11. The Opposite Parties in their counter affidavit have stated that the work charged establishment is not pensionable service as per Rule-18(2)(ii) of OCS (Pension) Rule, 1992.

12. 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.

13. 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.

14. 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.

15. The Petitioner's case is that although he was appointed as N.M.R. on 2nd April 1986 i.e. much prior to the cut off date fixed by the Hon'ble Supreme Court of India i.e. 13th April, 1993, the Petitioner should have been brought over to the work charged establishment much prior to the year 2009. The State Government counter does not reveal as to whether any scheme pursuant to the Hon'ble Supreme Court of India's direction was ever prepared or not and if such a scheme was prepared whether the list was

prepared on the basis of seniority of the work charged employees. In the absence of any such information, this Court is constrained to accept the fact that the State Government has not acted in a manner as directed by the Hon'ble Supreme Court of India concerning the work charged employees. Moreover, the Petitioner was exploited by a model employer like the State for several decades before he was finally brought over to work charged establishment in the year 2009.

16. Moreover, even accepting the argument for Opposite Parties that the DOWR resolution dated 7th September, 1995 provides that on completion of ten years of service in work charged establishment, a work charged employee is eligible to be brought over to regular establishment. In the present case, the Petitioner joined as N.M.R. on 2nd April, 1986. It is not known as to what prevented the authorities to bring the Petitioner to work charged establishment. Immediately after the said resolution and why did he wait till the year, 2009. Such delayed action has caused injustice to the Petitioner in the present case.

17. Since the Petitioner has retired from service on attaining age of superannuation, the question of his regularization against the regular post does not arise for consideration in the present writ petition. It is a case of 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.

18. 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.

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

(Biraja Prasanna Satapathy)
Judge

Sneha