

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.875 of 2010

Pramod Kumar Nath

....

Petitioner

Mr.Pravat Ranjan Dash, Advocate

-versus-

***Engineer-in-Chief, Water
Resources, Orissa and others***

....

Opposite Parties

Mr.Y.S.P.Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.04.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Government Advocate.
3. Initially the Petitioner filed an original application before the Orissa Administrative Tribunal which was subsequently transferred to this Court upon abolition of the Orissa Administrative Tribunal with the following prayer:

“In view of the above facts and circumstances, the Hon’ble Tribunal may graciously be pleased to direct the respondents to extend the pensionary and other retiral benefits such as gratuity, G.P.F. and other retiral benefits as per decision taken by this Hon’ble Tribunal in different cases and by the Hon’ble High Court reported in 2001(II) O.L.R. at page 639 and also to direct the respondents to sanction final pension of the applicant as early as possible by quashing the

order dated 07.09.2009 under Annexure-4.”

4. It is submitted by the learned counsel for the Petitioner that although the Petitioner has retired from service on attaining the age of superannuation in the year 2003, till date he has not been paid his legitimate pensionary benefits. He further submits that the Petitioner was originally engaged by the Office of the Superintending Engineer, Southern Irrigation Circle, Berhampur as work charged employee with effect from 01.09.1979 as helper. Thereafter he was brought over to regular(wage) establishment on regular basis with effect from 14.03.1991 and was engaged as Khalasi. Since that date he was continuing continuously as Khalasi under the same project. Letter dated 30.10.2002 issued from the Office of the Assistant Engineer, Baghalati Dam Sub-division, Nuagada (Ganjam) under Annexure-2 reveals that a prior notice was given to the Petitioner indicating that the date of his superannuation with effect from 31.01.2003. After retirement from service, the Petitioner has been running from pillar to post to get his retiral and pensionary benefits which he is entitled to as per law.

5. Learned counsel appearing for the State submits that the proposal for fixation of revision of pay in favour of the petitioner was rejected vide D.O.W.R.Letter No.32705 dated 18.09.2003 wherein it is stated that the Petitioner was brought over to the work charged establishment. As such he is not entitled to any pensionary benefits. Accordingly instruction was issued by the Office of the Engineer-in-Chief, Water Resources to the Executive Engineer, Baghalati Irrigation Division vide Office order dated 07.10.2003. Further, it is submitted that the present case has been filed after the retirement of the Petitioner. He further submits that the question of regularisation after the work charged employee has been retired from

service does not arise for consideration. Finally the learned State Counsel submits that the work charge service is classified as non-pensionable service under Rule 18(2) (ii) of Orissa Civil Services (Pension) Rules – 1992. And as such he is not entitled to pensionary benefit. On such grounds learned counsel for the State urges for rejection of the writ petition filed by the Petitioner.

6. Mr.Das, learned counsel for the Petitioner submits that the grounds taken in the rejection letter under Annexure-4 dated 07.09.2009 is different from the grounds taken in the counter affidavit. In reply to the contention of the learned State Counsel that in view of Rule 18(2) (ii) the period of service in the work charge establishment does not qualify for pension unless it is rendered against pensionary establishment post, learned counsel for the Petitioner relies upon sub-Rule 3 which provides as follows:

“Notwithstanding anything contained in Clauses (i) and (ii) of Sub-rule(2) a person who is initially appointed by the Government in a work-charged establishment for a period of five years or more and is subsequently appointed to the same or another post in a temporary or substantive capacity in a pensionable establishment without interruption of duty, the period of service so rendered in work-charged establishment shall qualify for pension under this Rule.”

7. The Petitioner who was initially appointed as a helper with effect from 01.09.1979 which fact stands established from the order under Annexure-1 dated 15.11.1999. Thereafter the Petitioner was brought over to the regular (wage) establishment as a Khalasi with effect from 14.03.1991 and since that date he was discharging his duty till the date of his superannuation on 31.03.2003. The fact that the Petitioner was rendering service in regular establishment also stands established. Letter under Annexure-2 dated 30.10.2002 wherein the Assistant Engineer Sub-division Nuagada (Ganjam) has

issued a notice to the Petitioner intimating the date of superannuation. Such procedure is followed under the Service Code in respect of regular employees holding the regular and sanctioned post. Therefore, the claim remains undisputed.

8. Further grant of pensionary benefit to Work charged employee on earlier occasion had engaged the attention of this Court in many such cases where this Court after analyzing the facts have directed the authority to allow sanction and disburse the pensionary benefits to work charged employee who have worked in regular establishment for a period of more than five years.

9. However, learned State counsel is unable to explain how the provision under Rule 18(3) is not applicable to the facts of the present case.

10. In my considered view, taking into consideration the facts and circumstances of the present case, the case of the Petitioner is squarely covered under Rule 18(3) of the Orissa Pension Rules, 1992. Therefore, the authorities should have considered the case and should have allowed pensionary benefit as due and admissible to the Petitioner.

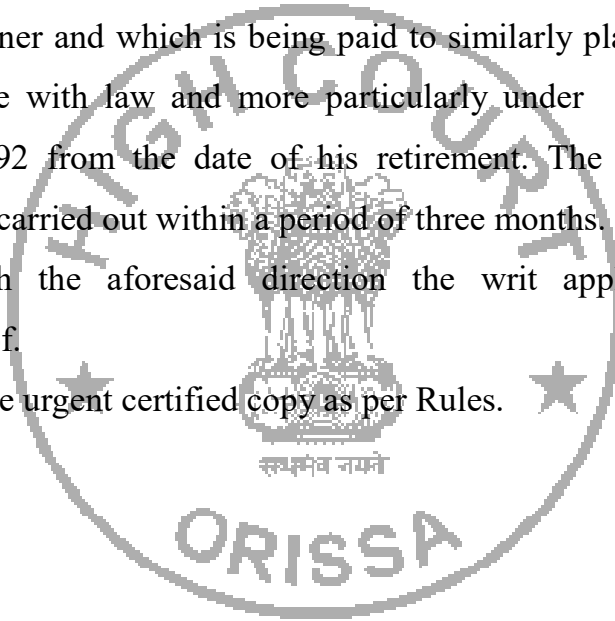
11. Learned counsel for the Petitioner has also filed a rejoinder affidavit. Along with Rejoinder affidavit the service book of the Petitioner has been annexed. On perusal of the Service Book of the Petitioner, it is seen that there is a clear endorsement by the Assistant Engineer that the petitioner was brought over to the regular (wages) establishment by way of conversion in the post of Khalasi vide order dated 15.11.1999 with effect from 14.03.1991. As such the stand of the State Government that the Petitioner was not working till he retired from service on attaining the age of superannuation is unsustainable in fact. Further the impugned order of rejection of the

Petitioner's claim under Annexure-4 is also unsustainable in the facts and circumstances of the present case.

12. Considering the rival contention and having regard to the facts and circumstances of the present case and upon perusal of the documents filed, this Court is of the considered view that the decision of the authority vide letter dated 07.09.2009 under Annexure-4 is legally unsustainable, the same is liable to be quashed and accordingly the same is hereby quashed. The Opposite Party No.1 is further directed to consider the case of the Petitioner afresh and the Petitioner be paid the pensionary benefit as is due and admissible to the Petitioner and which is being paid to similarly placed persons in accordance with law and more particularly under Orissa Pension Rules, 1992 from the date of his retirement. The entire exercise should be carried out within a period of three months.

13. With the aforesaid direction the writ application stands disposed of.

14. Issue urgent certified copy as per Rules.



RKS

(A.K. Mohapatra)
Judge