

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 843 of 2018

Iswar Chandra Swain

.....

Petitioner

Mr. B. Routray, Sr. Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

15.09.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioner and Mr. S. Nayak, learned Additional Standing Counsel appearing for the State-Opposite Parties.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to regularize his service along with all service and financial benefits keeping in view the Finance Department Resolution dated 15.05.1997 (Annexure-4 series) within a stipulated time.

4. Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioner contended that though the petitioner has completed minimum period of 10 years of service and fulfilled the criteria as per the resolution issued by the Finance Department, and is continuing against a sanctioned post long since, and that for regularization recommendation has already been made by the authority, vide letter dated 19.10.2009, due to inaction on the part of the authority, his service has not yet been regularized. It is further contended that though the juniors to the

petitioner have already been regularized and also they have been granted with the benefit of promotion, but the petitioner has been discriminated, which is in gross violation of Article 14 of the Constitution of India. It is further contended that similar question had come up for consideration before the tribunal and, as such, the tribunal has considered the same by extending the benefit to the petitioner therein. Thereby, non-consideration of the case of the petitioner by the authority, cannot be sustained in the eye of law. To substantiate his contention, he has relied upon the judgment of the apex Court in the case of *Nihal Singh v. State of Punjab*, (2013) 14 SCC 65; and of this Court in the cases of *Sanatan Sahoo v. State of Odisha*, 2017 (II) ILR CUT 1059; *Ranjeet Kumar Das v. State of Orissa*, 2018 (I) ILR CUT 695; *Sunil Barik v. State of Odisha*, 2021 (II) OLR 469; *Dr. Prasanna Kumar Mishra v. State of Odisha*, W.P.(C) No. 11148 of 2005 disposed of on 01.12.2015, upheld by the Division Bench of this Court in W.A. No. 4 of 2016 vide order dated 11.12.2019 and confirmed by the apex Court in SLP No. 4945 of 2020, disposed of on 07.08.2020; and *Subrat Narayan Das v. State of Orissa*, W.P.(C) No. 18659 of 2016 and batch disposed of on 12.07.2022. It is further contended that in the meantime, the petitioner has already rendered more than 30 years of service and, as such, due to non-regularization of service, he is depriving up to get the benefits as due and admissible to him.

5. Mr. S. Nayak, learned Additional Standing Counsel appearing for the State-Opposite Parties contended that admittedly the petitioner is continuing in service and his service has not yet been regularized. It is contended that recommendation has already been made by the authority vide letter dated 19.10.2009, but no decision has been taken thereon till date.

6. Having heard learned counsel for the parties and after going through the records, since recommendation made by the authority vide letter dated 19.10.2009 has not been decided by the authority, there is gross inaction on the part of the said authority. More so, since the juniors to the petitioner have already been regularized in service, question of denial of regularization to the petitioner does not arise. Accordingly, this Court disposes of the writ petition directing opposite party no.1 to consider the case of the petitioner on the basis of the recommendation made on 19.10.2009 and while considering the same, the said authority shall take into consideration the judgments, as referred to above, and pass appropriate order in accordance with law with regard to regularization of service of the petitioner. The entire exercise shall be completed within a period of three months from the date of production of certified copy of this order.

Issue urgent certified copy as per rules.

Ashok

(DR. B.R. SARANGI)
JUDGE