

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.684 of 2018

Chaturbhuja Nayak

....

Petitioner

Mr.Satyabrata Mohanty, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr.K.K.Nayak, ASC for State

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
09.03.2022

Order No.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. The writ petition has been filed by the Petitioner praying for a direction to the Opposite Party for reckoning the period of service w.e.f. 07.01.1985 to 05.07.1990.
3. The factual matrix, in brief, is that the Petitioner is working as Contingent Khalasi on being appointed after following due process of selection under the Opposite Party against the existing vacancy with a scale of pay of Rs.200 to 280. Vide its order dated 07.01.1985 and subsequently appointed in the scale of pay of Rs.750-12-870-940 with usual DA as admissible from time to time w.e.f. 05.07.1990. Petitioner joined as Contingent Khalasi on 07.01.1985 and was working as such without any interruption. Keeping his experience in service, he has been engaged with different scale of pay and regular increments under the ORSP Rule, 1998. Even though he had joined in the regular establishment with a scale of pay, but he has been

regularized on 05.07.1990 ignoring the initial date of joining. Accordingly, he was debarred from receiving other service benefits. It is submitted that as there is no promotional avenue in the said post he was being transferred to different places to discharge his duty as per the order of the Authority from time to time. It is submitted that he has represented to the Authority to reckon his service from his initial date of joining i.e. 07.01.1985, which is still pending for consideration before the Authority. In such view of the matter, learned counsel for the Petitioner seeks indulgence of this Hon'ble Court for interference.

4. It is further submitted by the learned counsel for the Petitioner that the Opposite Party-Authority ought to have considered the grievance of the Petitioner and Petitioner should have been granted pensionary benefit accordingly.

5. 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 Charan Mohanty vs. 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 vs. State of Odisha** allowed the writ petition and granted pensionary benefits as prayed for in that case.

6. 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.

7. So far the case of one ***Narsu 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.

8. 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 **Contingent Khalasi on 7.1.1985**. It is not known as to what prevented the authorities to regularize the service of the Petitioner w.e.f. 7.1.1985 and accordingly should have paid all consequential service benefits to him.

9. Since the Petitioner has retired from service on attaining the age of superannuation, the question of his pensionary benefits by regularizing his service from the initial date of joining i.e. 07.01.1985 be considered expeditiously. Since the benefits have been granted to other similarly placed work charged employees by actually/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 the 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.

10. 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.

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

12. Issue urgent certified copy as per rules.

