

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26696 of 2022

Abhay Charan Naik

....

Petitioner

Mr. K. Swain, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Choudhury S. Mishra, A.G.A.

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
18.10.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The present writ petition has been filed by the Petitioner with a prayer to direct the opposite parties to bring the petitioner under regular establishment as he had put more than 35 years of service both in the capacity of NMR and work Charge employee till his retirement from service i.e. 31.7.2022 as similarly situated work charged employees have been brought over to regular establishment and he may also be provided with the benefits of OCS (Pension) Rules, 1992 prior to its amendment in terms of the office memorandum dated 1.5.2010 issued by the Government of Odisha in

the Department of Finance as the petitioner was appointed prior to the cutoff date i.e. 1.1.2005 keeping in view the judgment rendered by this Hon'ble Court in the case of Basanti Behera vs. State of Odisha and others (W.P.(C) No.13314 of 2020 disposed of on 6.7.2021 in the case of Chandra Nandi vs. State of Odisha and others reported in 2014 (I) OLR 734, in the case of Premananda Tripathy Vs. State of Odisha and others (W.P.(c) No.27950 of 2019 disposed of on 3.2.2021, in the case of State of Odisha and others vs. Jyostna Rani Patnaik and others W.P.(C) No.1534 of 2008 disposed of on 19.12.2006 as well as in the case of Harbans Lal vs. The State of Punjab and others (CWP No.2371 of 2010, decided on 31.8.2010 by the High Court of Punjab and Haryana, which has been upheld by the Hon'ble Supreme Court in SLP (C) Bo.23578 of 2012 (SLP (C) No.18901 of 2011, disposed of on 30.7.2012 (State of Punjab and Others vs. Haryans Lal) and also in the case of Jeewan Lata vs. State of Punjab and others (CWP No10238 of 2017 (O & M) decided on 10.5.2019) will all consequential benefits.

4. It is further submitted by learned counsel for the petitioner that pension and pensionary benefits be granted under the old rule in the light of decision in the case of ***State of Odisha vrs. Pitambar Sahoo***, W.P.(C) No.24041 of 2017 (decided on 20.12.2017), which has been affirmed in SLP(C) Diary No.30806 of 2018 and ***Chandra Nandi vrs. State of Odisha and others***, W.P.(C) No.19950 of 2011(decided on 03.02.2021) and ***Premananda Tripathy vrs. State of Odisha***, W.P.(C) No.27950 of 2019 (decided on 03.02.2021) and ***Narusu Pradhan***, SLP No.22498 of 2012, ***State of Orissa and others vrs. Jyostna Rani Pattanaik and others***, W.P.(C) No.1534 of 2008, ***State of Orissa vrs. Pitambar Mohapatra***, W.P.(C) No.13483 of 2012 and

State of Orissa vs. Radheshyam Mohanta, W.P.(C) No.12377 of 2009, which has been affirmed in SLP(C) No.36038 of 2020 as well as the benefits given to similar persons.

5. It is also submitted by learned counsel for the petitioner that the petitioner-Abhaya Charan Naik was initially engaged as N.M.R under RWS & S Department on 1.9.1987 and was subsequently brought over to work charged establishment w.e.f 1.3.2009 by virtue of the order of the Executive Engineer, Mechanical RWS & S Division, Sambalpur and continued to work under the work charged establishment. The petitioner had already worked for more than 13 years in Work Charged Establishment prior to its superannuation.

6. Further, learned counsel for the petitioner submits that this Court in WPC(OAC) No.3494 of 2013 by order dated 14.07.2021 analyzing various points of law directed the State Government to regularize in establishment post from the time, the petitioners completed five years of continuous service in work charged establishment and the period from that time till the date of retirement be counted towards the pension and direction was issued to grant pensionary benefits to the employees. He further submits that in similar matter Government had challenged the order of the learned tribunal under Annexure-6 approached this Court in filing a writ petition bearing W.P.(C) No.5377 of 2010 and this Court by order dated 19.12.2011 referring the judgment rendered in O.J.C. No.1162 of 1999 (***State of Orissa vs. Jjuma Parida and others***) and O.J.C. No.11028 of 1999 (***State of Orissa vs. Sudarsan Sahoo and others***) confirmed the order passed by the learned tribunal and dismissed the writ application.

7. 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.

8. 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.

9. 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.

10. The only benefit the petitioner is intends to get his 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.

11. 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 Petitioners are directed to appear before the Opposite Party No.1 & 2 along with certified copy of this order and all other relevant documents and records for the processing of his claim. The Opposite Party No.1 & 2 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.

12. With the aforesaid observations/directions, the writ petition is allowed. There shall no order as to cost.

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(**Biraja Prasanna Satapathy**),
Judge