

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 3333 of 2018

Gobinda Barik

.....

Petitioner

Mr. D.K. Patnaik, Advocate

- Versus -

State of Odisha & Ors.

....

Opposite Parties

Mr. J.P. Patnaik, GA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

22.09.2022

Order No.

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This matter is taken up by hybrid mode.

2. The petitioner has filed this writ petition seeking direction to opposite parties to sanction pensionary and other retrial benefits by treating the petitioner as a regular employee with retrospective effect after completion of five years of service under work charged establishment and further seeks direction to opposite parties to pay the arrear dues with interest.

3. Mr. D.K. Patnaik, learned counsel for the petitioner contended that similar benefit has been extended to one Narusu Pradhan and there is no denial of the same. As such the petitioner having stood in similar footing, he is entitled to grant all the benefits.

4. Mr. J.P. Patnaik, learned Government Advocate for the State-opposite parties contended that the petitioner has already retired from service and he was working as a Khalasi and he has been paid the benefit in terms of the Appendix-III OPWD Code, Vol-II, i.e., Odisha Work-charged employees (Appointment and Condition of Service) Instruction, 1974, therefore, the claim of the petitioner cannot sustain in the eye of law.

5. Having heard learned counsel for the parties, after going through

the records it appears that the petitioner was appointed as NMR under M.I Division, Dhenkanal and while working as such, he was appointed as a Khalasi under work charged establishment and joined in the post on 01.01.2010. After completion of one year, service book of the petitioner was opened and during his service period he had been given the benefit of revision of pay as per different ORSP Rules. Apart from that he has also been allowed house rent allowance while continuing at M.I. Division. The petitioner was continuing as Khalasi and was granted annual increment from time to time and was also transferred to different divisions in the interest of the Government works during his service period like regular employees. In obedience to the direction of the apex Court, this Court and the Tribunal, the Government of Odisha in Finance Department introduced a guideline bearing Resolution No. 22764 dated 15.05.1997 to brought over the work charged/NMR/DLR personnel to the regular establishment, those who have appointed prior to 12.04.1993. Even though the petitioner fulfilled the criteria, his case was not considered, but the other similar employees have been considered. When the case of the petitioner was not considered to convert his service to regular establishment, he filed a representation, but no action has been taken. Finding no other alternative, he approached the Tribunal. In the meantime he retired from service during pendency of the writ petition.

6. As it reveals from the record that one Narusu Pradhan, a similar circumstanced person like the petitioner had filed O.A. No. 1189 (C) of 2006 praying for retrial benefits. The Tribunal allowed the retrial pensionary benefits in his favour vide order dated 11.06.2009, which was challenged by the State before this Court in W.P.(C) No. 5377 of 2010. This Court dismissed the writ petition on 19.12.2011 and confirmed the order passed by the Tribunal. Thereafter against the order passed by this Court, the State has preferred SLP in Civil Appeal No. 22498 of 2012, the same was also dismissed on 07.01.2013. The petitioner has made a

specific pleading in paragraph-6.15, which reads as follows:

“6.15. That one Narusu Pradhan, a similar circumstanced person like the applicant had filed O.A. No. 1189 (C)/ 2006, praying for retrial benefits. This Hon’ble Tribunal has allowed the retrial pensionary benefits in his favour, which was challenged by the State Government in the Hon’ble High Court of Odisha in W.P.(C) No. 5377 of 2010. The Hon’ble High Court of Odisha has dismissed the writ petition confirming the order of this Hon’ble Tribunal.

It is submitted that the State Government also challenged the order passed in W.P.(C) No. 5377 of 2010, where the Hon’ble High Court of Odisha has confirmed the order of the Hon’ble Tribunal granting pensionary benefits before the Hon’ble Supreme Court of India and the Hon’ble Supreme Court of India has also dismissed the SLP on 07.01.2013. In view of the dismissal of the writ petition and the SLP filed by the State, it has become a Law of the land that the Work Charged employees will get pensionary benefits. In view of the above position of Law, there is no reason in not granting the pensionary benefits in favour of the applicant.

The copy of the order dated 11.06.2009 passed by the Hon’ble Tribunal in O.A. No. 1189 (C)/2006, copy of the order dt.19.12.2011, passed by the Hon’ble High Court of Odisha in W.P.(C) No. 5377 of 2010 and the copy of the order dt.7.1.2013, passed by the Hon’ble Supreme Court of India in SLP No. 22498/2012 are annexed as Annexure-12, 13 and 14 respectively to this Original Application.”

7. There is no denial of the contentions raised by the petitioner. In that view of the matter, the relief claimed by the petitioner is fully covered by the judgment of the Tribunal passed in the case of Narusu Pradhan, which has been confirmed by this Court as well as the apex Court. Thus the petitioner, having stood in similar footing, is entitled to get the benefits which have been extended to Narusu Pradhan and all the differential benefits and consequential benefits, as due and admissible to him, shall be granted to him in accordance with law within a period of four months from the date of communication of this order.

8. Writ petition stands disposed of.

9. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE