

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.662 of 2016

Bijay Kumar Mishra & Others **Petitioners**

-versus-

State of Odisha & Others **Opp. Parties**

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

Order No **ORDER**
1. **21.7.2022**

1. 01. This matter is taken up through Hybrid Mode.

2. The petitioners have 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 taking into account the in time period of service as regular employees after completion of five years of service under work charged establishment, i.e., from the initil date of appointment 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 similarly placed person 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. M. Balabantaray, learned Addl. Standing Counsel for the State contended that the petitioners have already retired from service and they were working

4. as work charged employees and they have 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 petitioners were appointed as Junior Clerk-cum-Typist and Ganjmulia, Executive Engineer on 1.2.1983, 1.1.1989 and 1.6.1989 respectively DLR employees . For the interest of the Government , the petitioners were during their 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, their cases were not considered, but the other similar employees have been considered and the petitioners were brought over to work charged establishment on 14.1.2011 under Annexure-1. When the case of the petitioners were not considered to convert their services to regular establishment, they filed representations before the opposite party no.1, but no action has been taken. Finding no other alternative, they approached the Tribunal.

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 petitioners have made a specific prayer.

That the case of the applicant is squarely covered by the decision of this Hon'ble Tribunal delivered in the case of Narasu Pradhan Vs. State of Orissa in O.A. No. 1184 (C) of 2012 which was allowed on 11.06.2009. In that case this Hon'ble Tribunal has held that the work charge employes are entitled to get pension and pensionary benefits. This said judgment of Narasu Pradhan was challenged in the Hon'ble High Court of Orissa by the State, respondent and the State-respondent lost there. Thereafter again the State Govt. preferred an appeal before the Hon'ble Supreme Court by filing SLP baring SLP No. 22498 of 2012. The SLP filed by the govt. was also dismissed on 07.01.2013."

7. 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 petitioners having stood in similar footing, are 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.

(Biraja Prasanna Satapathy)
Judge

sangita

