

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4476 of 2016

Nilambar Nayak

.... Petitioner

-versus-

State of Odisha & Ors.

.... Opposite Parties

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
17.08.2022**

Order No

- 01.** 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. T. Nayak, learned counsel for the petitioner and Mr. R.N.Mishra, learned Addl. Government Advocate for the State.
3. The petitioner has filed this writ petition seeking direction to the opposite parties to count the period of service rendered by the petitioner on job contract basis and accordingly to revise the pension and also to release the arrear differential amount within a stipulated period.
4. Mr. S. Mallick, learned counsel for the petitioner contended that in terms of the order dated 25.02.2003 passed in O.A. No. 1071 (C) of 2003, opinion of the competent authority was sought for and accordingly the government vide order dated 01.05.2009 instructed for implementation of the same. Learned counsel for the petitioner further contended that the petitioner stands in the same footing and therefore, he is entitled to get the benefit at par with such persons.

5. Mr. R.N.Mishra, learned Addl. Government Advocate for the state though contended that the petitioner is not entitled to get such benefit, but the counter affidavit filed by the opposite parties states different stand.

6. At paragraph-1 of the counter affidavit, it has been stated as follows:-

"It is further submitted that, as per Finance Department resolution No.49296/F., dt.12.12.1997 and F.D. No. 24989/F., dt. 08.06.1998 for the purpose of pension and penionary benefits only, so much of their Jobcontract service period shall be added to the qualifying service in regular establishment as would render them eligible for pension and penionary benefits. For grant of pension as per prevailing Govt. rules, an employee is required to serve for a minimum period of 10 years including both regular and Job-contract service. In the instant case the applicant has rendered 27 years of establishment service. Therefore, he has been sanctioned pension and other pensionary benefits as per statutory provisions of Orissa Pension Rules in terms of Finance Deptt. Resolution No. 49296/F., dt. 12.12.1997 and No. 249689/F dt. 8.6.1998. It is further submitted that no such instructions regarding counting of entire Job-Contract service period rendered by the applicant towards pensionary benefits are made available to the Respondent No.3 from the Govt."

It is further humbly submitted that, the applicant has cited and sought relief for counting his entire Job-Contract service for pensionary benefits as has been granted in case of Sri Bhagaban Patnaik which was the outcome of T.A. Case No. 59/97 and T.S. No. 11/93. The citation of examples as mentioned above are the special consideration of Government. As such, the orders passed in different courts in this matter can not be taken as precedent case for counting of entire Job-Contract period of service towards pensionable service."

7. In view of the counter affidavit filed by the opposite parties as mentioned above, if the benefit has been extended in favour of similarly situated persons pursuant to the order passed by the Tribunal, the State Government could not have stated the same as a special case. Therefore,

the benefit as extended to similarly placed persons cannot be denied to the petitioner. This amounts to an act of discrimination towards the petitioner, on the part of the authorities.

8. In that view of the matter, this Court disposes of the writ petition directing the opposite parties to extend the benefit in favour of the petitioner in terms of the order dated 25.02.2003 passed in O.A. No. 1071 (C) of 2003, as has been extended in favour of similarly situated persons, as expeditiously as possible, preferably within a period of three months from the date of communication of the certified copy of the order.

9. Issue urgent certified copy as per rules.

(Biraja Prasanna Satapathy)
Judge

Subrat