

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4305 of 2014

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

.....

Sk. Ramjan

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. U.C. Mohanty, S.C. Mohanty
and B. Biswal

For Opp. Parties : Standing Counsel
Mr. M.K. Balabantaray

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 05.05.2022 and Date of Order: 11.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. U.C. Mohanty, learned counsel appearing for the
Petitioner and Mr. M.K. Balabantaray, learned Standing Counsel
appearing for the State-Opp. Parties.

3. The writ Petition has been filed with the following prayer:-

In view of the facts mentioned at para-6 above the applicant prays for the following relief(s):

“Direct the Respondents to regularize the services of the applicant and pay all the retirement benefits within a stipulated period with interest.”

4. It is submitted by the learned counsel appearing for the Petitioner that vide order dtd.02.03.1981 under Annexure-1, the Petitioner was appointed as a Choukidar on temporary basis.

5. It is further submitted that pursuant to the said order not only the Petitioner joined on 05.03.1981, but also the service book was opened in favour of the Petitioner vide Annexure-2.

6. It is submitted that w.e.f.05.03.1981 even though the Petitioner continued as a Choukidar under the Opp. Parties, but no step was taken to absorb the Petitioner as against the said post of Choukidar.

7. It is also submitted that during his continuance w.e.f. 05.03.1981 the Petitioner was not only allowed regular pay scale, but also he was allowed with the revised pay scale as provided vide ORSP Rules, 1985 and subsequent ORSP Rules.

8. It is accordingly submitted that since the services of the Petitioner was not regularized even though he was allowed to continue with regular scale of pay from the date of his initial appointment on 05.03.1981 till his retirement on 28.02.2014, the Petitioner was deprived from getting the post retirement benefits.

9. It is also submitted that person similarly situated as like the Petitioner and appointed under the Opp. Parties were absorbed in the regular establishment. It is also submitted that in spite of several approach made by the Petitioner during his continuance from 05.03.1981 to 28.02.2014, no action was taken in regularizing the service of the Petitioner. Accordingly, it is submitted that appropriate order be passed on the prayer made by the Petitioner by this Court.

10. It is also submitted that the in action of the Opp. Parties in not absorbing the Petitioner in regular establishment is also contrary to the decision of the Hon'ble Apex Court reported in the case of **Secretary, State of Karnataka vs. Uma Devi (3), (2006) 4 SCC-1, State of Karnatak vs. M.L.Keshari, (2010) 9 SCC 247, Nihal Singh & Others vs. State of Punjab & Others, 2013 (14) SCC 65** and **Amarkant Rai vs. State of Bihar & Others, 2015 (8) SCC 265.**

11. Mr. Balabantaray, learned standing counsel appearing for the Opp. Parties on the other hand submitted that even though the Petitioner was appointed on temporary basis and was allowed regular scale of pay throughout his service career with benefit of the revised pay scale, but prior to his superannuation on 28.02.2014, the Petitioner has never prayed for his absorption in the regular establishment.

12. It is further submitted that only after his retirement the present writ Petition has been filed with the prayer as made in the writ Petition. Accordingly, it is submitted that no interference is called for by this Court on the prayer made by the Petitioner.

13. Heard learned counsel for the Parties at length. Perused the materials available on record. It is not disputed that the Petitioner was appointed as a temporary Choukidar vide order under Annexure-1 and he joined in the said post on 05.03.1981.

14. It is also not disputed that w.e.f. 05.03.1981, the Petitioner was allowed to continue in the said post with payment of regular scale of pay as well as revised scale of pay till his superannuation on 28.02.2014.

15. In view of payment of regular scale of pay as well as revised pay, it is to be held that the Petitioner was continuing as against a sanctioned post and the Opp. Parties should have absorbed the Petitioner in his service and thereby enabling him to get the benefit of pension and other pensionary benefits.

16. State, being a model employer should have taken steps to absorb the Petitioner on regular establishment in view of the continuance of Petitioner from 05.03.1981 to 28.02.2014. But the same having not been done by the Opp. Parties and taking into account the plight of the Petitioner after his retirement, this Court directs the Opp. Parties to consider the claim of the Petitioner as made in the writ Petition by taking a sympathetic view of the matter and by following the directions of the Hon'ble Apex Court in the aforesaid cited decision.

17. The Opp. Parties are accordingly directed to take a decision on the claim of the Petitioner as made in the writ Petition within a period of 3 months from the date of receipt of this order.

18. It is observed that in case the Petitioner is extended with the benefit as prayed for in the writ Petition, the entitlement towards pension and other pensionary benefits be disbursed in favour of the Petitioner within a further period of 3 months.

19. With the aforesaid observation and direction, the writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 11th of May, 2022/Sneha

