

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3655 of 2013

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

.....

Debendra Kumar Nayak

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.S.Patra, S.Rath &
D.D.Sahu.

For Opp. Parties : Addl. Government Advocate
Mr. Y.S.P.Babu.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:24.08.2022 and Date of Judgment:26.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. S.Patra, learned counsel for the Petitioner and Mr. Y.S.P.Babu, learned Addl. Government Advocate for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following prayer:-

“(i) Respondents be directed to re-engage the applicant in service after declaring the retrenchment is illegal with all arrear dues and other service benefits.

(ii) Any other order/orders as would be deemed fit and proper”.

4. Mr. Patra, learned counsel for the Petitioner submitted that the Petitioner while continuing as a Seasonal Helper w.e.f. 1981, when he was disengaged from his work, he approached this Court and pursuant to the direction and the decision by the Government, the Petitioner was re-engaged in the Work Charged Establishment on 25.01.1985.

5. It is submitted that the said joining of the Petitioner in the work charged establishment on 25.01.1985 is reflected under Annexure-1.

6. It is submitted that even though the Petitioner was engaged as a Helper in the work charged establishment, where he joined on 25.01.1985, but the Petitioner was never absorbed in the regular establishment in terms of the resolution issued by the Finance Department on 22.01.1965 and 6.3.1990 as well as the other notifications / resolution issued by the department at different point of time.

7. It is also submitted that the Petitioner was also never absorbed in the regular establishment in terms of the Finance Department Resolution issued on 15.05.1997, which clearly provided for absorption of NMR/DLR/Work Charged employees on completion of 10 years of engagement and the first engagement should be prior to 12.04.1993.

8. Mr. Patra, learned counsel for the Petitioner submitted that even though the claim of the Petitioner for his absorption in the regular establishment clearly falls within the ambit of the resolution issued by the Finance

Department at different point of time as well as the orders passed by the Hon'ble Apex Court as well as by this Court regarding absorption of such work charged employees on completion of 5 years of continuous engagement, the Petitioner at no point of time was absorbed as such and he continued in the work charged establishment uninterruptedly w.e.f. 25.01.1985.

9. It is submitted that instead of absorbing the Petitioner in the regular establishment, the Petitioner basing on the communication issued by the Department of Water Resources on 29.05.2001 was declared as a surplus and was issued with the notice of retrenchment, retrenching him from his service w.e.f. 31.03.2002.

10. It is submitted that subsequently when the Petitioner came to know that the Opposite Parties have retained juniors to the Petitioner, the Petitioner seeking his reinstatement approached the learned Tribunal in O.A. No.19 (S) /2007.

11. It is submitted that learned Tribunal vide order dated 27.04.2007 was pleased to dispose of the case with a direction on the Opposite Party No.1 to consider the grievance of the Petitioner.

12. Mr. Patra, learned counsel for the Petitioner submitted that such prayer of the petitioner for his reinstatement though was directed to be considered by Opposite Party No.1, but Opposite Party No.6 vide his communication dated 03.11.2007 under Annexure-5 requested the Government to issue necessary instruction for taking further action in the matter. But in the said

letter when it was indicated that the Project work has already been completed and some work charged employees are continuing with the maintenance work, the Petitioner being aggrieved by the same, approached learned Tribunal in O.A. No.02(S)/2009.

13. It is submitted that the said matter was disposed of by the learned Tribunal vide order dated 22.11.2010 under Annexure-6, wherein the Opposite Party No.3 was directed to consider the prayer of the Petitioner for his reinstatement in accordance with the principle decided by the learned Tribunal in O.A. No.583(C)/2002 and 1188(C)/2003.

14. It is submitted that on receipt of such order, Opposite Party No.6 vide his letter dated 16.03.2011 under Annexure-7 requested the Opposite Party No.1 to consider the claim of the Petitioner in order to avoid future legal complicity. In the said letter, it was also indicated that similarly situated persons engaged along with the Petitioners are continuing by virtue of the interim order passed by this Court in W.P.(C) No.9087/2004.

15. It is submitted that on receipt of Annexure-7, Opposite Party No.1 vide his letter dated 25.08.2011 under Annexure-8 requested the Opposite Party No.2 to furnish various information with regard to compliance of the order passed by the learned Tribunal under Annexure-6.

16. It is submitted that the Opposite Party No.2 instead of complying the direction issued under Annexure-8 passed the impugned order on 12.01.2011 under Annexure-9 by holding that the Petitioner is not entitled for his reinstatement.

17. Mr. Patra, learned counsel for the Petitioner submitted that subsequently basing on the notification issued by the Government in the Water Resources Department on 28.02.2009 and 19.06.2009 when NMRs engaged prior to 12.4.1993 were brought over to the work charged establishment vide order dated 01.10.2010 under Annexure-10, Petitioner moved the Opposite Party No.1 on 4.8.2012 under Annexure-11, with a prayer to reinstate him in his service.

18. It is submitted that when the said prayer as made under Annexure-11 was not considered by the Opposite Party No.1, the present Writ Petition was filed with the prayer as indicated hereinabove.

19. It is submitted that since the Petitioner was engaged in the work charged establishment w.e.f 25.01.1985 and continued as such, he was due to be absorbed in the regular establishment in terms of the resolution issued by the Finance Department on 22.01.1965 and 6.3.1990 as well as resolution issued on 15.05.1997. It is also submitted that the Opposite Parties are required to absorb the Petitioner in the regular establishment as per the direction of the Hon'ble Apex Court as well as of this Court, wherein it is held that a work charged employee on completion of 5 years of continuous engagement became eligible for his absorption in the regular establishment.

20. Mr. Patra, further submitted that by the time the Petitioner was disengaged from the service w.e.f. 31.03.2002, the Petitioner had completed more than 18 years of continuing engagement as a work charged

employee. Therefore, in view of the decision of this Court in the case of **Sukadev Acharya and Another vs. State of Orissa & Others** reported in **2015 LAB.I.C.3357**, Petitioner is entitled for regularization of his service for the purpose of getting pension and pensionary benefits. This Court in Para-33 of the said judgment held as follows:-

“33. This contention of learned counsel for the RDA is absolutely contrary to the legal proposition because that moment they have taken decision in the meeting 06.04.2010 to have regularize the petitioner in service and they are awaiting for the outcome due to pending writ petition and as such they cannot take the plea that it is due to the resolution dated 13.07.2013 the petitioners have been offered to be engaged under their work-charged establishment because if an employee has been working since 1979 and 1983 without any break and they have already performed their duty, an employee cannot be permitted to superannuate from the service as daily rated or work-charged employee and that is the reason the judgment has been referred in the case of Umadevi if an employee has completed 10 years of service without support of interim order so that daily rated employee may be regularized and they get pensionary benefit if admissible under the law after his/her superannuation”.

21. It is also submitted that while on the one hand the Petitioner in spite of his continuance in the work charged establishment prior to 12.04.1993 was disengaged basing on the communication issued by the Government on 29.05.2001 by declaring him as a surplus, but NMRs engaged prior to 12.4.1993 were allowed to continue and basing on the notification issued by the Department on 28.02.2009 and 19.06.2009, such NMRS engaged prior to 12.2.1993 were brought over to the work charged establishment w.e.f. 1.3.2009 vide different orders including order dated 01.10.2010 under Annexure-10.

22. It is accordingly submitted that in view of the continuance of the Petitioners in the work charged establishment for more than 18 years, the Petitioner should have been absorbed in the regular establishment and the disengagement w.e.f 31.03.2002 is illegal and is liable to be declared as such by this Court with grant of consequential reliefs.

23. Mr. Y.S.P.Babu, learned Addl. Government Advocate for the State on the other hand made his submission basing on the stand taken in the counter affidavit filed by the Opposite Parties.

24. It is submitted that since by the time the Petitioner was disengaged from his service w.e.f. 31.03.2002 being found as a surplus, no Junior to the Petitioner was allowed to continue in the Project where the Petitioner was continuing. Opposite Party No.2 after consideration of the matter in terms of the order passed by the learned Tribunal on 22.11.2010 under Annexure-6 held the Petitioner not eligible for his reinstatement rightly vide order dated 22.01.2011 under Annexure-9.

25. Mr. Babu, learned Addl. Government Advocate for the State-Opposite Parties further submitted that basing on the notification issued on 28.02.2009, Government took a policy decision to bring over 5702 no's of NMRs engaged prior to 12.04.1993 to the work charged establishment and such NMR employees were brought over vide order dated 01.10.2010 under Annexure-10 and vide other similar orders.

26. Mr. Babu, learned Addl. Government Advocate for the State-Opposite Parties submitted that since the Petitioner was found as a surplus, he was rightly disengaged and his prayer for reinstatement as made in the writ petition cannot be entertained by this Court.

27. A rejoinder affidavit has been filed by the Petitioner and in the said rejoinder, the Petitioner has enclosed various resolutions issued by the Finance Department and the decision taken by the High Power Committee with regard to absorption of work charged employees in the regular establishment.

28. It is submitted that the Opposite Parties never followed the guidelines issued by the Finance Department at different point of time as well as the decision of the High Power Committee. The Petitioner because of such inaction on the part of the Opposite Parties in not taking appropriate action could not be absorbed in the regular establishment and faced the retrenchment w.e.f. 31.03.2002.

29. Mr. Patra, learned counsel for the Petitioner also in support of the claim as made in the writ petition relied on various decisions passed by this Court as well as by the learned Tribunal.

30. It is submitted that this Court in its judgment dated 6.3.1992 in OJC No.1614/1985 and batch after considering the terms of settlement arrived at 3.5.1974 and the order passed by this Court in OJC No.943/1989 and OJC No.2977/1988, disposed of on 6.12.1991, passed the following order while disposing the matter. Para-17 & 18 of the said order are reproduced herein below:-

“17. Having noted that the major projects with which we are concerned are being treated as “one establishment” and as benefits available to the employees of these projects conferred by Sections 35-G and 25-H of the Industrial Disputes Act, 1947 are being made available by and large, and as further thought is being given by concerned persons as to how best these benefits can be made available to all persons employed in these projects, no further direction is required to be given by this Court. We only hope that interest of the unrepresented, including the people of submersible areas, shall also be duly protected. Of course, while doing so the great need of assuring security of job to the workers to enthrust them to put their best in the job assigned to them shall have to be duly borne in mind. Then, in the socialist India, there cannot be ‘hiring and firing’, nor arbitrary termination of the services of workmen. We have to sound another note of warning also keeping in view what has been observed in Para-25 of the aforesaid recent decision of the apex Court. The same is about pernicious consequences of giving of direct employment “for various illegal considerations including money”. A check has to be kept on this tendency which has given rise to a flourishing illegal employment market resulting in a new source of competition, and frustration on the part of those who cannot afford to give bribe, though they are more entitled and deserving to get the job.

18. The petitions are disposed of by stating that the benefits of the aforesaid settlement and subsequent policy decisions shall be made available fully to the petitioners”.

31. Mr. Patra also relied another order passed by the learned Tribunal on 12.03.2014 in O.A No.750(C)/2002 and the compliance made to the order passed by the learned Tribunal in O.A No.2559(C)/1999 and batch vide Office Order dated 26.08.2021.

32. It is submitted that in terms of the order passed by the learned Tribunal on 16.11.1999 in O.A. No.2559(C)/1999 and batch, similarly situated retrenched work charged employees were allowed the benefit of regularization of service with extension of financial benefit from the date of such absorption in the regular establishment.

33. Mr. Patra, also relied another decision of the Hon'ble Apex Court reported in the case of **Sunil Kumar Verma & Others vrs. State of Uttar Pradesh & Others** reported in **(2016) 1 SCC 397**. It is submitted that the said reported decision, the Hon'ble Apex Court held that similarly situated persons are entitled to get the benefit of any judgment passed in any judicial proceeding. Hon'ble Apex Court in Para-15 to 24 has held as follows:-

"15. We have already adumbrated the facts in extensor to understand the nature of controversy. It is evident from the narration of the factual score that Mukund Lal Singh, who had approached the High Court in 2004, did not stand on a better footing than the present appellants herein. The learned Single Judge had treated him as a retrenched employee on similar facts. The Special Bench had declined to interfere and this Court, while dismissing the civil appeals, as the order would clearly show, had directed to give effect to the order passed in State of U.P. v. Mukund Lal Singh, strictly in accordance with Rule 3(1) of the 1991 Rules and it was eloquently stated that the Rule would apply to the batch of appeals. Needless to emphasise, the writ petition preferred by the present appellants should have been listed along with the writ petition preferred by Mukund Lal Singh and Shailendra Kumar Pandey, but, unfortunately, it did not so happen.

16. Be it stated, there had already been interpretation of the 2003 Rules by the learned Single Judge which has been affirmed up to this Court. In such a situation, we really fail to fathom how the Division Bench could have thought to entering into the analysis of the ratio of the earlier judgment and discussion on binding precedents. That apart, the Division Bench should have also kept itself alive to the direction issued by this Court in the civil appeals.

17. We will be failing in our duty if we do not take note what followed thereafter. After the directions were issued by this Court, Contempt Petition No.255 of 2008 in Civil Appeal No.782 of 2006 and certain other contempt petitions were filed. This Court issued directions from time to time as the employees were not absorbed. Thereafter, they were absorbed and this Court directed for payment of

salary component and certain other consequential benefits from the date of retrenchment.

18. *This Court referred to the order passed by the State Government and reproduced the same. It is extracted hereunder: (M.L.Singh Case, SCC pp. 409-10, para 4)*

“4 *‘Hon’ble Governor has been pleased to accord his sanction to extend following facilities / benefits to the petitioners of Contempt Petition No.255 of 2008, Mukund Lal Singh v. Atul Kumar Gupta, Secy., Govt. of U.P., Contempt Petition No.256 of 2008, Shailendra Kumar Pandey v. Fateh Bahadu Singh and Contempt Petition No.15 of 20098 (Civil Appeal No.782 of 2006), Mohd. Shakiluddin v. Atul Kumar Gupta and other connected civil appeals pending before the Hon’ble Supreme Court as well as those petitioners who are covered by the judgment and order of the Hon’ble Supreme Court dated 31.1.2008 and in furtherance to Government Order No.3504/77-1/2009/13 (Cement)/2004 dated 3-12-2009.*

- (1) All the petitioners of the aforesaid contempt petitions and all others who are covered by the judgment of the Hon’ble Supreme Court dated 31-1-2008 will be deemed to have been absorbed in the government service with effect from the date of further retrenchment by Uttar Pradesh State Cement Corpn. Ltd.*
- (2) If it is not possible to absorb the petitioners of the aforesaid contempt petitions and all others who are covered by the judgment of the Hon’ble Supreme Court dated 31-1.2008, on the posts on which they were working in Uttar Pradesh Cement Ltd. On the date of their retrenchment, then they be protected in the pay scale for the post on which they are being absorbed, in such a manner that their salaries are closest to the salaries which they were withdrawing on the date of their retrenchments from the Corporation. It was further decided in the meeting that if the last salary drawn by them was higher than the salary being given to them after their absorption in the government service, then such and difference be considered as personal pay and such personal pay be given to them from the date of their retrenchment. But before doing so, an undertaking must be obtained from the personnel concerned that he has not already received any other benefits, salary, retrenchment compensation, etc. from the Official Liquidator, for the period after their retrenchment from parent department. If any personnel has already availed any benefit from the Official Liquidator for the*

period after his retrenchment, then same will be adjusted from the arrears of the said personnel. Affidavit of undertaking given by the personnel should also be got verified from the Official Liquidator.

- (3) Besides above, these personnel will also be entitled to added increment and arrears with effect from the date of their retrenchment.
- (4) These benefits are being extended to all the petitioners of the aforesaid contempt petitions and all others who are covered by the judgment of the Hon'ble Supreme Court dated 31.1.2008, in accordance with the directions given by the Hon'ble Supreme Court. However, these benefits would not have been available to them in normal course. It is also pertinent to mention here that no other personnel will be entitled to such benefits in future.
- (5) Services rendered by these personnel in U.P. Cement Corpn. Ltd. i.e. before their absorption in government service, will not be considered for the purpose of their pensionary benefits”.

19. After reproducing the said order, this Court noted that as the Order had been substantially complied with the direction given by the High Court and the order passed by this Court, there is no valid reason to continue with the contempt proceedings. Additionally, this Court added, which we may profitably reproduce: (M. L. Singh case, SCC p.410, para 6).

“6..... If the petitioners are not satisfied with the fixation of their pay, etc., they may make representation(s) to the competent authority. Such representation shall be disposed of by the authority concerned within next two months by passing speaking order. If the petitioners are not satisfied with the order passed on their representation(s), then they shall be free to avail appropriate legal remedy.”

20. In the obtaining factual matrix, we are disposed to think that it was absolutely inappropriate on the part of the High Court to go in search of ratio of the judgment rendered by the Single Judge on the earlier occasion, when the controversy had really been put to rest by this Court. The Division Bench, we are disposed to think, should not have entered the arena which was absolutely unwarranted. The decision rendered by this Court inter se parties was required to be followed in the same fact situation. When the factual matrix was absolutely luminescent and did not require any kind of surgical dissection, there was no necessity to take a different view. Needless to say, this kind of situation

procrastinate the litigations and the litigants, as has been stated, though in a different context in Koppisetty Venkat Ratnam v. Pamarti Venkayamma is extremely expensive and time-consuming.

21. *In this regard, a few lines from Sundarjas Kanyalal Bhatija v. Collector is worth reproducing: (SCC p.406, para8)*

“8..... One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority”.

22. *We have highlighted this aspect as we intend to ingeminate that this kind of unnecessary enthusiastic quest should be avoided. It is because it is contrary to the principles of judicial discipline. In this regard reference to Official Liquidator v. Dayanand would be apt. In the said ruling, it has been observed thus: (SCC p.52, para 78)*

“78. There have been several instances of different Benches of the High Court's not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system”.

23. *In view of the aforesaid analysis, we find no reason that the appellants herein should not reap the benefits of absorption and, accordingly, it is directed that they shall be absorbed by the State Government as per their seniority and be given the benefit of increments, within eight weeks hence. Needless to say, they will be entitled to their seniority as per the prevalent rules. If anyone has been retired from service, he shall get the retiral benefits inclusive of pension.*

24. *At this juncture, the question arises as to what amount should be paid towards back wages. In this context, our attention has been invited to the order passed by this Court in contempt proceeding. However, after some debate, the learned counsel for the appellants left it to the discretion of this Court. Ms. Reena Singh, learned Additional Advocate General for the State vehemently*

opposed with regard to grant of any back wages. Having heard the learned counsel for the parties on this score and regard being had to the facts and circumstances of the case, we think that the cause of justice would be best served if each of the appellant is paid 40% of the back wages, and it is so directed. It shall be computed as per our directions issued hereinbefore within a period of twelve weeks hence and be paid to the appellants”.

34. Mr. Patra also relied on another decision of the Hon’ble Apex Court in the case ***Inder Pal Yadav & Others vs. Union of India & Others*** reported in **1985 SCC (2) 648**. In the said reported decision, Hon’ble Apex Court in Para-5.2 has held as follows:-

“The scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court’s order. To illustrate, in some matters, the court granted interim stay before the illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief be stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another arrear where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson’s choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter.”

35. Making all such submissions, Mr. Patra, learned counsel for the Petitioner submitted that since persons similarly situated and retrenched in the year 2003, pursuant to the order passed by the learned Tribunal on 16.11.1999 in O.A. No.2559(C)/1999 and batch were not only allowed the benefit of regularization but also extended with financial benefits, the Petitioner being similarly situated is also eligible and entitled to get the said benefit as extended vide order dated 26.08.2021.

36. Heard learned counsel for the Parties.

37. Perused the materials available on record. This Court after going through the same finds that even though the Petitioner was engaged as a Helper in the work charged establishment, where he joined on 25.01.1985, the Opposite Parties never took any steps to absorb the Petitioner in the regular establishment in terms of the resolution issued by the Finance Department on 22.01.1965 and 6.3.1990 as well as 15.05.1997. The Opposite Parties also never took any steps to absorb the Petitioner in the regular establishment on completion of 5 years of continuous engagement in the work charged establishment.

38. Therefore, in view of such admitted illegality on the part of the Opposite Parties, this Court is of the opinion that the Petitioner by the time he was retrenched from his service w.e.f. 31.03.2002, had already accrued a right of regularization.

39. Since persons similarly situated and retrenched in the year 2003 as like the Petitioner has been extended with the

benefit of regularization and consequential financial benefits in terms of the order passed by the learned Tribunal in O.A. No.2559(C)/1999 and batch vide order dated 26.08.2021, following the decision of the Hon'ble Apex Court reported in the case of **Sunil Kumar Verma** as well as of this Court in **2015 LAB.I.C-3357**, the Petitioner is also entitled to get similar benefits. This Court accordingly directs the Opposite Party No.1 to take effective steps in the matter and extend the benefit as has been extended to the Petitioner in O.A. No.2559(C)/1999 and batch. The entire exercise shall be completed within a period of three months from the date of receipt of this order.

40. With the aforesaid observations and directions, the WPC(OAC) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 26th of September, 2022/Subrat