

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1366 of 2014

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

.....

N. Mani Amma

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Satyajit Behera, Advocate

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

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 13.04.2022 and Date of Order: 21.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Satyajit Behera, learned counsel for the Petitioner and Mr. Balabantaray, learned A.G.A.
3. The Petitioner has filed the present Writ Petition with the following prayer.

"Under these circumstances, it is humbly prayed that this Hon'ble Tribunal may be graciously pleased to quash the letter dated 24.7.2013 issued by the Respondent No.3 under Annexure-9.

And further be pleased to direct the Respondents to absorb the husband of the

applicant in the regular establishment after completion of 5 years as has been done in case of Dinabandhu Satapathy and thereafter to sanction pension in favour of the husband of the applicant with effect from 1991 till March, 1999 as has been done in case of Dinabandhu Satapathy;

And further be pleased direct the Respondents to sanction family pension with effect from April, 1999 till its payment to the applicant;

And further be pleased to direct the Respondents to pay interest at the rate of 18% for delayed payment and that should be recovered from the erring official who has delayed the matter.

Or pass any other order/orders as this Hon'ble Tribunal may deem fit and proper;

And allow this Original Application with cost.

4. It is submitted by learned counsel for the Petitioner that the petitioner's late husband though was engaged in the work charge establishment w.e.f 19.3.1964 and he retired while working in the said establishment on 31.7.1991, but the Opposite Parties never considered his claim for absorption in the regular establishment basing on the Resolution issued under Annexures-3 & 4. As per the said Resolution, so relied on by the Petitioner, a work charged employee on completion of five years of regular service became eligible for his absorption in the regular establishment and thereby enabling him to get the pension and gratuity as provided under OCS Pension Rules, 1992,

It is submitted by learned counsel for the Petitioner that since the Opposite Parties never considered the claim of the Petitioner's late husband for his absorption in the regular establishment, he retired on 31.7.1991 while

continuing in the work charged establishment and accordingly, he was deprived of pension and other pensionary benefits as provided under OCS Pension Rule, 1992.

Mr. Behera, learned counsel appearing for the Petitioner also brought to the notice of this Court, the order passed in respect of similarly situated employees pursuant to the order passed by the learned Tribunal in the case of Dinabandhu Satapathy. Mr. Behera, learned counsel for the Petitioner also brought to the notice of this Court the order passed by the learned Tribunal in the case of **Naresu Pradhan in O.A. No.1189(C) of 2006** and the confirmation of the same by this Court as well as by the Hon'ble Apex Court. It is also submitted that basing on the order passed in OA 1189(C) of 2006, the Petitioner therein was brought to the regular establishment and was extended with the benefit of pension under OCS Pension Rule, 1992. Mr. Behera also brought to the notice of this Court the confirmation of the order passed by the learned Tribunal in OA No.4189 (C) of 2013. In the said order, so confirmed by this Court, learned Tribunal allowed the claim for regularization of the Petitioner therein and for extension of the pension and other pensionary benefits.

Mr. Behera, learned counsel for the Petitioner relying upon the orders passed under Annexures-11 & 12 in O.A. No.189 (C) of 2006 and O.A. No.4189 (C) of 2013 and the benefit extended to one Dinabandhu Satapathy prayed that the Petitioner's claim is squarely covered by those

decisions and the petitioner is accordingly entitled to get the benefit as prayed for.

5. Mr. Balabantaray, learned counsel appearing for the Opp. Party made his submission as per the counter filed by Opp. Party Nos. 3 & 4. It is submitted by Mr. Balabantaray, learned counsel appearing for the Opp. Parties that even though the late husband of the Petitioner continued in the work charged establishment for the period from 19.3.1964 to 21.7.1991, but at no point of time, he staked his claim for his absorption in the regular establishment. Not only that the late husband of the petitioner till his death on 13.3.1999 never made any claim of any nature for his absorption in the regular establishment and consequential sanction of pension and other pensionary benefits in his favour.

Mr. Balabantaray, learned Counsel for the State further argued that only when similar benefit was extended in favour of one Dinabandandhu Satpathy under Annexure-5 series, the petitioner as a fence seater raised her claim for the first time and the same was rightly rejected by the Opp. Party No.3 under Annexure-9. It is also submitted that subsequently Govt. in the Department of Water Resources vide Annexure-3/F dated 24.5.2014 also rejected the claim of the Petitioner. Accordingly, Mr. Balabantaray, learned counsel for the Opp. Parties argued that since the late husband of the Petitioner during his service career nor till his death ever approached either the Government or this Court claiming his absorption in the regular establishment, the prayer made by the present petitioner after more than 15 years

of the death of the employee is not entertainable. It is also urged that the order relied upon by the Petitioner under Annexures-11 & 12 series cannot be made applicable to the case of the Petitioner as in all those cases, the Petitioner himself was an employee and claim was made for their absorption and consequential grant of pension.

6. Having heard learned counsel for the Parties and in view of the admitted position that the late husband of the petitioner during his service career from 19.3.1964 to 31.4.1991 and after his retirement till death on 13.3.1999 never approached any authority seeking his absorption in the regular establishment and consequential sanction of pension, the claim made by the present petitioner to extend the said benefit in favour of her late husband and consequentially in her favour is not maintainable and the same is also hopelessly barred by limitation.

7. This Court though is of the opinion that the opposite parties should have taken steps for absorption of the deceased employee during his continuance in the work charged establishment, but since no such claim was ever made, this Court has no option than to reject the claim of the Petitioner. Consequentially the prayer made in the Writ Petition is not maintainable and the Writ Petition is dismissed accordingly.

(Biraja Prasanna Satapathy)
Judge