

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C. (OAC) No.3363 of 2014

Kahunu Charan Parida ***Petitioner***
Mr. Prafulla Kumar Mohapatra, Advocate

-versus-

State of Odisha & Others ***Opposite Parties***
Mr. Anupam Rath, ASC

CORAM:
JUSTICE M.S. RAMAN

Order No.

ORDER
12.04.2022

01. 1. This matter is taken up through virtual/physical mode.
2. The Original Application No. 3363 (C) of 2014 was filed before the State Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAC) No.3363 of 2014.
3. The Petitioner claims to have entered into service on 24.01.1977 as Amin under Job Contract establishment of Dy. Director of Consolidation, Nimapara & Balipatna, Cuttack and was posted at Tulasipur Camp. While continuing as such, he was appointed as Draftsman Grade-III by the Dy. Director of Consolidation, Range IV, Cuttack and then Grade-II and subsequently Grade-I.

Referring to Annexure-5 i.e. Pension Payment Order, the learned counsel for the Petitioner submits that the Petitioner got regular appointment on 26.05.2006 and got retired on attaining age of superannuation w.e.f 31.05.2012.

4. The claim of the Petitioner is that though pension has been sanctioned considering the date of appointment as 26.05.2006, he is entitled to get pension from the date of initial engagement in the job contract establishment as Amin w.e.f. 24.01.1977 and consequently, he prays for revision of his pension and retirement benefits.

5. Learned counsel for the Petitioner relied on a Division Bench decision of this Court rendered in the case of State of Odisha and Others vs. Sri Rajkishore Swain; W.P.(C) No. 3443 of 2019 vide order dated 07.03.2022 and Single Bench decision in case of Kshirod Kumar Dash vs. State of Orissa & Others; WPC (OAC) No. 1399 of 2017 vide order dated 03.03.2022 and also in the case of Bichitrananda Palei vs. State of Odisha and Others; W.P.(C) No. 6474 of 2022 vide order dated 16.03.2022. It is submitted that in the said cases similarly situated persons who were engaged in the job contract establishment got the reliefs and this Hon'ble Court in the Division Bench decision cited (supra) has been pleased to dismiss the writ petition of the State.

6. Mr. Soubhagya Chandra Sahoo, learned counsel for the Petitioner has laid stress on the order dated 07.03.2022 passed in W.P.(C) No. 3443 of 2019. For convenience, the said order is reproduced herein below:-

“2. Heard.

3. Challenge in the present writ petition has been made to the judgment and order dated 15.05.2015 passed by the learned Odisha Administrative Tribunal, Cuttack in O.A. No. 1977 (C) of 2009, wherein, direction was made to take into consideration the period of engagement of the petitioner under job contract establishment while calculating qualifying service and accordingly his

pension and other pensionary benefits due and admissible was directed to be revised and paid after adjusting the amount, if any already paid.

4. Perusal of Tribunal's order reveals that learned Tribunal while disposing of O.A. No. 1977 (C) of 2009 has relied upon its earlier decision in T.A. No. 11 of 1993 disposed of on 21.10.1994 (OJC No. 2405 of 1985) on this issue.

5. Learned counsel for the opp. Party draws our attention to the order of the Hon'ble Supreme Court passed in SLP (Civil) No. 13916 of 1995, wherein, the State have gone to challenge the order of the Tribunal passed in T.A. No. 11 of 1993, and the same came up to be dismissed by order dated 17.07.1995.

6. Apart from the above, we find that earlier in W.P. (C) No. 11060 of 2011 a similar case has come before this Court, the principle decided wherein, is squarely applicable to the facts and circumstances of the present case.

7. In view of the aforesaid factual backdrop, we find no merit in the present writ petition, hence the same stands dismissed."

7. Mr. Sahoo, learned counsel has pointed out that in other cases, the period of engagement of the Petitioner therein in Job Contract Establishment has been taken into account as qualifying service.

8. Mr. M.K. Khuntia, learned Addl. Govt. Advocate submits that factual position of the case at hand *vis-à-vis* applicability of amendment of the Orissa Pension Rules vide notification No. 45865/F dated 1.9.2001 is required to be examined by the competent authority. He also pointed out that while considering the eligibility for pensionary benefit, certain judgments were rendered in respect of persons who got retired prior to the amendment. Placing reliance on sub-Rule (6) of Rule 18 of the Odisha Pension Rules which got inserted w.e.f 1.9.2001, Mr. Khuntia, learned Addl. Govt.

Advocate submits that so much of job contract service period is to be added to the period of qualifying service in the regular establishment so as to make the employee eligible for pension. He further submits that the said sub-Rule (6) as inserted has not been brought to the notice of this Court on earlier occasions. Therefore, the orders cited by the Petitioner to claim parity has no application to the facts of the present case.

9. It may be appropriate to reproduce Rule-18 of the Orissa Pension Rules:-

“18. Conditions subject to which service qualifies –(1) Service does not qualify for pension unless it is rendered in a pensionable establishment post.

(2) The entire continuous temporary of officiating service under Government without interruption in the same post or any other post, shall count for the purpose of pension in respect of all categories of Government servants except in the following cases, namely:

- (i) Period of service in an non-pensionable establishment;
- (ii) Period of service in the work-charged establishment;
- (iii) Period of service paid from contingencies;
- (iv) Where the employee concerned resigns and is not again appointed to service under Government or is removed/dismissed from public service;
- (v) A probationer who is discharged from service for failure to pass the prescribed test or examination;
- (vi) Re-employed pensioner Government servants engaged on contract and Government servants not in whole time employment of Government;
- (vii) Service paid from Local Fund or Trust Fund;
- (viii) Service in an office paid by fees whether levied by law or under authority of the Government or by Commission; and
- (ix) Service paid out of the grant in accordance with Law or Custom.

(3) Notwithstanding anything contained in Clauses (i) and (ii) of Sub-rule (2) a person who is initially appointed by the Government in a work-charged establishment for a period of five years or more and is subsequently appointed to the same or another post in a temporary or substantive capacity in a pensionable establishment without interruption of duty, the period of service so rendered in work-charged establishment shall qualify for pension under this rule.

(4) Notwithstanding anything contained in Sub-rule (1) Government may, by general or special order; prescribe any class of service or post which were previously born under work-charged establishment or paid from contingencies to be pensionable.

(5) Notwithstanding anything contained in Sub-rules (1) and (2) in case of Government servant belonging to Government of India or other State Government on his permanent transfer to the State Government the continuous service rendered by him under pensionable establishment of Government of India or any other State Government, as the case may be, shall count as qualifying service for pension.

(6) Notwithstanding anything contained in Clauses (i) and (iii) of Sub-rule (2), a person who is initially appointed in a job contract establishment and is subsequently brought over to the post created under regular/ pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular establishment and would render him eligible for pension.”

10. Needless to point out that the Hon’ble Division Bench of this Court in the case referred to above, while dismissing the writ petition filed by the State observed the direction of learned Odisha Administrative Tribunal contained in O.A. No. 1977(C)/2019 to the effect that the period of engagement of the Petitioner under job contract establishment is to be taken into account while calculating qualifying service. Therefore,

the Petitioner is entitled to pension and other pensionary benefit in consonance with such direction.

11. In such view of the matter, without entering into the merits of the rival contention, it is mete and proper to direct the Petitioner to approach the competent authority, namely, Secretary, Govt. of Odisha, Revenue & Disaster Management Department, i.e., Opposite Party No. 1 with a representation within a period of two weeks from today. It is open for the Petitioner to place the decisions of this Court before the said authority. The Competent Authority shall take a decision in this regard keeping in view of the earlier decisions of this Court as well as the Odisha Pension Rules, 1992 and dispose of the same in accordance with law within a period of three months from the date of filing of such representation.

12. In the light of above observation, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Aks