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ORISSA HIGH COURT : C U T T A C K

WPC(OA) No.2359 of 2013

An application under Section 19 of the Administrative Tribunal Act, 1985

Biswanath Gouda ***: Petitioner***

-Versus-

State of Odisha & Ors. ***: Opposite Parties***

For Petitioner : M/s. S.P. Pati

For the State of Odisha : Mr. S. Ghose,

For Opposite Party Nos.3 & 4 : M/s. B.C. Bastia,
A.K. Sahoo,
B.B. Dalai,
T.K. Biswal,

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of hearing: 13.04.2022 :: Date of Judgment : 26.04.2022

1. Initially this application was registered as O.A. No.2359 of 2013 and on closure of the Tribunal on transfer of the case to this Court, it is re-registered as WPC(OA) No.2359 of 2013 and placed before this Court for disposal in exercise of power under Article 226 & 227 of the Constitution of India.

2. Short background involved in this case is that the Petitioner got an appointment to the post of Auto Electrician under the work-charged establishment for a period of three months on ad.hoc basis with salary of Rs.240/- per month in the scale of pay of Rs.240-315/-. Petitioner joined the post on 1.12.1977 as clearly borne from Annexure-2. On 1.03.1978 the Petitioner's engagement on ad.hoc basis was extended for a further period of three months and the name of the Petitioner was at Sl.No.8. In a further development by the order vide Annexures-2/1 & 2/2 for the name of the Petitioner being sponsored by the Employment Exchange, the Petitioner was allowed to continue as Auto Electrician under the work-charged establishment in the scale of pay of Rs.240-315/-. While continuing as such the Petitioner was promoted to the post of Auto Electrician Grade-II in the scale of pay of Rs.300-410/- and posted in the same Division. It appears, by the order dated 11.03.1982 vide Annexure-4 the Petitioner was not only promoted to the post of Auto Electrician Grade-I in the scale of pay of Rs.370-550/-, but was also allowed to be posted in the same Division. While continuing as such, by order dated 6.069.1985 the Petitioner was transferred from the Gohira Dam project to the Upper Indravati Project and was also allowed to work under the Superintendent Engineer, Upper Indravati Mechanical Circle. In the meantime the Petitioner was re-posted to work under the Sub-Divisional Officer, Workshop & H.M. Sub-Division under Stores & Mechanicial Division, Upper Indravati Hydro Electric Project (UIHE Project), where he continued till the age of superannuation i.e. on 30.06.2010 as clearly borne from Annexure-6.

3. Learned counsel for Petitioner submitted that though the Petitioner has served in a Government Establishment for more than 30 years being granted with several promotions, but strangely enough on the pretext of Petitioner's services placed allthrough under the work-charged establishment, he has not been provided with pension. Taking help of the resolution at Annexure-7 Petitioner attempted to claim that he would have long since been treated as a regular employee. Taking reference of another Finance Department memorandum at Annexure-9 the Petitioner claimed that for the observation made therein employees continuing for such long period under the Work-charged establishment are entitled to pension. Finding no respite the Petitioner made a representation on 29.05.2010 as appearing at Annexure-11 and in their response the Opposite Parties intimated the Petitioner vide Annexure-12 that his name has been recommended to Opposite Party No.3 to convert his status from work-charged employee to that of a regular employee and his name is also included in the list prepared for the said purpose. Taking help of an order of the Tribunal in disposal of O.A. No.922 of 1999 ***(Chaitanya Gouda & Others Vs. State of Orissa & Others)*** the Petitioner claimed that considering the claim of similarly situated person particularly involving a superannuated person, the Tribunal allowed the claim of the applicant therein in the final disposal of the matter vide Annexure-13. It is further submitted by the Petitioner that challenging the order of the Tribunal in O.A. No.622 of 1999 the State approached this Court in O.J.C No.12087 of 1999 and through Annexure-14 the Petitioner claimed that the above order of the Tribunal has been confirmed in dismissal of the writ petition. Petitioner further claimed that an SLP(C) was also moved involving the order of the Tribunal hereinabove, which has also been dismissed by the Hon'ble apex Court as appearing at Annexure-16. Taking help of the orders at Annexures-16 & 16/1 the Petitioner submits that the order of the Tribunal in disposal of the O.A. No.622 of 1999 have been implemented. Petitioner also takes help of a judgment in similarly situated case passed by the Tribunal itself involving the Upper Kolab Project. The Tribunal gave the decision in O.A. No.622 of 1999 and through Annexure-17/1, there is already implementation of the judgment of the Tribunal in O.A. No.1599 of 1999. Thereafter the Petitioner approached the Tribunal in O.A. No.425 of 2011 seeking direction for pension and pensionary benefits. The said O.A. No.425 of 2011 was disposed of by the Tribunal directing the Opposite Party No.1 therein to consider the Paper Book as representation at the instance of the Petitioner and take a decision therein within a period of three months. For the grievance of the Petitioner being rejected the Petitioner approached this Court. Learned counsel for the Petitioner also takes help of a decision in similar matter disposed of by the Tribunal being confirmed by the Hon'ble Apex Court. Petitioner also takes help of another decision of this Court through a Division Bench in W.P.(C) No.19550 of 2011 decided on 3.02.2021.

It is, in the above background of the matter, learned counsel for the Petitioner claimed that the issue regarding entitlement of pension by a person allowed to be superannuated in the work-charged establishment has already been settled long since, not only this but such order even has also the approval of the Hon'ble apex Court, not only in one case but in a variety of cases. In the process, learned counsel for the Petitioner claimed that the O.A. may be disposed of simply entitling the Petitioner to pension and pensionary benefit.

5. Mr. Ghose, learned State Counsel in his opposition while not disputing the developments on such particular issue, however taking this Court to the counter affidavit at the instance of the Opposite Party Nos.1 & 2 submitted that since the Petitioner was a retired employee that too allowed to retire while continuing in the work-charged establishment, there was no scope for the authority to consider the claim of the Petitioner and there has been right rejection of the claim of the Petitioner. Taking this Court to the resolutions taken support by the Petitioner, Mr. Ghose, learned State Counsel attempted to make a distinction between the case referred and the case of the Petitioner, by saying that even though there has been provision to regularize such employees and even in spite of inclusion of the name of the Petitioner in the list prepared in the month of May, 2010 and even there is a recommendation to bring the Petitioner to the regular establishment, but in fact the petitioner has never been brought to the regular establishment.

It is, in the above premises, Mr. Ghose, learned State Counsel attempted to justify the action of the competent authority in rejecting the case of the Petitioner. Mr. Ghose, learned State Counsel though did not dispute to the settling of such position through the cases referred to hereinabove, however on the premises that the Petitioner was not brought to the regular establishment, contended that the Petitioner's case stands on different footing and as such he is not entitled to the relief as claimed. Mr. Ghose, learned State Counsel further contended that persons who have claimed to have been benefited of pension on account of their regularization, have all got such benefit only after the Tribunal and / or this Court's direction and as a result of suo motu action of the State. If any such benefit is extended to the similarly situated persons, then it is only on the case decided basis.

6. This Court finds, there is also appearance of counsel on behalf of Opposite Party Nos.3 & 4. Going through the counter affidavit at the instance of the Opposite Party Nos.3 & 4, this Court finds, they have no dispute that the Petitioner was appointed in work-charged establishment on 01.12.1977 and also retired as such on 30.06.2010. The Opposite Party Nos.3 & 4, however, attempted to make a claim that regularization of services on conversion of a work-charged post into a regular one is not an empty formality and regularization, however, depends on fulfillment of certain parameters. Taking resort to the plea taken in paragraph no.5 the Opposite Party Nos.3 & 4 contended that since the Petitioner allthrough remains in work-charged establishment and that too in different projects, there is no sanction of such post by the Government and enjoyment of the Petitioner was to continue till completion of particular project. Therefore, the Petitioner failed in fulfilling the conditions reflected in paragraph no.5.

It is, in the above premises, an attempt is made by the Opposite Parties that for distinction between the work-charged employee and the regular employee, there is no scope for regularization of the Petitioner and as a consequence the Petitioner had also no scope for pension.

7. Considering the rival contentions of the parties, this Court finds, though the Petitioner was initially appointed with opening of the service book on 1.12.1977 in one of the Division of the Government Establishment, but it, however, appears, on the sponsoring of the name of the Petitioner by the Employment Exchange the Petitioner was allowed to continue as Auto Electrician though in work-charged establishment but was entitled to scale of pay. Undisputed pleadings disclose that the Petitioner has not only been given with several promotions in spite of his services are taken to different projects under different Offices, but he has also been provided with gradual promotions. In the process this Court finds, the Petitioner has served a long continuous service of 32 years under different Establishments of the Government. To achieve regularization it appears, the Petitioner was required to fulfil the following criteria:-

> ***"(a) All posts sanctioned in Work Charged Establishment must have completed 5 Years of continuous existence.***
> ***(b) The posts are likely to continue in future and the work for which the posts have been sanctioned should be of permanent nature.***
> ***(c) Such posts if considered suitable should be absorbed in the corresponding posts created in Regular Establishment.***
> ***(d) The above principles will not apply to big projects, dams and other construction works until such Projects, dams and constructions works are completed and minimum residual staff necessary for normal functioning of the Projects, dams and construction work is determined by the competent authority. After this is done, the quest of bringing over such Work Charged Staff to Regular Establishment as are necessary will be decided according to aforesaid principle."***

8. Reading the above this Court finds, one must have completed five years of continuous service and there was likelihood of continuance of him in future and the post where the Petitioner is placed must be a sanctioned and permanent in nature and in such contingency, if considered suitable, one should be absorbed in the corresponding post created in regular establishment. The Opposite Parties though took the plea that the Petitioner has served in different projects, therefore, there is no application of above condition, this Court, however, finds, it is the State Government who had engaged the Petitioner though in a different establishment, but in particular scale of pay. The State utilized the services of the Petitioner for long 32 years that too continuously for more than three decades. Petitioner had no choice but to continue under the Public Establishment. Not only this establishment, but even considering the length of services of the Petitioner imparted, position of Law even after tempted to bring him to regular establishment. It is too late for the State-Opposite Parties to claim that since the Petitioner was engaged allthrough in work-charged establishment, he is not entitled to pension otherwise. This Court here again also finds, at some point of time considering the claim of the Petitioner, name of the Petitioner name was already empaneled and recommended to be brought into the regular establishment and as has also been communicated to the Petitioner vide Annexure-12 on 25.06.2010 i.e. the date the Petitioner was still in service. The entire gamut clearly establishes that there is exploitation of services of the Petitioner by none else than the State-Establishment. This person having continuously served for 32 years, was entitled to several promotions and while continuing as such, he was to entitled to different scale of pay. It is unfair and unbecoming on the part of the State to see that it's employees after providing so much of service even more than three decades of his career, does not get any protection to survive for the rest part of his life and there is clear obstruction by the State to see its employee after putting up so much of service at least to have a decent retired life. At a time when there is a class of people at State level so also Central level are entitled to pension even if they have not served one elected term. This Court is of view that the State has not performed its duty as a model employer.

9. Now coming to decide; upon superannuation whether the Petitioner maintains a claim for being considered for pension, this Court here finds, the O.A. decided by the Tribunal bearing No.622 of 1999 in the case of ***Chaitanya Gouda & Ors. Vs. State of Orissa & Others,*** clearly involves a superannuated person like that of the Petitioner. The Tribunal deciding the above O.A. vide Annexure-13 has given the following direction in paragraph no.5 therein:-

> "**5.** I accordingly direct that the applicants shall be absorbed in any establishment posts from the time they completed five years continuous service till the date when they retired from

> service for the purpose of pension and other pensionary benefits. After such absorption, their pension and other pensionary benefits shall be computed on the basis of the notional fixation of pay in the regular establishment by adding annual increments which fell due and also taking into account various revisions of pay scales that were introduced. The process shall be completed within three months from the date of receipt of a copy of this order. Accordingly, the Original Application is allowed."

10. In a further development this Court finds, for the order of the Tribunal hereinabove being challenged before the High Court in O.J.C. No.12087 of 1999, this Court by its Judgment dated 1.05.2001 had ultimately passed the following in confirmation with the order of the Tribunal :-

> "2. Having heard learned counsel, we find no ground to interfere with the impugned order in view of the fact that the matter in dispute already stands concluded by two decisions of this Court in State of Orissa & others v. Jhuma Parida & ors. (O.J.C. No.1162 of 1999, decided on 10.05.2000) and State of Orissa and others v. Sudarsan Sahu and another (O.J.C. No.11028 of 1999 decided on 25.11.1999) in which similar challenge to the order of the Tribunal was made.
>
> Admittedly opp. Parties 1 to 5 rendered their valuable services and considering this and in the light of the decision of the Apex Court in SLP No.11929-930 of 1998 the impugned direction was issued. Hence, we are of the view that no illegality has been committed by the Tribunal in its order.
>
> Accordingly, the writ application is dismissed."

11. This matter again visited the Hon'ble apex Court and the Hon'ble apex Court in disposal of the SLP(C) ……/2003 CC 3196/2003 has come to dismiss the SLP observing as follows:

> "It appears that some officers of the State have formed the habit of not filing the petition for special leave within a reasonable time. There is a delay of 578 days in filing the present petition for which no justifiable reason is mentioned in the application for condonation of delay. Hence this petition is dismissed on the ground of delay with Rs.5,000/- as costs to be paid to the Supreme Court Legal Services Committee."

12. This Court here finds, there has been compliance of the order of the Tribunal in O.A. No.622 of 1999 after final disposal of the matter in Hon'ble apex Court and further there has also been compliance of similar nature of relief involving similar issues disposed of by the Tribunal in O.A. No.425 of 2011. This Court again finds, there has been again disposal of number of writ petitions by this Court involving similar issue such as W.P.(C) No.19550 of 2011 and in one such writ petition while a Division Bench of this Court taking note of similar development through several writ petitions and also taking note of development through disposal of Civil Appeal No.10690 of 2017, finally directed the State to comply the direction in favour of the Petitioner within specific period. It is socking to observe that even after the State's endeavor in Hon'ble apex Court in similar matters, the State does not realize the legal state of affairs in such matters and compelling the persons to avail till a command is given by the competent Court.

In the above background of the matter, this Court again finds, the question raised herein particularly involving entitlement of pension by a person completing entire service in work-charged establishment, have long since been settled. In the circumstance, this Court finds, there cannot be any other decision possible here and accordingly, this Court interfering in the rejection order at Annexure-20, sets aside the same and directs the State Authorities to treat the Petitioner to have been superannuated in the regular establishment at least for pensionary benefit, by completing the entire exercise within a period of one month from the date of communication of a copy of this judgment. Calculation of pension be made within a period of fifteen days thereafter. Arrear so calculated be released in favour of the Petitioner also within another fifteen days thereafter and release of the same in favour of the Petitioner be made within a period of seven days thereafter, but however, with 6% interest allthrough. It is further made clear that in the event arrear is not released within the time stipulated hereinabove, the Petitioner shall be entitled to interest at the rate 10% per annum from the date of entitlement. Current pension in favour of the Petitioner will be started at least within a period of seven days from the date of communication of this judgment by the Petitioner.

13. The writ petition succeeds. There is, however, no order as to costs.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 26th day of April, 2022//
Ayaskanta Jena,
Senior Stenographer