

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OA)No.2559 of 2014

Muralidhar Pradhan

....

Petitioner

Mr.Indramani Sahoo, Adv.

-versus-

State of Odisha & Ors.

....

Opposite Parties

Mr. H.K.Panigrahi,
ASC

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
12.10.2022

08. 1. The matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the opposite party.
3. The Petitioner has filed this writ petition seeking direction for the Opposite Party No.1 to grant or sanction pension and other pensionary benefits to the petitioner after regularizing his services on completion of 10 years service under work charged establishment.

FACTUAL MATRIX OF THE CASE:

4. Shorn of unnecessary details, the factual matrix of the case in brief is that the applicant is a retired work-charged employee. While working as mate under the administrative control of the Executive Engineer Rengali Dam Division in the District of Angul retired from Govt. service with effect

from 31.05.2013 on attaining the age of superannuation. The applicant was initially appointed as a Khalasi in the year 1973 by the Superintending Engineer Rengali Dam Circle, Dhenkanal under the work charged establishment and joined in his service on 01.01.1974. Thereafter, in the year 1979, he was promoted to the post of mate. Since the date of joining, he had served regularly for the Department without any break till his retirement and after completion of more than 39 years of continuous service he has retired from Govt. service with effect from 31.05.2013 on attaining the age of superannuation without pension and IVE other retirement benefits.

5. The Government of Orissa in the year 1965 came up with a resolution dated 22.01.1965 where the pay Committee set up by the State Govt. in the year 1960 was required not only to go into the question of revision of scale of pay and D.A of the Govt. servant in different establishment under the State Govt. but also inter-alia recommended for prescribing better condition of service for the work charged employees in its report. On the basis of the said recommendation of the Pay Committee, the State Govt. have already sanctioned revised scale of pay and D.A. to the work charged employees at the same rate as applicable to the corresponding category of Govt. servant in regular establishment and basing on that recommendation the State

Govt. have been pleased to decide that all post sanction in work charged establishment under different Department of Govt. which have completed 5 (five) years of continuous existence on the date of issue of this order and likely to continue in future and the work for which the post have been sanctioned are of permanent nature, should be brought over to the regular establishment and the incumbents of the posts if considered suitable should also be absorbed in the corresponding posts created in regular establishment.

6. Thereafter, the State Govt. of Orissa issued a series of circulars/instruction from time to time including work charged employees (Appointment and condition of service) instruction of 1974 and reiterated the same position regarding absorption of work charged employees in the regular establishment. Further in the same year (1974) it was decided by the Government of Orissa to prepare a common senior list for the workers and employees of all the major projects of the State for regularization.

7. In pursuance to the directions of Hon'ble Supreme Court, High Court and Orissa Administrative Tribunal lastly on 15.05.1997, the Government of Orissa, Finance Department prepared a scheme to absorb work charged employees under regular establishment along with NMR/DLR/Job contract workers vide Resolution No Irr-24/97-22764/F and

in the said resolution, the main eligibility criteria for absorption under regular establishment of a work charged employees is that the worker concerned should have worked under the administrative control of the Department concerned directly for a minimum period of 10 years. In para-8 of the said resolution dated 15.05.1997 it has been clearly and categorically decided that while filling of regular vacant post first preference shall be given to the work charged employees.

8. In the instant case the applicant has served more than 39 years in Govt. Service before attaining the age of superannuation. The State Govt. did not regularize his service on completion of 10 years, rather, simply relieved the applicant from his service without giving any old age assistance like pension and other retirement benefit. On being aggrieved of the same, the petitioner has filed this writ petition.

PETITIONER'S SUBMISSIONS:

9. Learned counsel for the Petitioner has submitted that the state Government should have regularized the service of the applicant on completion of ten years service under work-charged establishment and accordingly allowed all retirement benefits to the applicant after his retirement. He has submitted that the Tribunal has delivered several judgments in case of regularization of service of work-

charged employees who have continued in service for several years and for their retirement/pensionary benefits. One such decision reported in (2006-1-ATT (OAT)) Page- 68 and the applicant case is squarely covered by the said decision. Therefore, the applicant needs to be given similar benefit.

10. He has additionally submitted that on 24.01.2010, the High Court of Orissa while disposing of the W.P. (C) No. 19550 /2011 reported in 2014 (1) OLR -734 (which is very similar with the instant case) has directed that the petitioner should be treated to have been regularized in service at least one day prior to his superannuation notionally and further directed that calculating his entitlements, his pension amount shall be fixed by the Opposite Parties - State, in accordance with the Rules and the arrear pension of the petitioner so calculated shall be paid to the petitioner by the end of march -2014 and further the monthly payment of pension shall be made to the petitioner regularly thereafter.

11. He has argued that the Supreme Court of India in a constitutional Bench while adjudicating similar matters like regularization of daily wagers temporary/contractual employees in case of *Secretary State of Karnataka and others v. Umadevi and others*¹ has held that the Employees

¹AIR 2006 Supreme Court 1806.

who have continued to work for ten years or more but without intervention or orders of Courts or of Tribunals, the questions of regularization of the services of such employees may have to be considered on merits in the light of the principle settled by this Court in the cases above referred to and in the light of this Judgment.

12. He has contended that in the instance case, the applicant has served more than 39 years in Govt. Service before attaining the age of superannuation and the State Govt. simply relieved him from his service without giving any old age assistance like pension and other retiral benefits. Therefore, for his long continuance in such post in the work-charged establishment he should be given the benefit of regularization by converting his post to the post in the regular establishment and thereby he should be entitled for pension and other retiral benefits. Moreover, it is nothing but a question of surviving in his old age after serving more than 39 years of Govt. service and the State Govt as a benevolent Employer should protect such employee by regularizing his service, so that he can earn pension and other retiral benefits after retirement.

13. Furthermore, law is well settled that the State Government should not exploit its employee nor should it seeks to take advantages of the helplessness and misery of either the unemployed person or the employees as the case

may be and employee should not be kept in temporary or adhoc status for a long time. Hence, where a temporary appointment is continued for a long time it presumes that there is need and warrant for a regular post and the authority must consider their case for regularization. But, in the instant case after completion of more than 39 years of continuous service, the respondents simply relieved the applicant from his service without regularization of his service as well as without giving pension and other retirement benefits.

SUBMISSIONS BY OPPOSITE PARTY NO.1:

14. Per *contra*, learned counsel for the Opp. party has submitted that the applicant has already retired from service since 31.05.2013 on attaining the age of superannuation. Therefore, this WPC (OA) is grossly barred by time limitation, since he has filled the application after one & half years of his retirement which is not maintainable in the eye of law.

15. Moreover, the applicant has relied upon the Finance Department Resolution dated 22.01.1965 and claimed for regularization of his service. The said resolution is not a blanket one, it has several conditions. It is important to state here that the resolution dated 22.01.1965 has clearly indicated that:-

"The above principle will not apply to big projects, dams and other construction works until such projects dams and construction works are completed and minimum residual staff necessary for normal functioning of these projects, dams and construction works as determined by the competent authority". After this is done, the question of brining over such of the work- charged staff to regular establishment as are necessary will be decided according to the aforesaid principle"

16. In this connection, it is to state here that the Rengali Dam Division is come under previews of Major Projects in which the applicant was employed. Hence, the Resolution dated 22.01.1965 is not applicable to the applicant.

17. He has further contended that the contention of the series of circulars/instructions in connection with the regularization of service of the applicant has not been reflected in the O.A.. However, the Work-charged Employees (Appointment and Conditions of Service) Instruction, 1974 does not provide any scope to the applicant for absorption in regular establishment. The resolution No. 21826 dated 07.09.1995 of Water Resources Department under Annexure-3 clearly indicated in its para-3 that "Post for which statutory rules for recruitment are existing cannot be filled up from among the work-charged staff. However, in respect of other posts for which no recruitment rules are existing, the same may be filled up from among the work-charged staff who have already

completed 10 years of service, strictly according to the seniority subject to being suitable for the post". That means the resolution dated 07.09.1995 under annexure-3 is very clear that after arising of vacancies under regular establishment in corresponding posts and where no statutory rules, for recruitments are existing, the corresponding posts can be filled up from among the work-charged employees considering the other terms and conditions. As there were no corresponding vacant posts, under regular establishment related to the posts hold by the applicant, the regularization of his service does not arise.

18. He has further submitted that in the order dated 08.08.2007 passed by the High Court in OJC No. 14196/99 filed by the State of Odisha against the impugned order dated 23.03.1999, passed by the O.A.T., Cuttack Bench in O.A.No.589(c)/99, the O.A.T. while disposing the O.A. on admission stage, directed the State Respondents to regularize the service of the applicant as "who have rendered more than five years of service in work-charged establishment should be brought over to regular establishment and thereafter they shall be paid pension and other retiral benefits. While allowing the appeal petition on dated 08.08.2007 in OJC No. 14196/99 and setting aside the impugned order dated 23.03.1999 of the O.A.T. passed in

OA No. 589 (C)/99, the High Court passed the following orders:

"A person from work-charged to regular establishment only be taken on the availability of regular vacant post. It is no doubt true that a work-charged employee who has completed 5 years of service would become eligible for consideration in regular establishment. But that is possible only if the post is available in the regular establishment. Without availability of such posts the work-charged employees cannot become a regular employee. Therefore, we are of the opinion that the decision of the Tribunal directing the petitioner to regularize the service of the opposite party No.1 i.e. from work-charged establishment is erroneous."

19. Therefore, as there was no vacant post in regular establishment in Major Projects, the service of the applicant could not be regularized. Thus, there is no discrimination to the applicant borne under work-charged establishment in Major Project, a complete separate cadre.

COURT'S REASONING & ANALYSIS

20. Having heard learned counsel for the parties and after going through the record, it was also brought to the notice of this Court about the order dated 02.04.2018 passed in OJC No. 12017 of 2000, wherein it has been observed/directed as follow:-

"Having heard learned counsel for the parties and on perusal of the record, more particularly the order impugned herein, it appears that the Government in Finance Department vide resolution dated 22.01.1965 decided for absorption of such employees to regular establishment after completion of five years in the

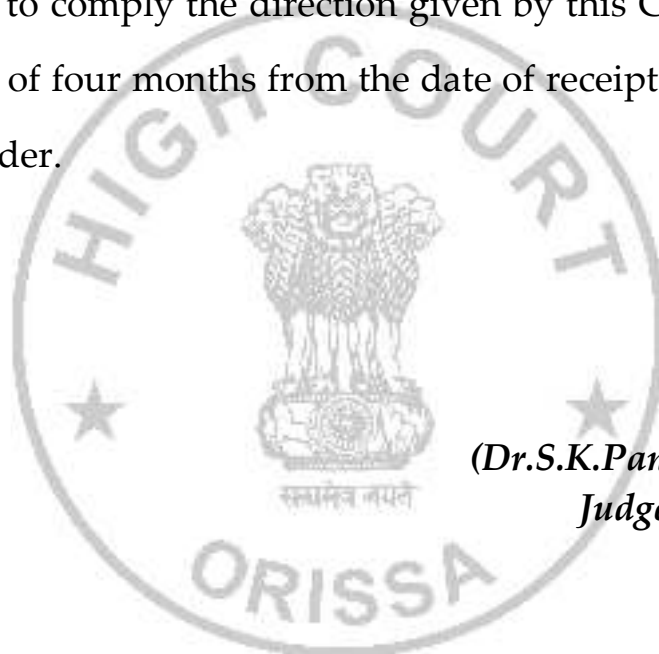
Work Charged Establishment. Subsequently vide memorandum dated 06.03.1990, Finance Department has also extended the pensionary benefit to work charged employees. Learned Tribunal in O.A. No. 2389 of 1997 vide order dated 23.02.1999 has already disposed of a case of similar nature. Even learned Tribunal has gone on to adjudicate one dispute in O.A. No. 1819 of 1996 regarding extension of pensionary benefit to such work charged employees, who have already retired. The plea of Additional Government Advocate to the effect that the opposite party could not have been brought over to regular establishment, as there was no vacancy, is not sustainable in law, as it has already been held in a catena of decisions that even if there is no clear vacancy, a work charged employee can be brought over to regular establishment for at least one day by creating a supernumerary post to make him entitled for pensionary benefit.

In view of the above, we modify the order of learned Tribunal to the extent that the opposite party shall be brought over to the regular establishment for at least one day by creating a supernumerary post, if necessary and accordingly, he shall be extended with the pensionary benefit as would be admissible to him. The entire exercise shall be completed within a period of two months hence."

21. It was also contended that relying on such decision, many other writ petitions, such as OJC No. 12017 of 2000 (decided on 16.04.2019), W.P.(C) No. 12017 of 2000 (decided on 16.04.2019) have also been disposed of. While dealing with the matter, this Court deprecates the action of the state-opposite parties. The state-opposite parties have not fair enough to comply the directions given by the Hon'ble Apex Court as indicated above and are only dragging such

employees into multiple litigations. The state-authorities are also misleading this Court as well as the Hon'ble Apex Court on each and every occasions in case of such types of work-charged employees, in spite of law settled in this regard and as well as specific circulars/resolutions/ orders have been passed by the State Authorities in terms of the direction of this Court.

22. In view of the above, the State opposite parties are directed to comply the direction given by this Court within a period of four months from the date of receipt of the copy of the order.



(Dr.S.K.Panigrahi)
Judge

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