

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3617 of 2012

Bijayananda Mohapatra

....

Petitioner

Mr.Aurovinda Mohanty, Advocate

-versus-

***Engineer-in-Chief, Rural Works
Department and others***

....

Opp.Parties

Mr. P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.02.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as the learned counsel appearing for the Opposite Parties.
3. Initially an original application was filed before the State Administrative Tribunal, Cuttack Bench, Cuttack by the Petitioner with a prayer to regularize the service of the Petitioner in terms of the Resolution under Annexures-1 and 2 and for a further direction to the Opposite Parties to consider the case of the Petitioner for regularization of service in consonance with the order under Annexure-7 and to pay the pensionary and other retiral benefits as due and admissible under law. The Petitioner has also prayed for a direction to the authorities to consider his representation dated 12.06.2012 under Annexure-5 and dated 19.07.2012 under Annexure-6.
4. The factual backdrops of the case as narrated in the original application is that the Petitioner, who is a physically disabled person joined as DLR under Executive Engineer, Rural Works Division, Bhubaneswar on 01.02.1990. While he was continuing as such along

with other similarly situated persons, a decision was taken by the Government of Odisha to bring the Petitioner and other similarly situated employees to the Work Charge Establishment under the Opposite Parties in consonance with the Government of Odisha Resolution No.16367 dated 25.07.1991. It has also been pleaded that as per the Resolution dated 25.07.1991, a decision was taken by the Government of Odisha, Works Department for conversion of posts from Work Charge Establishment to regular Establishment based on the yardstick prescribed by the Government of Odisha. Since a lot of vacancies arose due to retirement of employees, such posts were kept vacant and a decision was taken by the Government to bring over the Work Charge Establishment to regular Establishment against such vacant post. In that regard, a total number of 1391 DLR/NMR and other category of employees throughout the State were decided to be brought over to the regular Establishment against the existing vacancies. It has been further pleaded that the Petitioner, pursuant to such decision, is eligible to be regularized or brought over to the regular Establishment against the aforesaid vacancies.

5. Since a lot of controversies arose in connection with absorption of NMR/DLR/other contractual workers under regular Establishment many litigations cropped up and finally reached to the Hon'ble Supreme Court of India. The Government of Odisha in Finance Department passed a Resolution dated 15.05.1997 which was published in Odisha Gazette relating to scheme for absorption of NMR, DLR and Job contractual employees in regular establishment. As per the scheme, suggested under Resolution dated 15.05.1997, the workers who have been engaged prior to 12.04.1993 i.e. prior to promulgation of ban on engagement of NMR, DLR and other contractual employees, a separate gradation/senior list was required to be prepared by the appointing authority for different categories of employees basing on the

length of service of each and every employees/workers and accordingly, their cases were considered on the basis of their seniority subject to a minimum eligibility criteria of such employees having rendered 10 years of service.

6. Under the aforesaid scheme prepared by the Government of Odisha, it was specifically fixed that while filling up the vacancies as stated herein above, preference shall be given to work charge employees and in absence of suitable work charge employees, preference shall be given in order to the employees i.e. NMR, DLR, Job contract workers and others while regularizing their services and while doing so it was decided to consider the first appointment of such persons to service for pension and other service benefits. It is apt to mention here that the Petitioner was appointed on 01.02.1990 and was posted as a DLR and continuing in service against a regular vacant post. However, the Government of Odisha did not consider the case of the Petitioner with other similarly situated persons while considering the case of similarly situated persons to bring them over to Work Charge Establishment for the purpose of permanent absorption in regular Establishment. Therefore, it has been pleaded that the case of the Petitioner has not been considered in consonance with the Government Resolution dated 15.05.1997.

7. It was further contended in the application by the Petitioner that the cases of the present petitioner and many other similarly situated persons, who are working as NMR/DLR were brought over to the Work Charge Establishment vide order dated 11.02.2011. Further pursuant to the said order dated 11.02.2011, joined in the post of Junior Clerk in Work Charge Establishment in the Office of the Executive Engineer, Rural Works Division, Bhubaneswar and thereafter the Service Book of the Petitioner was opened. It is further pleaded on behalf of the Petitioner that by the time the decision was taken on

11.02.2011, the Petitioner was aged about 57 years and was virtually at the verge of retirement from Government service and his retirement was due on 31.10.2012. Therefore, there was no enough time to consider the case of the Petitioner for regularization of his service by bringing the Petitioner over to regular Establishment from Work Charge Establishment.

8. While this was so, on 12.06.2012 as well as on 19.07.2012 i.e. prior to his retirement, the Petitioner submitted two representations before the Chief Engineer, Rural Works (1), Odisha Bhubaneswar wherein the Petitioner has prayed for regularization of Work Charge service for his pensionary benefit.

9. Learned counsel for the Petitioner submits that although he has submitted two representations dated 12.06.2012 and 19.07.2012, the same was never considered by the authority and even till now the same are pending for consideration even after expiry of almost a decade time.

10. That on the other hand, learned counsel for the State submits that they have filed a counter affidavit in the matter wherein they have admitted that the Petitioner was initially engaged as DLR worker and that pursuant to the scheme prepared for absorption of Work Charge/NMR/DLR/Job Contract workers by the Government of Odisha Resolution dated 15.05.1997, the Petitioner was brought over to the Work Charge Establishment as per the decision of the Rural Development Department vide its letter dated 22.02.2011 with the concurrence of the Finance Department vide letter dated 09.09.1990. It is further submitted by the learned Additional Standing Counsel that the Resolution dated 25.07.1991 issued by the Works Department is not at all relevant so far as the present Petitioner is concerned and that since no decision was taken by the Rural Development Department regarding regularization of service of DLR worker, the claim of the Petitioner was not considered. However, it has been stated in the

counter affidavit that the Petitioner had initially joined on 01.02.1990 as a DLR worker. After bifurcation of the department into two different departments i.e., Works Department and Rural Development Department with effect from 01.07.1990, the Resolution of Works Department is not applicable to the Petitioner, who is an employee under the Rural Development Department.

10. It is further submitted by the learned Additional Standing Counsel that regular sanctioned vacant posts were not available in the Rural Development Department at the relevant point of time. Therefore, the Petitioner and many other similarly situated persons cannot be absorbed against regular post. It was further submitted that it was only on 09.02.2011 the Rural Development Department created 1301 number of Work charged post and accordingly by order dated 11.02.2011 issued orders directing absorption of DLR workers in the Work Charge Establishment. Therefore, the claim for regularisation as per Resolution dated 15.05.1997 under regular establishment made by the Petitioner is not legally tenable.

11. It was further submitted by the learned Additional Standing Counsel that since the Petitioner has joined in on 11.02.2011, his case should be governed under "Appointment & Conditions of Service for Work Charged Employees Instruction, 1974". Further nowhere in the said Rule/Instruction there is any provision to allow pensionary benefit to employees serving under the Work Charged Establishment . It is further submitted by the learned Additional Standing Counsel that there is no Rule or any instruction issued by the Government to extend the pensionary benefit to the DLR and Work Charge workers/employees. Further, it has been stated that since the Petitioner has barely worked for one year in Work Charge Establishment, he is not entitled to the retiral and pensionary benefit as claimed by him. Therefore, the contention of the Petitioner that his case should have

been considered for regularization of his service under regular establishment for pensionary and other retiral benefits pursuant to the Government Resolution dated 15.05.1997 is not at all feasible and acceptable.

12. It is further submitted by the learned Additional Standing Counsel that the Resolution referred to by the Petitioner was only meant for job contract workers of Revenue department and as such the same is not applicable to employees like the Petitioner, who were working under the Rural Development Department.

13. Learned counsel for the Petitioner further submits that considering the initial date of appointment of the Petitioner i.e. 01.02.1990 as a DLR worker, the Petitioner is covered by the direction of the Hon'ble Supreme Court and as such he should have been brought over to the Work Charge Establishment and upon completion of 10 years of service, his service should have been regularized in the regular Establishment. He further submits that the Petitioner is entitled to the benefit under the Government Resolution dated 15.05.1997 as the Government cannot discriminate between the employees of two different departments of the same Government. He further submits that similar benefit has also been extended to many similarly situated persons. He further submits that this issue has also been adjudicated by this Court and many similar cases directions have been issued by this Court to the Opposite Parties to consider the case of regularisation of service of the persons, who are similarly placed with the Petitioner.

14. Having heard learned counsel for the parties, this Court is of the considered view that the Opposite Parties should have considered the case of the Petitioner keeping in view the length of service he has rendered to the department i.e. almost for 22 years pursuant to the direction of the Hon'ble Supreme Court of India, the Government of Odisha prepared a scheme for regularization of all DLR, NMR, Job

Contract workers. The Petitioner having been appointed prior to cut-off date fixed by the Hon'ble Supreme Court, his case should have been considered by the Opposite Parties. It is true that the Petitioner has already retired from service on attaining the age of superannuation, his case should have been considered for regularization and he should have been extended the pensionary and other retiral benefit as has been given to similarly situated other employees. Therefore, the inaction on the part of the authority to consider and take a final decision on the representations of the Petitioner seriously cause prejudice to the Petitioner and his legal right has been infringed by the inaction of the opposite parties.

15. In view of the facts and circumstances stated herein above, this Court considers it proper, without keeping the matter pending any further, the writ application can be disposed of with a direction to the Petitioner to file a fresh representation taking all the grounds available to him along with all supporting documents and citation, judgment relied upon by him within a period of two weeks before the Chief Engineer, Rural Works Department, Government of Odisha or any other authority, who is competent to take a decision so far as the present Petitioner is concerned, within a period of two weeks from today along with certified copy of this order. In the event such representation is filed, the same shall be considered in accordance with law and shall be disposed of by a speaking and reasoned order. In the event it is found that the Petitioner is entitled to pensionary and other retiral benefits, the same shall be disbursed in his favour within a period of two months from the date of such decision.

16. With the aforesaid observation, the writ application is disposed of.

