

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 15 of 2012

Rajanikanta Kanungo

.....

Petitioner

Mr. S.P. Swain, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

21.02.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S. P. Swain, learned counsel for the petitioner and Mr. M. Balabantaray, learned Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking to quash the order dated 12.01.2011 passed by opposite party no.3 in Annexure-4 and to issue direction to the opposite parties to grant pension and other retirement benefits to the petitioner declaring him as a regular establishment employee, by following the ratio decided in Annexures-5 and 6.

4. Mr. S. P. Swain, learned counsel for the petitioner contended that the petitioner initially joined as a carpenter and was brought to the work charged establishment on 12.04.1962 and continued to discharge the duties assigned to him. On attaining the age of superannuation, he retired from service on 31.07.2002. Therefore, in view of the resolution no. 4419 dated 22.01.1965 of the Finance Department of the Government of Odisha and the judgment of the apex Court in SLP No. 11929- 930 of 1998, the petitioner is entitled to get retirement benefits by regularization of his service. It is further contended that a similarly situated person,

namely, Duryodhan Mohanty had filed O.A. No. 70 (B) of 1997 before the Orissa Administrative Tribunal, which was disposed of vide order dated 03.05.1999 directing the opposite parties to regularize him in an establishment post from the time he completed five years continuous service in work charged establishment and the period from that time till date of retirement be counted towards the pension and further directed to grant pensionary benefit to the employees. The said order of the tribunal was challenged before this Court by the State authorities by filing OJC No. 13552 of 1999 and this Court, by order dated 01.05.2001, relying upon the judgment passed in OJC No. 1162 of 1999 (State of Orissa v. Jhuma Parida and others) and OJC No. 11028 of 1999 (State of Orissa v. Sudarsan Sahoo & others), confirmed the order passed by the tribunal and dismissed the writ petition filed by the State and after dismissal of the writ petition said Duryodhan Mohanty was brought to the regular establishment and granted the benefits as due and admissible to him. It is further submitted that the petitioner, having stood in the same footing, should be extended with same benefits at par with Duryodhan Mohanty, in view of the judgment of the apex Court in SLP No. 11929-930 of 1998.

5. Mr. M. Balabantaray, learned Standing Counsel appearing for the State, after the brief was transferred to this Court, though had taken time on 25.06.2021 to file counter affidavit, but the same has not been filed.

6. However, considering the contention raised by the parties and after going through the materials available on record, this Court finds that the petitioner was retired from service on

37.07.2002 and in the meantime more than 19 years have passed and, as such, the petitioner had filed the present writ petition in the year 2012 and in the meantime 11 years have passed, but no counter affidavit has been filed by the State. Therefore, keeping in view the limited grievance of the petitioner that as he was continuing as work charged employee, his service should have been regularized after completion of five years in the work charged establishment and he should have been granted benefit as due and admissible at par with Duryodhan Mohanty, pursuant to the order dated 03.05.1999 passed by the tribunal in O.A. No. 70(B) of 1997, which has been confirmed by order dated 01.05.2001 passed by this Court in OJC No. 13552 of 1999.

7. In view of such position, this writ petition is disposed of directing the opposite parties to extend the benefits as due and admissible to the petitioner in terms of the decision of the apex Court in SLP No. 11929-930 of 1998, since the petitioner stands in similar footing with Duryodhan Mohanty, as expeditiously as possible, preferably within a period of two months from the date of receipt of this order.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok