

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.545 of 2011

Haramohan Barik

....

Petitioner

Ms.Basudev Barik, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

14.02.2022

Order No.

1. This matter is taken up through Hybrid arrangement (virtual/physical mode).
2. The Petitioner has filed the present writ application with a prayer to treat the service of the Petitioner as a regular employee of the State Government and to treat the establishment of Rengali Dam Project as a regular establishment of the State Government. Further the Petitioner seeks a direction to the Opposite Parties to grant post retirement benefit including pension and gratuity, leave salary.
3. The Petitioner was initially appointed as Operator by the Executive Engineer, Field & Machinery Division, Rengali and was working sincerely and honestly to the best satisfaction of his authorities till his date of superannuation . The last salary drawn by the Petitioner was Rs.4,723/- as on 30.01.2002. It is the submission of the Petitioner that he was in employment since his appointment till the date of superannuation by holding a permanent and sanctioned post of the State Government without any break or breaks in his service in a regular post under a work charged establishment i.e.

Rengali Dam Project. It is also stated in the Petition by the Petitioner that the Petitioner has been discriminated for not treating him as regular employee of the establishment as he has already rendered more than five years in a work charged establishment though there is a Government of Orissa Resolution No.17031 dated 10.08.2008 in this regard. It is further stated that the Petitioner has approached the opposite parties on many occasions to grant pensionary benefit and treating him as regular employee of the Project.

4. Learned counsel for the Petitioner relies on a decision of the learned Tribunal in O.A.No.2054 of 1993 dated 15.07.1996 wherein it has been decided that the work charged employees are entitled to receive pension as a regular employee in view of the Government Notification dated 22.01.1965.

5. Learned counsel appearing for the State submits that the work charged establishment is not pensionable service as per Rule-18(2)(ii) of OCS (Pension) Rule, 1992.

6. Heard learned counsel for both sides. Perused the materials available on record. Learned counsel for the Petitioner relies upon the judgment of this Court in the case of **Abhaya Chanrana Mohanty vs. State of Odisha**, WPC(OAC) No.3494 of 2013 disposed of on 14th July, 2021. In the said case, the Petitioner, who was a work charged employee had claimed the pensionary benefits after his retirement with retrospective effect. This Court relying upon the order of the Hon'ble Supreme Court of India in Civil Appeal No.21498 of 2012 thereby dismissing the State Government's Appeal and confirming the order dated 19th December, 2011 of this Court passed in W.P.(C) No.5377 of 2010 in the case of one **Narusu Pradhan vs. State of Odisha** allowed the

writ petition and granted pensionary benefits as prayed for in that case.

7. Similarly, learned counsel for the Petitioner has also cited another order of a Division Bench of this Court in the case of ***Chandra Nandi vrs. State of Odisha and others*** : reported in 2014(I) OLR 734. In the said reported case, this Court had given a direction to notionally regularize service of the Petitioner prior to his superannuation from service and accordingly, calculated the Petitioner's entitlement including the pensionary benefits.

8. So far the case of one Nansu Pradhan is concerned and which has been referred to by this Court in ***Abhaya Charan Mohanty*** (supra), said ***Narusu Pradhan*** had filed O.A. No.1189(C) of 2006 praying for retiral benefits. Learned Tribunal allowed the retiral pensionary benefits in his favour vide order dated 11th June, 2009. The order dated 19th June, 2009 was challenged by the State Government before this Court in W.P.(C) No.5377 of 2010. This Court dismissed the writ petition on 19th December, 2021 and confirmed the order passed by the learned Tribunal. Therefore, the State Government preferred an appeal before the Hon'ble Supreme Court of India bearing Civil Appeal No.22498 of 2012. The said appeal was also dismissed on 7th January, 2013 by the Hon'ble Supreme Court of India thereby confirming the orders passed by the learned Orissa Administrative Tribunal as well as this Court. Since the case of ***Narusu Pradhan*** is a case of work charged employee, who had worked for more than five years in work charged establishment had been allowed to receive pensionary benefits by virtue of order passed by the learned Odisha Administrative Tribunal, which was ultimately confirmed by the Hon'ble Supreme

Court of India, the principle laid down in that case has become a Law of the land as declared by the Hon'ble Supreme Court of India and is binding on this court while deciding cases of similar nature. Therefore, it is no more open to the State Government to take stand contrary to the principle finally approved by the Hon'ble Supreme Court of India.

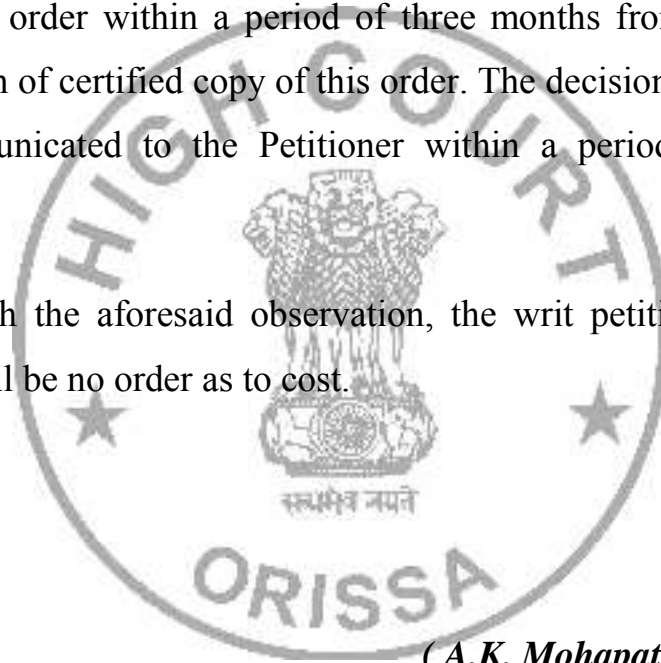
9. Moreover, even accepting the argument for Opposite Parties that the DOWR resolution dated 7th September, 1995 provides that on completion of ten years of service in work charged establishment, a work charged employee is eligible to be brought over to regular establishment. In the present case, the Petitioner discharged his duties being a work charged employee since 07.01.1982. It is not known as to what prevented the authorities to bring the Petitioner to work charged establishment immediately after the said resolution. Such delayed action has caused injustice to the Petitioner in the present case.

10. Since the Petitioner has retired from service on attaining age of superannuation, the question of his regularization against the regular post does not arise for consideration in the present writ petition. It is a case of pensionary benefits payable to the Petitioner i.e. required to be considered in the present writ petition. Since the benefits have been granted to other similarly placed work charged employees by notionally considering them as regular establishment employee and as such the pensionary benefits have been given to them, the same benefit needs to be extended to the Petitioner for services rendered by him under the State Government for several decades continuously that too on payment of a paltry amount every month. The whole objective of the pension scheme is to support an

employee and his family after retirement which is in recognition of his relentless service to the Govt. and such benefits are provided under the Rules on humanitarian considerations.

11. In view of the facts narrated above, the Petitioner is directed to file a fresh representation within a period of two weeks before Opposite Party No.3-Engineer in Chief, Secha Sadahn, Water Resource Department. In the event such a representation is filed, the same shall be considered in the light of the discussion made herein above and the same shall be disposed of by a speaking and reasoned order within a period of three months from the date of production of certified copy of this order. The decision thereon shall be communicated to the Petitioner within a period of 10 days thereafter,

12. With the aforesaid observation, the writ petition is allowed. There shall be no order as to cost.



RKS

(A.K. Mohapatra)
Judge