

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4744 of 2011

N.Mani

.... ***Petitioner***
Mr.N.P.Patra, Advocate

-versus-

State of Odisha and others

.... ***Opposite Party***
Mr.P.C.Das, A.S.C..

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

15.02.2022

Order No.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. The Petitioner has filed the above noted writ application with a prayer to direct the Opposite Parties to grant pension and other pensionary benefits to the Petitioner declaring him as a regular establishment employee quashing the letter dated 12.01.2011 issued by Opposite Party No.3 to the Petitioner under Annexure-5 following the ratio decided in the judgment passed by the learned Tribunal in O.A.No.70(B) of 1997 and the order passed by this Court in O.J.C.No.13552 of 1999 under Annexures-6 ad 7.
3. The factual matrix, in brief, is that the Petitioner had initially joined as Rigger under Opposite Party No.3 and brought to work charged establishment on 06.04.1981 and discharging his duties to the satisfaction of his authority. He was superannuated from service with effect from 31.03.2007. It is stated in the Petition that the Petitioner has filed O.A.No.1126(C) of 2010 before the learned

Tribunal with a prayer to direct the opposite parties to consider his case for payment of pensionary benefits. The said original application was disposed of directing the Opposite Party No.3 to dispose of the representation of the Petitioner within a period of three months. It is also stated in the Petition that the Opposite Party No.3 rejected the representation of the Petitioner on the ground that the Petitioner had never brought over to regular establishment.

4. Learned counsel for the Petitioner submits that the Opposite Party No.3 should have kept in mind the Finance Department Resolution and the order of the Hon'ble Apex Court while rejecting the representation of the Petitioner and also taken into consideration the length of service rendered by the Petitioner in the establishment being a work charged employee and continuous service.

5. It is also submitted by the learned counsel for the Petitioner that the learned Tribunal in O.A.No.70(B) of 1997 by order dated 03.05.1999 analyzing various points of law directed the State Government to regularize in a establishment post from the time he completed five years of continuous service in work charged establishment and the period from that time till the date of retirement be counted towards the pension and direction was issued to grant pensionary benefit to the employees. He further submits that the Government challenging the order of the learned Tribunal under Annexure-6 approached this Court in filing OJC No.13552 of 1999 and this Court by order dated 01.05.2001 referring the judgment rendered in OJC No.1162 of 1999 (**State of Orissa-vrs.-Jhuma Parida and others**) and OJC No.11028 of 1999 (**State of Orissa Vrs. Sudarsan Sahoo and others**) confirmed the order passed by the learned Tribunal and dismissed the writ application. After dismissal

of the writ application, the Government has brought the employee into regular establishment for the purpose of granting pensionary benefit.

6. Lastly, it is submitted by the learned counsel for the Petitioner that the Opposite Party No.3 ought to have considered the ratio decided in the judgment (supra) while rejecting the representation of the Petitioner and should have granted pensionary benefit in favour of the Petitioner.

7. The Opposite Party No.3 has filed a counter affidavit denying all the allegations made by the Petitioner in the Petition. It is averred in the counter that the claim of the Petitioner is a stale claim and has approached the learned Tribunal after four years of his superannuation. Further it is stated in the counter affidavit that the cases cited by the Petitioner are different from the grievance of the Petitioner and the principle decided in the said case are not all applicable to the case of the present Petitioner. It is submitted by the learned counsel appearing for the State that the Opposite Party No.3 has given due care and caution towards implementation of orders passed by the learned Tribunal and this Court as well as the Apex Court and the guidelines and circulars issued by the State Government from time to time.

8. The Opposite Party No.3 in the counter affidavit has stated that the work charged establishment is not pensionable service as per Rule-18(2)(ii) of OCS (Pension) Rule, 1992.

9. 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**

vrs. 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 vrs. State of Odisha* allowed the writ petition and granted pensionary benefits as prayed for in that case.

10. 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.

11. 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 Odisha 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.

12. 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 joined as N.M.R. on 2nd April, 1986. It is not known as to what prevented the authorities to bring the Petitioner to work charged establishment. Such delayed action has caused injustice to the Petitioner in the present case.

13. 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.

14. In view of the aforesaid facts and circumstances, the present writ petition is allowed and the Opposite Parties are directed to grant similar benefits to the Petitioner as has been done in the case of *Narusu Pradhan* vide order dated 11th June, 2009 passed in O.A. No.1189(C) of 2006. The Petitioner is directed to appear before the Opposite Party No.4 along with certified copy of this order and all other relevant documents and records for the processing of his claim. The Opposite Party No.4 upon receipt of certified copy of this order shall calculate and pay the benefits payable to the Petitioner, particularly his pensionary benefits, within a period of three months from the date of production of certified copy of this order.

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

RKS

(*A.K. Mohapatra*)
Judge