

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 31517 of 2022

Sk. Abdul Aziz

....

Petitioner

Mr. R.C. Mishra, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Arnav Behera, ASC

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

06.12.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel appearing for the State-Opposite Parties.
3. The Petitioner has filed this writ petition seeking direction to the Opposite Parties to refix his pension and other retirement benefits by regularizing his entire continuous and uninterrupted Job Contract period service, i.e., from 23.06.1974 to 05.03.2009 on the basis of Finance Department Resolution dated 15.5.1997 (Annexure-4) and judgments of the Hon'ble Supreme Court rendered in the cases of *State of Karnataka v. Umadevi, (2006) 4 SCC*; *State of Karnataka v. M.L. Keshari, (2010) 9 SCC 247*; and *Amarkant Rai v. State of Bihar, (2015) 8 SCC 265* and to pay all arrear dues as accruing therefrom to him with interest at the rate of 9% per annum within a stipulated time.

4. Learned counsel for the Petitioner contended that similar matter has come up before this Court in O.J.C. No. 2405 of 1985 and after constitution of the Odisha Administrative Tribunal, the same was transferred to the Tribunal and registered as T.A. No. 11 of 1993. The said case was disposed of on 21.10.1994 by the learned Tribunal by following the decisions of the Apex Court and by giving direction to the competent authority to count the past service rendered by the petitioner in Job Contract Establishment towards pension and pensionary benefit and after such orders were passed, pension of the Petitioner was directed to be calculated, drawn and disbursed in his favour within two months from the date of receipt of the copy of the judgment. The order passed in T.A. No. 11 of 1993 was challenged before the Apex Court by the State, which was dismissed vide order dated 17.07.1995.

5. It is further contended that similar matter has also come up before this Court in O.J.C. No. 2147 of 1991, which was decided on 24.03.1992 and this Court has considered the case of Job Contract employees for regularization of service and for pension and pensionary benefits. In O.A. No. 3020 (C) of 2003 (*Nityananda Biswal v. State of Orissa and others*), the Tribunal vide order dated 04.01.2004 also directed that the period of the engagement of the Petitioner in job contract establishment should be taken into account as qualifying service and accordingly his pension and other pensionary benefits be revised and paid to the Petitioner therein. The order passed in O.A. No. 3020 (C) of 2003 was also challenged by the State before this Court in W.P.(C) No. 14244 of 2006. This Court vide order dated 09.04.2014 dismissed the writ application preferred by the state against the order passed by the Tribunal. The

state also preferred Special Leave to Appeal (C) No. 12573 of 2015 against the order passed by this Court in W.P.(C) No. 14244 of 2006, which was dismissed by the apex Court vide order dated 13.07.2015.

6. Per contra, learned Additional Standing Counsel appearing for the State-Opposite Parties objects to the claim of the Petitioner on the ground that Rule-18(6) has been incorporated in the Odisha Civil Service (Pension) Rules, 1992. In view of the aforesaid rule, the job contract employees have been excluded from the purview of OCS (Pension) Rules. In the aforesaid context, learned counsel for the State relies upon the decisions of a coordinate Bench of this Court in the case of **Judhistir Padhy Vrs. State of Odisha & Others** (WPC (OAC) No.2276 of 2012) and in **Pitambar Hota v. State of Odisha & Others** (WPC (OAC) No.2622 of 2015) and, accordingly, it is submitted that the Petitioner is not entitled to any pensionary benefits under the OCS (Pension).

7. On a conspectus of the factual background of the present case, this Court observed that the Petitioner was initially engaged as an Orderly Peon on 23.06.1974 under the Administrative Control of the Consolidation Officer, Chhatia. After rendering service in different places, lastly the Petitioner was absorbed as Peon in Tahasil Office, Nischintakoili on 06.03.2009 under Regular Establishment. Thereafter, the Petitioner was posted as Peon in Tahasil Office, Mahanga. While continuing in the said post, the Petitioner has retired from service on 30.04.2016 on attaining the age of superannuation.

8. After working for several decades, the Petitioner upon his retirement has been allowed to get a paltry sum towards pension and other retiral benefits. Furthermore, on a reading of Rule-21 of OCS (Pension) Rules, 1992, this Court observed that it provides “except in pensionable-establishment, service in survey and settlement Organization shall not count unless it is followed without interruption by qualifying service. Therefore, under Rule-21, there are two requirements (1) the employee must have been employed at pensionable-establishment; and (2) he must have served without interruption by the qualifying service period.

9. In the present case, the Petitioner fulfills both the requirements. As such, the exception under Rule-18(6) of the OCS (Pension) Rules, 1992 is not applicable to the facts of the present case. The Petitioner who has served his entire service carrier stand over several decades had served uninterruptedly against a sanctioned post. Therefore, denying pensional benefits to the Petitioner would cause the greatest interest to the Petitioner.

10. Moreover, the judgments cited by the learned counsel for the State can very well be distinguishable on facts. As such, the same is not applicable to the present case.

11. In view of the aforesaid analysis of the factual background of the present case as well as the legal position, this Court is of the view that the Petitioner is entitled to get full pension by taking into consideration his entire period of service.

12. Accordingly, the Opposite Party No.3 is directed to consider the representation of the Petitioner under Annexure-5 in the light of the discussion made hereinabove and disposed of the same by passing a speaking and reasoned order and in the event, the

Petitioner is entitled to get full pension, the same may be sanctioned and disbursed in favour of the Petitioner within a period of two months from today. The Opposite Party No.3 is directed to act upon the certified copy of this order.

13. With the aforesaid observations and directions, this writ petition stands disposed of.

14. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge

Debasis

