

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34592 of 2022

Iswar Chamdra Naik *Petitioner*
Mr. B. Barik, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. B.P.Tripathy, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

Order No.

ORDER
19.12.2022

01.

1. Heard learned counsel for the Petitioner as well as learned counsel for the State.
2. The Petitioner has filed the above noted writ application with a prayer to direct the Opposite Parties to regularize him in service for a day prior to his superannuation notionally and grant pension and pensionary benefits under the old rule in the light of the decision in the case of *State of Odisha vs. Pitambar Sahoo*, W.P.(C) No.24041 of 2017 (decided on 20.12.2017), which has been affirmed in SLP(C) Diary No.30806 of 2018 and *Chandra Nandi vs. State of Odisha and others*, W.P.(C) No.19950 of 2011 (decided on 03.02.2021) and *Premananda Tripathy vs. State of Odisha*, W.P.(C) No.27950 of 2019 (decided on 03.02.2021) and *Narusu Pradhan*, SLP No.22498 of 2012, *State of Orissa and others vs. Jyostna Rani Pattanaik and others*, W.P.(C) No.1534 of 2008, *State of Orissa vs. Pitambar Mohapatra*, W.P.(C) No.13483 of 2012 and *State of*

Orissa vs. Radheshyam Mohanta, W.P.(C) No.12377 of 2009, which has been affirmed in SLP(C) No.36038 of 2020 as well as the benefits given to similar persons.

3. The factual matrix, in brief, is that the Petitioner had initially joined on NMR basis and being an affected family of Reservoir of Samal Barrage Project. He was appointed as worked charged establishment w.e.f. 02.09.2013 as per order No.2851 dated 08.06.2001. He continued in the worked charged establishment as Helper. While continuing as such, he was retrenched from service. Then the Opposite Party withdraw the retrenchment order and took back the Petitioner into service as a work charged employee Watchman as per order dated 21.07.2012. However as per the direction the Petitioner had to refund the retrenchment compensation which amount deposited by the Opposite Parties in the account of the Petitioner, consequently, the Petitioner returned the retrenchment compensation amount in shape of Treasury Challan in favour of F.A. & C.A.O., RIP, Samal and also submitted his joining report. While the Petitioner is continuing as such, submitted an application before the Opposite Party No.4 with a prayer to regularize the period from 29.03.2003 to 21.07.2012, which is covering from the date of disengagement to date of reinstatement in service and to grant all financial benefits as a regular employee of the establishment. It is submitted that law is well settled that once the order of disengagement has been passed without application of mind of the employer and subsequently it is found illegal and improper and the reinstatement order was passed, the Petitioner is entitled to receive all the financial benefits from the employer on the sole ground that he has no fault for his discontinue in service. Accordingly, the

Authorities are liable to pay all the financial benefits for the period of disengagement of service of the Petitioner for the period from 29.03.2003 to 21.07.2012. Accordingly, a prayer has been made to direct the Opposite Parties to regularize the service of the Petitioner for the aforesaid period.

4. Learned counsel for the Petitioner submits that the Opposite Parties 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 should have also taken into consideration the length of service rendered by the Petitioner in the establishment being a work charged employee rendering continuous service.

5. It is also submitted by the learned counsel for the Petitioner that 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 the applicant in the establishment 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 while calculating the pension and a direction be 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 by 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 vs. Jhuma Parida and others*) and OJC No.11028 of 1999 (*State of Orissa vs. 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 Parties ought to have considered the ratio decided in the judgments (supra) while rejecting the representation of the Petitioner and should have granted pensionary benefit in favour of the Petitioner.

7. The Opposite Parties have not filed a counter affidavit denying all the allegations made by the Petitioner in the Petition. It is stated by learned Additional Government Advocate referring to the counter affidavit that the counter that the claim of the Petitioner is a stale claim. Further it is submitted 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 at all applicable to the case of the present Petitioner. It is submitted by the learned counsel appearing for the State that the Opposite Parties have given due care and caution towards implementation of orders passed by this Court as well as the Apex Court and the guidelines and circulars issued by the State Government from time to time.

8. 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 Charan 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.

9. Similarly, learned counsel for the Petitioner has also cited another order of a Division Bench of this Court in the case of ***Chandra Nandi vs. 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.

10. So far the case of ***Narsu Pradhan (supra)*** 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 the 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 a stand contrary to the principle finally approved by the Hon'ble Supreme Court of India.

11. The only benefit the petitioner is entitled to get his pensionary benefits payable to the Petitioner and the same is 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.

12. 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 processing 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.

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

14. Issue urgent certified copy of this order as per Rules.

*(A.K. Mohapatra)
Judge*

RKS

