IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) No.2711 of 2023

Biraj Kumar Pattnaik **.....** ***Petitioner***
Mr. N. Rath, Advocate

-versus-

State of Odisha &Ors. **.....** ***Opposite Parties***
Mr. A. Tripathy, AGA

CORAM:
THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY
ORDER
15.12.2025

Order No.09

1. This matter is taken up through hybrid mode.

2. Heard Mr. N. Rath, learned counsel appearing for the Petitioner and Mr. A. Tripathy, learned Addl. Govt. Advocate appearing for the Opp. Parties.

3. The present writ petition has been filed inter alia challenging order dtd.10.01.2023 so passed by the Govt.-Opp. Party No. 1 under Annexure-4. Vide the said order claim of the Petitioner to get the benefit of pension and other pensionary benefits on his regularization in service was rejected.

4. Learned counsel appearing for the Petitioner contended that Petitioner was engaged as a Khalasi in the work charged establishment on 02.02.1974. Subsequently, Petitioner was promoted to the post of Dozer Operator Grade-III in the work charged establishment and while continuing as such, he retired on 31.01.2014 on attaining the age of superannuation.

4.1. It is contended that even though prior to his superannuation on 31.01.2014 Petitioner had moved the Tribunal by filing O.A. No.

1443 of 2013 seeking regularization of his services, but the said Original Application remained pending with the Tribunal without passing of any direction. After closure of the Tribunal and the matter on being transferred to this Court, W.P.C.(OA) No. 1443 of 2013 was disposed of vide order dtd.06.09.2022 under Annexure-3 inter alia directing Opp. Party No. 1 to consider the Petitioner's claim in the light of the order passed by this Court in the case of ***Chandra Nandi vs. State of Odisha & Ors.*** (W.P.(C) No. 19950 of 2011 decided on 03.02.2021) & ***Premananda Tripathy vs. State of Odisha*** (W.P.(C) No. 27950 of 2019 decided on 03.02.2021) as well as the ratio decided in the case of ***State of Odisha & Ors. Vs. Jyostna Rani Pattanaik & Anr.*** (W.P.(C) No. 1534 of 2008).

4.2. Learned counsel appearing for the Petitioner contended that since Petitioner continued in the work charged establishment all through w.e.f.02.02.1974 to 31.01.2014, his claim is not only covered by the order passed in the case of ***Chandra Nandi*** but also similar claim allowed by the Tribunal in the case of ***Narusu Pradhan vs. State of Odisha & Ors.*** (O.A. No. 1189(C)/2006), further confirmed by this Court as well as by the Apex Court. It is also contended that the order passed in the case of ***Narusu Pradhan*** as cited *supra* in the meantime has already been implemented by the State.

4.3. It is contended that even though claim of the Petitioner is covered by the claim in the case of ***Chandra Nandi*** and ***Premananda Tripathy*** as cited *supra,* but only on the ground that Petitioner is not a Party to the said proceeding, claim of the Petitioner has been rejected vide the impugned order dtd.10.01.2023 under Annexure-4. It is accordingly contended that the impugned order is not sustainable in the eye of law.

5. Learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party Nos.1 to 4. It is contended that even though Petitioner continued all through in the work charged establishment, but since he was never absorbed in the regular establishment prior to his retirement on 31.01.2014, Petitioner is not eligible and entitled to get the benefit of absorption in the regular establishment and consequential sanction of pension and other pensionary benefits. It is also contended that pursuant to the order passed by this Court in the earlier writ petition on 06.09.2020, Petitioner's claim was duly considered and since it was found that Petitioner was not a Party to the proceeding in the case of ***Chandra Nandi*** or ***Premananda Tripathy***, it was held that Petitioner is not eligible to get the benefit so allowed in favour of ***Chandra Nandi & Premananda Tripathy***. Stand taken in Para 11 & 15 of the counter affidavit reads as follows:-

> *"11. That, the present petitioner has not been involved in W.P(C) No.1534 of 2008, W.P (C) No.19550 of 2011 and W.P (C) No.27950 of 2019 to get similar benefit as an exemplary case. Hence, the above orders passed by the Hon'ble Courts are not applicable to him. It is relevant to mention that the orders passed by the Hon'ble High Courts of Orissa in W.P (C) No.27950 of 2019 in the case of Premananda Tripathy has been challenged by the State before the Hon'ble Apex Court of India and the same is subjudice at present. Moreover the orders dated 03.02.2021 passed in the case of Chandra Nandi by the Hon'ble High Court of Orissa in W.P(C) No.19550/2011 and confirmed by the Hon'ble Supreme Court of India in order dated 06.05.2022 passed in SLA (C) No. (s)21180/2021 cannot be taken as a precedence in case of the present petitioner as the context in both cases are different for which order has no general applicability. Further, the Hon'ble Apex Court vide order dated 02.03.2006 passed in Civil Appeal No.1915-1917 of 2003 have held that work charged employees are not entitled to pension under applicable*

pension rules and also that the work charged employee would not be entitled to be brought over to regular establishment unless the conditions stipulated in the applicable regularizations are fulfilled. The Hon'ble Apex Court of India further made it clear that the previous order which was also default order shall not be treated as precedent in future case, the state shall be entitled to place on records all relevant materials circulars and rules and put forward it contention, with regard to disentitlement of work charged employee to pensionary benefit.

15. That, the work charged employee can be absorbed under regular establishment subject to availability of vacant post under regular establishment before his retirement and if his turn comes as per seniority. A Division Bench of the Hon'ble High Court vide order dated 08.08.2007 in OJC No.14196 of 1999 have held that services of a work charged employee can be regularized only if regular post becomes available before retirement, otherwise there is no question of regularisation. The petitioner has retired as a work charged employee and will drawn EPF pension as per instruction, 1974 and the EPF and MP Act, 1952. Again the claim for pension by observing him under regular establishment after retirement, overlooking quit a good number of senior is not at all permissible."

5.1. Making all these submissions, learned Addl. Govt. Advocate contended that no illegality or irregularity can be found with the impugned order.

6. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that Petitioner entered into service as a Khalasi in the work charged establishment on 02.02.1974. It is not disputed that Petitioner continued all through in the work charged establishment till he attained the age of superannuation on 31.01.2014. It is also found that prior to his retirement Petitioner moved the Tribunal by filing O.A. No. 1446 of 2013 claiming the benefit of regularization and consequential sanction of pension and pensionary benefits. However, the said writ

petition was transferred to this Court and this Court vide order dtd.06.09.2022 under Annexure-3, directed Opp. Party No. 1 to consider the claim of the Petitioner taking note of the order passed in similar cases in the case of ***Chandra Nandy*** and ***Premananda Tripathy*** so also ***Jyostna Rani Pattanaik***. But on the ground that Petitioner is not a party to the proceeding in the above noted cases, Petitioner's claim has been rejected.

6.1. It is the view of this Court that since similar benefit has been extended in favour of ***Chandra Nandi & Premananda Tripathy***, this Court directed for consideration of the Petitioner's claim in the light of the said order. Therefore, the stand taken by Opp. Party No. 1 that since Petitioner is not a party to the proceeding in the case of ***Chandra Nandi and Premananda Tripathy*** as cited *supra* and accordingly he is not eligible to get the benefit of the said order, as per the considered view of this Court is not legal and justified.

6.2. It is also found that similar claim made by one ***Narusu Pradhan*** in O.A. No. 1189(C) of 2006, after being allowed by the Tribunal vide order under Annexure-5 series was upheld by this Court as well as by the Apex Court. It is also not disputed that the order passed in the case of ***Narusu Pradhan*** in the meantime has already been implemented by extending the benefit as directed.

6.3. In view of the aforesaid analysis, this Court is of the view that the ground on which Petitioner's claim was rejected vide the impugned order dtd.10.01.2023 under Annexure-4 by Opp. Party No. 1 is not sustainable in the eye of law. While quashing the said order, this Court directs Opp. Party No. 1 to extend similar benefit as has been extended in the case of ***Narusu Pradhan*** so cited

(supra). This Court directs Opp. Party No. 1 to do the needful within a period of four (4) months from the date of receipt of this order.

7. The writ petition accordingly stands disposed of.

(BIRAJA PRASANNA SATAPATHY)
Judge

Sneha

Signature Not Verified
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Signed by: SNEHANJALI PARIDA
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 17-Dec-2025 18:00:55