IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 32060 of 2026
(CNR No. ODHC010755432026)

Ashok Kumar Swain …. **Petitioner**

Mr. B. Routray, Sr. Advocate
Mr. S. Routray, Advocate

-Versus-

State of Odisha and others …. **Opposite Parties**

Mr. S.K. Parhi, ASC

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
27.10.2026

Order No.

01. 1. Heard Mr. Routray, learned Senior Advocate for the petitioner and Mr. Parhi, learned ASC for the State.

2. Instant writ petition is filed by the petitioner challenging the impugned order dated 28th August, 2026 as at Annexure-10 of opposite party No.1 and to direct the opposite parties to regularize his service w.e.f. 18th June, 2007 modifying the order dated 3rd July, 2016 of opposite party No.2 as at Annexure-1 in terms of the directions issued in the case of **Niranajan Das and others Vrs. State of Odisha and others** in W.P.C.(OAC) No.1074 of 2017 dated 7th October, 2021 i.e. Annexure-3 confirmed in W.A. No.936 of 2021 and batch of cases upheld in SLP(C) No.24480 of 2023 as at Annexure-9 on the grounds stated but within a reasonable time extending all other consequential service and financial benefits to him from the date of engagement as Full-time Resource person.

3. Mr. Routray, learned Senior Advocate refers to the order in W.P.C.(OAC) No.1074 of 2017 disposed of along with WPC (OAC) No.1956 of 2017 as at Annexure-3, wherein, direction was issued to grant notional benefits to the petitioners therein and it has been upheld in W.A. No.936 of 2021 and batch of case vide Annexure-4. The orders in appeals, as further submitted, have been upheld by the Apex Court with dismissal of SLPs filed by the State vide Annexure-9. The submission of Mr. Routray, learned Senior Advocate is that the petitioner has not been allowed similar benefits for being a fence-sitter and having approached with delay. But since similarly situated received the benefits consequent upon dismissal of the SLPs, according to Mr. Routray, learned Senior Advocate, the impugned order of rejection dated 28th August, 2026 at Annexure-10 is liable to be interfered with and set aside with consequential directions issued in that regard.

4. Mr. Parhi, learned ASC for the State pleads for an adjournment so as to have a response from the side of the State. However, having regard to the orders in the SLPs confirming the decision of this Court in W.P.C.(OAC) No.1074 of 2017 and the connected case at Annexure-3 and having regard to the fact that the benefits have not been extended to the petitioner having demanded the same only after the dismissal of the SLPs and hence, treated as a fence-sitter, this Court is inclined to dispose of the writ petition by following order and on merit.

5. In course of hearing, Mr. Routray, learned Senior Advocate cites a decision of the Apex Court in **Lt. Col. Suprita Chandel Vrs. Union of India and others** in Civil Appeal No.1943 of 2022 dated 9th December, 2024 to submit that the petitioner cannot be denied similar benefits alleging him to be a fence-sitter. It is submitted that the Apex Court in the case (supra) held that a citizen aggrieved by an action of the Government Department having approached the Court and obtained a declaration of law, others similarly situated ought to be extended the same benefit without the need for them to go to the Court referring to one of its earlier decisions in **Amrit Lal Berry Vrs. Collector of Central Excise, New Delhi and others (1975) 4 SCC 714**. It is profitable to extract the relevant observations of the Apex Court in **Lt. Col. Suprita Chandel** (supra) for better appreciation and the same are reproduced herein below:

> "14. It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See **Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others, (1975) 4 SCC 714**]
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> 15. In **K.I. Shephard and Others vs. Union of India and Others, (1987) 4 SCC 431**, this Court while reinforcing the above principle held as under:

> "19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners."
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> (Emphasis Supplied)

6. Having gone through the decision (supra), this Court is of the view that the petitioner is entitled to similar benefits as allowed to others upon dismissal of the SLPs as he cannot be penalized for having not approached this Court earlier. Regard being had to the order as at Annexure-3 and decision of this Court in appeals vide Annexure-4 and ultimately upheld in SLPs disposed of by the Apex Court vide Annexure-9, this Court is inclined to hold that the petitioner cannot be deprived of the benefits notionally alleging him to be a fence-sitter. On a reading of the impugned order as at Annexure-10, it is made to understand that opposite party No.1 denied the benefits towards regularization of the services from the date of initial

appointment notionally as has been done in the case of **Niranajan Das** (supra) and it was primarily on the ground that he is a fence-sitter referring to a maxim "vigilantibus non dormientibus jura subveniunt". However, in view of the law laid down by the Apex Court in **Lt. Col. Suprita Chandel** (supra), it is no more res integra that even someone having not approached the Court cannot be differently treated but shall have to be extended the same benefits as allowed to others similarly situated. In view of the above, having recorded to the objection of Mr. Parhi, learned ASC for the State, this Court is of the considered view that the impugned order dated 28th August, 2026 at Annexure-10 cannot be sustained in law.

7. Accordingly, it is ordered

8. Consequently, the writ petition stands allowed. As a necessary corollary, the impugned order of rejection dated 28th August, 2026 as at Annexure-10 of opposite party No.1 is hereby set aside with a direction to immediately release service benefits in favour of the petitioner from the date of his appointment in terms of order in **Niranajan Das** (supra) and comply the same at the earliest preferably within a period of eight weeks from the date of receipt of a copy of this order.

9. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

Signature Not Verified
Digitally Signed
Signed by: ROJINA SAHOO
Designation: Sr. Stenographer
Reason: Authentication
Location: OHC, CTC
Date: 29-Oct-2026 15:50:44