IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.32849 of 2024
ODHC010920192024

Gagan Bihari Badajena .... ***Petitioner***
Mr. N. Rath, Adv.

-versus-

State of Odisha and Others .... ***Opposite Parties***
Mr. S. Das, ASC

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

Order No. **29.10.2026**

07. **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Pursuant to order dated 24.09.2026, learned counsel for the petitioner taking into account the stand in the affidavit so filed, contended that after his retirement from service on 30.06.2023, petitioner has been released with the amount towards GIS, Gratuity and unutilised leave salary but he has not been paid with other retiral benefits as due and admissible under OCS(Pension) Rules, 1992.

3. Heard learned counsel for the parties.

4. The present Writ Petition has been filed *inter alia* with the following prayer:-

> *"It is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to Admit the writ application, to issue rule Nisi calling upon the opposite parties to show cause as to why the prayers*

made hereunder be not allowed, Upon showing insufficient cause/ no cause make the said Rule absolute, Issue writ/ writs in the nature of

i. Mandamus quash the order under Annexure-10 and direct the Opp. Party No.1 to consider the case of the petitioner for grant of pension and other retirement dues as per the old OCS (Pension) Rules, 1992 by calculating the regular period and period of service rendered on DLR basis within a stipulated period of time and;

ii. And/or may pass such other writ/writs, order/orders, direction/directions as this Hon'ble Court may think fit and proper for the ends of justice. And for this act of kindness the petitioner as in duty bound shall ever pray."

5. It is contended that petitioner though continued as a DLR w.e.f. 01.12.1981, but he was never regularised in his service in terms of the Finance Department Resolution issued on 15.05.1997 under Annexure-1. However, while so continuing as a DLR w.e.f. 17.06.2008, petitioner was regularised as against the post of Jeep Driver where he joined on 17.06.2008 so available under Annexure-5.

5.1. It is further contended that while continuing as a regular employee w.e.f. 17.06.2008 under Annexure-5, petitioner retired from his services on attaining the age of superannuation on 30.06.2023, as per the order available under Annexure-6.

5.2. It is contended that since petitioner continued as a DLR w.e.f. 01.12.1981 and as a regular employee w.e.f. 17.06.2008 till he retired on attaining the age of superannuation on 30.06.2023, petitioner claiming the benefit of pension and other pensionary benefits under

OCS(Pension) Rules, 1992, approached this Court by filing W.P.(C) No.38990 of 2023. This Court vide order dated 18.12.2023 under Annexure-8, when directed Opp. Party No.1 to take a decision on the petitioner's claim taking into account the nature of order passed in the case of ***Sk. Abdul Motalib Vs. State of Odisha and Others*** (W.P.(C) No.3220 of 2022, so disposed of on 04.01.2023), such claim of the petitioner was rejected vide the impugned order dated 05.07.2024 under Annexure-10 of Opp. Party No.1.

5.3. It is contended that petitioner's claim was rejected only on the ground that since challenging the order passed in the case of ***Sk. Abdul Motalib***, SLP is pending before the Hon'ble Apex Court, petitioner's claim cannot be considered in the light of the decision in the case of ***Sk. Abdul Motalib***.

5.4. Learned counsel for the petitioner contended that in the meantime SLP so filed in the case of ***Sk. Abdul Motalib*** was dismissed vide order dated 16.03.2026 and Review filed against such order was also dismissed vide order dated 16.09.2026 after condoning the delay. It is contended that since order passed in the case of ***Sk. Abdul Motalib*** has been confirmed by the Apex Court with dismissal of the SLP and so also the Review Petition, in view of the nature of order passed in the case of ***Sk. Abdul Motalib***, petitioner is eligible and

entitled to get the benefit of pension and other pensionary benefits under OCS(Pension) Rules, 1992.

5.5. It is also contended that since petitioner continued as a DLR w.e.f. 01.12.1981 and in the regular establishment w.e.f. 17.06.2008 till he attained the age of superannuation on 30.06.2023, in view of the decision of this Court in the case of ***Md. Zamilur Rahaman and Others Vs. State of Odisha and Others*** (W.P.(C) No.37563 of 2025 so disposed of on 20.05.2026), petitioner is entitled to get the benefit of pension under OCS(Pension) Rules, 1992.

5.6. It is also contended that in the Tentative Gradation List of DLRs so published under Annexure-4, while name of the petitioner was at Sl. No.5 with his initial date of engagement as 01.12.1981, name of Md. Zamilur Rahaman was at Sl. No.41 with his date of engagement as 01.09.1983.

5.7. It is accordingly contended that taking into account the nature of order passed in the case of ***Sk. Abdul Motalib*** and ***Md. Zamilur Rahaman*** so cited (supra), the ground on which petitioner's claim has been rejected is no more sustainable in the eye of law and with quashing of the said order, Opp. Party No.1 be directed to extend the benefit of pension under OCS(Pension) Rules, 1992.

6. Even though vide order dated 27.01.2025, this Court directed learned State Counsel to obtain instruction and file an affidavit but no counter affidavit has been filed as yet.

7. Considering the submission of the learned counsel for the petitioner, this Court passed the following order on 07.09.2026 and further order on 24.09.2026:-

> *"1. This matter is taken up through hybrid mode.*
>
> *2. Heard learned counsel for the Parties.*
>
> *3. Mr. N. Rath, learned counsel appearing for the Petitioner contended that the ground on which Petitioner's claim to get the benefit of regularisation has been rejected vide the impugned order dated 05.07.2024 under Annexure-10 is no more sustainable as the order passed by this Court in the case of Sk. Abdul Motalib in the meantime has been upheld with dismissal of the SLP by the Hon'ble Apex Court on 16.03.2026.*
>
> *4. It is also contended that Petitioner's claim is covered by the order passed by this Court on 20.05.2026 in W.P.(C) No.37563 of 2025.*
>
> *5. Copies of the orders are provided to the learned Addl. Standing counsel in Court.*
>
> *6. On the request made by the learned Addl. Standing Counsel, list this matter on 24th September, 2026."*
>
> *xxxx xxxx xxxx xxxx*
>
> *"1. This matter is taken up through hybrid mode.*
>
> *2. Heard learned counsel appearing for the Parties.*
>
> *3. Learned counsel appearing for the Petitioner contended that in the meantime Review filed by the State against the order passed in the case of Sk. Abdul Motalib before the Apex Court has been*

rejected vide order dtd.16.09.2026. Copy of the order so produced in Court be kept in record.

4. It is accordingly contended that since Petitioner stands in a better footing than the issue decided in the case of Sk. Abdul Motalib, rejection of the Petitioner's claim is required to be interfered with by this Court.

5. However, considering the fact that Petitioner has already retired since 30.06.2023, learned counsel appearing for the Petitioner is directed to obtain instruction as to what benefit Petitioner has got in the meantime after his retirement under the New Pension Scheme.

6. As requested by the learned counsel appearing for the Petitioner, list this matter on 7th October, 2026."

8. Learned Addl. Standing Counsel on the other hand contended that since petitioner continued as a DLR w.e.f. 01.12.1981 and was regularised with his date of joining as 17.06.2008, petitioner is not eligible and entitled to be covered under OCS(Pension) Rules, 1992, the same having been amended w.e.f. 01.01.2005.

8.1. It is accordingly contended that since petitioner's date of regularisation is after 01.01.2005, petitioner is not eligible and entitled to be covered under the provisions of OCS(Pension) Rules, 1992. It is accordingly contended that petitioner's claim has been rightly rejected vide the impugned order dated 05.07.2026 under Annexure-10. It is further contended that petitioner has been released with the benefits as due and admissible to him after his retirement.

9. Having heard learned counsel for the parties and considering the submission made, it is found that

petitioner was engaged as a DLR in the establishment of Opp. Party No.6 w.e.f. 01.12.1981, so available under Annexure-4. It is found that while continuing as a DLR w.e.f. 01.12.1981, petitioner was regularised as against the post of Jeep Driver where he joined on 17.06.2008, so available in the Service Book enclosed as Annexure-5. Petitioner while so continuing as a regular employee w.e.f. 17.06.2008, he retired from his services on attaining the age of superannuation w.e.f. 30.06.2023, so available vide order dated 28.06.2023 under Annexure-6.

9.1. However, after his retirement, petitioner was released with the benefit of GIS, Gratuity and Unutilized leave salary as due and admissible. Petitioner however claiming the grant of pension under OCS(Pension) Rules, 1992, approached this Court in W.P.(C) No.38990 of 2023. This Court vide order dated 18.12.2023 under Annexure-8, while disposing the matter, directed Opp. Party No.1 to take a decision on the petitioner's claim taking into account the order passed in the case of ***Sk. Abdul Motalib***.

9.2. However, it is found that on the ground of pendency of the issue in the case of ***Sk. Abdul Motalib*** before the Apex Court, claim of the petitioner was rejected vide the impugned order dated 05.07.2024 under Annexure-10 of Opp. Party No.1.

9.3. It is found that order passed in the case of ***Sk. Abdul Motalib*** in the meantime has been upheld by the Apex Court with dismissal of the appeal vide order dated 16.03.2026 and Review filed by the State was also dismissed vide order dated 16.09.2026.

9.4. Since the issue in the case of ***Sk. Abdul Motalib*** has attained its finality with dismissal of the SLP and so also the Review, placing reliance on the decision in the case of ***Sk. Abdul Motalib*** and the decision in the case of ***Md. Zamilur Rahaman*** so cited (supra), this Court is of the view that petitioner is eligible and entitled to be covered under the provisions of OCS(Pension) Rules, 1992.

9.5. In view of the aforesaid analysis, this Court while quashing the impugned order dated 05.07.2024 under Annexure-10, direct Opp. Party No.2 to extend the benefit of pension as due and admissible in terms of the provisions contained under OCS(Pension) Rules, 1992 in favour of the petitioner. This Court directs Opp. Party No.1 to complete the entire exercise within a period of 3(three) months from the date of receipt of this order.

10. The Writ Petition stands disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Signature Not Verified
Digitally Signed
Signed by: BASUDEV SWAIN
Designation: SENIOR STENOGRAPHER
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 02-Nov-2026 10:26:37