

**(2024) 04 OHC CK 0302**

**Orissa High Court**

**Case No:** Writ Petition (C) No.9560 Of 2024

Sudarsan Patra

APPELLANT

Vs

State Of Odisha

RESPONDENT

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**Date of Decision:** April 30, 2024

**Hon'ble Judges:** A.K. Mohapatra, J

Bench: Single Bench

Advocate: Prafulla Kumar Mohapatra, D.Mohapatra, S.K.Patra

Final Decision: Disposed Of

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### **Judgement**

A.K. Mohapatra, J

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel appearing for the State-Opposite Parties and Mr. S.K. Patra, learned Standing Counsel appearing for the A.G. (A&E), Odisha. Perused the writ petition as well as documents annexed thereto.
3. The present writ petition has been filed by the Petitioner with the following prayers:-  
"It is therefore, humbly prayed that this Hon'ble Court may graciously be pleased to:-
  - i) Direct the Opp.Parties to regularize him in service for a day prior to his superannuation notionally and grant pension and pensionary benefits under the old rule as has been given to similarly situated employees in the light of the decision in the case of Narusu Pradhan in O.A.No.1189(C) of 2006, which has been confirmed in W.P.(C) No.5377 of 2010, vide order dated 19.12.2011 and SLP in Civil Appeal No.22498 of 2012 vide order dated 07.01.2013 and State of Odisha vrs. Sarbeswar Bhujabal W.P.(C) No.7680/2019 vide order dated 15.11.2019, which has been confirmed in SLP(C)

No.7541/2020 order dated 31.10.2022 and State of Odisha vrs. Pitambar Sahoo, W.P.(C) No.24041/2017 (decided on 20.12.2017), which has been affirmed in SLP(C) Diary No.30806/2018 and Chandra Nandi v. State of Odisha and others, W.P.(C) No.19550 of 2011 (decided on 03.02.2021), which has been affirmed by the Hon'ble Supreme Court vide order dated 06.05.2022 in SLP(C) No.21180/2021, state of Orissa and others vrs. Jyostna Rani Patnaik and others, W.P.(C) No.1534/2008 as has been given to similarly situated persons vide Annexure-6 and thereby quash the order dated 20.05.2022 vide Annexure-4 as it is illegal and not in consonance with the principles decided in the case of Narusu Pradhan and Sarbeswar Bhujabal;

ii) Pass such other order(s)/direction(s) as would be deem fit and proper in the bona fide interest of justice.”

4. Learned counsel for the Petitioner submitted that the present Petitioner was initially engaged as NMR on 01.07.1987. While working as such, the present Petitioner was brought over to the work charged establishment to the post of Khalasi vide Office Order No.4261 dated 31.12.2009 of the Executive Engineer, Minor Irrigation Division, Khordha). Thereafter, the Petitioner has retired from service w.e.f. 31.07.2019 on attaining the age of superannuation. Now he Petitioner has approached this Court challenging the order dated 20.05.2022 under Annexure-4 whereby his claim for grant of pension has been rejected by the Opposite Parties.

5. Learned counsel for the Petitioner further contended that earlier the Petitioner had approached this Court by filing W.P.(C) No.35346 of 2021. This Court disposed of the said writ petition vide order dated 16.11.2021 by directing the Opposite Parties to consider the case of the Petitioner in the light of the law laid down by the Odisha Administrative Tribunal in Sarbeswar Bhujabal vs. State of Odisha & Ors. (O.A. No.606 of 2015 decided on 05.07.2018). He further contended that in the case of Sarbeswar Bhujabal, who stands in a similar footing with the Petitioner, after passing of the order by the Tribunal, he has been extended the pensionary benefits under Annexure-6 series of the writ petition. So far the present Petitioner is concerned, his representation was considered pursuant to the order dated 16.11.2021 passed by this Court in W.P.(C) No.35346 of 2021, however the same has been rejected vide order dated 20.05.2022 under Annexure-4 to the writ petition by the Opposite Party No.1 holding that the Petitioner was not a regular employee. Therefore, he is not entitled to the pensionary benefits.

6. Learned Additional Standing Counsel, on the other hand, supported the impugned rejection order dated 20.05.2022 under Annexure-4 to the writ petition. He further contended that the authorities have not committed any illegality in rejecting the claim of the Petitioner. Further it was submitted that pursuant to the order dated 16.11.2021 in the earlier writ petition, the case of the Petitioner was considered by the Opposite

Parties and by a detailed and speaking order, the claim of the Petitioner has been rejected by the authorities by holding that the Petitioner is not entitled to get similar benefits as has been granted to Sarbeswar Bhujabal. The impugned rejection order further reveals that since the Petitioner was a Work Charged Khalasi, his service was governed under the Orissa Work Charged Employees (Appointment and Conditions of Service) Instruction, 1974. In such view of the matter, learned Additional Standing Counsel submitted that the Petitioner is covered by the aforesaid instruction of the year 1974. Therefore, his case cannot be considered under the OCS (Pension) Rules, 1992. Accordingly, it was prayed that the writ petition be dismissed as the same is devoid of merit.

7. Having heard the learned counsels appearing for the respective parties and on a careful examination of the background facts of the present case, as well as the materials on record, this Court observes that the only question that is required to be adjudicated in the present writ petition is with regard to entitlement of the Petitioner to get pensionary benefits after retirement from service. In the event this Court comes to a conclusion that the Petitioner is entitled to the pensionary benefit, the Petitioner will be eligible to get the pension. The aforesaid issue, as it appears, is no more *res integra*. The same has been adjudicated by this Court repeatedly on a number of occasions. Apart from the judgment in Sarbeswar Bhujabal's case (*supra*), similar issue was decided in *Khageswar Jena v. State of Odisha and Ors.* (W.P.(C) No.29993 of 2022 disposed of on 18.11.2022) and such order passed by this Court has already been confirmed by the Division Bench of this Court in writ appeal bearing W.A. No.301 of 2023 vide order dated 06.11.2023. Similar view has also been taken in many similar matters like in *Sri Narsingh Choudhury v. State of Odisha and others* (W.P.(C) No.31366 of 2023, in *Pradip Kumar Sahu v. State of Odisha and others* (W.P.(C) No.28909 of 2023). All the aforesaid employees belong to the very same department except Narsingh Choudhury.

8. In view of the aforesaid legal position, this Court has no hesitation in setting aside the impugned order vide No.12784 dated 20.05.2022 under Annexure-4 to the writ petition. Accordingly, the same is hereby set aside. Further the matter is remanded back to the Opposite Party No.1 to consider the case of regularisation of service of the Petitioner in regular establishment for grant of pensionary benefits by taking into consideration so much of the service period of the Petitioner so as to calculate the minimum qualifying service period for grant of pensionary benefits from NMR and work charged NMR period of the Petitioner. Accordingly, minimum pensionary benefits be calculated as is due and admissible to the present Petitioner on the basis of the last pay drawn by him. Further, it is directed that in the event similarly situated employees, one of whom being Sarbeswar Bhujabal has been given such pensionary benefits, then the case of the Petitioner also be considered and the Petitioner shall be paid the

minimum pension as is due and admissible to him within a period of two months from the date of communication of a certified copy of this order by the Petitioner.

9. With the aforesaid observation and direction, the writ petition is disposed of.

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

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