

**(1999) 03 OHC CK 0035**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 13370 of 1996**

Purna Chandra Nanda

APPELLANT

Vs

Grid Corporation of Orissa Ltd. and Others

RESPONDENT

**Date of Decision :** 26-03-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1999) 87 CLT 827

**Hon'ble Judges :** S. Chatterji, Acting C.J.; D.M. Patnaik, J

**Bench :** Division Bench

**Advocate :** B.B. Acharya, for the Appellant; B.K. Patnaik, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.M. Patnaik, J.—The Petitioner seeks a direction under Article 226 of the Constitution against the opposite party, the Grid Corporation of Orissa Ltd. to grant him pensionary benefit which has been denied to him on the ground that he retired from the service under the erstwhile Orissa State Electricity Board (for short, the O. S.E. B) on 30-6-1988 when there was no Regulation for extending such benefit. It is further claimed that his period of service under the ex-State of Bamara during its Durbar administration from 1-6-1947 to October, 1948 should have been counted towards the continuity of his service under the State Government.

2. Heard Mr. B.B. Acharya, learned Counsel for the Petitioner and Mr. B.K. Patnaik, learned Counsel for the Grid Company

3. There is no dispute with regard to the admitted position that the Petitioner was originally serving under the ex state of Bamara for a period of one year four months and thereafter he served under the State Government under Executive Engineer, G.E. D., Bolangir as a line Khalasi. It is also not disputed that he entered into the Board's service after the formation of the Board in 1961 and that he admittedly retired on 30-6-1988 while serving under the erstwhile O.S.

E.B.. These facts are admitted in the counter-affidavit.

The case of the Gridco is that once the Petitioner opted to serve under the Board and was permanently absorbed on his own. in the Board's service, his case is to be covered as per the Regulation of the Board relating to pensionary benefit. According to them, the O.S.E.B. introduced the Board's Employee's Pension Regulation, 1992 making provisions for pension to its employees with effect from 1-4-1990. Therefore, since the Petitioner retired on 30-6-1988 i. e. much before coming Into force of the above Regulation, he was not entitled to receive any pension".

Another ground is taken that the Petitioner was working as the Lineman "A" on the date of his retirement and this was a class-III. post under the Orissa State Electricity Board Employees Regulation, 1979. The age of retirement of class-III employees is 58 years and this has been so held in the case reported in A. 1. Rule 1997 S.C. 2397 All Orissa Electricity Union v. State of Orissa and Ors.

4. Having heard the learned Counsel for the parties and on going through the respective documents we are afraid that we cannot grant any relief to the Petitioner the reason being as follows:

So far as the service of the Petitioner during the Durbar administration is concerned, no doubt this Court in the case Sudhir Kumar Gupta v. State of Orissa reported in I.L. Rule 1972 Cuttack 373 held the period of service under the ex-State of Mayurbhanj should be counted towards the continuity of service under the State Government after merger. Same also was the view taken in the case of Padmalochan Das v. State of Orissa and Ors. reported in 44 (1977) C.L. T. 538.

The decision in the case of Padmalochan (supra) is based Oli the reasoning that the Mayurbhanj Service Regulation. 1939 constituted the law relating to conditions of service in the ex state and the age of retirement was 60 years. Therefore, had not the State of Mayurbhanj merged in the province of Orissa. Petitioner would have continued in service till he completed the age of 60 years.

5. In the present case, the Petitioner claims to have served under the ex-State of Bamara. No material has been placed before this Court to indicate that there was a law prevalent in the Bamara ex-State prescribing the age of retirement as 60 years as in the two above cases (supra) relating to the Regulations then prevalent in the ex-State of Mayurbhanj. It would not be appropriate to judge the. case of the Petitioner in the absence of any material in that regard.

The other reason for which we do not want to go into that matter is that in the mean, time as long as 27 years have elapsed between 1961 when the Petitioner entered the Board service and retired in the year 1988 and yet the Petitioner did not take any steps to get this deficiency removed.

6. In Annexure-3 a representation by the Petitioner addressed to the Chairman, O.S. E.B. he pleaded that his entire service from 1-6-1947 to 30-6-1988 should be treated as Government service and that he should be entitled to pension,

gratuity and other pensionary benefits admissible to other Government employees, though he retired from the O.S. E.B.. Such a stand is wholly untenable, because in the counter-affidavit the opposite parties have taken a positive stand that the Petitioner himself opted to be permanently absorbed as a Board's employee because of higher emoluments. This fact has not been challenged by the Petitioner by filing any rejoinder. He has not placed any material before this Court that during all these years he was serving under the Board as a deputationist from the Government. Therefore, he was a Board's employee and retired as such on 30-6-1988. The decision in the case of Prahallad Jena v. State of Orissa and another, (disposed of on 14-12-1983) squarely applies to the present case and supports the contention of the Grid Company

7. So far as the Board's Regulation for pensionary benefits are concerned the cut off date is found to be 1-4-1990 and, therefore, the Petitioner having retired prior to 1-4-1990, cannot claim the benefit and this proposition of law has been well settled by the Supreme Court in the cases of State of West Bengal v. Ratan Behari De) and Ors. 1993 Lab. I.C. 2199 and State of Rajasthan and Anr. v. Amrit Lal Gandhi and Ors. 1997 Lab. 1. C. 420.

8. In the result, the writ petition is dismissed but without cost. We however make it clear that this shall not deprive the Petitioner from getting any pensionary benefit extended by the Gridco to similarly situated employees either by way of relaxation of the existing Regulation or on coming into force of any fresh Regulation.

S. Chatterji, A.C.J.

9. I agree.

Writ petition dismissed.