

**(2024) 01 OHC CK 0025**

**In the Orissa High Court**

**Case No : Writ Appeal No. 601 Of 2023**

**State Of Odisha And Others Vs J. Rama Murty And Another ?**

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**Date of Decision : 04-01-2024**

**Acts Referred:**

**Citation : (2024) 01 OHC CK 0025**

**Hon'ble Judges : Dr. B.R. Sarangi, ACJ; M.S. Raman, J**

**Bench : Division Bench**

**Advocate : Biplab Mohanty, S. Roy**

**Final Decision : Dismissed**

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## **Judgement**

W.A. No.601 of 2023

1. Heard Mr. Biplab Mohanty, learned Additional Government Advocate for the Appellants and Mr. S. Roy, learned counsel appearing for the Respondent No.1.

2. The Appellants, being the State functionaries, has filed this writ appeal challenging the order dated 29th September, 2022 passed in W.P.(C) No.21450 of 2022, by which the learned Single Judge has directed the present Appellants to extend the similar benefit to the Respondent No.1, as has been done in the case of Narusu Pradhan v. State of Odisha (O.A. No.1189(C) of 2006 disposed of on 11th June, 2009) and also directed the Respondent No.1 to appear before the Appellants by producing the certified copy of the impugned order to proceed with his claim.

3. Mr. Biplab Mohanty, learned AGA has contended that the Respondent No.1 is not entitled to the benefit in terms of Narusu Pradhan (supra) and also contended that the learned Single Judge has committed an error by granting the claim of regularization and pensionary benefit of the Respondent No.1, who retired from the service under work charged establishment justifying the same in light of the order passed in Narusu Pradhan (supra), where the principle decided by the Tribunal has not only been confirmed by a Division Bench of this Court (in State of Odisha v. Narusu Pradhan (W.P.(C) No.5377 of 2010, dismissed on 19th December, 2011) but also the SLP, preferred by the State, has been dismissed

(vide order passed by the apex Court on 7th January, 2013 in Civil Appeal No.22498 of 2012). It has been contended that with the disposal of such writ petition by the learned Single Judge, direction was issued to consider the case of the Respondent No.1 in light of the principles decided in other case, whereas no discussion was made as to whether both the cases are factually similar or not in order to invoke the principles decided in other case. Therefore, the State has filed this writ appeal before this Court.

4. Mr. S. Roy, learned counsel appearing for the Respondent No.1 has vehemently contended that the Respondent No.1 stands on the similar footing with that of the Appellant in Narusu Pradhan (supra) and considering the factual background of the case of Narusu Pradhan (supra) and applying the same to the case of the Respondent No.1, the learned Single Judge directed to extend the benefit to the Respondent No.1, as has been done in Narusu Pradhan (supra). In view of such position, the learned Single Judge has not committed any error apparent on face of the record so as to cause any interference of this Court at this stage and, accordingly, the writ appeal filed by the State may be dismissed.

5. The Respondent No.1 has relied upon the judgment of this Court in case of Abhaya Charan Mohanty v. State of Odisha passed in WPC(OAC) No.3494 of 2013 disposed of on 14.07.2021 and has stated that in the said case, the Petitioner who was a work charged employee, had claimed the pensionary benefits after his retirement with retrospective effect. This Court, relying upon the order of the Hon'ble Supreme Court of India in Civil Appeal No.21498 of 2012, thereby dismissed the State Government's appeal and confirmed the order dated 19.12.2011 of this Court passed in W.P.(C) No.5377 of 2010 in the case of pensionary benefits as prayed for in that case. Further reliance has also been placed on the order of a Division Bench of this Court in Chandra Nandi v. State of Odisha and others; 2014(I) OLR 734, where this Court had given a direction to notionally regularize the service of the Petitioner prior to his superannuation from the service and, accordingly, calculated the Petitioner's entitlement including the pensionary benefits.

6. On the basis of the factual matrix available on record, it appears that the Respondent No.1 had initially joined as NMR, subsequently, was brought over to work charged establishment. Thereafter, he retired from service. The continuance of the Respondent No.1 in work charged establishment was considered for all purposes including the gratuity. The Tribunal, vide order dated 03.05.1999 passed in O.A. No.70(B) of 1997, analyzing various points of law, directed the State Government to regularize in an establishment post from the time he completed five years of continuous service in work charged establishment and the period from that time till the date of retirement be counted towards the pension and direction was issued to grant pensionary benefit to the employees. Challenging the order of the Tribunal, the State filed the writ application being O.J.C. No.13552 of 1999 and this Court, vide order dated 01.05.2001, referring to the judgments rendered in O.J.C. No.1162 of 1999 (State of Orissa v. Jhuma

Parida and others) and O.J.C. No.11028 of 1999 (State of Orissa v. Sudarsan Sahoo and others), confirmed the order passed by the Tribunal and dismissed the writ application. After dismissal of such writ application, the Government brought the employee into regular establishment for the purpose of granting pensionary benefit. But the Government has not extended the benefits as has been extended to the similarly situated persons. Hence, relying upon the judgment of this Court in Narusu Pradhan (supra), which had been confirmed by the apex Court, the benefit should be extended to the Respondent No.1.

7. In view of such position, if the similarly situated persons have already received the benefits, then the present Respondent No.1 cannot be deprived of the same, more particularly, when the decision in Narusu Pradhan (supra) has been confirmed by the apex Court.

8. Consequentially, the learned Single Judge has not committed any error apparent on the face of record, so as to interfere with the same and deny the benefits to the Respondent No.1.

9. Accordingly, the writ appeal filed by the State merits no consideration and the same is hereby dismissed.

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