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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SUDHANSHU DHULIA; J., AHSANUDDIN AMANULLAH; J.

FEBRUARY 21, 2025

SPECIAL LEAVE PETITION (CIVIL) NO.2146 OF 2024 AND CONNECTED MATTERS

STATE OF ODISHA & ORS. *versus* SUDHANSU SEKHAR JENA

Pensions – Odisha Pension Rules, 1992 – Rule 18(3), (6) – Distinction between work-charged employees and job contract employees – Entitlement to pension for pre-regularisation service – Job contract employees not entitled to count entire pre-regularisation service towards pension; only qualifying period to make eligible for pensionary benefits – Unlike work-charged employees, whose full service of 5 years or more counts if uninterrupted and followed by regular appointment – 2001 amendment to Rule 18(6) limits job contract service to minimum qualifying period post-regularisation – State’s delay in appeals condoned due to fiscal implications on exchequer and large number of affected employees, but costs of ₹1.5 lakhs per employee imposed on State for lethargic litigation approach – Orissa Administrative Tribunal and Orissa High Court orders set aside insofar as they allowed full pre-regularisation service for job contract employees. (Para 3. 15, 20)

Pensions – Odisha Pension Rules, 1992 – A batch of job contract employees in Odisha, initially engaged under job contract establishments and later regularised in pensionable posts, claimed pensionary benefits counting their entire pre-regularisation service. The Orissa Administrative Tribunal and Single Judge of the Orissa High Court upheld the claim, treating job contract service akin to work-charged service. The State’s writ appeals before the Division Bench were dismissed as time-barred due to inordinate delay. The State approached the Supreme Court via special leave petitions, many filed belatedly. Appeals allowed; costs imposed. (Para 3. 15, 20)

Pensions – Odisha Pension Rules, 1992 – Rule 18(3), (6) – Whether job contract employees, upon regularisation, are entitled under the Odisha Pension Rules, 1992, to pension benefits counting their full pre-regularisation service period, or only a limited qualifying portion thereof, as distinct from work-charged employees. Held: The Supreme Court, departing from the norm against condoning excessive delays, examined the merits given the matter’s impact on numerous employees and the State exchequer. It clarified the statutory distinction under Rule 18: sub-Rule (3) qualifies the full uninterrupted service of work-charged employees (5+ years) for pension upon regularisation, whereas sub-Rule (6) limits job contract employees to only that service portion necessary to achieve pension eligibility post-regularisation. The 2001 amendment reinforced this intent to curb undue fiscal burden. The Tribunal and High Court misinterpreted the rules by equating the two categories. Full pre-regularisation service for job contractors impermissibly expands eligibility beyond legislative scheme. Directions issued for State to deposit ₹1.5 lakhs per affected employee within 4 weeks, non-effective until compliance; dismissed delay-based petitions revived per merits. [Relied on: *Prem Singh v. State of U.P.*, (2019) 10 SCC 516; (Para 3. 15, 20)]

[Arising out of impugned final judgment and order dated 20-11-2023 in WA No. 1134/2023 passed by the High Court of Orissa at Cuttack]

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J U D G M E N T

SUDHANSHU DHULIA, J.

1. Delay condoned. Leave granted.
2. In all these appeals which are before this Court, the State of Odisha has challenged the order of the Division Bench of the Orissa High Court by which their Writ Appeals were dismissed due to inordinate delay in filing of Writ Appeals. Even this Court had earlier dismissed a few Special Leave Petitions on the same dispute, which were belatedly filed even before this Court. All the same, we are now examining the cases on its merits considering the importance of the matter(s). Nevertheless, the casual manner in which the State authorities, particularly the concerned department of the State and the Land Records office, Surveys Office have handled the matters is a matter of concern.
3. It is not a case concerning a few employees, rather it affects a large number, and in turn, the State Exchequer. It is for this reason that we were persuaded to look into these matter(s), although initially, we were not inclined to interfere, considering the lethargic approach of the State in pursuing these matters, and the inordinate delay caused, which was never explained in any satisfactory manner. The State though kept filing one Special Leave Petition after another before this Court, not in one go but one after another, most of them belatedly, to complete a mere formality. For this reason, many of these petitions have been dismissed on the ground of delay itself as stated earlier, as Courts do not come to rescue those who sleep over their rights. Be it the State. The liability of the State on this issue will be addressed towards the end. Now, since we are taking up these matters, what will be the fate of the already dismissed petitions after our determination, we will address at the end.
4. In the State of Odisha, apart from regular employees who are working on sanctioned posts in various departments of the State, there are also a large number of employees, who were working as 'Job Contractors', who are mainly engaged for purposes of survey and preparation of maps and for the purposes of consolidation of land holdings etc. Their

services were not pensionary services and thus even when they had put in long years of service as Job Contractors their services were not counted for pensionary benefits, and they were not given any pension post their retirement. The Rules which were applicable in the State of Odisha at the relevant point of time with which we are concerned are known as Odisha Civil Services (Pension) Rules, 1992 (hereinafter referred to as “Odisha Pension Rules, 1992”).

5. Then a case came up before the Division Bench of the Orissa High Court, i.e. **Settlement Class-IV Job Contract Employees Union, Balasore v. State of Orissa & Ors. (O.J.C No.2147/1991)** (hereinafter “**Job Contract Employees Union**”), which was decided on 24.03.1992. The High Court considered the non-payment of pension to Job Contractors as an unfair practice and even violative of Article 14 of the Constitution of India. Many of the Job Contractors were subsequently regularised in service but in most cases, this happened towards the end of their service where these employees had not completed the mandatory period of pensionable service which was 10 years. Hence, the Job Contractors though regularised in service before their retirement, were still not entitled for pension. The High Court in the said judgment said as under:

“13. ... This apart, for the purpose of calculating the pensionary benefit, so much of their earlier service period shall be reckoned, even if there had been breaks in their employment, so as to make them eligible for pension. The necessity of giving this direction has been felt because, if service rendered after regularisation alone shall be counted for pensionary benefit, most of the present incumbents would be denied the same, because to earn pension, ten years minimum service is necessary, which most of the incumbents at hand would not put in after regularisation as they would retire before completing this period having been appointed two decades back.”

The State of Odisha subsequently published an Office Memorandum dated 12th December, 1997 where it repeated what has been said by the High Court in its Division Bench Judgment, while counting a part of the service of Job Contractors for grant of pension:

“2. According to Finance Department Resolution No. 22764-F, dated the 15th May 1997, the job contract employees appointed prior to the 12th April 1993 (after which there is a ban for engagement of such employees) under the administrative control of different Departments can be brought over to the posts created under regular/pension establishment after completion of 10 years, service as job-contract employees subject to fulfilment of certain conditions and stipulations outlined therein. According to the provisions contained in the said Office Memorandum, the date of regularisation shall be reckoned as the first appointment to the service for pension and other benefits. It has come to the notice of the Government that some of the job-contract employees are absorbed under the regular establishment almost towards the end of their service and become ineligible to get the pensionary benefits due to length of regular Government service in pensionable establishment. This has caused hardship to such type of employees.

3. The Hon’ble High Court of Orissa in their judgment dated the 24th January, 1992 in O.J.C. No. 2147/91 directed that ‘for the purpose of calculating the pensionary benefit, so much of their service period shall be reckoned, even if there had been breaks in their employment, so as to make them eligible for pension’. The Hon’ble Orissa Administrative Tribunal have also in their judgment in O.A. No. 1545 (C)/96 have categorically directed to count that much period of job-contract service of the employees which will make them eligible for pensionary benefits.

4. After careful consideration of the matter, State Government have been pleased to decide that for the purpose of pensionary benefits only, so much of their job-contract service period shall be added to the period of qualifying service in regular establishment as would render them eligible

for pension. Addition of that portion of job-contract service shall not be counted for calculation of gratuity.”

Thereafter, in the year 2001, an amendment was finally brought in the Odisha Pension Rules, 1992 wherein sub-Rule 6 was added to Rule 18 of the said Rules, which reads as under:

“(6) Notwithstanding anything contained in clause (i) & (iii) of sub-rule (2), a person who is initially appointed in a job contract establishment, and is subsequently brought over to the post created under regular/pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular establishment and would render him eligible for pensionary benefits.”¹

The judgment of Orissa High Court, the subsequent Circular of the Government and then the amended Rules, all three gave pensionary benefit to employees who were Job Contractors earlier, but provided that only such period of their service as ‘Job Contractors’ will be counted for pensionary benefits as was sufficient to entitle them for pension. The claim of Job Contractors for considering the entire period of their service for calculation of their pension was negated and only limited years of service was to be counted in terms of the above, which would suffice for their entitlement for pension. These provisions were never challenged before any court.

6. All the same, on 21.10.1994, the Orissa Administrative Tribunal in ***Bhagaban Pattnaik v. State of Orissa (T.A No.11/1993)***, on a total misinterpretation and reading of ***Job Contract Employees Union*** (Supra) case, held that the entire period of Job Contract Employment should be considered for calculation of pension. This ruling was followed by the Tribunal when it ordered inclusion of entire period of Job Contract Employment in calculation of pension in ***Nityanand Biswal v. State of Orissa & Ors. [O.A No.3020(C)/2003]***. The State of Odisha unsuccessfully tried to challenge these decisions of the Tribunal before the High Court and this Court. Clearly, the Tribunal had misinterpreted the ratio of ***Job Contract Employees Union*** case. We will deal this aspect later.

7. All the same, the same Tribunal in its later decisions such as in ***All Orissa Settlement and Land Consolidation NonGazetted Technical Officers Association v. State of Orissa & Ors. [O.A No.3665(C) of 2001]*** and connected cases on 25.03.2011, considered the amended Sub-Rule 6 of Rule 18 of Odisha Pension Rules, 1992 along with the judgment of the Orissa High Court in ***Job Contract Employees Union*** (Supra) and dismissed the claim of the Association for inclusion of the entire Job Contract employment period while calculating pension.

8. Following the principle laid down in ***Job Contract Employees Union*** (Supra), another Division Bench of the Orissa High Court in ***State of Orissa v. Nityanand Das & Ors. [W.P(C) No.11503/2008]*** upheld the view of the State and dismissed other such similar claims. Thereafter, learned Single Judge of Orissa High Court in ***Judhistir Padhy v. State of Odisha & Ors. [WPC (OAC) No. 2276/2012]*** again dismissed the claim of similarly situated persons, although the State Government was directed to consider if any further concession can be made to the employees. In compliance with the said direction, the State Government once again considered the question whether the entire service can be counted towards calculation of pensionary benefit and it was again turned down by a speaking order, dated 02.07.2022. This order has never been challenged by any

¹ Vide Finance Department Notification No.45856/F., dt.01.09.2001.

employee before any Court. Thereafter, in **Chintamani Panda v. State of Odisha & Ors. [W.P.C (OAC) No.3741/2015]** and **Pitambar Hota v. State of Odisha [W.P.C (OAC) No.2622/2015]**, the Orissa High Court again rejected a similar claim of the employees relying on **Judhistir Padhy** (Supra).

9. In the present batch of cases, the learned Single Judge of the High Court relied upon the judgment of the Tribunal in **Nityanand Biswal** (Supra) and ordered that the entire service period be counted for calculation of pension of Job Contract employees. The writ appeals were filed belatedly by the State and were dismissed on the grounds of laches.

10. We are totally in agreement with the submissions made by learned Senior Advocate, Shri P.S. Patwalia, that the order of the learned Single Judge cannot be sustained. Moreover, as stated at the outset, the Division Bench Judgment dismissed the Writ Appeals of the State on the first day itself, undoubtedly on the grounds of delay. Had the Division Bench given them an opportunity, the State would have explained the entire legal position and the *ex-facie* anomaly in the order of the Single Judge.

11. At this stage, we must put on record the distinction between work-charged employees and job contractors. Although, this point was never argued before this Court by any of the two parties, we must nevertheless in all fairness state the law as it stands today for work-charged employees, as distinct from job contractors.

12. There are judgments of this Court which have directed that the entire service of a work-charged employee has to be counted for pensionary benefits, once such an employee is regularised in service. The reference here would primarily be to a three Judge Bench decision of this Court in **Prem Singh vs. State of Uttar Pradesh and Others (2019) 10 SCC 516** which has relied on two earlier decisions of this Court and has held that once workcharged employees are regularised in service, their entire period of service in a work-charged establishment has to be counted for pensionary benefits. But then, that was said by this Court in context of service rules and regulations relating to Punjab, Uttarakhand and finally, Uttar Pradesh [in **Prem Singh** (Supra)]. The Rules though did not provide for pensions to such employees. Although, in a recent two Judge Bench decision, this Court in **Uday Pratap Thakur and Another vs. The State of Bihar and Others (2023) SCC OnLine SC 527**, while denying the benefit of entire period of service (as workcharged employees) to these employees for calculation of pension, this Court had held that the ruling of the three Judge Bench is in an entirely different context and stated as under:

“22. Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension/quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension/quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

23. Now, insofar as the reliance placed upon the decision of this Court in the case of *Prem Singh* (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment/department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered/counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered/counted for the quantum of pension/pension. The decision of this Court in the case of *Prem Singh* (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension.”

13. In our respectful opinion, the above interpretation by the two Judge Bench of this Court regarding the three Judge Bench decision in ***Prem Singh*** (supra) does not appear to be correct as the three Judge Bench has been quite unambiguous in asserting that the entire period of service of the work-charged employees has to be counted for pension.

14. Be that as it may, we are still unable to grant the same relief to the respondent(s) as has been given to the work-charged employees by this court and as indeed was their prayer before the High Court and also before this Court. The reason being that in the Odisha Pension Rules 1992, a clear distinction has been made between the work-charged establishment and job contract establishment. In order to keep a proper perspective, we need to refer to Rule 18 of the above rules which is as follows:

“18. Conditions subject to which service qualifies-

(1) Service does not qualify for pension unless it is rendered in a pensionable establishment /post.

(2) The entire continuous temporary or officiating service under Government without interruption in the same post or any other post, shall count for the purpose of pension in respect of all categories of Government servants except in the following cases, namely:-

(i) Period of service in a non-pensionable establishment;

(ii) Period of service in the work-charged establishment;

(iii) Period of service paid from contingencies;

(iv) Where the employee concerned resigns and is not again appointed to service under Government or is removed/dismissed from public service;

(v) A probationer who is discharged from service for failure to pass the prescribed test or examination;

(vi) Re-employed pensioner, Government servants engaged on contract and Government servants not in whole time employment of Government;

(vii) Service paid from Local Fund or Trust Fund;

(viii) Service in an office paid by fees whether levied by law or under authority of the Government or by Commission; and

(ix) Service paid out of the grant in accordance with Law or Custom.

(3) Notwithstanding anything contained in clauses (i) and (ii) of sub-rule (2) a person who is initially appointed by the Government in a work-charged establishment for a period

of five years or more and is subsequently appointed to the same or another post in a temporary or substantive capacity in a pensionable establishment without interruption of duty, the period of service so rendered in work-charged establishment shall qualify for pension under this rule.

(4) Notwithstanding anything contained in sub-rule (1) Government, may, by general or special order, prescribe any class of service or post which were previously born under work-charged establishment or paid from contingencies to be pensionable.

(5) Notwithstanding anything contained in sub-rules (1) and (2) in case of a Government servant belonging to Government of India or other State Government on his permanent transfer to the State Government the continuous service rendered by him under pensionable establishment of Government of India or any other State Government, as the case may be, shall count as qualifying service for pension.

(6) Notwithstanding anything contained inclause (i) & (iii) of sub-rule (2), a person who is initially appointed in a job contract establishment and is subsequently brought over to the post created under regular/ pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular establishment and would render him eligible for pensionary benefits. (Vide Finance Department Notification No.45865/F., dt.01.09.2001)”

(Emphasis provided)

15. As stated earlier, there is a clear distinction between the employees who are in work-charged establishment vis-à-vis those who are in job contract establishment. The distinction becomes obvious from a bare perusal of sub-Rules 3 and 6 of Rule 18 of the Odisha Pension Rules, 1992 where it is given that work-charged employees who have worked in the establishment for a period of five years or more without interruption and are subsequently appointed to the same or another post in temporary or substantive capacity in a pensionable establishment, the period of service rendered by him/her in a work-charged establishment shall qualify for pension under the Odisha Pension Rules, 1992². Compare this with the provision relating to job contract establishment³ for whom it has been specifically stated that in case of a job contract employee, after he/she is brought in pensionable establishment, only that much period as job contract service shall be added to regular service as would make him qualify or eligible for pensionary benefits.

16. Again, as we have already stated in the preceding paragraphs, these Odisha Pension Rules, 1992 or the distinction under the law have not been challenged before any Court. As we have already stated, this was also the point which was never even mentioned before this Court, leave aside any argument being made by any of the parties in this regard. We are, therefore, at a loss to examine as to whether the work the two are actually performing is similar or not? Therefore, we are not in a position to determine whether the classification itself between the workcharged establishment and job contract establishment is artificial or an unequal classification to make it violative of the Article 14 of the Constitution of India. Though, we may, however, mention at this stage that the work charged employees are governed by the Orissa Work Charged Employees (Appointment and Conditions of Service) Instructions, 1974 which are issued by the General Administration Department of the State Government which defines such work-charged establishment as follows:

² Sub-Rule (3) of Rule 18

³ Sub-Rule (6) of Rule 18

“2(1)(q) **“Work-charged establishment” means an establishment where the pay and allowances of the employees are charged to the item of work for which they are employed.”**

(Emphasis provided)

17. On the other hand, employees in the job contract establishment are associated with survey and settlement and map publication as well as consolidation operations in the State and their service conditions are governed by the Consolidation Manual issued under Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972.

18. As we have already stated above, we are not in a position to give a finding as to whether the distinction between the two is artificial, being only a difference of nomenclature, and also whether effectively, they both are performing regular work, for the reason that no arguments have been made by any side on this aspect. We, therefore, leave this aspect open.

19. Presently, in the cases before us, and for reasons which have already given above, considering the facts and circumstances of the case, these appeals are hereby allowed.

20. Having made the above determination, we also feel that it is our duty to bring on record the extreme carelessness and lethargic manner in which the State has been pursuing these cases, both in the High Court and before this Court. The delay caused by them is inexcusable. Nevertheless, we have heard these matters for reasons we have already stated in the preceding paragraphs in the earlier part of this judgment. All such cases, which were belatedly filed, both before the High Court in Appeal and then before this Court as Special Leave Petitions, are hereby set apart from the rest, only for the purpose of payment of costs. Consequently, in all such cases the State shall pay an amount of Rupees One Lakh Fifty Thousand, to the employee concerned. This amount shall be deposited in the account of the employees, or as the case might be, within a period of four weeks from today. This order shall not be made effective till the above amount is deposited in the account of each of such employees.

21. Due to the delay in filing of Special Leave Petitions some petitions were dismissed earlier as we have stated in the preceding paragraphs. Now, in terms of our order here, the State may file its review, within four weeks from today.

22. Interim orders, if any, stand vacated.

23. All pending application(s), if any, is/are disposed of.

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