

[O. H. C.-97-A]

SAROJ KANTA SAMAL, A.G.A

In the High Court of Orissa

M/s. Siba Prasad Samal

ORDER SHEET

-tudu Prophan

BLAPL/W. P. (VA) No. 1238/2023

of 20

23

(R-1)

STATE OF ODISHA

f. ORS. Petitioner

Versus

SUBHALAXMI PATRO

f. JNR. Opposite-Party

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
			<p>PRESENTED ON 01/06/2023 Register and Put up for Orders</p> <p>jm Registrar (Judicial)</p> <p>For SR</p> <p>nm 5.6.23 SR 49/6/2023 RAJENDRA PRASAD SAMAL ASST. REGISTRAR</p>



FC107742

SCANNED



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1238 of 2023

State of Odisha and others *Appellants*

Mr. M.K. Khuntia, Additional Government Advocate

-versus-

Subhalaxmi Patro and another *Respondents*

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

ORDER

05.10.2024

Order No.

I.A. No.3233 of 2023

01. This matter is taken up through Hybrid mode.
2. For the reasons stated in this application, filing of certified copy of the impugned order is dispensed with for the present. The application is accordingly disposed of.

I.A. No.3234 of 2023

3. Issue notice to respondent No.1 on the question of limitation by Registered/Speed Post with A.D., making it returnable within four weeks, requisites for which shall be filed within a week.
4. List this matter on 25.11.2024.


(Chakradhari Sharan Singh)
Chief Justice


(Savitri Ratho)
Judge



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1238 of 2023

State of Odisha and others

....

Appellants

Mr. K.C. Kar, Government Advocate

-versus-

Subhalaxmi Patro and another

....

Respondents

Mr. Siba Prasad Swain, Advocate for Respondent No.1

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MISS JUSTICE SAVITRI RATHO

Order No.

ORDER

25.11.2024

02.

I.A. No.3234 of 2023

This matter is taken up through Hybrid mode.

2. Mr. Siba Prasad Swain, learned counsel submits that he has instruction to appear on behalf of respondent No.1 and he shall file his Vakalatnama in the Registry in course of the day.

3. List this matter on 02.12.2024.

4. Objection, if any, shall be filed in the meanwhile after serving a copy of the same on learned State counsel.


(Chakradhari Sharan Singh)
Chief Justice


(Savitri Ratho)
Judge

S. Behera/A Nanda



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1238 of 2023

State of Odisha and others *Appellants*

Mr. Bimbisar Dash, Addl. Government Advocate

-versus-

Subhalaxmi Patro and another *Respondents*

Mr. S.P. Swain, Advocate (R/1)

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MISS JUSTICE SAVITRI RATHO

ORDER

02.12.2024

Order No.

03. This matter is taken up through Hybrid mode.

I.A. No.3234 of 2023

2. Mr. S.P. Swain, learned counsel appearing on behalf of respondent No.1 undertakes to file an objection to the application for condonation of delay in course of the day, after serving a copy of the said objection on Mr. Bimbisar Dash, learned Additional Government Advocate for the appellants.

3. List this matter on 10.12.2024. The objection shall be scanned and incorporated in the digital record forthwith.


(Chakradhari Sharan Singh)
Chief Justice


(Savitri Ratho)
Judge

IN THE HIGH COURT OF ORISSA

Case No. W/A-1238/2023

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
		<p>(i) D.A No-3233/2023 is at flag 'A' for despatching with filing of (c) copy. (online c-copy of order filed)</p> <p>(ii) D.A No-3234/2023 is at flag 'B' for condonation of delay.</p> <p style="text-align: right;">For order</p> <p style="text-align: right;">-Amguth WPC(Case)-1275/2013 (adsp. gen)</p> <p style="text-align: right;">Niranjan Meduli 27.8.24 D.B</p> <p style="text-align: right;">27/8 Order No-01</p> <p style="text-align: right;">Memo No- 20995, Dated:- 04/11/24. Notice of limitation matter came to R-1 by R-1 with AD fixing on 20.11.2024 for appearance & show cause.</p> <p style="text-align: right;">Memo 22.10.24</p> <p style="text-align: right;">Sd/- 27/8</p>

IN THE HIGH COURT OF ORISSA

Case No. INA-1238/2023

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
01	5.10.2024	<p><u>Order No - 01.</u></p> <p>(i) P.A No - 3234/2023 is at flag 'B' for further orders regarding confirmation of delay.</p> <p>(ii) Neither AD nor undelivered notice back from R-1 in this regard postal-tracking report showing "item delivered" is at flag 'C'.</p> <p>For orders</p> <p>Alongwith WPC (OAE)-1275/2015 (ad. sp. plan) Nirajm Module 21.11.24</p> <p>D.B</p> <p><u>44th to 23.11.24.</u></p>

IN THE HIGH COURT OF ORISSA

Case No. INA-1238/2023

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
02	25.11.2024	<p>M/s Siba Prasad Guain & his associates entered appearance for R-1.</p> <p>Certified Copy filed.</p> <p>Order NO-02.</p> <p>(i) I.A No-3234/2023 is at stay 'B' for further orders mag. Confirmation of delay.</p> <p>(ii) objection not yet filed.</p> <p>for orders</p> <p>Alongwith WPC (OAC) - 1275/2013 (adoption)</p> <p>Alibegon module</p> <p>29.11.24</p> <p>D.B</p> <p><u>Actn. to 2.12.2024,</u></p>

IN THE HIGH COURT OF ORISSA

Case No. WA-1238/2023

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
03	02.12.2024	<p><u>Order No. 03.</u></p> <p>(i) D.A NO-3234/2023 is at flag 'B' for further orders reg. condonation of delay.</p> <p>(ii) objection filed by the opposite party to the D.A NO-3234/2023 is at flag 'D'.</p> <p><u>for orders</u></p> <p>Alongwith WP(Cone)-1275/2013 (ad. by you) Narasim Meheri 9.12.24 D.B</p> <p><u>Adm to 10.12.24.</u></p> <p><u>Rediff</u> <u>9/12/24</u></p>



CNR
Filing No
Date and Time
Misc Case/IA
Petitioner Name
Petitioner Advocate Name
Respondents Name
Respondents Advocate
Amount
Police Station
FIR

ORISSA HIGH COURT
FILING ACKNOWLEDGEMENT SLIP

ODHC010430222023

WA/0001238/2023

01/06/2023-13:17:28

3233/2023,3234/2023,3235/2023

STATE OF ODISHA

SAROJ KANTA SAMAL,A.G.A

SUBHALAXMI PATRO



Thursday 01st of June 2023 02:47:30 PM

STAMP REPORT

CASE NO. W.A-1238/2023

LIMITATION

Date of Judgement Awards 22-9-2022
Date of Valid Presentation 01-6-2023
Total Period Occupied 252 days
Limitation 30 day
Certified Copy Period 30 day
Delay in filing 222 days

1. In time No Expired on
2. Period of delay 222 days. G.A. No - 3234/2023 filed for condonation of delay.
3. Court Fee Rs 12/- Paid.
4. Authentication fee due on the
(a) Copy of Trial Court Judgement
Rs..... Decree Rs..... X
(b) Appellate Court Judgement Rs.....
Decree Rs..... X
5. (a) Copy of Trial Court Judgement/Order online copy of Order dated 22-9-2022 vide Annexure 1
(b) Appellate Court/Revisional Order 22-9-2022 vide Annexure 1
Judgement X filed. G.A. No - 3233/2023
(c) Second Copy Petition filed filed for dispensing with
(d) Receipt showing copy on A.G. X the filing of a copy of
(e) Vakalatnama properly stamped, Order under Annexure 1
Executed and accepted yes
6. (a) Cause Title in order
(b) Provision of Law furnished
7. Code indicated ✓
8. Single Judge/Division Bench Case DB
9. Other Defects ✓

19/6/2023

STAMP REPORTER

RAJENDRA PRASAD JAIN
ASST. REGISTRAR

1. RFA/RSA/FAO/SAO/LPA/SPA/CRP/Review pet/O. Ref/EXFA/EXSA/SM/APP Tr. P(c) WP (c)/WA/SCLP/Co. Appl/Co. Pet/Co. Case/Co. App/Bkg. P/Mat. A/Mat Ref/RP (FAMCT) Test Case / Intest. Case/L.A. Ref/ RCFA/ L.A.A./RCSA/RE Rev/MAC/MAC APP/EL Pet/ ELAPP/Arb. P/Arb. A/Arb. A/Insurance Ref/Cont. Cas(c)/Coutd. App (c) / MFA(name of the Act)/MSA/SP. JC (name of the Act) Cri A/Cri. Rev/Ckl. M. C/ BLAPI/Cal. MAPPI/WP (crl) CUSREF STREV.

Case Type WA No 1238, 2023 Date of Regn. 23/05/23

2. If 'State' is Party, Name of the Deptt: (Pet/Res) [Put Mark]

H & FW
If Public Undertakings (Specify name): (Pet/Res) [Put Mark]

3. (a) Number of Category under which the matter falls:

3 1 0 7 9 9

If Others, Specify the subject _____

(b) Which is applicable? [Put Mark]

(Single Bench/Div. Bench/Three Judge Bench/Five Judge Bench)

4. Article of the Constitution/Act (Central/State) [Put Mark]

Article-4 of adeshcha High Court order 1948

5. Section/Sub-Section Involved _____

6. Rules Involved NA

7. Whether any other matter is pending in this Court on the same point of law :

If so, give the number of matter :

NA

8. Whether any other matter is pending against the impugned order/Judgement?

if so give the number of matter _____

9. Whether the matter is covered by any judgement of the Supreme Court this Court or any other High Court, If so give the details of the judgement

NA

10. Point of law involved in the matter Challenging the order order

Passed by the Single Bench

Date 23/05/23

Signature of the Advocate

High Court of Orissa

Acknowledgement



CNR : ODHC010430222023

Efiling No : AOD20220001886C202300384

Filing No. : WA/1238/2023

Date of Filing : 01-06-2023

Petitioner : STATE OF ODISHA

Time of Filing : 13:17:28

Petitioners : SAROJ KANTA SAMAL, A.G.A

Respondent : SUBHALAXMI

Advocate

PATRO

: 0.00

[Print](#)

IN THE HIGH COURT OF ORISSA: CUTTACK

Writ Appeal No. 1238 of 2023

(Arising out of WPC (OAC) No. 1275 of 2015
disposed of on 22.09.2022)

STATE OF ODISHA & OTHERS ... PETITIONERS

-VERSUS-

SUBHALAXMI PATRO ... OPP. PARTY

I N D E X

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Cuttack

Date: 22.05.2023

ADDL. GOVT. ADVOCATE

SAROJ KANTA SAMAL

EN NO - 0 - 696/1999

MOB - 9437286069

SYNOPSIS

That, Smt. Subhalaxmi Patra, the present respondent no.1, was appointed on contractual basis on consolidated monthly remuneration of fixed amount for a definite period vide order dated 27.10.2004 of the CDMO, Nabarangpur. The above said contractual appointment does not provide that the present respondent would be covered under the O.C.S (pension) Rules, 1992. She accepted the contract and furnished necessary undertaking with certain terms and conditions.

That the State Government took decision to appoint such contractual employees on regular basis. The date of regularization should be the First entry into a civil post. In view of the decision of the Government the present respondent no.1 was regularized in the service vide order dated 8.12.2006 of the C.D.M.O, Nabarangpur with effect from 05.12.2006. Further in pursuance to the interim order dated 24.01.2011 and interim order dated 10.03.2011 of the Hon'ble O.A.T, Bhubaneswar in OA No. 1668/2008 and OA No. 251/2011 32 numbers of MPHWF, including the present respondent no.1, were regularized with effect from 16.08.2005 vide order dated 27.08.2011 of the CDMO, Nabarangpur. The above modified date of regularization also falls after 01.01.2005, the date of

*SP-1
ACTA*

- B -

introduction of the new pension rules by way of amendment and accordingly the present respondent no.1 cannot be covered under the old pension rules as it was prior to amendment of pension rules with effect from 01.01.2005 by introduction of Rule-3(A) in O.C.S (pension) Rules , 1992.

That as present respondent no 1 entered into regular establishment after 01.01.2005, She would be covered under the Sub-Rule-4 to Rule-3 of the O.C.S (Pension) Rules, 1992. Sub-Rule-4(ii) of Rule-3 of the above said rules provide that " In addition to the above provision, each individual may also have a voluntary tier-II withdrawable account at his option. This option is provided as General Provident Fund will be withdrawn for employees recruited to the State Government services with effect from the 1st January 2005. Government will make no contribution into this account. In tier-II system the individual may subscribe 10 % of his salary and these assets would be managed through exactly the above procedure. However, the employees would be free to withdraw part or all of all of second tier of money at any time. This withdrawable account does not constitute pension investment and would attract no special tax treatment."

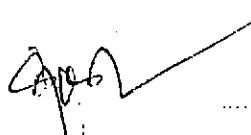
In view of the above said statutory mandate , the present respondent no.1 having been appointed to

- 2 -

regular establishment after 1st January 2005 would not be entitled to opening of General Provident Fund Account and even if the same has been opened that is to be withdrawn as per the above said provision of the Rules. In the present case as per the Sub-Rule-4(ii) of Rule-3 of the O.C.S (Pension) Rules, 1992 , the Accounts Officer of the Office of the Principal Accountant General vide letter dated 18.03.2015 (under annexure-11 to the writ petition) communicated to the Medical Officer , I/C , C.H.C Sanmosigam , Dist.- Nabarangapur , to cancel the GPF account numbers allotted to the employees working on contractual basis prior to 01.01.2005 and regularised after 01.01.2005. The above said communication is in compliance to a statutory provision i.e Sub-Rule-4(ii) of Rule-3 of the O.C.S (Pension) Rules, 1992 and accordingly there is no illegality in the above said communication.

Without considering the statutory provision of law the Hon'ble Single Judge disposed of the WPC (OAC) No.1275 of 2015 vide Order dated 22.09.2022 and the said order is under challenge in the present Writ Appeal.

Cuttack
Dtd: 22.05.2023


ADDL.GOV'T. ADVOCATE

LIST OF DATES AND EVENTS

27.10.2004- The Present Respondent was appointed as a Mulia purpose Health Worker (Female) on contractual basis by the C.D.M.O., Nabarangpug.

01.05.2005 - The New Pension Scheme was introduced.

18.12.2006 - The services of the present respondent was regularized and pursuant to direction of the Odisha Administrative Tribunal passed in OA No.251 of 2011, the order of regularization was modified and given effect from 16.08.2005.

04.03.2013 - The G.P.F. Account number was allotted to the present respondent.

18.03.2015- The Principal Accountant General communicated to medical officer, Sanmosigam, Dist:- Nabaranpur regarding cancellation of G.P.F. Account.

2015 - The present Respondent filed O.A No.1275 (c) of 2015 challenging the cancellation of G.P.F Account. The said Original Application was transferred to this Hon'ble Court after abolition of the Tribunal and re-numbered as W.P.(c) No.1275 of 2015.

22.09.2022 - The Hon'ble Single Judge disposed of the above said Writ Petition by quashing the Order

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sent*

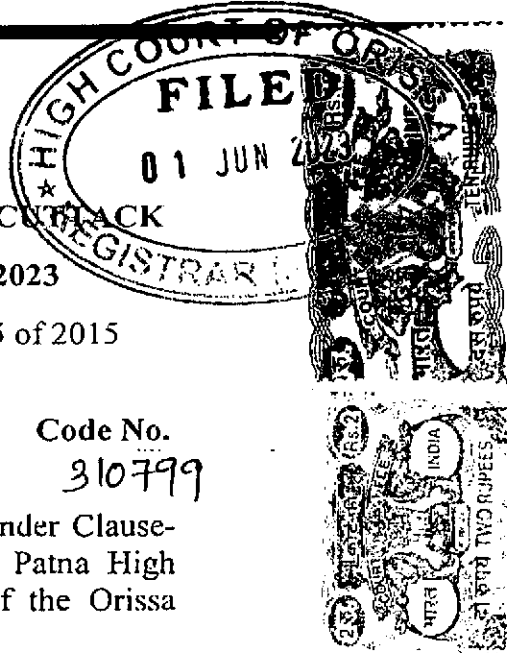
- E -

dtd.18.03.2015 and further directing to maintain the position of the Petitioner so far it relates to continuance in the G.P.F. Scheme from the date of his regularization.

2023 - The present Writ Appeal is filed challenging the order dated 22.09.2022 passed in WPC (OAC) No.1275 of 2015.

Cuttack

Dtd: ~~22~~ 05.2023  ADDL. GOVT. ADVOCATE



IN THE HIGH COURT OF ORISSA: CUTTACK

Writ Appeal No. 1238 of 2023

(Arising out of WPC (OAC) No. 1275 of 2015
disposed of on 22.09.2022)

Code No.

310799

In the matter of :

A memorandum of Appeal under Clause-10 of the Letters Patent of Patna High Court read with Article-4 of the Orissa High Court Order, 1948;

AND

In the matter of :

Presented on. 11/6/2023

SM
Registrar (Judicial)

An Intra-Court appeal challenging the order dated 22.09.2022 passed by the Hon'ble Single Judge of this Hon'ble Court in WPC (OAC) No. 1275 of 2015.

AND

In the matter of:

1. State of Odisha represented through its Commissioner -Cum- Secretary now present Principal Secretary to Government, Department of Health and family Welfare, Secretariat Building, At/PO: Bhubaneswar, Dist.: Khurda.
2. State of Odisha represented through its Principal Secretary to Government, Finance Department, At/PO: Bhubaneswar, Dist.: Khurda.
3. Director , Health and Family Welfare Department, Heads of Department Building, At/PO: Bhubaneswar, Dist.: Khurda.
4. Chief District Medical Officer (CDMO), Nabarangpur, At/PO/Dist.: Nabarangpur.

Kali Ram Das

SPD
RETA

5. Medical officer in charge CHC ,
Sanamosingam , Dist.- Nabarangpur.

... **Appellants**

(Opposite Parties no.s 1,2,3,4 & 6 in
writ Petition)

-Versus-

1. Subhalaxmi Patro , aged about 48 years ,
daughter of Harihar Patro, resident of At:
Sankhari Street , P.O/Dist.- Nabarangpur, at
present working as Health worker (F) in
kesharigada Sub-Centre under Sanamosingam
C.H.C in the district of Nabarangpur.

(Petitioner the in writ Petition)

2. Principal Accountant General (A&E),
Odisha , At/Po:- Bhubaneswar , Dist.- Khurda.

(O.P No.5 in the in writ Petition)

... **Respondents**

(The matter out of which this present
appeal arises before the Hon'ble Single
Judge in WPC (OAC) No. 1275 of 2015
disposed of on 22.09.2022)

To

The Hon'ble Chief Justice of Orissa
High Court and His Lordship's
companion Justices of the said Hon'ble
Court.

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Handwritten signature/initials

The humble Memorandum of appeal
on behalf of the Appellants named above;

MOST RESPECTFULLY SHEWETH:

1. That, the Appellants seek to challenge the order 22.09.2022 passed in WPC (OAC) No. 1275 of 2015 by Hon'ble Single judge of this Hon'ble High Court, where under the Hon'ble Single judge has passed the following order:-

"Learned counsel appearing for the petitioner on reiteration of the factual background indicated hereinabove giving reference to the documents appended here to further taking support of the judgment of the Tribunal in Original Application No.98 of 2015 disposed of on 19.5.2017 confirmed by this Court in the case of State of Odisha & Others Vs. Sanjulata Sethy & Others in disposal of W.P.(C).No.22057 of 2019 and further being affirmed by Hon'ble Apex Court, attempted to justify the claim involved herein. Learned counsel further also submitted that in another development involving a judgment in similar situation being carried up to Hon'ble Apex Court, the Hon'ble Apex Court in disposal of a batch of SLPs including Special Leave Petition (C).No.23578 of 2012 and dismissal of the State's plea vide batch of review cases

Kali Ram Dahi.

*PA
L.A.P.A*

including Review Petition (C) No. 2038 of 2013. Learned Counsel further taking support of this judgment also to the case at hand, claimed above judgment also taken care of in the disposal of Original Application No.98 of 2015.

Learned Standing Counsel appearing for the State taking this Court to the reason assigned in the counter affidavit in justification of the impugned order however did not dispute the position of law involving very same issue not only decided by the Tribunal in the above Original Application but also decided through the decision in Special Leave Petition (C).No.23578 of 2012 and Review Petition (C) No. 2038 of 2013.

Since the claim made here based on settled position of law, without entering into the factual aspect, this Court simply observes the Finance Department orders herein also impugned in the Original Application No.98 of 2015. The Tribunal after taking all the factual aspects involved herein and further taking into the developments through the above SLP(C) and the Review settling the position in disposal of Original Application No.98 of 2015, has come to hold the orders at Annexure-11 and 12 also being impugned herein were set aside. For there is no dispute with regard to the position of law

Learned Counsel, State

State

on this aspect and as has already been settled through the above judgment, this Court sets aside the orders at Annexure-11 and 12 respectively and allows the application directing to maintain the position of the petitioner so far it relates to continuance in the G.P.F. Scheme from the date of his regularization.

Copy of the order dated 22.09.2022 passed in WPC (OAC) No. 1275 of 2015 is annexed herewith as ANNEXURE-1.

2. That the appellants are the functionaries of the State of Odisha and the cause of action giving rise to this writ appeal lies within the territorial jurisdiction of this Hon'ble High Court.

3. That the present respondent as applicant had filed an Original Application before the Odisha Administrative Tribunal in O.A No. 1275(C) of 2015 challenging the letter no. 1798 dated 18.03.2015 and letter no. 103 dated 08.04.2015 under annexure-11 and 12 respectively being ultravires to the article 14 and 16 of the constitution of India and further seeking a declaration that the applicant deemed to be continued in old O.C.S (pension) Rule 1992 and entitled to all service benefits under the said Rules. The above said Original Application was transferred to this Hon'ble

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*70/11
A-11*

Court after abolition of the Tribunal and re-numbered as WPC (OAC) No. 1275 of 2015.

4. That it is humbly submitted that the case of the present respondent in essence as narrated in the writ petition is as follows:

4(a). That the applicant being a qualified and A.N.M. trained holder so also being a sponsoring candidate of the Director of Family Welfare, Orissa as per the Penal List maintained under the directorate was initially appointed as Multi Purpose Health Worker (Female) now known as Health Worker (Female) on contractual basis against a regular vacant post of the C.D.M.O., Nabarangpur vide Order no.4711 dated 27.10.2004. and accordingly posted at Sanomosingam, C.H.C. in the district of Nabarangpur.

4(b). That when the applicant was appointed as such in her respective post under the Sanomosingam C.H.C. under the administrative control of C.D.,M.O., Nabarangpur the Government circular vide Memo. No.9137 dated 15.04.2005 of the Respondent-1 regarding regularisation/ regular appointment of contractual H.W.(f) working under the KBK/Non-KBK district CDMOS and the letter no.9129 dated 11.08.2005 of the Respondent no.2 was remain in force. But the Respondent no.4 illegally appointed the applicant on contractual basis.

Kuldeep Kumar Barua

*20/11/15
L.A.E.A.*

4(c). That it is submitted here that in pursuance to the Annexure-2 and 3, the CDMOs of KBK and Non-KBK districts except the CDMO, Nabarangpur have implemented the policy decision of the Govt. by regularising / absorbing the contractual MPHWS (F)/HW (F) working under their control in the existing regular vacant post of HW (F) in which post they are continuing on contractual basis from the date of joining with the regular scale of pay of Rs.3200-4900/-. With other allowances sanction by the Government.

4(d). That it is pertinent to mention here that after too much persuasion lastly the Respondent no. 4 vide order no.4787 dated 08.12.2006 regularized the services of the applicant by appointing her as a HW (F) on regular basis in a phased manner in the scale of pay of Rs.3200-85-4900/- against the same post in which she is continuing on contractual basis prior the issuance of regularization order issued by the other KBK CDMOS. So the applicant filed O.A.No.251 of 2011 before the Odisha Administrative Tribunal, Bhubaneswar. As per the order of the Odisha Administrative Tribunal, Bhubaneswar dated 16.03.2011 again the service of the applicant was regularized with effect from 16.08.2005 vide order No.5959 dated 27.08.2011 of the C.D.M.O. Nabarangpur.

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Hd. Room Ddu.

Handwritten signature:
P. A. A.

4(c). That applicant joined much prior to 01.01.2005 on contractual basis against a regular vacant post being a trained and qualified candidate sponsored by the Director of Family Welfare, Odisha. So the Notification dated 17.09.2005 is not applicable in respect of the applicant.

4(f). That the applicant has been treated as differently because the amendment rule came into force with retrospective effect and the employees belonging to pensionable establishment under Old O.C.S.(Pension) Rules 1992 even though the applicant joined the post much prior the notification of amendment of O.C.S.(Pension) Rules.

4(g). That basing upon the amendment rules, the Finance Department by its office memorandum dated 13.07.2006 introduced a new restructured defined contribution pension scheme for the new entrants into Government Service with effect from 01.01.2005 in new pensionable establishment. According to the said scheme no deduction can be made by any of the new entrants to Government service towards G.P.F. Scheme.

4(h). That the action of the respondents is giving effect the notification at annexure-6 and the office memorandum vide Annexure-8 is quite illegal and

File Room Bhub.

*90d
A-1A*

contrary to law since such an amendment of Pension Rules 1992 having retrospective operation which has the effect of taking away a benefit already available the employees under the existing rules is arbitrary, discriminatory and violative the Article 14 and 16 of the constitution of India.

4(i). That the Government of Odisha in Labour and Employment Department as per letter dated 21.05.2010 with connivance of Finance Department decided in Odisha Employment Service officers directly recruited in O.C.S. Examination 2000 and joined after 01.01.2005 have been exempted from the preview of New Pension Scheme and these are allowed to cover under Old O.C.S.(Pension) Rules 1992.

4(j). That the Principal Account General allotted G.P.F.No. to the applicant bearing G.P.F.A/C No.PHO 36658 and deducted Monthly installment from the salary of the applicant which is clear from the annual statement issued by the Asst. Accounts Officer.

4(k). That the G.P.F. was deducted from the applicant's salary till end of the December 2014. It is surprising and shocking that the Respondent No-5 has issued a letter to the Medical Officer in Charge C.H.C. Sanamosigam vide Letter No.1798 dated 18.03.2015 regarding cancellation of G.P.F. Account Nos. Basing

Kali Ram Parhi

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A.P.A.*

upon that letter the M.O. in charge CHC, Sanamosigam, Nabarangpur has issued a Letter to the applicant bearing letter No.103 dated 08.04.2015 regarding cancellation the G.P.F. account number.

4(l). That it is humbly submitted that the cancellation of G.P.F. Account Number of the applicant under Annexure 11 and 12 is quite illegal and contrary to law and as such the same is liable to be quashed.

4 (m). That it is humbly submitted that the applicant was appointed as Multi Purpose Health Worker (F) on contractual basis against a regular vacant post prior to 01.01.2005 when the New Pension Rules come into force. So the service of the applicant covers under the Old O.C.S.(Pension) Rules 1992. Therefore the cancelation of the G.P.F. Account number under annexure 11 and 12 is quite illegal, arbitrary, and contrary to law as such the same is liable to be quashed.

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Copy of the writ petition bearing WPC (OAC) No. 1275 of 2015 is filed herewith and marked as Annexure-2.

5. That it is humbly submitted by the present appellants that Smt. Subhalaxmi Patra, the present respondent no.1, was appointed on contractual basis on

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consolidated monthly remuneration of fixed amount for a definite period vide order dated 27.10.2004 of the CDMO, Nabarangpur. The above said contractual appointment does not provide that the present respondent would be covered under the O.C.S (pension) Rules, 1992. She accepted the contract and furnished necessary undertaking with certain terms and conditions.

Copy of order dated 27.10.2004 of the CDMO, Nabarangpur is filed herewith and marked as Annexure-3.

6. That it is humbly submitted that the State Government as a model employer took decision to appoint such contractual employees on regular basis. The date of regularization should be the First entry into a civil post. In view of the decision of the Government the present respondent was regularized in the service vide order dated 8.12.2006 of the C.D.M.O, nabarangpur with effect from 05.12.2006.

Copy of order dated 08.12.2006 is filed herewith and marked as Annexure-4.

7. That it is respectfully submitted that while matter stood thus in pursuance to the interim order dated 24.01.2011 and interim order dated 10.03.2011 of the Hon'ble O.A.T, Bhubaneswar in OA No. 1668/2008 and OA No. 251/2011 32 numbers of MPHWF were

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regularized with effect from 16.08.2005 vide order dated 27.08.2011 of the CDMO, Nabarangapur. The above modified date of regularization also falls after 01.01.2005, the date of introduction of the new pension rules by way of amendment and accordingly the present respondent no.1 cannot be covered under the old pension rules as it was prior to amendment of pension rules with effect from 01.01.2005 by introduction of Rule-3(A) in O.C.S (pension) Rules, 1992.

Copy of order dated 27.08.2011 of CDMO, Nabarangpur is filed herewith and marked as Annexure-5.

8. That Prior to appointment of the petitioner(present respondent no.1) on regular basis in the year 2005, State Govt. took a policy decision to amend the OCS (Pension) Rules, 1992 and accordingly the O.C.S (pension) Rules, 1992 was amended by way of insertion of Rule-3(A) in the O.C.S (pension) Rules. The present respondent no.1 has not challenged the validity of amended provision of the O.C.S(pension) Rules, 1992 before the Hon'ble Court.

9. That it is respectfully submitted that the present respondent no.1 has relied upon the benefits extended to the work-charged employees. In response to same it is humbly submitted that the Work-charged employees

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are engaged in engineering establishments. They are governed under the Orissa Work Charged Employees (Appointment and Conditions of Service) Instructions, 1947 which deal with service conditions such as pay leave, retirement and disciplinary proceedings. Such employees get salaries as like as Government employees. Contractual engagement differs from a work- charged employees. Further , it is humbly submitted that by way of an amendment to newly introduced Rule-3(A) of the O.C.S (pension) Rules, 1992 vide notification dated 4.9.2015 ,it has been provided as follows:

“ Provided that above provisions shall not apply to the persons who are appointed under job-contract and work-charged establishment prior to 01.01.2005 and brought over to the regular establishment on or after 01.01.2005.”

It is humbly submitted that in view of above statutory amendment the job-contract and work-charged employees those have been regularized after 01.01.2005 will not be covered under the new pension scheme , rather they would be covered under the old pension rules , as it was prior to amendment.

10. That it is humbly submitted that Job-contract employees are engaged in Survey, Settlement & Map Publication and Consolidation Manual. Such employees are different from Contractual employees

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and benefits of coverage of the pre-amended pension rule has been given to them as per the provisions of the O.C.S (pension) Rules, 1992 .

11. That it is humbly submitted that in the case of Staff Nurses orders passed by the Learned Tribunal present a mismatch. In some cases the Learned Tribunal passed order to regularize the employee retrospectively where in other cases the claim is allowed in the ratio of Harbans Lal-vrs- State of Punjab case.

12. That it is humbly submitted that the exemplified case related to provisions of Punjab Civil Service Rules Vol-II where the employees was a work- charged employee. The direction of the court lays stress upon counting of work charged period with regular service. On the other hand the employees herein were engaged on contractual basis with fixed remuneration for a fixed period renewable from time to time as per the agreement.

13. Provisions of Punjab Civil Service Rules are not identical with those of OCS (Pension) Rules, 1992. Hence the ratio of judgment or the principle upon which the question before the Court of Law is decided seems to be inappropriate precedent having no binding effect.

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14. The employees to be covered under the NPS shall not be eligible to get the benefit of the GPF. Cases where the GPF account has been opened erroneously against the specific guidelines issued by the Finance department and definite principle of State Government the deposit has refunded with interest as per provisions of FD circular No. 12750/ F dtd. 25.02.2010.

15. That it is pertinent to mention here that the very self same issue regarding giving benefit to the Swechhasevi Sikshya Sahayak , those are initially appointed on contractual basis and subsequently regularised after 01.01.2005 was before the Division bench of Hon'ble High Court of Orissa in W.P.(C) Nos. 11156, 11157, 11158 and 11159 of 2013, wherein the Hon'ble High Court of Orissa confirming the judgment passed by the Hon'ble Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. Nos. 3351(c), 3348(c), 3347(c), and 3352(c) of 2012 held as follows:

“As discussed hereinabove paragraphs, Swechhasevi Sikshya Sahayak is engaged on contractual basis as per the scheme on certain terms and conditions annually. The engagement was only renewed after satisfactory completion of the period of engagement by the competent

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authority. They are being paid honorarium by the Zilla Parishad and they are not coming under any pay rules. Since their engagement was schematic and they were appointed as regular primary school teacher after 01.01.2005, rightly the Tribunal observed that they are not to be covered under Orissa Civil Service (Pension) Rules, 1992 and General Provident Fund (Orissa) Rules, 1938.

This court finds no error in the impugned order. Thus, we are not inclined to interfere with the same in exercise of the jurisdiction conferred under Article 227 of the Constitution of India."

In view of the above law laid down by the Hon'ble High Court of Orissa in self same issue the writ petitioner (present respondent no.1) is not entitled to get the benefit under the old pension rules as it was prior to amendment with effect from 01.01.2005 to the O.C.S (pension) rules, 1992.

16. The contractual employment is meant for definite period. Basing upon performance, efficiency and conduct of the engaged person the period can be renewed from time to time. In order to safeguard the person's service security and recognize his engagement state has formulated a set of rule in GA & PG Department Notification No. 32010/Gen dated 12.11.2013. As per Article 310(2) of the Indian

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Constitution State Government has power to create temporary posts with contractual engagement. Such engagement cannot be construed as continuous in State of Orissa-vrs-Chandra Sekhar Mishra (2002) 10 SCC 583 the Hon'ble Court observed that the Respondent was only a contractual employees, there could be no question of being granted the relief of being directed to be appointed as a regular employee.

6. That it is humbly submitted that the Hon'ble Single Judge disposed of the above said writ petition without proper appreciation of facts and laws involved in the case vide order dated 22.09.2022 with the following order:

"Learned counsel appearing for the petitioner on reiteration of the factual background indicated hereinabove giving reference to the documents appended here to further taking support of the judgment of the Tribunal in Original Application No.98 of 2015 disposed of on 19.5.2017 confirmed by this Court in the case of State of Odisha & Others Vs. Sanjulata Sethy & Others in disposal of W.P.(C).No.22057 of 2019 and further being affirmed by Hon'ble Apex Court, attempted to justify the claim involved herein. Learned counsel further also submitted that in another development involving a judgment in similar situation being carried up to Hon'ble

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Apex Court, the Hon'ble Apex Court in disposal of a batch of SLPs including Special Leave Petition (C).No.23578 of 2012 and dismissal of the State's plea vide batch of review cases including Review Petition (C) No. 2038 of 2013. Learned Counsel further taking support of this judgment also to the case at hand, claimed above judgment also taken care of in the disposal of Original Application No.98 of 2015.

Learned Standing Counsel appearing for the State taking this Court to the reason assigned in the counter affidavit in justification of the impugned order however did not dispute the position of law involving very same issue not only decided by the Tribunal in the above Original Application but also decided through the decision in Special Leave Petition (C).No.23578 of 2012 and Review Petition (C) No. 2038 of 2013.

Since the claim made here based on settled position of law, without entering into the factual aspect, this Court simply observes the Finance Department orders herein also impugned in the Original Application No.98 of 2015. The Tribunal after taking all the factual aspects involved herein and further taking into the developments through the above SLP(C) and the Review settling the position in disposal of

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Original Application No.98 of 2015, has come to hold the orders at Annexure-11 and 12 also being impugned herein were set aside. For there is no dispute with regard to the position of law on this aspect and as has already been settled through the above judgment, this Court sets aside the orders at Annexure-11 and 12 respectively and allows the application directing to maintain the position of the petitioner so far it relates to continuance in the G.P.F. Scheme from the date of his regularization.

Being aggrieved by the above said order dated 22.09.2022 passed in WPC (OAC) No. 1275 of 2015, the present appellants challenge the same on following amongst other

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A) For that, the impugned order is wrong, illegal, erroneous, arbitrary, contrary to law and as such the same is liable to be set aside.

B) For that the Hon'ble Single Judge has disposed of the writ petition without considering the grounds taken in the counter affidavit without giving any findings as regards the entitlement of the present respondent no.1

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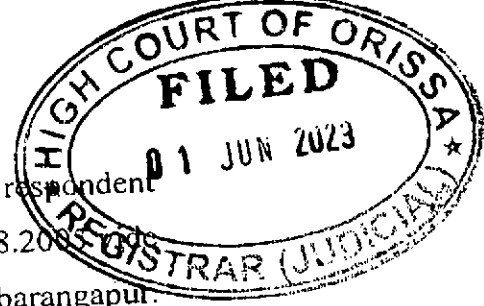
under the old pension rules , 1992 and without taking into consideration of the provisions of O.C.S (pension) Rules , 1992 as amended with effect from 01.01.2005 by way of introduction of Rule-3(A) to the O.C.S(pension) Rules , 1992.

C) For that it is humbly submitted that Smt. Subhalaxmi Patra, the present respondent no.1, was appointed on contractual basis on consolidated monthly remuneration of fixed amount for a definite period vide order dated 27.10.2004 of the CDMO, Nabarangpur. The above said contractual appointment does not provide that the present respondent would be covered under the O.C.S (pension) Rules , 1992 . She accepted the contract and furnished necessary undertaking with certain terms and conditions.

D) For that it is humbly submitted that the State Government took decision to appoint such contractual employees on regular basis. The date of regularization should be the First entry into a civil post. In view of the decision of the Government the present respondent no.1 was regularized in the service vide order dated 8.12.2006 of the C.D.M.O , Nabarangpur with effect from 05.12.2006. Further in pursuance to the interim order dated 24.01.2011 and interim order dated 10.03.2011 of the Hon'ble O.A.T , Bhubaneswar in OA No. 1668/2008 and OA No. 751/2011 32 numbers

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of MPHWF), including the present respondent no.1, were regularized with effect from 16.08.2005 by order dated 27.08.2011 of the CDMO, Nabarangapur.

The above modified date of regularization also falls after 01.01.2005, the date of introduction of the new pension rules by way of amendment and accordingly the present respondent no.1 cannot be covered under the old pension rules as it was prior to amendment of pension rules with effect from 01.01.2005 by introduction of Rule-3(A) in O.C.S (pension) Rules, 1992.

E) For that it is humbly submitted that rule-3 of the O.C.S (Pension) Rules, 1992 provides the applicability of the rules. The relevant contents of the rule for the purpose of present case are reproduced below for kind appreciation of this Hon'ble Court.

“ Rule-3.Application- (1) Save as otherwise provided in these rules, these rules shall apply to Government servants, appointed in posts and services in connection with the affairs of the State which are born on pensionable establishment, but shall not apply to –

- (a) Persons in casual and daily rated employment;
- (b) Persons paid from contingencies;

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(c) Persons entitled to the benefit of Contributory Provident fund;

(d) Members of all India services;

(e) Persons employed on contract except when the contract provides otherwise;

(f) Persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force."

The above said rules at Rule-3(1)(e) provides that the O.C.S Pension Rules, 1992 will not be applicable to contractual employees except when the contract provides otherwise. In view of the above, if the contractual appointment provides for that, then the contractual appointees would be covered under O.C.S (Pension) Rules, 1992, if the contractual appointment does not provide that, then they will not be covered under the O.C.S (Pension) Rules, 1992. Since the petitioner's order of contractual appointment does not provide that she will be covered under the O.C.S (Pension) Rules, 1992 accordingly the contractual period of the service of the petitioner was under a non-pensionable establishment.

F) For that it is humbly submitted that while the petitioner was continuing as a MPHW(F) on


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contractual basis then by way of an amendment Sub-Rule-4 to Rule-3 was introduced to O.C.S (Pension) Rules, 1992. Which provided that "Notwithstanding anything contained in these rules , all persons under the Government of Odisha with effect from the 1st day of January 2005 shall not be eligible for pension as defined under Sub-Rule(1) of Rule 3 of the said rules but shall be covered by the defined contribution Pension Scheme as specified below:"

G). For that it is humbly submitted that in view of the above said amendment to O.C.S (Pension) Rules, 1992 any person appointed under the Government after 01.01.2005 will not be eligible for pension as defined under Sub-Rule (1) of Rule 3, but will be eligible for defined Contribution Pension in the manner defined in Sub-Rules-(4) (i),(ii) and (iii) of the O.C.S (Pension) Rules, 1992. It is apposite to mention here that the contractual period of service of the present respondent no.1 was non-pensionable and She would have been covered under pre-amended pension rules, had she entered into the regular establishment prior to 01.01.2005. Since the present respondent no.1 entered into the regular establishment after 01.01.2005, she would be covered under the Sub-Rule-4 to Rule-3 of the O.C.S (Pension) Rules, 1992 and she would get the pension in the manner prescribed there under.

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H). For that it is humbly submitted that as present respondent no.1 entered into regular establishment after 01.01.2005, She would be covered under the Sub-Rule-4 to Rule-3 of the O.C.S (Pension) Rules, 1992. Sub-Rule-4(ii) of Rule-3 of the above said rules provide that " In addition to the above provision, each individual may also have a voluntary 'tier-II' withdrawable account at his option. This option is provided as General Provident Fund will be withdrawn for employees recruited to the State Government services with effect from the 1st January 2005. Government will make no contribution into this account. In tier-II system the individual may subscribe 10 % of his salary and these assets would be managed through exactly the above procedure. However, the employees would be free to withdraw part or all of all of second tier of money at any time. This withdrawable account does not constitute pension investment and would attract no special tax treatment."

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In view of the above said statutory mandate , the present respondent no.1 having been appointed to regular establishment after 1st January 2005 would not be entitled to opening of General Provident Fund Account and even if the same has been opened that is to be withdrawn as per the above said provision of the Rules. In the present case as per the Sub-Rule-4(ii) of Rule-3 of the O.C.S (Pension) Rules, 1992 , the

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Accounts Officer of the Office of the Principal Accountant General vide letter dated 18.03.2015 (under annexure-11 to the writ petition) communicated to the Medical Officer , I/C , C.H.C Sanmosigam , Dist.- Nabarangapur , to cancel the GPF account numbers allotted to the employees working on contractual basis prior to 01.01.2005 and regularised after 01.01.2005. The above said communication is in compliance to a statutory provision i.e Sub-Rule-4(ii) of Rule-3 of the O.C.S (Pension) Rules, 1992 and accordingly there is no illegality in the above said communication.

I). For that it is respectfully submitted that the services of the present respondent no.1 was regularised with effect from 16.08.2005. After such regularisation the present respondent no.1 entered into the regular establishment and she would be covered under the O.C.S (Pension) Rules, 1992 as it was on the date of her regularisation. As on the date of regularisation of the petitioner, the O.C.S (Pension) Rules, 1992 had already undergone an amendment by insertion of Sub-Rule-4 to Rule-3 , the present respondent no.1 is covered by Sub-Rule-4 to Rule-3 and cannot be covered by the provisions of rules as it was prior to insertion of Sub-Rule-4 to Rule-3.

J). For that it is humbly submitted that right to get pension and Sub-Rule-4(ii) of Rule-3 of the O.C.S

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(Pension) Rules, 1992 flows from statute. In absence of any provision under the statute for the same no employee can have any right for pension and Sub-Rule-4(ii) of Rule-3 of the O.C.S (Pension) Rules, 1992. The present respondent no.1 is only entitled for the benefits as contemplated under the statute. In the present case the petitioner is only entitled to the benefits as stipulated in Sub-Rule-4 of Rule-3, of the O.C.S (Pension) Rules, 1992 and nothing beyond that.

K). For that it is humbly submitted that the law is well settled that one is not entitled to any benefits contrary to statute as the right flows from the statute. In the present case Sub-Rule-4(ii) of Rule-3 of the O.C.S (Pension) Rules, 1992 provides even for withdrawal of GPF account of an employee who has been appointed to Government service after 1st January 2005 and accordingly the communication vide letter, dated 18.03.2015 of the Accounts Officer of the Office of the Principal Accountant General has been issued, which is in compliance of the provisions of statute.

L). For that it is humbly submitted that as per order of Govt. of Odisha, Finance Department vide No. Pen 240/2013/35655/F dated 29.11.2013 the contractual appointee consequent upon their regularization after 01.01.2005 are no way entitled to be covered under OCS(Pension) Rules, 1992 and GPF Rules 1938. They are to be covered under newly contributory pension

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scheme 2005. So cancellation of the GPF account of the present respondent no.1 is justified and in consonance with law.

M). For that it is humbly submitted that the Govt. in exercise of the powers conferred under Article 309 of the Constitution of India have introduced the Odisha Civil Services (Pension) Amendment Rules, 2005 which inter alia contended that all persons appointed under the Govt. of Odisha with effect from 01.01.2005 shall not be eligible for pension but shall be covered by the defined contribution Pension Scheme. Besides that Govt. also introduced the General Provident Fund (Odisha) Amendment Rules, 2007 vide Finance Department Notification dated 31.08.2007 which inter alia provides that the General Provident Fund (Odisha) Rules, 1938 shall not apply to Govt. Servants appointed on or after 01.01.2005 to services and posts in connection with the affairs of the State, either temporarily or permanently.

In the event of introduction of New Pension Rule with effect from 01.01.2005, Finance Department vide their order dated 29.11.2013 issued clarification that contractual appointee consequence upon their regularization after 01.01.2005 are no way entitled to be covered under OCS (Pension) Rule, 1992 and GPF Rule, 1938.

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N) For that it is humbly submitted that the very self same issue regarding giving benefit to the Swechhasevi Sikshya Sahayak, those are initially appointed on contractual basis and subsequently regularised after 01.01.2005, was before the Division bench of Hon'ble High Court of Orissa in W.P.(C) Nos. 11156, 11157, 11158 and 11159 of 2013, wherein the Hon'ble High Court of Orissa confirming the judgment passed by the Hon'ble Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. Nos. 3351(c), 3348(c), 3347(c), and 3352(c) of 2012 held as follows:

"As discussed hereinabove paragraphs, Swechhasevi Sikshya Sahayak is engaged on contractual basis as per the scheme on certain terms and conditions annually. The engagement was only renewed after satisfactory completion of the period of engagement by the competent authority. They are being paid honorarium by the Zilla Parishad and they are not coming under any pay rules. Since their engagement was schematic and they were appointed as regular primary school teacher after 01.01.2005, rightly the Tribunal observed that they are not to be covered under Orissa Civil Service (Pension) Rules, 1992 and General Provident Fund (Orissa) Rules, 1938.

This court finds no error in the impugned order. Thus, we are not inclined to interfere with

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the same in exercise of the jurisdiction conferred under Article 227 of the Constitution of India.”

In view of the above law laid down by the Hon'ble High Court of Orissa in self same issue the writ petitioner (present respondent no.1) is not entitled to get the benefit under the old pension rules as it was prior to amendment with effect from 01.01.2005 to the O.C.S (pension) rules , 1992.

O) For that it is humbly submitted that the Hon'ble single Judge taking into consideration the orders passed by the Hon'ble Odisha Administrative Tribunal in O.A No. 98/2015 and the order passed by this Hon'ble Court in W.P(C) No. 22057/2019 , confirming the order passed by the Hon'ble Tribunal as well as the order passed by the Hon'ble supreme Court in SLP(C) No. 23578/2012 and order passed in Review Petition (C) No. 2038 of 2013 allowed the writ petition filed by the present respondent no.1 , although in non of the above said orders the provisions of amended 'O.C.S (pension) rules have been interfered with and in absence of interference with the amended provisions of O.C.S (pension) rules , the amended provisions are still in vogue and accordingly the above said orders are per-in curium and cannot be treated as precedent.

P) For that it is humbly submitted that the Hon'ble single Judge relied upon the order of the Hon'ble

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Tribunal passed in O.A No. 98 of 2015 and O.A No. 169 of 2015. In the above said order the Hon'ble Tribunal passed the order only relying upon the judgment of the Hon'ble Punjab and Haryana High Court in the case of Harbans Lal vrs. State of Punjab and in that case the Hon'ble Punjab and Haryana High taking into consideration the Punjab civil Services Rules. But, the claim of the present respondent no.1 is to be considered as per the amended provision of the O.C.S (pension) rules, 1992, which was not the subject matter before the Hon'ble Punjab and Haryana High and accordingly the said judgment has no applicability in the present case.

Q) For that it is humbly submitted that the Hon'ble Single Judge has further relied upon the order of this Hon'ble High Court passed in W.P(C) No. 22057 of 2019, wherein the State of Odisha had challenged the order of the order dated 15.05.2017 of the Hon'ble Tribunal passed in O.A No.98 of 2015, but the above said writ petition filed by the State was dismissed on the ground of delay and laches. As the writ petition was dismissed on the ground of delay and laches without any consideration on the merit of the case accordingly the doctrine of merger is not attracted and there is no declaration of law to be followed as a precedent. The Hon'ble single Judge without examining the above said legal aspect passed the

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impugned order which is not sustainable in the eye of law.

R) For that it is humbly submitted that as per the settled position of law that an order passed contrary to statute cannot be treated as a precedent. Further, although the G.P.F account of the present respondent no.1 was erroneously opened, but the same has been subsequently cancelled as there is estoppel against law.

S) For that it is humbly submitted that the order dated 22.09.2022 of the Hon'ble single Judge passed in WPC (OA) No. 1275 of 2018 is against the mandates of statute and accordingly cannot sustain judicial scrutiny of this Hon'ble Court.

T) For that in view of the aforesaid facts and circumstances, the impugned order passed by the Hon'ble Single Judge is illegal, not in consonance with law and is liable to be quashed.

U) For that the appellants crave leave to urge any other ground / grounds or rely on any other document at the time of hearing.

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V) For that the impugned order is otherwise bad, illegal and contrary to the materials on record and as such the same is not sustainable in the eye of law.

PRAYER

Under these circumstances the Appellants most humbly pray that this Hon'ble court be graciously pleased to admit this appeal, call for the records and after hearing the parties be pleased to set aside the impugned order 22.09.2022 passed in WPC (OA) No. 1275 of 2015 vide Annexure-1.

And further be pleased to pass any other order / orders as this Hon'ble Court deem just and proper.

And for this act of kindness, the appellants as in duty bound shall ever pray.

BY THE APPELLANTS
THROUGH

CUTTACK.

DATE: 22/09/23

Additional Govt. Advocate

CERTIFICATE

Certified that the grounds set forth above are good grounds and I undertake to support the appellants at the time of hearing.

Further certified that cartridge papers are not readily available.

CUTTACK.

DATE: 22/09/23

Additional Govt. Advocate

SAROT KANTA SAMAL

ENNO - 0-696/1999

MOB - 9437286009

*Prin.
Kali Nandi*

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1275 of 2015

Subhalaxmi Patro

....

Petitioner

Mr. S. Patra, Adv.

-Versus -

State of Odisha and others

....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

Order No.
01

ORDER
22.09.2022

HIGH COURT
ORISSA

This matter is taken up through hybrid mode.

2. Heard learned counsel appearing for the parties.

3. Originally, the case was filed in the Tribunal in Original Application No.1275 (O) of 2015. On being transferred to this Court, the same has been registered as WPC (OAC) No. 275 of 2015.

4. Background involving the case is that the applicant being a ANM Training holder was selected in a duly constituted selection committee and accordingly appointed as MPHWS (F) on contractual basis. While the petitioner was continuing as such in the year 2006 the service of the petitioner was regularized and by the time of filing of the Original Application, the petitioner was continuing as a regular employee. While the petitioner was continuing as a contractual employee, State Government issued a notification dated 17.09.2005 introducing a new re-structured defined contribution pension scheme for the new entrants in the State Government service with effect from 01.01.2005. While matter stood above, there arose some doubt in the matter of implementation of such circular, clarification appears to

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Chief District Medical &
Public Health Officer
Nabarangpur

have been issued to all Departments of the Government vide intimation dated 04.04.2007 indicating therein that the cases of employees would be governed in terms of OCS Pension Rule, 1992 and existing GPF(O) Rules. It is after such clarification is issued, the respondent-opposite party no.3 vide letter dated 20.09.2011 issued instruction to all Chief District Medical Officers of the State directing therein for deduction of G.P.F. deduction of the staff under their control and those who were appointed on contractual basis prior to 01.01.2005 and brought over on regular basis after 01.01.2005. It is pursuant to such developments, petitioner was provided with G.P.F. number and the petitioner was continued to be a G.P.F. subscriber. It is while the matter stood thus, the opposite party no.5 issued a letter dated 08.04.2015 thereby cancelling the G.P.F. Account number in respect of the employees who are continuing on contractual basis prior to 01.01.2005. Petitioner being aggrieved by such direction of the opposite party no.5, preferred the Original Application involved herein. On entertaining the Original Application, it appears by interim order the Tribunal stayed the operation of the instruction vide Annexures-11 and 12 so far as the applicant is concerned.

5. Learned counsel appearing for the petitioner on reiteration of the factual background indicated hereinabove giving reference to the documents appended here to further taking support of the judgment of the Tribunal in Original Application No.98 of 2015 disposed of on 19.5.2017 confirmed by this Court in the case of State of Odisha & Others Vs. Sanjulata Sethy & Others in disposal of W.P.(C).No.22057 of 2019 and further being affirmed by Hon'ble Apex Court, attempted to justify the claim involved herein. Learned counsel further also submitted that in another development involving a judgment in similar situation being carried up to Hon'ble Apex Court, the Hon'ble Apex Court in disposal of a batch of SLPs including Special Leave Petition (C).No.23578 of 2012 and dismissal of the State's plea vide batch of review cases including Review

TRUE COPY ATTESTED

Chief District Medical Officer
Public Health Officer
Nabarangpur

Petition (C) No. 2038 of 2013. Learned Counsel further taking support of this judgment also to the case at hand, claimed above judgment also taken care of in the disposal of Original Application No.98 of 2015.

6. Learned Standing Counsel appearing for the State taking this Court to the reason assigned in the counter affidavit in justification of the impugned order however did not dispute the position of law involving very same issue not only decided by the Tribunal in the above Original Application but also decided through the decision in Special Leave Petition (C).No.23578 of 2012 and Review Petition (C) No. 2038 of 2013.

7. Since the claim made here based on settled position of law, without entering into the factual aspect, this Court simply observes the Finance Department orders herein also impugned in the Original Application No.98 of 2015. The Tribunal after taking all the factual aspects involved herein and further taking into the developments through the above SEP(C) and the Review settling the position in disposal of Original Application No.98 of 2015, has come to hold the orders at Annexure-11 and 12, also being impugned herein were set aside. For there is no dispute with regard to the position of law on this aspect and as has already been settled through the above judgment, this Court sets aside the orders at Annexure-11 and 12 respectively and allows the application directing to maintain the position of the petitioner so far it relates to continuance in the G.P.F. Scheme from the date of his regularization.

8. The writ petition succeeds.

(Dr. B.R. Sarangi)
Judge

TRUE COPY ATTESTED

Chief District Officer
Public Housing Unit
Nabarangpur

Ashok

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Annexure-2

1

IN THE ODISHA ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:

CUTTACK.

O.A. No. 1275(C) of 2015

In the matter of:

An application under Section 19 of the
Administrative Tribunal Act, 1985;

And

In the matter of:


Subhalaxmi Patro, aged about 41
years. D/O. Harihar Patro, Resident of At.
Sankhari Street, P.O./Dist.- Nabarangpur, At
present working as Health Worker (F) in
Keshariguda Sub-Centre under Sanamosingam
C.H.C. in the District of Nabarangpur.

..... Applicant.

- Versus -

1. State of Odisha, represented through
it's Commissioner -cum- Secretary,
Department Of Health and Family
Welfare, Secretariate Building, At/P.O.-
Bhubaneswar, Dist.- Khurda.
2. State of Odisha, represented through
the Principal Secretary to Government,
Finance Department, At/P.O.-
Bhubaneswar, Dist.- Khurda.
3. Director, Health and Family Welfare
Department, Heads of Department
Building, At/P.O.- Bhubaneswar, Dist.-
Khurda.

TRUE COPY ATTESTED


Chief District Medical Officer
Public Health Officer
Nabarangpur

4. Chief District Medical Officer (CDMO),
Nabarangpur, At/P.O./Dist.-
Nabarangpur.
5. Principal Account General (A&E),
Odisha. At/P.O. - Bhubaneswar, Dist. -
Khurda.
6. Medical Officer in Charge CHC,
Sanamosingam, At/P.O.-Sanamosingam,
Dist. - Nabarangpur.

..... Respondents.

DETAILS OF APPLICATION

1. **Particulars of the Applicant :** As per cause title portion
Address for correspondence: - Mr. Srinivas Patro, Advocate, Plot No.
F/659, Sector- 6, CDA, Cuttack- 14.
2. **Particulars of the Respondents :** As per cause title.
3. **Particulars of the order against which Application is made :**

The application is against the following order:-

- I) Order : 1798 and 103.
- II) Date : 18.03.2015 and 08.04.2015.
- III) Passed by: Respondent No.4 and 5

- IV) Subject in brief:

That the applicant challenges the order of the Respondent no.4 and 5 dated 18.03.2015 and 08.04.2015 for not deducting the G.P.F. and not covering the service of the applicant under old O.C.S. (Pension) Rule 1992 and also challenges the notification dated 17.09.2005 and 13.07.2006 fixing the cut off date retrospectively for new pension rule to be given effect to w.e.f.

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Chief Public Health Officer
Nabarangpur

38-

01.01.2005 and also claiming to be covered under Old O.C.S. (Pension) Rules 1992.

4. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

The Applicant further declares that the subject matter of the application is within the Limitation of this Hon'ble Tribunal as prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the case :

The facts of the case are given below:-

6.1. That the applicant is a citizen of India and holding a civil post under the Govt. Of Odisha. So the Hon'ble Tribunal has got the jurisdiction to entertain her grievance.

6.2. That the applicant being a qualified and A.N.M. trained holder so also being a sponsoring candidate of the Director of Family Welfare, Orissa as per the Penal List maintained under the directorate was initially appointed as Multi Purpose Health Worker (Female) now known as Health Worker (Female) on contractual basis against a regular vacant post of the C.D.M.O., Nabarangpur vide Order no.4711 dated 27.10.2004. and accordingly posted at Sanomosingam, C.H.C. in the district of Nabarangpur. The copy of the appointment Order no.4711 dated 27.10.2004 is filed herewith as Annexure - 1.

TRUE COPY ATTESTED

Chief District Medical &
Public Health Officer
Nabarangpur

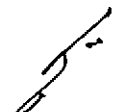
That when the applicant was appointed as such in her respective post under the Sanomosingam C.H.C. under the administrative control of C.D.M.O., Nabarangpur the Government circular vide Memo. No.913/ dated 15.04.2005 of the Respondent-1 regarding regularisation/ regular appointment of contractual H.W.(f) working under the KBK/Non-KBK district CDMOs and the letter no.9129 dated

11.08.2005 of the Respondent no.2 was remain in force. But the Respondent no.4 illegally appointed the applicant on contractual basis. A copy of the Govt. Order no.9137 dated 15.04.2005 and letter no.9129 dated 11.08.2005 are filed herewith as Annexure- 2 and 3.

6.4. That it is submitted here that in pursuance to the Annexure-2 and 3, the CDMOs of KBK and Non-KBK districts except the CDMO, Nabarangpur have implemented the policy decision of the Govt by regularising / absorbing the contractual MPHWS (F)/HW (F) working under their control in the existing regular vacant post of HW (F) in which post they are continuing on contractual basis from the date of joining with the regular scale of pay of Rs.3200-4900/-. With other allowances sanction by the Government.

6.5. That it is pertinent to mention here that after too much persuasion lastly the Respondent no. 4 vide order no.4787 dated 08.12.2006 regularised the services of the applicant by appointing her as a HW (F) on regular basis in a phased manner in the scale of pay of Rs.3200-85-4900/- against the same post in which she is continuing on contractual basis prior the issuance of regularisation order issued by the other KBK CDMOs. So the applicant filed O.A.No.251 of 2011 before the Odisha Administrative Tribunal, Bhubaneswar. As per the order of the Odisha Administrative Tribunal, Bhubaneswar dated 16.03.2011 again the service of the applicant was regularised with effect from 16.08.2005 vide order No.5959 dated 27.08.2011 of the C.D.M.O. Nabarangpur. The copy of the order no. 4787 dated 08.12.2006 and Order No.5959 dated 27.08.2011 are filed herewith as Annexure-4 and 5 respectively.

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Chief District Medical Officer
Public Health Officer
Nabarangpur

6.6. That applicant joined much prior to 01.01.2005 on contractual basis against a regular vacant post being a trained and qualified candidate sponsored by the Director of Family Welfare, Odisha. So the Notification dated 17.09.2005 is not applicable in respect of the

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applicant. The copy of the Notification dated 17.09.2005 is filed here with as Annexure-6.

6.7. That the applicant has been treated as differently because the amendment rule came into force with retrospective effect and the employees belonging to pensionable establishment under Old O.C.S.(Pension) Rules 1992 even though the applicant joined the post much prior the notification of amendment of O.C.S.(Pension) Rules. The copy of the Notification dated 04.04.2007 is filed here with as fin Annexure-7.

6.8. That basing upon the amendment rules, the Finance Department by its office memorandum dated 13.07.2006 introduced a new restructured defined contribution pension scheme for the new entrants into Government Service with effect from 01.01.2005 in new pensionable establishment. According to the said scheme no deduction can be made by any of the new entrants to Government service towards G.P.F.Scheme. The copy of the office memorandum dated 13.07.2006 is filed here with as Annexure-8.

6.9. That the action of the respondents is giving effect the notification at annexure-6 and the office memorandum vide Annexure-8 is quite illegal and contrary to law since such an amendment of Pension Rules 1992 having retrospective operation which has the effect of taking away a benefit already available the employees under the existing rules is arbitrary, discriminatory and violative the Article 14 and 16 of the constitution of India.

6.10. That the Government of Odisha in Labour and Employment Department as per letter dated 21.05.2010 with connivance of Finance Department decided in Odisha Employment Service officers directly recruited in O.C.S.Examination 2000 and joined after 01.01.2005 have been exempted from the preview of New Pension Scheme and these are allowed to cover under Old O.C.S.(Pension) Rules 1992. The copy of the letter dated 21.05.2010 is filed herewith as Annexure-9.

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6.11 That the Principal Account General allotted G.P.F.No. to the applicant bearing G.P.F.A/C No.PHO 36658 and deducted Monthly instalment from the salary of the applicant which is clear from the annual statement issued by the Asst. Accounts Officer. The copy of the ~~Account~~ slip is filed herewith as Annexure-10.

6.12 That the G.P.F. was deducted from the applicant's salary till end of the December 2014. It is surprising and shocking that the Respondent No-5 has issued a letter to the Medical Officer in Charge C.H.C. Sanamosigam vide letter No.1798 dated 18.03.2015 regarding cancellation of G.P.F. Account Nos.. Basing upon that letter the M.O. in charge CHC, Sanamosigam, Nabarangpur has issued a Letter to the applicant bearing letter No.103 dated 08.04.2015 regarding cancellation the G.P.F. account number. The copy of the Letter No.1798 dated 18.03.2015 and letter No.103 dated 08.04.2015 are filed herewith as Annexure-11 and 12 respectively.

6.13. That it is humbly submitted that the cancellation of G.P.F. Account Number of the applicant under Annexure 11 and 12 is quite illegal and contrary to law and as such the same is liable to be quashed.

6.14. That it is humbly submitted that the applicant was appointed as Multi Purpose Health Worker (F) on contractual basis against a regular

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vacant post prior to 01.01.2005 when the New Pension Rules come into force. So the service of the applicant covers under the Old O.C.S.(Pension) Rules 1992. Therefore the cancelation of the G.P.F.Account number under annexure 11 and 12 is quite illegal,

Chief District Officer
Public Health Officer
Nabarangpur

arbitrary, and contrary to law as such the same is liable to be quashed.

Relief(s) sought for:

In view of the facts and submissions mentioned in para-6 above the Applicant prays for the following relief(s) :-

- i) The Hon'ble Tribunal be pleased to admit this Original Application.

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ii) The Hon'ble Tribunal be pleased to quashed the letter no.1798 dated 18.03.2015 and letter no.103 dated 08.04.2015 under annexure 11 and 12 respectively being ultra virus to the Article 14 and 16 of the Constitution of India.

iii) The Hon'ble Tribunal be pleased to declare the applicant deemed to be continued in Old O.C.S.(Pension) Rule 1992 and entitled to all the service benefits under the said Rules.

iv) The Hon'ble Tribunal may be pleased to pass any order(s)/direction(s) as deemed fit and proper for the interest of justice.

8. Interim order if prayed for :

Stay operation of Letter no.1798 dated 18.03.2015 and letter no.103 dated 08.04.2015 under annexure 11 and 12 and direct the respondents to deduct the monthly G.P.F. subscription from the salary of the applicant as usual till disposal of the Original Application.

9. Details of the remedies exhausted :

The applicant declares that she has availed of all the remedies available to her under the relevant service rules etc.

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10. Matter not pending with any other Court etc.:

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or has not been rejected by any court of law or any other authority any other bench of the Tribunal.

Chief District Medical &
Public Health Officer
Nabarangaip

11. Details of Index :-

As attached earlier.

12. List of enclosures :

As per index.

VERIFICATION

I Subhalaxmi Patro, aged about 41 years, D/O:- Harihar Patro, Resident of At.-Sankhari Street, P.O/Dist.- Nabarangpur, at present working as Health Worker (F) in Keshariguda Sub-Centre under Sanamosingam C.H.C.in the District of Nabarangpur, do hereby verify that the contents from para 1 to 12 of O.A. are true to the best of my knowledge and I have not suppressed any material facts.

Cuttack:

VERIFICANT

Date :

TRUE COPY ATTESTED

[Signature]
Chief District Medical
Public Health Officer
Nabarangpur

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Ambari/222/2004-3

- 9 -

Ambari/222/2004-3

OFFICE OF THE CHIEF DISTRICT MEDICAL OFFICER, NABARANGPUR
No. 4311/04 Estt. FW, dated, Nabarangpur the 27.10.04

OFFICE ORDER

Miss Subhalaxmi Patra a trained and qualified candidate sponsored by the Director of Family Welfare, Orissa vide his letter No 20634 dt 16.11.2001 is engaged as Multi Purpose Health Worker (F) on contractual basis on a consolidated remuneration of Rs. 4500/- Rupees four thousand five hundred only per month up to 30.1.2005 or until further orders which ever is earlier and posted to the Sub-Centre, Bital under PHC Sanamosigam against a regular vacant post.

The engagement is purely temporary and terminable at any time without assigning any reason thereof. Further continuation may be considered depending upon her performance.

She will not claim for regular appointment and service benefit in future.

She is required to report for duty before the Medical Officer I/C of the concerned PHC CHC with in 15 days from the date of issue of the order along with the following documents failing which the engagement will stand automatically cancelled.

01. Physical Fitness Certificate from a State Govt. Lady Assistant Surgeon
02. Oath of allegiance to the Constitution of India
03. Declaration regarding non contract of plural marriage.
04. Two-chamber certificate from two different Gazetted Officer.
05. Attested copy of MPIFW (F) pass certificate
06. Attested copy of educational certificate.
07. Attested copy of registration certificate in the Orissa Nurses & Midwives Council
08. Attested copy of Caste certificate in case of SC/ST/SEBC candidate
09. Attestation Form duly filled in with a passport size Photograph

Sd/- C.M. Pandab
Chief District Medical Officer,
Nabarangpur

Memo No. 4312/04 Estt. FW, dated, Nabarangpur the 27.10.04
Copy to Subhalaxmi Patra, through Medical Officer PHC Sanamosigam for information and guidance. She should join the appointment before the concerned Medical Officer in time. If in service should submit her clearance from the appropriate authority.

Sd/- C.M. Pandab
Chief District Medical Officer,
Nabarangpur

Memo No. 4313/04 Estt. FW, dated, Nabarangpur the 27.10.04
Copy forwarded to the Medical Officer I/C PHC Sanamosigam for information and necessary action. The date joining of the MPIFW (F) may be intimated to this office and the documents submitted by the candidate forwarded for record within 5 days of joining of the candidate.

Sd/- C.M. Pandab
Chief District Medical Officer,
Nabarangpur

Memo No. 4314/04 Estt. FW, dated, Nabarangpur the 27.10.04
Copy forwarded to the Director of Family Welfare, Orissa, Bhubaneswar for information and necessary action with reference to Govt. memo No 35359 dt 26.7.2004

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Sd/- C.M. Pandab
Chief District Medical Officer,
Nabarangpur

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Annexure-4

-12-

Annexure-4

OFFICE OF THE CHIEF DISTRICT MEDICAL OFFICER, NABARANGPUR
No. 4787 /06 Estt.FW, dated, Nabarangpur the 8.12.06

OFFICE ORDER

Smt. Subhalaxmi Patra who is now working as Health Worker (F) on contractual basis is here by appointed as Health Worker (F) on regular basis in the scale of pay Rs.3200-85-4900/- with other allowances sanctioned by Govt. from time to time and allowed to continue in her present place of posting under PHC/CHC Sanamosigam with effect from 05.12.2006.

The appointment is purely temporary and terminable at any time without prior notice and without assigning any reason thereof.

She is required to submit her joining report on the said date with effect from 05.12.2006 before the Medical Officer I/C PHC/CHC Sanamosigam.

Sd/- B.D.Muni
Chief District Medical Officer,
Nabarangpur

Memo No. 4788 /06 Estt.FW, dated, Nabarangpur the 8.12.06
Copy to Smt. Subhalaxmi Patra for information and guidance.

Sd/- B.D.Muni
Chief District Medical Officer,
Nabarangpur

Memo No. 4789 /06 Estt.FW, dated, Nabarangpur the 8.12.06
Copy forwarded to the Medical Officer I/C PHC/CHC Sanamosigam for information and necessary action. The joining report along with the documents like copies of educational /professional residence/caste /fitness certificate etc submitted by Smt. S.L.Patra at the time of her joining on contractual engagement may be forwarded to this office for record within 7 days of her joining. If no previous documents are available the joining report may be transmitted.

Sd/- B.D.Muni
Chief District Medical Officer,
Nabarangpur

Memo No. 4790 /06 Estt.FW, dated, Nabarangpur the 8.12.06
Copy forwarded to the Director of Family Welfare, Orissa, Bhubaneswar for information and necessary action

Sd/- B.D.Muni
Chief District Medical Officer,
Nabarangpur

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Sd/-
Chief District Medical Officer
Public Health Officer
Nabarangpur

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Annexure-5
Annexure-5

OFFICE OF THE CHIEF DISTRICT MEDICAL OFFICER, NABARANGPUR
NO. 5959 /11 Dated Nabarangpur the 27.5.11
OFFICE ORDER.

In pursuance to the interim order No 16 dt 24.1.2011 and interim order No 02 dt 16.3.2011 of the Hon'ble OAT, Bhubaneswar in OA No 1668/2008 and OA No 251/2011, the following Health Workers (Female) who were submitted their representation for consideration and regularization of their services against the regular post have been, after carefully considered and their contractual services has been regularized with effect from dt.16.8.2005 i.e. from the date of receipt of the clarification regarding regular appointment of MPIIW(F) from the Director of Family Welfare, Orissa, Bhubaneswar.

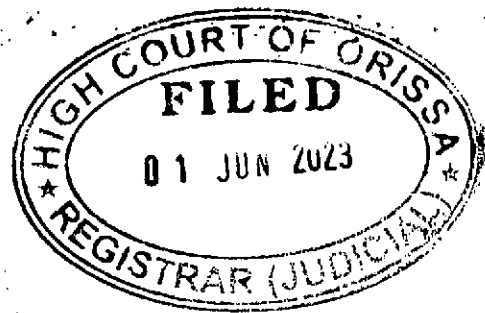
LIST OF MPHWF(S) WHOSE CONTRACTUAL SERVICES REGULARISED WITH EFFECT FROM 16.8.2005

Sl.No	Name of the MPHWF(F)	Present place of posting
1	Kanchan Medhi	Majhiguda
2	Ranjita Kumari Samal	PHC(N) Ramnaguda
3	Sangitanjali Nayak	PHC(N) Nandahandi
4	Jemamani Harijan	Dumurmunda
5	Ritarani Adhikary	Mahuvata
6	Ashalata Sahu	PHC(N) Phupigam
7	Sailabala Khundapani	Betajharan
8	Pranati Kadambani Chakrabarti	Sanmosigam
9	P. Padmabati	Sasan
10	Subhalaxmi Patro	Kesariguda
11	Rebati majhi	Jaganathpur
12	Kunjeswari Majhi	Mentry
13	Deepali Biswas	Hirapur
14	Beauty Dhali	Kanahandi
15	Amikarani Bala	Powerbela
16	Subalaya Harijan	Temra
17	Jangyasuni Sahoo	Antipada
18	Manjula Sahu	Sirliguda
19	Sangita Patra	Sanabasin
20	Sachita Kumar Sahu	PPC Umerkote
21	Mamata Baral	PPC Umerkote
22	Rina Bepari	Khanda
23	Namita Sarkar	Pujaribharndi
24	Jagnyaseni Sahu	PHC(N) Dolabeda
25	Pinkeswari R. Nag	Bhatiguda
26	Bina Mandal	Mahuli
27	Dilshad Begum	Gumaguda

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Chief District Medical Officer
Public Health Officer
Nabarangpur

Chief District Medical Officer
NABARANGPUR



29	Umakanli Jagat	CHC Chandahandi
30	Supriya Tripathy	CHC Tentulikhunti
31	Rasmita Padhy	CHC Papadahandi
32	Sujatarani Dash	K.P.I

Sd/- J.K. Behera
Chief District Medical Officer
Nabarangpur.

Memo No. 5960 /11 Dated Nabarangpur the 27-8-11
Copy to person concerned for information.

Chief District Medical Officer
Nabarangpur.

Memo No. 5961 /11 Dated Nabarangpur the 28-8-11
Copy forwarded to all Medical Officers I/C, of concerned PHC/CHCs for
information and necessary action.

Chief District Medical Officer
Nabarangpur.

Memo No. 5962 /11 Dated Nabarangpur the 27-8-11
Copy forwarded to the Government Advocate, Hon'ble OAT,
Bhubaneswar for information and necessary action.

Chief District Medical Officer
Nabarangpur.

Memo No. 5963 /11 Dated Nabarangpur the 27-8-11
Copy forwarded to the Registrar, Hon'ble OAT, Bhubaneswar for
information and necessary action.

Chief District Medical Officer
Nabarangpur.

Memo No. 5964 /11 Dated Nabarangpur the 27-8-11
Copy forwarded to the Director of Family Welfare, Orissa, Bhubaneswar
for information and necessary action.

Chief District Medical Officer
Nabarangpur.

TRUE COPY ATTESTED

Chief District Medical &
Public Health Officer
Nabarangpur

IN THE HIGH COURT OF ODISHA: CUTTACK

WA No. 1228 OF 2023.

State of Orissa & Ors

Appellant/Petitioners

-Versus-

Subhalaxmi Patra

Respondent/Opp. Parties

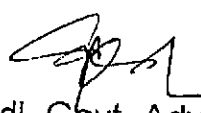
APPEARANCE MEMO

I hereby enter appearance in the above noted case on behalf of
the petitioners/Appellant.

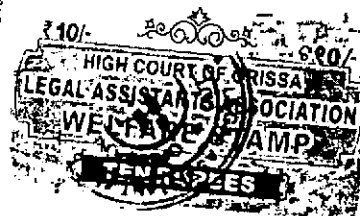
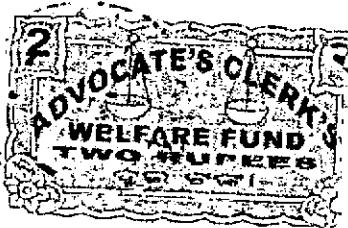
CUTTACK

Dt. 22/06/23




Addl. Govt. Advocate/
Addl Standing Counsel

B.C.E No- O-696/1999
Mob: -9437286069
SAROT KANTA SAMAL



IN THE HIGH COURT OF ORISSA: CUTTACK.

I.A. NO. 3233 OF 2023

(Arising out of W.A. No. 1238 of 2023)

In the matter of:

An application for dispensing with filing of certified copy of the impugned order, under Chapter-VI, Rule-27 of the Orissa High Court Rules, 1948.

AND

In the matter of:

State of Odisha and Others ... Appellants

-Versus-

Subhalaxmi Patro ... Respondent

To

The Hon'ble Chief Justice and His Lordship's Companion Justices of the Hon'ble High Court of Orissa.

The humble petition on behalf of the Appellants above named;

MOST RESPECTFULLY SHEWETH:

1. That the appellants have filed the aforesaid appeal challenging the Order dtd.22.09.2022 passed by the Hon'ble Single Judge in WPC (OAC) No.1275 of 2015 under Annexure-1.
2. That the detailed facts and circumstances stated in the writ appeal may kindly be considered as a part of this application.
3. That it is humbly submitted that the certified copy of the impugned order under Annexure-1 is not readily available for

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No- ON-04/1995

which a downloaded copy of the impugned order has been filed in order to avoid further delay.

4. That the appellants have a strong prima facie case and the balance of convenience lies in favour of the appellants.

5. That unless the filing of the certified copy of the impugned order is dispensed with for the time being, the appellants shall be highly prejudiced and shall suffer irreparable loss.

6. That in the interest of justice, the filing of the certified copy of the impugned order may kindly be dispensed with.

P R A Y E R

It is, therefore, humbly prayed that this Hon'ble Court may graciously be pleased to allow this application and filing of the certified copy of the impugned order dated 22.09.2022 passed in WPC (OAC) No.1275 of 2015 under Annexure-1 may be dispensed for the time being and further be pleased to pass any other order/orders as this Hon'ble Court deems fit and proper.

And for this act of kindness, the Appellants as in duty bound shall ever pray.

CUTTACK.

Dt. 22.05.2023

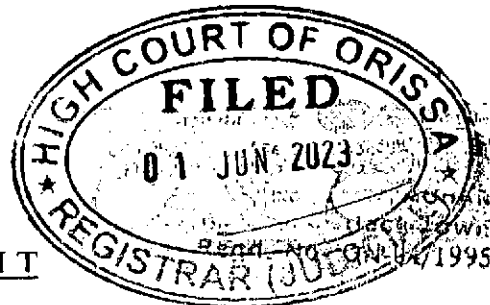
By the Appellants through



ADDL. GOVT. ADVOCATE

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No- ON-04/1995

Kuli Town Raha



AFFIDAVIT

I, Dr. Kali Prasad Behera, aged about 63 years, Son of Late Sribachha Behera, at presently working as Chief District Medical & Public Health Officer, Nabaranpur, AT/Po/Dist: Nabarangpur, do hereby solemnly affirm and state as follows:

1. That I have been authorized by the appellants to swear this affidavit on their behalf. I am otherwise acquainted with the facts of this case and competent to swear this affidavit.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by :

Mohans Behera
AC, A.G.'s Office.

Kali Prasad Behera
DEPONENT

CERTIFICATE

Certified that Cartridge papers are not available.

Cuttack

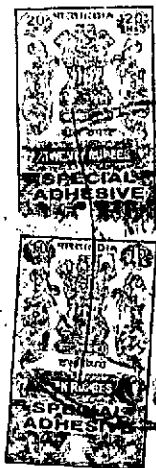
Dtd 22.05.2023

ADDL. GOVT. ADVOCATE

SAROT KANTA SAMAL

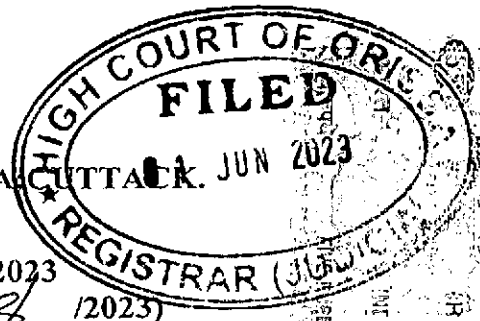
EX NO-0-696/1999

MOB- 9437286069



Solemnly sworn before me by *K.P. Behera*
being identified by *M. Behera AC, A.G.'s Office*
on 22.05.2023
22.05.2023
P.K. Mullick, District Judge, Cuttack
Notary Seal, Cuttack

IN THE HIGH COURT OF ORISSA



I.A.No. 3234 /2023
(Arising out of W.A. No. 1238 /2023)

In the matter of:

An application for condonation of delay
under Section 5 of the Limitation Act.

And

In the matter of:

-State of Odisha & others
... Petitioners
-Versus-
Subhalaxmi Patro ... Opp. Party

To

The Hon'ble Chief Justice of Orissa High Court and
His Lordship's Companion Justices of the said Hon'ble
Court.

The humble petition of the
above named Petitioner.

MOST RESPECTFULLY SHEWETH :-

1. That the Petitioner filed the aforesaid Writ Appeal
before the Hon'ble High Court challenging the judgment
dated 22.09.2022 passed by the Hon'ble High Court in WPC
(OAC) No.1275 of 2015.

PRADIPTA KUMAR MOHANTI
Notary, Cuttack Town
E-mail: Notary.Cuttack@rediffmail.com

2. That, there has been a delay of about 212 days in preferring the appeal before this Hon'ble Forum for the reasons indicated hereinafter.

3. That, the impugned judgment was delivered on 22.09.2022 and the present appeal was to be filed on or before 21/10/2022 but the appeal is being filed today i.e. on 23/05/23 which is beyond the prescribed period of limitation.

4. That, it is humbly submitted that, the copy of the Order dated 22.09.2022 of the Hon'ble High Court passed in WPC (OAC) No.1275 of 2015 was received in the concerned Section of H & FW Department on 09.11.2022. Accordingly, it was processed from the concerned section on 10.11.2022 and further processing through the concerned hierarchy of Officers of H&FW Department the file was endorsed to Law Department on 17.12.2022 soliciting their view to challenge the Order dtd.22.09.2022 passed by this Hon'ble Court in the instant case. The file was received from Law Department in the concerned section of H & FW Department on 13.01.2023. Accordingly, the Govt. in H & FW Department vide letter No.1255, dtd.17.01.2023 requested the CDMO & PHO, Nabarangpur to take appropriate steps for filing of Writ Appeal against the Order dated 22.09.2022 of the Hon'ble High Court passed in WPC (OAC) No.1275 of 2015.

Legal Name Dth

*904
A-9A*

Accordingly, the Chief District Medical & Public Health Officer, Nabarangpur requested the Advocate General, Odisha, Cuttack vide letter No.821, dated 31.01.2023 along with all necessary documents to take necessary steps to file Writ Appeal. Then the matter was entrusted to the Addl. Government Advocate on 23.02.2023. After due discussion, the Writ Appeal was prepared and filed before this Hon'ble Court on 23/5/23

5. It is humbly submitted that the appellants are functionaries of the State and in order to file Writ Appeal several opinion are sought for, which requires time. Appellant was pursuing with the authorities to sanction for filing of appeal and delay is for official purpose and hence bonafide.

6. That, in these circumstances, there is delay in filing the appeal which is neither intentional nor deliberate, rather the same has been caused due to movement of the file in different offices of the State Government which were beyond the control of the appellants. In that view of the matter, the delay in filing the appeal is bonafide and there is no deliberate latches nor wilful negligence on the part of the appellants in not filing the same in time.

7. That, in view of the above, there is a delay of about 212 days in filing the appeal which is neither intentional nor deliberate rather the same has been caused due

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No. ON-04/1997

Kali Ram Borthu

to the facts and circumstances which were beyond the control of the appellant/petitioner. The action of the State/Appellate is a bonafide one and unless delay is not condoned, the appellant shall suffer irreparable loss and shall be highly prejudiced.

8. That, unless the delay of presenting the appeal is condoned and the matter be heard on merit, the Appellant will suffer irreparable loss and injury.

PRAYER

It is, therefore, prayed that, this Hon'ble Court may be graciously pleased to allow this application and condone the delay of 212 days in filing of the Writ Appeal on such terms and conditions as circumstance justify.

And for this Act of kindness, the Appellant shall as in duty bound ever pray.

By the Appellant through

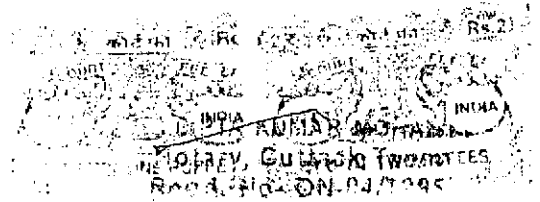
Cuttack

Date: 22/05/2023


Addl. Government Advocate

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No- ON-04/1995

Kali Singh Bhatia

AFFIDAVIT

I, Dr. Kali Prasad Behera, aged about 63 years, Son of Late Sribachha Behera, at presently working as Chief District Medical & Public Health Officer, Nabaranpur, AT/Po/Dist:- Nabarangpur, do hereby solemnly affirm and state as follows:-

1. That I am working as such and have been duly authorized by the Appellants to swear this affidavit on their behalf.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by

Kali Prasad Behera

DEPONENT

Moham Behera

Advocate's Clerk
A.G's Office

CERTIFICATE

Certified that due to want of cartridge paper thick white paper are used.

Cuttack.

Date: 22/05/23

Addl. Government Advocate

SAROT KANTA SAMAL

EX NO-0-696/1999

MOB - 9437286089

Subscribed and sworn to before me by.....

K. P. Behera

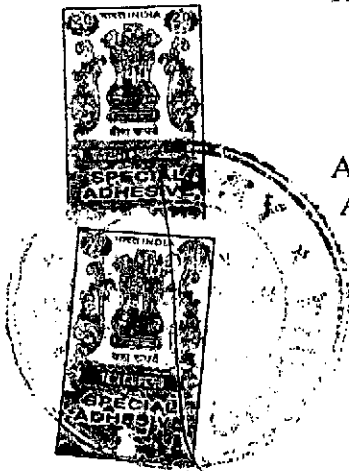
being identified by..... *M. Behera A.C. A.G's Office*

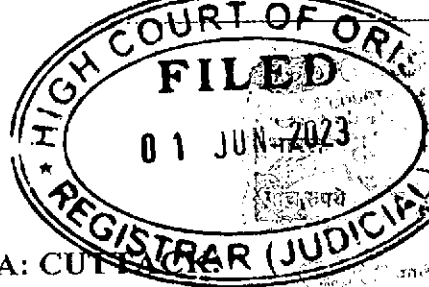
at Cuttack Town dated..... 22/05/23

M. Behera
22/05/23

P.K. Mahapatra, Notary Public

Cuttack, Odisha, 22/05/23





1

IN THE HIGH COURT OF ORISSA: CUTTACK

I.A. NO. 3235 OF 2023
(Arising out of W.A. No. 228 of 2023)

In the matter of:

An application for stay operation of
impugned Order dtd.22.09.2022 passed in
WPC (OAC) No.1275 of 2015 by the
Hon'ble Single Judge of this Hon'ble
Court under Chapter-VI, Rule-27 (A) of
Orissa High Court Rules.

AND

In the matter of:

State of Odisha and others ... Petitioners

-Versus-

Subhalaxmi Patro ... Opp. Party

To

The Hon'ble Chief Justice and His Lordship's
Companion Justices of the Hon'ble High Court
of Orissa.

The humble petition on behalf of
the Petitioners above named;

PRADIPTA KUMAR MOHANTY,
Notary, Cuttack Town
Regd. No- ON-04/498

K. S. Narayan Dohra

MOST RESPECTFULLY SHEWETH:

1. That the Petitioners being the appellants have filed the aforesaid Appeal challenging the Order dtd.22.09.2022 passed in WPC (OAC) No.1275 of 2015 by the Hon'ble Single Judge of this Hon'ble Court.
2. That the averments made and the grounds taken in the Writ Appeal may kindly be read and treated as part of this interim application.
3. That, it is humbly submitted that, the respondent filed a writ petition bearing WPC (OAC) No.1275 of 2015 praying therein for a direction to the appellants as to why the case of the petitioner shall not be allowed and after hearing the parties, the case of the respondent be allowed and necessary order be passed that the respondent shall be entitled to receive the pension as if the respondent has retired from the regular establishment and direct the appellants to regularize the respondent in service for a day prior to his superannuation notionally and grant pension and pensionary benefit under the old rule in the light of the decision in the case of Hon'ble Court vide order dated 19.12.2011 passed in W.P.(C) No.5377 of 2010 in a case of Narasu Pradhan -Vrs- State of Odisha and

Kali Nandan Mishra

[Signature]

4
PRADIPTA KUMAR MOHANTY,
Notary, Cuttack Town
Road No- 09/01/1999

subsequent decision of this Hon'ble Court in a case of State of Odisha -Vrs- Pitambar Sahoo W.P.(C) No.24041 of 2017 disposed of on 20.12.2017, which has been affirmed in SLP (C) Diary No.30806 of 2018 and the entire benefits be given to the respondents within the stipulated period.

4That, the Petitioners have a prima facie case in their favour and also they have very good chance of success in this Writ Appeal as because the order has been passed in violation of the principle of natural justice and unless the operation of the impugned order is stayed the Petitioners functionaries will irreparably prejudice.

Kali Ram Pohn

P R A Y E R

It is, therefore, prayed that this Hon'ble Court may graciously be pleased to direct stay operation of the impugned order till disposal of the Writ Appeal in considering the facts and circumstances of the case;

And for this act of kindness the Petitioners as in duty bound shall ever pray.

By the Petitioners through

Cuttack.

Dtd. 22.05.2023

[Signature]
ADDL. GOVT. ADVOCATE

[Signature]
PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No- ON-01/16/2017

AFFIDAVIT

I, Dr. Kali Prasad Behera, aged about 63 years,
Son of Late Sribachha Behera, at presently working as
Chief District Medical & Public Health Officer,
Nabaranpur, AT/Po/Dist: Nabarangpur, do hereby
solemnly affirm and state as follows:

1. That I have been authorized by the appellants to swear this affidavit on their behalf. I am otherwise acquainted with the facts of this case and competent to swear this affidavit.
2. That the facts stated above are true to the best of my knowledge and based on official records.

Identified by:

AC, A.G.'s Office.

DEPONENT

CERTIFICATE

Certified that Cartridge papers are not available.

Cuttack

Dtd. 22.05.2023

ADDL. GOVT. ADVOCATE

SAROJ KANTA SAMAL

EN/NO-0-696/1999

MOB - 9437286069

Solemnly sworn before

me by K. P. Behera

being identified by M. Behera AC A.G.'s Office

on this date dated 22.05.2023

(22.05.2023)

By [Signature]

For the Addl. Govt. Advocate

SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 5

Branch No : WRIT APPEAL

Receipt No : 130307/2024

Date Of Receiving : 21/10/2024

Time : 01:29:08 PM

Filing No : D- WA 1238/2023

Case No : WA 1238/2023

Received From : Petitioner

Filed By: ADVOCATE FOR THE PETITIONER

Document(s) Filed :

1- REQUISITE FOR OPS --- Postal Fee -Rs.80



IN THE HIGH COURT OF ORISSA: CUTTACK

W.A. No. 1238 of 2023

State of Orissa & Ors

... ..

Appellants

-Versus-

Subhalaxmi Patro

... ..

Respondents

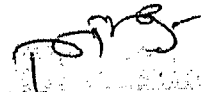
MEMO

Postage stamp of Rupees 80/-(Rupees Eighty) only, along with written process and the copy of limitation filed herewith for service of notice on Respondents in limitation matter in the aforesaid appeal through Registered post.

Cuttack

Date- 21.10.2024

MOB NO: 9237183713


ASC
For the Appellant

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A

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Track Consignment

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* Indicates a required field.

* Consignment Number

RO198759011IN

[Track More](#)

Article Type	Delivery Location	Delivery Confirmed On
Registered Letter	Nabarangpur S.O	11/11/2024 17:35:07

Event Details For : RO198759011IN

Current Status : Item Delivered(Sender)

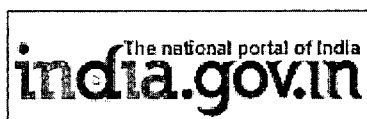
Date	Time	Office	Event
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11/11/2024	11:17:39	Nabarangpur S.O	Out for Delivery
11/11/2024	10:36:28	Nabarangpur S.O	Item Received
09/11/2024	19:19:28	Jeypore RMS L2S	Item Dispatched
09/11/2024	19:05:08	Jeypore RMS L2R	Item Dispatched
09/11/2024	17:16:37	Jeypore RMS L2R	Item Bagged
09/11/2024	13:13:20	Jeypore RMS L2R	Item Received
08/11/2024	15:16:21	Mirganiguda S.O	Item Dispatched
08/11/2024	15:09:56	Mirganiguda S.O	Item Bagged
08/11/2024	15:05:09	Sanamasigaon B.O	Item Returned Addressee moved
07/11/2024	12:10:01	Mirganiguda S.O	Item Bagged
07/11/2024	12:10:01	Mirganiguda S.O	Dispatched to BO
07/11/2024	12:10:01	Mirganiguda S.O	Item Dispatched
07/11/2024	11:51:51	Mirganiguda S.O	Item Received
04/11/2024	21:00:03	Cuttack CRC L1R	Item Dispatched
04/11/2024	20:44:41	Cuttack CRC L1R	Item Bagged

04/11/2024	19:39:52	Cuttack CRC L1R	Item Received
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SCANNED

**COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP**

Seat No : 5

Branch No : WRIT APPEAL

Receipt No : 144591/2024

Date Of Receiving : 25/11/2024

Time : 11:10:52 AM

Filing No : WA/1238/2023

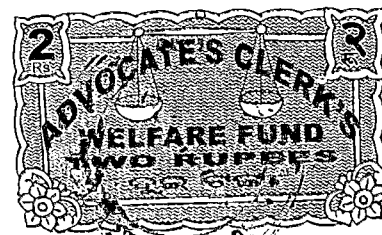
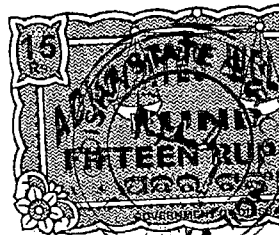
Case No : WA/1238/2023

Received From : Respondent

Filed By: M/S SIBA PRASAD SWAIN

Document(s) Filed :

2- Vakalatnama --- Court Fee -Rs.12 (34540/2024)



FORM OF VAKALATNAMA
IN THE HIGH COURT OF ORISSA, CUTTACK

W. A No - 1238 / 2023

Between

State of Odisha & others, Appellant Petitioner

Versus

Respondent Opp. Party

Subhalaxmi Patro

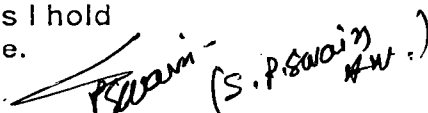
I/We Subhalaxmi Patro D/o - Harinax patro, Resident of At - Sankhari street, PO / Dist - Nabarangpur At present working as Health worker (F) in Keshari guda Sub-centre under Sanamosingam C.H.C in the District of Nabarangpur. (Opp Party & Respondent.)

Appellant / Respondent / Petitioner / Opposite party the aforesaid Revision Appeal Case do hereby appoint and retain and SIBA PRASAD SWAIN ADVOCATE, ENL NO - 0 - 1039 / 1999
M - 9337942376, TUTU PRADHAN ADVOCATE, ENL NO - 0 - 735 / 9001
M - 9437205748.

Advocate (s) to appeal for me/us, in the above case and to conduct and prosecute for defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or other passed therein including all applications for return of documents or receipt of any moneys that may be payable to me/us in the said case and also in application for review, appeals to Supreme Court. I/We authorized my/our Advocate (s) to admit any compromise lawfully in the said case.

Dated the 25 / 11 / 2024

Received from the Executant (s)
Satisfied and accepted as I hold
No brief for the other side.


Advocate

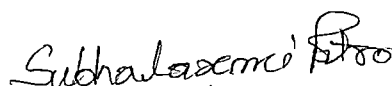
Accepted as above


Advocate

Accepted as above.

Advocate





Signature of the Executant (s)

SCANNED.

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 5

Branch No : WRIT APPEAL

Receipt No : 146408/2024

Date Of Receiving : 29/11/2024

Time : 11:21:54 AM

Filing No : WA/1238/2023

Case No : WA/1238/2023

Received From : Petitioner

Filed By: ADDL.STANDING COUNSEL

Document(s) Filed :

3- Certified Copy (XEROX COPY) --- Court Fee -Rs.3 (35200/2024)

IN THE HIGH COURT OF ORISSA: CUTTACK

W.A. No. 1238 of 2023



State of Odisha & Anr

... ..

Appellants

-Versus-

Subhalaxmi Patro

... ..

Respondents

MEMO

Certified Copy of the order dtd. **22.09.2022** arising out of **W.P.C (OAC)**
Case No. 1275 of 2015 with authentication fees of Rs. 3.00 (Rupees three)
Only is filed herewith in the aforesaid appeal.

Cuttack

Date-28.11.2024

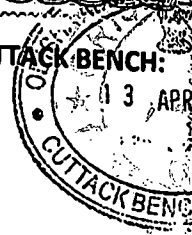

Addl. Standing Counsel
For the Appellant



IN THE ODISHA ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:
CUTTACK BENCH CUTTACK.

VF 2-2
13/11/15

O.A. No. 1275 (C) of 2015



In the matter of:

An application under Section 19 of the
Administrative Tribunal Act, 1985;

And

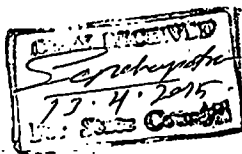
In the matter of:

Subhalaxmi Patro, aged about 41
years, D/O. Harihar Patro, Resident of At.-
Sankhari Street, P.O./Dist.- Nabarangpur, At
present working as Health Worker (F) in
Keshariguda Sub-Centre under Sanamosingam
C.H.C. in the District of Nabarangpur.

..... Applicant.

- Versus -

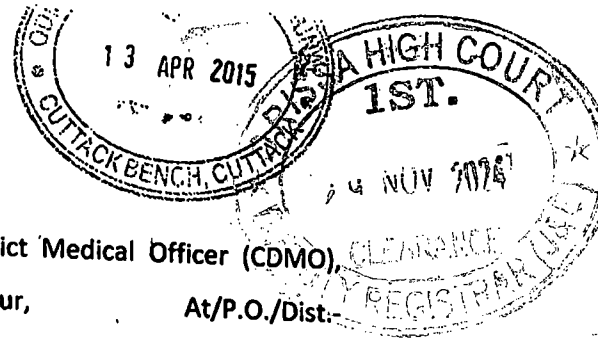
1. State of Odisha, represented through
it's Commissioner -cum- Secretary,
Department Of Health and Family
Welfare, Secretariate Building, At/P.O.-
Bhubaneswar, Dist.- Khurda.
2. State of Odisha, represented through
the Principal Secretary to Government,
Finance Department, At/P.O.-
Bhubaneswar, Dist.- Khurda.
3. Director, Health and Family Welfare
Department, Heads of Department
Building, At/P.O.- Bhubaneswar, Dist.-
Khurda.



Signature

Signature valid

Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 26-Nov-2024 16:22:14



- 2.
4. Chief District Medical Officer (CDMO),
Nabarangpur, At/P.O./Dist:-
Nabarangpur.
5. Principal Account General (A&E),
Odisha. At/P.O. - Bhubaneswar, Dist. -
Khurda.
6. Medical Officer in Charge CHC,
Sanamosingam, At/P.O.-Sanamosingam,
Dist. - Nabarangpur.

..... Respondents.

DETAILS OF APPLICATION

1. **Particulars of the Applicant :** As per cause title portion

Address for correspondence:- Mr. Srinivas Patro, Advocate, Plot No.
F/659, Sector- 6, CDA, Cuttack- 14.

2. **Particulars of the Respondents :** As per cause title.

3. **Particulars of the order against which Application is made :**

The application is against the following order:-

- i) Order : 1798 and 103.
- ii) Date : 18.03.2015 and 08.04.2015.
- iii) Passed by: Respondent No.4 and 5
- iv) Subject in brief:

That the applicant challenges the order of the Respondent no.4 and 5 dated 18.03.2015 and 08.04.2015 for not deducting the G.P.F. and not covering the service of the applicant under old O.C.S. (Pension) Rule 1992 and also challenges the notification dated 17.09.2005 and 13.07.2006 fixing the cut off date retrospectively for new pension rule to be given effect to w.e.f.

[Handwritten signature]

Signature valid

Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 26-Nov-2024 16:22:14



IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1275 of 2015

Subhalaxmi Patro

....

Petitioner

Mr. S. Patra, Adv.

-Versus -

State of Odisha and others

....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

22.09.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard learned counsel appearing for the parties.

3. Originally, the case was filed in the Tribunal in Original Application No.1275 (C) of 2015. On being transferred to this Court, the same has been registered as WPC (OAC) No.1275 of 2015.

4. Background involving the case is that the applicant being a ANM Training holder was selected in a duly constituted selection committee and accordingly appointed as MPHWS (F) on contractual basis. While the petitioner was continuing as such in the year 2006 the service of the petitioner was regularized and by the time of filing of the Original Application, the petitioner was continuing as a regular employee. While the petitioner was continuing as a contractual employee, State Government issued a notification dated 17.09.2005 introducing a new re-structured defined contribution pension scheme for the new entrants in the State Government service with effect from 01.01.2005. While matter stood above, there arose some doubt in the matter of implementation of such circular, clarification appears to

Signature valid

Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 26-Nov-2024 16:22:14

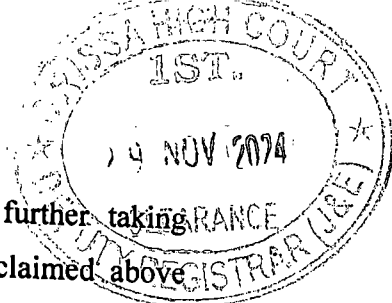
Page 1 of 3

have been issued to all Departments of the Government vide intimation dated 04.04.2007 indicating therein that the cases of employees would be governed in terms of OCS Pension Rule, 1992 and existing GPF(O) Rules. It is after such clarification is issued, the respondent-opposite party no.3 vide letter dated 20.09.2011 issued instruction to all Chief District Medical Officers of the State directing therein for deduction of G.P.F. deduction of the staff under their control and those who were appointed on contractual basis prior to 01.01.2005 and brought over on regular basis after 01.01.2005. It is pursuant to such developments, petitioner was provided with G.P.F. number and the petitioner was continued to be a G.P.F. subscriber. It is while the matter stood thus, the opposite party no.5 issued a letter dated 08.04.2015 thereby cancelling the G.P.F. Account number in respect of the employees, who are continuing on contractual basis prior to 01.01.2005. Petitioner being aggrieved by such direction of the opposite party no.5 preferred the Original Application involved herein. On entertaining the Original Application, it appears by interim order the Tribunal stayed the operation of the instruction vide Annexures-11 and 12 so far as the applicant is concerned.

5. Learned counsel appearing for the petitioner on reiteration of the factual background indicated hereinabove giving reference to the documents appended here to further taking support of the judgment of the Tribunal in Original Application No.98 of 2015 disposed of on 19.5.2017 confirmed by this Court in the case of State of Odisha & Others Vs. Sanjulata Sethy & Others in disposal of W.P.(C).No.22057 of 2019 and further being affirmed by Hon'ble Apex Court, attempted to justify the claim involved herein. Learned counsel further also submitted that in another development involving a judgment in similar situation being carried up to Hon'ble Apex Court, the Hon'ble Apex Court in disposal of a batch of SLPs including Special Leave Petition (C).No.23578 of 2012 and dismissal of the State's plea vide batch of review cases including Review

Signature valid

Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTACK
Date: 26-Nov-2024 16:22:14



Petition (C) No. 2038 of 2013. Learned Counsel further taking support of this judgment also to the case at hand, claimed above judgment also taken care of in the disposal of Original Application No.98 of 2015.

6. Learned Standing Counsel appearing for the State taking this Court to the reason assigned in the counter affidavit in justification of the impugned order however did not dispute the position of law involving very same issue not only decided by the Tribunal in the above Original Application but also decided through the decision in Special Leave Petition (C).No.23578 of 2012 and Review Petition (C) No. 2038 of 2013.

7. Since the claim made here based on settled position of law, without entering into the factual aspect, this Court simply observes the Finance Department orders herein also impugned in the Original Application No.98 of 2015. The Tribunal after taking all the factual aspects involved herein and further taking into the developments through the above SLP(C) and the Review settling the position in disposal of Original Application No.98 of 2015, has come to hold the orders at Annexure-11 and 12 also being impugned herein were set aside. For there is no dispute with regard to the position of law on this aspect and as has already been settled through the above judgment, this Court sets aside the orders at Annexure-11 and 12 respectively and allows the application directing to maintain the position of the petitioner so far it relates to continuance in the G.P.F. Scheme from the date of his regularization.

8. The writ petition succeeds.

Ashok

(Dr. B.R. Sarangi)
Judge

Signature valid

Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTACK
Date: 26-Nov-2024 16:22:14

HIGH COURT OF ORISSA



Copy Application No. : 97723/2024

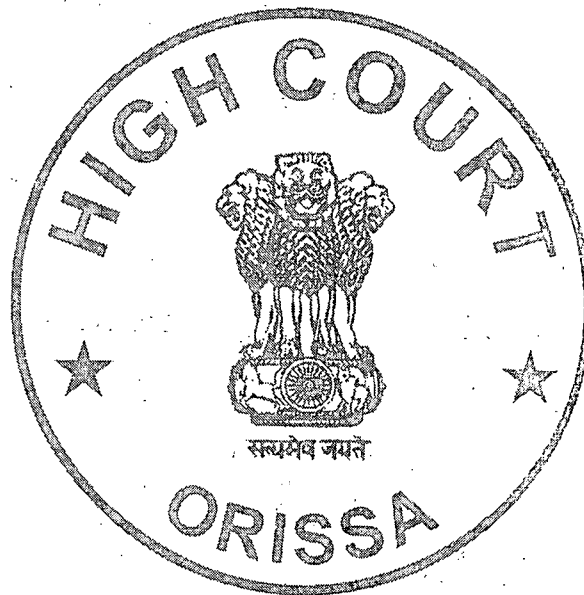
Date of Notification : NA

Date of Supply : NA

Date of Application : 26/11/2024

Date of Ready : 26/11/2024

Date of Delivery : 26/11/2024



Signature valid



Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 26-Nov-2024 16:22:14

Signature valid



Digitally Signed
Signed by: PRAVAT KUMAR MOHANTY
Designation: SUPERINTENDENT (J&E)
Reason: EXAMINED
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 26-Nov-2024 16:25:31

Signature valid



Digitally Signed
Signed by: LAXMIDHAR MOHAPATRA
Designation: ASST. REGISTRAR (ESTT)
Reason: CERT. TO BE A TRUE COPY AD
75.BSA.2023
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 26-Nov-2024 16:29:26

SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 5

Branch No : WRIT APPEAL

Receipt No : 147032/2024

Date Of Receiving : 02/12/2024

Time : 11:05:10 AM

Filing No : WA/1238/2023

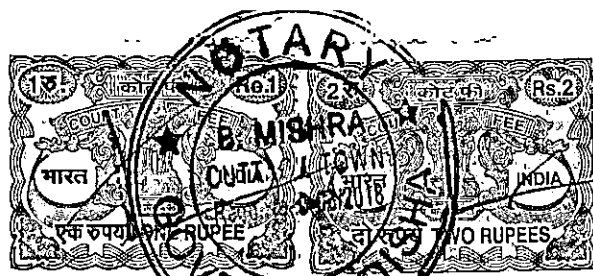
Case No : WA/1238/2023

Received From : Respondent

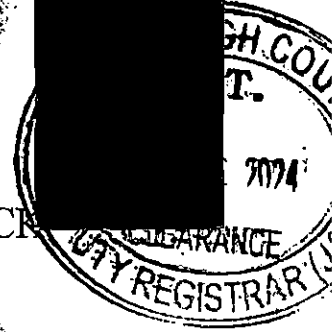
Filed By: ADVOCATE FOR THE RESPONDENT

Document(s) Filed :

4- Objection To Misc. Case --- (Misc Case No- 3234/2023) --- Court Fee -Rs.3 (35421/2024)



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3542



IN THE HIGH COURT OF ORISSA: CUTTACK

I.A. No. 3234 Of 2023

(Arising out of W.A. No. 1238 of 2023)

State of Odisha and Others Petitioners.

-Versus-

Subhalaxmi Patro Opposite Party.

OBJECTION FILED ON BEHALF OF THE OPPOSITE
PARTY TO THE I.A. FILED BY THE PETITIONERS.

I, Subhalaxmi Patro, aged about 50 years, D/O Late Harihar Patro, resident of At;- Sankhari Street, P.O./Dist;- Nabarangpur. At present working as Health Worker(F) in Keshariguda sub- centre under Sanamusingam CHC in the District of Nabarangpur do hereby solemnly affirm and state as follows;-

1. That I am the Opposite Party in this I.A. arising out of W.A. No. 1238 of 2023 and gone through the contents of the I.A. filed by the Petitioners and understood the same.
2. That, without giving detail parawise objection to each and every paragraph of the I.A. the Opposite Party humbly submits the objection that the Petitioners challenging the order dated 22.09.2022 passed by the Hon'ble Single Judge thereby set aside the orders at Annexure-11 and 12 of the Writ Petition and directing to maintain the position of the Opposite Party so far it relates to continuance in

For Adm.

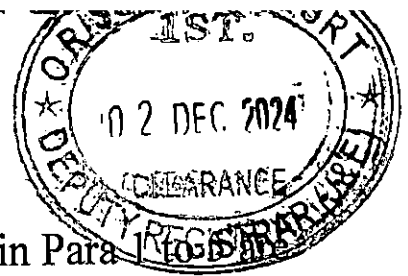
B. MISHRA
NOTARY, CUTTACK
ODISHA



the GPF Scheme from the date of her regularization. The said order has been challenged by the State Govt. in the above Writ Appeal, which has been filed on 23.05.2023, therefore the Petitioners are guilty of delay and laches, further the Petitioners have not been shown sufficient cause in each date delay to condone the delay of 212 days in preferring the Writ Appeal and there is no due diligence has been indicated in the Petition in preferring the Writ Appeal, for which above said I.A is to be dismissed and consequently the Writ Appeal is also liable to be dismissed solely on the ground of delay and laches as the part of the Petitioners.

3. That, Law is well settled that the Writ Appeal may not be entertain at belated stage as the same suffers from delay and laches in view of the Judgment of this Hon'ble Court in the case of State of Odisha Vrs. Surama Manjari Das in W.P. (C) No. 15763 of 2021 and the said order has been confirmed by the H0n'ble Apex Court vide order dated 05.04.2023 in SLP(C) Diary No. 9259 of 2023. Therefore by taking the above position of Law, the I.A. may be dismissed and so also above Writ Appeal may be dismissed on the ground of delay and laches.
4. That, the Opposite Party believes and humbly submits in view of foregoing submissions the present I.A. is liable to be dismissed.
5. That, the Opposite Party has kept her right reserved to submit other facts and Law at the time of hearing.


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6. That, the statements made above in Para 1 to 5 are true to the best of my knowledge and belief which I obtain from the personnel sources. I believe the information to be true for the following reasons: Basing upon the Official records and information.

Identified by Siba Prasad Swain

Advocate

Subhalaxmi Patro

Deponent

Solemnly affirms before me by Subhalaxmi Patro who is identified by me by Siba Prasad Swain Advocate whom I personally known.

This is the 01st day of December 2024.

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NOTARY, CUTTACK
ODISHA

NOTARY PUBLIC, CUTTACK
CERTIFICATE

Certified that the cartridge papers are not available
Cuttack

Date; 02.12.2024

Siba Prasad Swain
SIBA PRASAD SWAIN
ADVOCATE

ENROLMENT NO. O-1039/1999

MOBILE NO. 9337942376

