

In the High Court of Orissa

ORDER SHEET

BLAPL/W. P. (C) No. 2141/2023 of 20 23



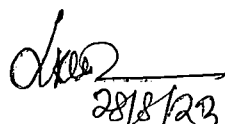
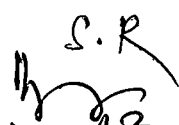
STATE OF ODISHA

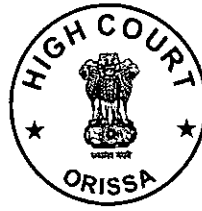
Petitioner

Versus

HARIHAR BEHERA

Opposite-Party

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
 FC127274 SCANNED			<p>PRESENTED ON 25/08/2023 Register and Put up for Orders</p> <p> Registrar (Judicial)</p> <p>For S. R</p> <p> 28/8/23</p> <p> 11.9.23 Bikram Sethy Assistant Registrar (Judl.)</p>



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 2141 of 2023

State of Odisha and others

Appellants

Ms. A. Dash, Addl. Standing Counsel

-versus-

Harihar Behera and another

Respondents

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MISS JUSTICE SAVITRI RATHO

ORDER

03.12.2024

Order No.

01.

This matter is taken up through Hybrid mode.

2. Ms. A. Dash, learned Additional Standing Counsel on behalf of the appellants submits that the case is covered by the decision of this Court dated 20.11.2023 in *W.A. No.1134 of 2023 (State of Odisha and another Vs. Sudhansu Sekhar Jena and others)*, but the same has been challenged by State of Odisha before the Supreme Court in SLP (C) No.2146 of 2021 and batch. The matters have been heard on 19.11.2024 and judgment has been reserved. She also submits that a similar matter i.e. W.A. No.614 of 2023 is posted to 10.12.2024.

3. List this matter on 10.12.2024 along with W.A. No.614 of 2023.


(Chakradhari Sharan Singh)
Chief Justice

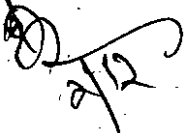
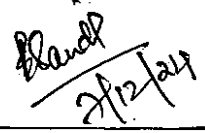

(Savitri Ratho)
Judge

SK Jena/Secy.

IN THE HIGH COURT OF ORISSA

Case No. WA 2141/2023

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) L.A NO 5803 of 2023 is at Page "A" for dispensing with filing of certified copy.</p> <p>(ii) L.A NO 5804 of 2023 is at Page "B" for condonation of delay.</p> <p>For orders</p> <p>Alongwith WPC(OAC) NO. 3297 of 2018. (admission of case)</p> <p>Akash Pradhan 04.09.2024 02.12.2024</p> <p></p> <p>Order No - 1</p> <p>(i) L.A NO. 5803 of 2023 is at Page (A) for dispensing with filing of certified copy.</p> <p>(ii) L.A NO. 5804 of 2023 is at Page (B) for condonation of delay.</p> <p>For orders</p> <p>Alongwith WPC (OAC) 3297 of 2018. (admission of case) and for Release of WA 614/2023</p> <p>Akash Pradhan 05.12.2024</p> <p></p> <p>D.B Adt to dt 10.12.2024</p>
01	03.12.2024	



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

ODISHA HIGH COURT
FILING ACKNOWLEDGEMENT SLIP

ODHC010676472023
WA/0002141/2023
25/08/2023-11:08:24
5803/2023,5804/2023,5805/2023
STATE OF ODISHA
RABI NARAYAN MISHRA,A.G.A
HARIHAR BEHERA



Friday 25th of August 2023 12:01:56 PM

STAMP REPORT

CASE NO. W A 2141/23

LIMITATION

Date of Judgement Awards 06.09.22
Date of Valid Presentation 25.08.23
Total Period Occupied 353 days
Limitation 30 days
Certified Copy Period day
Delay in filing 323 days

1. In time 16 Expired on 06.10.22
2. Period of delay 323 days, 94 for condonation of delay filed
3. Court Fee Rs. 12/- Paid
4. Authentication fee due on the
(a) Copy of Trial Court Judgement
Rs. 1 Decree Rs. 1
(b) Appellate Court Judgement Rs. 1
Decree Rs. 1
5. (a) Copy of Trial Court Judgement/Order
(b) Appellate Court/Revisional Order o.e. of impugned order not filed.
Judgement
(c) Second Copy Petition filed
(d) Receipt showing copy on A.G.
(e) Vakalatnama properly stamped, Executed and accepted upward one more filed.
6. (a) Cause Title for order
(b) Provision of Law for relief.
7. Code Indiate
8. Single Judge/Division Bench Case DB
9. Other Defects

STAMP REPORTER

11.9.23
Bikram Sethy
Assistant Registrar (Judl.)

1. RFA/RSA/FAO/SAO/LRA/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 KIA No. 2141 / 2023 Date of Regn. 22/8/23
Mark]

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

R & DM
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 Odisha High Court rules - 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 :

8. Whether any other matter is pending against the impugned order/Judgement?
If so give the number of matter. NA

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

10. Point of law involved in the matter challenging the order passed by the Single Bench

Date 22/08/23

Signature of the Advocate

High Court of Orissa Acknowledgement



CNR : ODHC010676472023

Efiling No : AOR20220001513C202300687

Filing No. : WA/2141/2023

Date of Filing : 25-08-2023

Petitioner : STATE OF ODISHA

Time of Filing : 11:08:24

Petitioners : RABI NARAYAN

Respondent : HARIHAR

Advocate : MISHRA,A.G.A

BEHERA

: 0.00

[Print](#)



IN THE HIGH COURT OF ORISSA: CUTTACK

W.A. NO. 2141 OF 2023

**(Arising out of W.P.C (OAC) No.3297 of 2018,
Disposed of on 06.09.2022)**

CODE NO. 310799

State of Odisha and others ... Appellants

-VERSUS-

Harihar Behera ... Respondent.

I N D E X

SL.NO.	DETAILS OF DOCUMENTS	PAGES
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5	<u>ANNEXURE-2</u> Copy of the notification dated 12.12.1997.	18

**CUTTACK.
Dtd. 22/08/2023**

ADDL. GOVT. ADVOCATE
RABI NARAYAN MISHRA
ADDL. GOVT. ADVOCATE
Enroll.No-O-499/1992
Mob.:943727781

A

SYNOPSIS

The respondent filed an Original Application vide W.P.C (OAC) No.3297 of 2018 before the Hon'ble High Court praying for a direction to the present appellants to extend similar benefits of pension by counting his entire past service rendered in the job contract establishment and regular establishment in the light of the decision given by the Courts in O.A No.3020(C)/2003 (Nityananda Biswal Vs. State of Orissa and others).

The Hon'ble Single Judge vide order dated 06.09.2022 disposed of the aforesaid writ petition relying on the order passed in O.A. No.3020(C)/2003 and directed the appellants to extend all such benefits in favour of the respondent in terms of the direction given in O.A No.3020(C)/2003 within a period of three months from the date of communication of the order.

The aforesaid order of the Hon'ble Single Judge is erroneous, contrary to the provisions of the O.C.S (Pension) Rules, 1992 and against the settled position of law and is liable to be interfered with.

By the Appellants through

Cuttack.

Dt. 22.08.2023

Addl. Govt. Advocate

Sherail Chandre Sahu

B

LIST OF DATES AND EVENTS

- 07.05.1980 Respondent joined as a job contract Amin under the Dy. Director, Consolidation, Bargarh
- 08.04.2005 Respondent was brought over to the regular establishment as Revenue Inspector in Kalahandi Tahasil by the Collector, Kalahandi.
- 31.07.2013 Respondent retired from service.
- 2018 Respondent filed W.P.C (OAC) No.3297 of 2018.
- 06.09.2022 W.P.C (OAC) No.3297 of 2018 was disposed of by the Hon'ble Single Judge, directing the appellants to grant similar benefits to the respondent as has been done in O.A No.3020(C)/2003 (Nityananda Biswal Vs. State of Orissa and others).

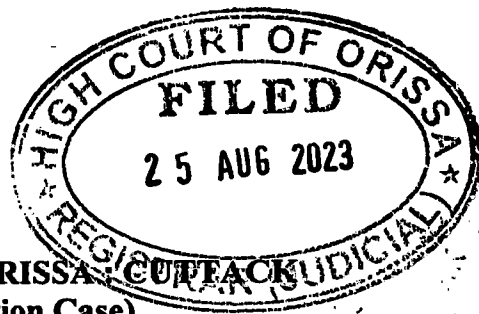
Charat Chandra Sahu

Cuttack.

Dt. 22.08.2023

By the Appellants through

Addl. Govt. Advocate



IN THE HIGH COURT OF ORISSA
(Appellate Jurisdiction Case)

W.A. NO. 2141 OF 2023

[Arising out of W.P.C (OAC) No. 3297(C) of 2018
disposed of on 06.09.2022]

CODE NO. 310799

In the matter of :


An appeal under Article-4 of the Orissa High
Court Rules, 1948 read with Clause-10 of the
Letter Patent of the Patna High Court;

AND

In the matter of:

An appeal challenging the judgment and order
dated 06.09.2022 passed in W.P.C (OAC)

Presented on 25/8/2023 No.3297 of 2018 by the Hon'ble Single Judge;


Registrar (Judicial)

AND

In the matter of :

1. State of Odisha, represented through the
Commissioner-cum-Secretary to Govt.,
Revenue & Disaster Management
Department, Secretariat Building,
Bhubaneswar, Dist-Khurda
2. Principal Secretary to Govt. of Orissa,
Finance Department, Secretariat Building,
Bhubaneswar
3. Collector, Kalahandi,

Charat Chandra Sahu

At/Po/ Dist.-Kalahandi.

(O.P. Nos. 1, 2 & 4 in the writ petition)

...Appellants

-Versus-

1. Harihar Bheera, aged about 64 years, S/o.
Late Banchhanidhi Behera, Village-
Gobindpur, P.O- Biranilakanthapur,
PS/Dist.- Bhadrak.

(Petitioner in the writ petition)

... Respondent.

2. Accountant General (A&E), Odisha,
Bhubaneswar, Dist-Khurda

... Proforma Respondent.

(Respondent-3 in the OA Petition)

[The matter out of which this writ appeal arises
was before this Hon'ble Court in W.P.C.(OAC)
No. 3297 of 2018, disposed of on 06.09.2022]

To

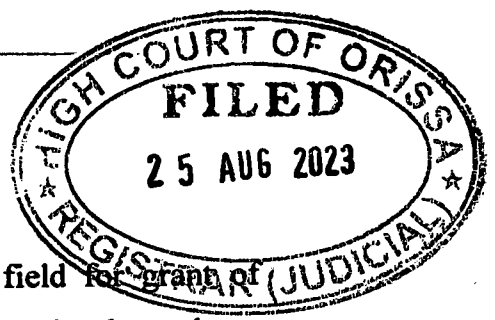
The Hon'ble Chief Justice and His Lordships
companion justices of the Hon'ble High Court of
Orissa.

The humble memorandum of appeal
of the above named appellants;

MOST RESPECTFULLY SHEWETH:

1. That the appellants challenge herewith the order
dated 06.09.2022 passed in W.P.C.(OAC) No. 3297
of 2018 by the Hon'ble Single Judge in directing the
present appellants to extend all the benefits in favour of
the respondent in terms of the directions given by the
Courts in O.A. No.3020(C) of 2003 (Nityananda
Biswal v. State of Orissa and others), on the ground
that the said order is completely erroneous and
violation of the settled principles of law as well as the

Charai Chandro Sate



statutory provisions governing the field for grant of pension to job contract employees who have been absorbed in regular establishment. A copy of the order dated 06.09.2022 is annexed herewith as ANNEXURE-1.

2. That the respondent approached the learned State Administrative Tribunal in O.A. No.3297 (C) of 2018 with the following prayer:

"Therefore, it is prayed that this Hon'ble Tribunal may kindly be pleased to admit the case and issue notice to the respondent to show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed.

And direction be given to the respondents to sanction full pension in favour of the applicant by counting entire job contract period as qualifying service and the applicant be given all the arrears within a stipulated period.

And the entire job contract service of the applicant be taken as qualifying service for the purpose of pension."

3. That the brief factual backdrop of the case is that the respondent joined as a job contract Amin on 07.05.1980 under Dy. Director of Consolidation, Bargarh. While continuing as such, he was brought over to regular establishment and appointed as Revenue Inspector in Kalahandi Tahasil, Dist- Kalahandi on 24.01.2007 upon being relieved from the

Charai Chandee Sahu

office of the Dy. Director of Consolidation, Bargarh. While continuing there, he was retired from service on 31.07.2013 on attaining the age of superannuation. After his retirement he was granted minimum pension only on the basis of regular period of service and some J.C period service, although he is entitled for full pcnsion on basis of entire period of service both under J.C., estt. And regular estt. i.e., 07.05.1980 to 31.07.2013. Further case of the respondent is that as similarly situated persons have been granted full pension taking into account their job contract period and regular service, denial of full pension to him amounts to discrimination.

4. That after abolition of the learned State Administrative Tribunal, the matter was transferred to this Hon'ble Court and renumbered as W.P.(C)(OAC) No.3297 of 2018. The matter was taken up on 06.09.2022 and the Hon'ble Single Judge disposed of the case relying on the order passed in O.A. No.3020(C)/2003 (Nityananda Biswal Vs. State of Odisha and others) confirmed by this Hon'ble Court in W.P.(C) No.14244/2006 which was also confirmed in S.L.P.(C) No.12573/2015 and directed the appellants to extend all such benefits in favour of the respondent in terms of the direction given by the Court as mentioned above within a period of three months from the date of communication of the order.

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5. That it is pertinent to mention here that as per the Finance Department Resolution No.227/64/F. dated 15.05.1997 the job contract employees appointed prior to 12.04.1993 under the administrative control of different departments can be brought over to the posts created under regular / pension establishment after completion of 10 years service as job contract employees subject to fulfillment of certain conditions and stipulations outlined therein. In the case of Settlement Class-IV Job Contract Employees Union, Balasore-Mayurbhanj District Vs. State of Orissa and others (OJC No.2147 of 1991) and this Hon'ble Court allowed the prayer for regularization and held as follows:

"This apart, for the purpose of calculating the pensionary benefit, so much of their earlier service period shall be reckoned, even if there had been breaks in their employment, so as to make them eligible for pension."

Keeping in view the judgment of this Hon'ble Court, the Finance Department issued Office Memorandum dated 12.12.1997 in which it has been stated to count the service under job contract establishment to the period for qualifying service to make them eligible for pensionary benefits. A copy of the said notification dated 12.12.1997 is annexed herewith as ANNEXURE-2.

Charat Chandra Saha

6. That it is further pertinent to mention here that as prior to this Office Memorandum, there was provision for calculating the job contract period as qualifying service, some employees approached the learned State Administrative Tribunal in different Original Applications praying therein to grant pension counting the job contract period as qualifying service. The learned Tribunal vide order dated 21.10.1994 passed in T.A. No.11/1993 by referring to Rule 23 of the Orissa Pension Rules wherein it was held that the same does not prohibit counting of past services rendered in the job contract establishment and that as provided under Rule 23(3), the Government has ample power notwithstanding the restrictions contained in Rule-23(1) to order the periods rendered under work charged establishment or the periods in which an employee is paid from the contingencies for counting towards pension and pensionary benefits. Accordingly the learned Tribunal granted benefits and the said order was confirmed by the Hon'ble Apex Court in S.L.P.(C) No.13916 of 1995.

7. That it is profitable to mention here that as per Rule-18 of the O.C.S. (Pension) Rules, 1992, the job contract employees are not entitled to pension. However, vide Notification No.45865/F. dated 01.09.2001, Rule-18 has been amended by inserting sub-rule (6) in the following manner:

Charat Chandra Sahu

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

Though the aforesaid provision was made under the O.C.S. (Pension) Rules, 1992, but the learned Tribunal while deciding O.A. No.3020(C)/2003 (Nityananda Biswal Vs. State of Odisha and others), relying on the earlier judgment passed in T.A. No.11/1993, held that the period of engagement in job contract establishment should be taken into account as qualifying service. The said judgment was challenged by the State before this Hon'ble Court in W.P.(C) No.14244/2006 which was dismissed vide order dated 9.4.2014 by the Division Bench referring to the judgment of the learned Tribunal passed in T.A. No.11/1993.

8. That in a similar matter which came up for consideration before this Hon'ble Court in W.P.(C) No.11503 of 2003 wherein this Hon'ble Court has held as follows:

"In our considered opinion, the earlier judgment, which is well-reasoned, holds the field as the subsequent decision in

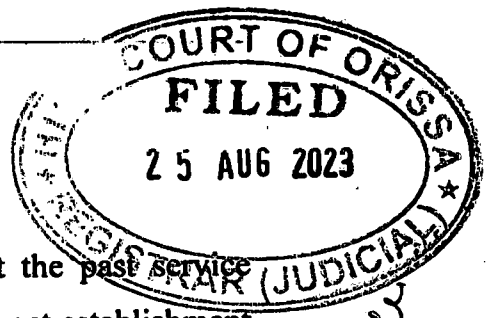
Charat Chandel Sahu

W.P.(C) No.14244 of 2005 had not referred to the same. Opposite parties will be given benefits only on the basis of earlier Division Bench judgment in OJC No.2147 of 1991 decided on 24.3.1992, thereby the past period of service of the opposite parties, which is required only to make them eligible for pension, shall be taken into consideration."

9. That it is appropriate to mention here that there are conflicting Division Bench judgments on this score on the issue at hand. While the judgments passed in O.J.C. No.2147/1991 and W.P.(C) No.11503/2003 lays down that only so much of service rendered under the job contract establishment shall be reckoned as would be necessary for qualifying service for pension, the other Division Bench has referred to the order of the learned Tribunal passed in T.A. No.11/1993 and O.A. No.3020(C)/2003, both of which have been confirmed by the Hon'ble Apex Court. So far as T.A. No.11/1993 is concerned, the learned Tribunal on reference to Rule-23 of the Orissa Pension Rules, held that there is no mention therein about a job contract employee being subsequently brought to the regular establishment and held that the job contract employees who have been brought over to the regular establishment, the pension rules does not prohibit counting of past services rendered in the job contract establishment. Though the learned Tribunal referred to the decision of this Hon'ble Court in O.J.C.

Charat Chandra Sahu





No.2147/1991 but directed to count the past service rendered by the petitioner in job contract establishment towards pension and pensionary benefits. Similarly the learned Tribunal relying on the order passed in T.A. No.9/1993 allowed the prayer made in T.A. No.203/2003. It is profitable to mention that the learned Tribunal has relied upon Rule-23 of the Orissa Rules, 1977, but by the time the matter was decided the said Rule has been repealed upon coming into force the new Rules i.e. O.C.S. (Pension) Rules, 1992. Under the present scenario, the Hon'ble Single Judge relying on the order passed in O.A. No.3020(C)/2003 has allowed the writ petition and directed to grant him the benefit as has been granted to the applicant in O.A. No.3020(C)/2003. The said order is completely erroneous and in contravention of the settled principle of law.

10. That it is humbly submitted that though the respondent is not entitled to full pension as he stands on a different footing, but the Hon'ble Single Judge has directed to extend the benefits as has been granted to Nitya Nanda Biswal in terms of order passed in O.A. No.3020 of 2003.

Being aggrieved by the order dated 06.09.2022 passed by the Hon'ble Single Judge in W.P.C.(OAC) No. 3297 of 2018 under Annexure-1,

Charat Chandrasekhar

the appellants beg to prefer this
Appeal on the following amongst other,

GROUND

- A. For that the impugned order is illegal, erroneous, arbitrary, contrary to law and as such the same is liable to be set aside.
- B. For that while deciding the matter, the Hon'ble Single Judge has not taken into account the specific provisions made under Rule-18(6) of the O.C.S. (Pension) Rules, 1992 as the respondent has retired from service on 31.10.2013 and governed under the provisions of the said Rules. He not being governed under the 1977 Rules, the direction of the Hon'ble Single Judge to extend the benefits of order passed in O.A. No.3020(C)/2003 is not applicable to him.
- C. For that the Hon'ble Single Judge failed to appreciate that when Rule-18(6) of the O.C.S. (Pension) Rules, 1992 speaks that job contract period shall be added to the period of qualifying service in regular establishment as would render him eligible for pensionary benefits as the same is holding the field, the job contract period cannot be counted as qualifying service.
- D. For that the impugned judgment has been rendered without referring to Rule 18(6) of the O.C.S. (Pension) Rules, 1992, the said order is completely erroneous and is in contravention of the statutory provisions laid down under the Rules. It is settled

Charan Chandoo Sahu

position of law that no direction can be issued by the Court to the authority to do something contrary to law.

E. For that the Hon'ble Single Judge while relying on the order passed in the case of Nityananda Biswal (supra) has not taken into account the ratio decided in the case of Settlement Class-IV Job Contract Employees Union (supra) as well as the order passed in W.P.(C) No.11503 of 2003.

F. For that the Hon'ble Single Judge failed to appreciate that in a number of cases the learned Tribunal relying on the order passed in the aforesaid writ petition, has dismissed the claim for extending the full pension taking into account the entire job contract period. In O.A. No.1290 of 2007, the learned Tribunal has observed as follows:

"As the scheme has been made to consider so much of period Job-Contract employment which falls short of the entitlement, the regular employee to get pension, the entire Job-Contract period cannot be added to regular period. A particular person cannot be considered as a precedent nor can the applicant claim equality with that incumbent. This amounts to claiming counter equality. The applicant does not have any legal right to claim the entire period of Job-Contract service for the purpose of pension.

Whereas, in several cases like O.A. No.38/2009 filed by Priyabhusan Jena Vs. State of Odisha and others, O.A.

Charat Chandra Saha



No.174/2006 filed by Shyamsundar Nath Vs. State of Odisha and others, O.A. No.1828(C)/2004 filed by Hrudananda Sahu Vs. State of Orissa and others, O.A. No.824(C)/2008 filed by Dibakar Behera Vs. State of Odisha and others and O.A. No.2161 (C)/2004 filed by Madhabananda Biswal Vs. State of Odisha and others, the Hon'ble Tribunal has dismissed the claim of the applicants for extending benefits of full pension / family pension taking into account the entire Job-Contract period."

G. For that it is the settled principle of law that if a judgment rendered in ignorance of relevant statute of law, as per the *doctrine of per-incurium*, cannot set precedent. This ratio has been laid down by the Hon'ble Apex Court in the case of **State of Odisha and another Vs. Mamata Mohanty** [(2011) 3 SCC 436]. In that view of the matter the impugned order of the Hon'ble Single Judge in directing to extend all such benefits in favour of the petitioner in terms of the directions given by the Courts as mentioned in the order, is not sustainable and is liable to be set aside.

H. For that it is the settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute

Charat Chandro Sahu

and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. In that view of the matter, the impugned order is bad in law and is liable to be set aside.

I. For that law is well settled that a party cannot claim that since something wrong has been done in another case, direction should be given for doing another wrong. If the impugned order will be implemented then the ambit of the OCS (Pension) Rules, 1992 and the amendment thereto will be struck down and will open the floodgates to thousands of such employees to come with undeserving claims and it will become an obligation on the State leaving it in a drastic financial crisis which is irreparable.

J. For that the impugned order is otherwise bad in law and is liable to be set aside.

PRAYER

Under these circumstances the Appellants most humbly pray that this Hon'ble Court may graciously be pleased to admit this appeal, call for the records and after hearing the parties be pleased to set aside the impugned order dated 06.09.2022 passed by the Hon'ble Single Judge in W.P.C. (OAC) No. 3297 of 2018 under Annexure-1 and further be pleased to pass

Sharat Chandra Sahu

[Signature]

any other order/orders as may be deemed fit and proper;

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

By the Appellants through

Cuttack

Date: 22/08/2023

Addl. Govt. Advocate

CERTIFICATE

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

Further certified that Cartridge papers are not available.

CUTTACK.

DATE: 22/08/2023

ADDL. GOVT. ADVOCATE

RABI NARAYAN MISHRA
ADDL. GOVT. ADVOCATE
Enroll.No - O-499/1992
Mob.: 9437277781

Charat Chandrasekhar

ANNEXURE-2

-15-

ANNEX

IN THE ODISHA ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,
CUTTACK.

O.A. NO. _____ (C) OF 2018

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Harihar Behera, aged about 64 years, Son of
Late Banchhanidhi Behera, of Village-
Gobindpur, PS/Dist. Bhadrak.

... Applicant.

-Versus-

1. State of Odisha, represented through the
Commissioner-Cum-Secretary to Govt., Dept. of
Revenue and Disaster Management, Secretariat
Building, Bhubaneswar, Dist. Khurda.
2. The Principal Secretary to Govt., Department of
Finance, Secretariat Building, Bhubaneswar,
Dist. Khurda.
3. The Accountant General (A & E), Odisha,
Bhubaneswar, Dist. Khurda.
4. The Collector, Kalahandi, AT/PO/Dist. Kalahandi.

... Respondents.

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Assistant Collector (Estt.)
Collectorate, Kalahandi

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 3297 of 2018

Harihar Behera

.....

Petitioners

Mr. A.K. Sahoo, Advocate

Vs.

State of Orissa and others

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

06.09.2022

Order No.

1

This matter is taken up through hybrid mode.

2. Heard.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to count his past service rendered in the Job-Contract Establishment for the purpose of pension and pensionary benefit within a stipulated period.

4. Learned counsel for the petitioner contended that similar matter had come up before this Court in O.J.C. No. 2405 of 1985 and after constitution of the Odisha Administrative Tribunal the same was transferred to the Tribunal and registered as T.A. No. 11 of 1993. The said case was disposed of on 21.10.1994 by the learned Tribunal by following the decisions of the Apex Court and by giving direction to the competent authority to count the past service rendered by the petitioner in Job Contract Establishment towards pension and pensionary benefit and after such orders were passed, pension of the petitioner was directed to be calculated, drawn and disbursed in his favour within two months from the date of receipt of the copy of the judgment. The order passed in T.A. No. 11 of 1993 was challenged before the Apex Court by the State, which was dismissed vide order dated 17.07.1995.

5. It is further contended that similar matter had also come up

True Copy Attested

Assistant Collector (Estt.)
Collectorate, Kalahandi

before this Court in O.J.C. No. 2147 of 1991, which was decided on 24.03.1992 and this Court has considered the case of Job Contract employees for regularization of service and for pension and pensionary benefits. In O.A. No. 3020 (C) of 2003 (*Nityananda Biswal v. State of Orissa and others*), the Tribunal vide order dated 04.01.2004 also directed that the period of the engagement of the petitioner in job contract establishment should be taken into account as qualifying service and accordingly his pension and other pensionary benefits be revised and paid to the petitioner therein. The order passed in O.A. No. 3020 (C) of 2003 was also challenged by the State before this Court in W.P.(C) No. 14244 of 2006. This Court vide order dated 09.04.2014 dismissed the writ application preferred by the state against the order passed by the Tribunal. The State also preferred Special Leave to Appeal (C) GC No. 12573 of 2015 against the order passed by this Court in W.P.(C) No. 14244 of 2006, which was dismissed by the apex Court vide order dated 13.07.2015.

6. In view of the above settled position of law, nothing remains to be reconsidered by this Court. Accordingly the opposite parties are directed to extend all such benefits in favour of the petitioners in terms of the directions given by the Courts as mentioned above, as expeditiously as possible, preferably within a period of three months from the date of communication of the certified copy/authenticated copy of the order.

7. With the above observation/direction, the writ petition stands disposed of.

8. Issue urgent certified copy as per rules.

True Copy Attested

Alok

Assistant Collector (Estt.)
Collectorate, Kalahandi

(DR. B.R. SARANGI, J.)

No. 49296—Pen-59/97.F.

GOVERNMENT OF ORISSA
FINANCE DEPARTMENT
OFFICE MEMORANDUM

The 12th December 1997

SUBJECT— Counting of Service rendered under the Job contract establishment towards pension


The service rendered under the job-contract establishment which is paid from contingencies is not taken into account towards pensionary benefits under rule 18 (2) (iii) of O. C. S (Pension) Rules, 1992. Further, under rule 21 of the said Rules, except in pensionable establishment, the service in Survey and Settlement Organisation will not be count for pension, unless it is followed without interruption by qualifying service.

2. According to Finance Department Resolution No. 22764-F., dated the 15th May 1957, the job contract employees appointed prior to the 12th April 1993 (after which there is a ban for engagement of such employees) under the administrative control of different Departments can be brought over to the posts created under regular/pension establishment after completion of 10 years, service as job-contract employees subject to fulfilment of certain conditions and stipulations outlined therein. According to the provisions contained in the said Office Memorandum, the date of regularisation shall be reckoned as the first appointment to the service for pension and other benefits. It has come to the notice of the Government that some of the job-contract employees are absorbed under the regular establishment almost towards the end of their service and become ineligible to get the pensionary benefits due to length of regular Government service in pensionable establishment. This has caused hardship to such type of employees.

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

4. After careful consideration of the matter, State Government have been pleased to decide that for the purpose of pensionary benefits only, so much of their job-contract service period shall be added to the period of qualifying service in regular establishment as would render them eligible for pension. Addition of that portion of job-contract service shall not be counted for calculation of gratuity.

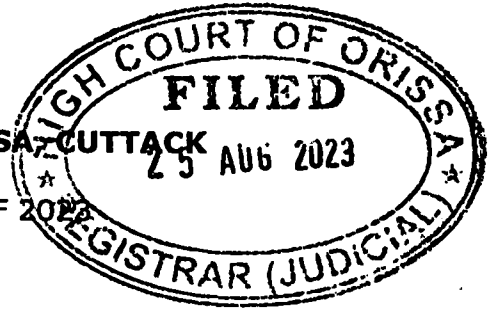
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Assistant Collector (Estt.)
Collectorate, Kalahandi

K. B. VERMA
Principal Secretary to Government

IN THE HIGH COURT OF ORISSA

WA NO. 2141 OF 2023



State of Odisha

....

Appellants/Petitioner

-Vrs.-

Hanihar Bakenzoth

Respondent/Opp. Parties

APPEARANCE MEMO

I do hereby enter my appearance in the above noted case on
behalf of the State of Orissa.

Cuttack.

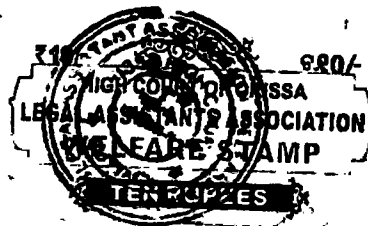
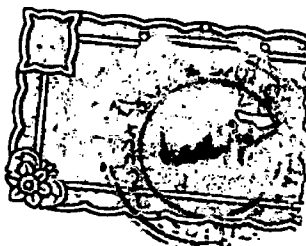
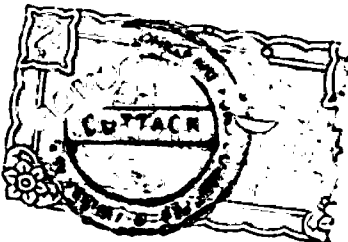
Dt. 22/8/23



Addl. Govt. Advocate /

Addl. Standing Counsel

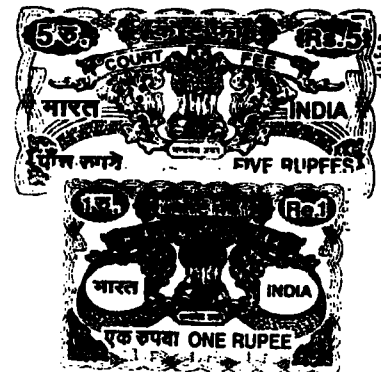
RABI NARAYAN MISHRA
ADDL. GOVT. ADVOCATE
Enroll.No. 1499/1992
Mob.: 943727781



IN THE HIGH COURT OF ORISSA: CUTTACK

I.A. NO. 5803 OF 2023

(Arising out of W.A. NO. 2141 OF 2023)



In the matter of:

An application under Rule- 27(A) of Chapter-
VI of Orissa High Court Rules for dispensing
with the certified copy of the order dated 06.09.2022
passed in W.P.C (OAC) No.3297 of 2018.

And

In the matter of:

State of Odisha and othersAppellants.

-Vrs-

Harihar BeheraRespondent.

To

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

The humble petition of the
petitioners named above;

MOST RESPECTFULLY SHEWETH:

1. That the petitioners as appellants in the above
mentioned writ appeal have challenged the order dated
06.09.2022 passed by the Hon'ble Single Judge in
W.P.C (OAC) No.3297 of 2018.

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

Charat Chandro Saha

06.09.2023

2. That for better appreciation of facts, the contents of the writ appeal filed by the petitioners may kindly be treated as a part and parcel of this interim application.

3. That the petitioners as appellants challenging the order dated 06.09.2022 under Annexure-1 to the writ appeal, passed in W.P.C (OAC) No.3297 of 2018 The original/ certified copy of the said order is not available with the petitioners at present and they shall apply for the same and as soon as receipt of the certified copy of the said order, the same shall be filed before this Hon'ble Court for which the filing of certified copy of the order dated 06.09.2022 under Annexure-1 to the writ appeal may kindly be dispensed with for the time being.

PRAYER

It is, therefore, humbly prayed that in view of the aforesaid facts and circumstances, filing of certified copy of the impugned order dated 06.09.2022 under Annexure-1 to the writ appeal may kindly be dispensed with for the time being and the petitioners undertake that the same shall be filed before this Hon'ble Court as soon as obtaining from the Hon'ble Court.

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

By the Petitioners through

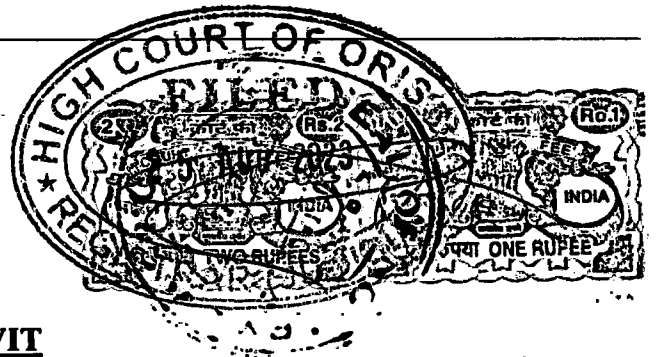
CUTTACK.

DATE 22/08/2023.

ADDL. GOVT. ADVOCATE

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

Pharal Chandee Sahu



AFFIDAVIT

I, Sri Sharat Chandra Sahu aged about 52 years, S/o- Late Dibakar Sahu, at present working as Assistant Collector, Collectorate, Kalahandi do hereby solemnly affirm and state as follows: -

1. That, I am ^{working as above & I am also} acquainted with the facts of the case and 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, information and based on official records available.

Identified by:

Mohan Behera
A.C A.G.'s Office.

Sharat Chandra Sahu
DEPONENT 22/8/2023

Assistant Collector (Estt.)
Collectorate, Kalahandi

CERTIFICATE

Certified that due to non-availability of cartridge papers thick white paper are used in this petition.

CUTTACK.
DATE: 22/08/2023.

ADDL. GOVT. ADVOCATE

RABI NARAYAN MISHRA
ADDL. GOVT. ADVOCATE
Enroll. No - O-499/1992
Mob.: 9437277781

The above named Deponent
Solemnly affirms on.....

M. Mishra
Certified

Surendra Prasad Dha
Advocate
NOTARY, CUTTACK

IN THE HIGH COURT OF ORISSA : CUTTACK

I.A. NO. 5804 OF 2023

(Arising out of W.A. No. 2141 of 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 and others ... Appellants

-Versus-

Harihar Behera ... Respondent

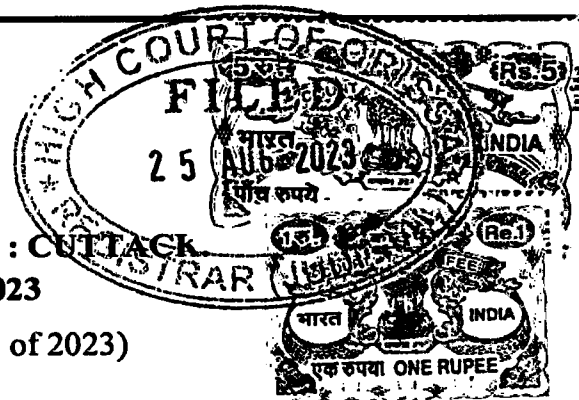
To

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 dated 06.09.2022 passed by the Hon'ble Single Judge in W.P.C(OAC) No.3297 of 2018 under Annexure-1.
2. That the impugned order is dated 06.09.2022 and the instant appeal having been filed on 23.08.2023, there is a delay of 321 days in filing the same.
3. That after pronouncement of the impugned order on 06.09.2022. The Revenue & Disaster Management Department vide letter No.17789, dtd.01.06.2022 instructed the appellant No.3 to take steps for filing of



Charal Chandro Lake

28/8/2023

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

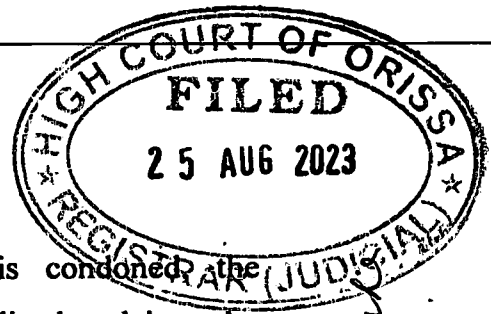
writ appeal against the impugned order. On receipt of such letter, the appellant No.3 vide letter No.1280 dated 17.06.2022 submitted all the required documents in the office of the learned Advocate General, Odisha for filing an appeal. Thereafter the matter was placed before the learned Advocate General who entrusted the matter to the learned Addl. Standing Counsel for preparation of memorandum of appeal. The learned Addl. Standing Counsel after examining the records and after necessary discussion, prepared the Memorandum of appeal which was filed before this Hon'ble Court on 23/08/2023.

Charat Chandra Sahu

4. 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. It is humbly submitted that the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation, reported in (2022) 3 SCC 117, was pleased to extend the period of limitation upto 30.05.2022 due to resurgence of COVID-19 pandemic. The delay in filing the appeal is bonafide and there is no deliberate laches nor willful negligence on the part of the appellants in not filing the same in time.

5. That the appellants have a strong prima facie case and there is every likelihood of success and unless

1/12/23
Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK



the delay in filing the appeal is condoned, the appellants would be severely prejudiced and in order advance substantial justice between the parties, the delay may kindly be condoned.

6. That unless the delay in presenting the appeal is condoned and the matter is heard on merit, the State-appellants will suffer irreparable loss and it shall be grossly prejudiced.

7. That for the interest of justice, the delay in filing the appeal may kindly be condoned.

PRAYER

It is, therefore, prayed that this Hon'ble Court may graciously be pleased to allow this application by condoning the delay in filing the appeal and further be pleased to pass any other order/orders as this Hon'ble Court may deem fit and proper.

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

By the Appellants through

Cuttack.

Dt. 22.08.2023

Addl. Govt. Advocate

G228
Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

Shanaz Chandra Sah

AFFIDAVIT

I, Sri Sharat Chandra Sahu aged about 52 years,
S/o- Late Dibakar Sahu, at present working as
Assistant Collector, Collectorate, Kalahandi do hereby
solemnly affirm and state as follows:-

1. That I am *Worung as above and*
I am otherwise acquainted with the
facts of this case and competent to swear
this affidavit on behalf of other appellants.
2. That the facts stated above are true to the
best of my knowledge and based on
official records.

Identified by :

Moham Chh...
AC, A.G.'s Office.

Sharat Chandra Sahu
Deponent
22/8/2023

CERTIFICATE

Certified that Cartridge papers are not available.

Cuttack

Dtd *22.08.2023*

Addl. Govt. Advocate

RABI NARAYAN MISHRA
ADDL. GOVT. ADVOCATE
Enroll.No-O-499/1992
Mob.:9437277781

The above named Deponent
Solemnly affirm on...

S. L. Saha
M. M. Mishra (A/C)

22/8/2023
Advocate
CUTTACK

IN THE HIGH COURT OF ORISSA: CUTTACK.

I.A. NO. 5805 OF 2023
(Arising out of W.A. No. 2141 of 2023)

In the matter of:

An application for stay, under Chapter-VI, Rule-
27 (A) of the Orissa High Court Rules, 1948.

AND

In the matter of:

State of Odisha and others ... Petitioners
-Versus-

Harihar Behera ... Opposite Parties

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 dated 06.09.2022 passed by the Hon'ble Single Judge in W.P.C(OAC) No.3297 of 2018 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.



Charan Chandrasekhar

4/28/2024
Surenendra Prasad Dha.
Advocate
NOTARY, CUTTACK

3. That it is humbly submitted that the impugned order is illegal, arbitrary and not sustainable in the eye of law and is liable to be set aside.
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 impugned order is stayed during pendency of the writ appeal, the appellants shall be highly prejudiced and shall suffer irreparable loss.
6. That in the interest of justice, the impugned order may kindly be stayed till disposal of the writ appeal.

Charad Chandee Sahi

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 pass necessary orders to stay the impugned order dated 06.09.2022 passed by the Hon'ble Single Judge in W.P.C(OAC) No.3297 of 2018 under Annexure-1 till disposal of the writ appeal 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.

By the Appellants through

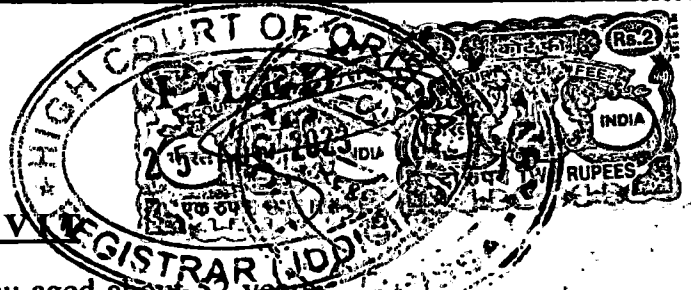
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DI 92/2023

ADDL. GOVT. ADVOCATE

4228
Surenra Prasad Dhal
Advocate
CUTTACK

AFFIDAVIT



I, Sri Sharat Chandra Sahu aged about 52 years,
S/o- Late Dibakar Sahu, at present working as
Assistant Collector, Collectorate, Kalahandi do hereby
solemnly affirm and state as follows:-

1. That, I am ~~knowing as above~~ being
acquainted with the facts of the case has 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, information and based on
official records available.

Identified by :

Moham Behar
A.C., A.G.'s office.

Sharat Chandra Sahu
20/8/2023
DEPONENT

Assistant Collector (Estt.)
Collectorate, Kalahandi

CERTIFICATE

Certified that Cartridge papers are not available.

CUTTACK.

Dt. 22. 08.2023

ADDL. GOVT. ADVOCATE

RABI NARAYAN MISHRA
ADDL. GOVT. ADVOCATE
Enroll. No - O-499/1992
Mob.: 9437277781

The above named Deponent

Solemnly affirm on.....

..... Being identified

by.....

Chandra Prasad Dhal
Advocate
NOTARY, CUTTACK