[O. H. C.–97-A]

IA-Nos-4043/23
4044/23
4045/23

HARI KRUSHNA PANIGRAHI, A.S.C
M/s Prafulla Kumar Mohapatra
S. Ch. Sahoo CR-D

In the High Court of Orissa

ORDER SHEET

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

WA No. 1529/2023

Petitioner(s)

STATE OF ODISHA

Versus

Ors.

BANAMALI PANDA

Opposite-Party(s)

& Anr.

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
			PRESENTED ON 10/07/2023 **Register and Put up for Orders** **Registrar (Judicial)** for S.R 17/07/23 24/7/23 S.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.1529 of 2023

State of Odisha and others .... ***Appellants***

Mr. M.K. Khuntia, Addl. Govt. Advocate

-versus-

Banamali Panda and another .... ***Respondents***

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

ORDER
08.10.2024

Order No.

I.A. No. 4044 of 2023

01. This matter is taken up through Hybrid mode.

2. Issue notice on the question of limitation to the respondents by Speed/Registered Post with AD fixing a short returnable date, requisites for which shall be filed within three days.

3. List this matter on 12.11.2024.

(Chakradhari Sharan Singh)
Chief Justice

(Savitri Ratho)
Judge

S.K. Guin/PA.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1529 of 2023

State of Odisha and others .... ***Appellants***

Mr. K.C. Kar, Government Advocate

-versus-

1. Banamali Panda .... ***Respondents***
2. The Accountant General (A&E), Odisha, Bhubaneswar

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

ORDER
14.11.2024

Order No.

02. ***I.A. No.4043 of 2023***

This matter is taken up through Hybrid mode.

2. Mr. K.C. Kar, learned Government Advocate undertakes to file the certified copy of the impugned order within two weeks.

3. Considering the said submission, this application is disposed of.

4. The certified copy of the impugned order shall be filed within two weeks as undertaken.

I.A. No.4044 of 2023

5. The office note indicates that the postal tracking report is back with the noting that 'item delivered'.

6. Since no counsel appears on behalf of the respondents, list this matter on 28.11.2024.

7. The Registry is directed to verify if any counsel has appeared on behalf of respondent No.1 and indicate his/her name in the cause list.

(Chakradhari Sharan Singh)
Chief Justice

(Savitri Ratho)
Judge

S. Behera/A Nanda

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1529 of 2023

State of Odisha and others ... ***Appellants***

Mr. K.C. Kar, Government Advocate

-versus-

Banamali Panda and another ... ***Respondents***

Mr. P.K. Mohapatra, Advocate

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

ORDER

Order No. **28.11.2024**

03. This matter is taken up through Hybrid mode.

2. Mr. P.K. Mohapatra, learned counsel appearing on behalf of the respondents 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 the 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. He also submits that a similar matter i.e. W.A. No. 614 of 2023 is posted to 10.12.2024.

3. Hence, list this matter on 10.12.2024 along with W.A. No.614 of 2023 and batch.

(Chakradhari Sharan Singh)
Chief Justice

(Savitri Ratho)
Judge

SK Jena/Secy.

IN THE HIGH COURT OF ORISSA

Case No. WA - 1529 / 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
		i) I.A no- 4043 / 2023 is at Flag- 'A' for dispensing with filing of C-copy. ii) I.A no- 4044 / 2023 is at Flag- 'B' for condonation of delay. For orders Along with WP(C) - 30498 / 2022 Biswabhusan Nahak DB 23 / 08 / 2024 Order No-1 Memo No- 20455. Date - 28/10/24. Notice on limitation matter issued to the ~~sole~~ respondent-1 by R.P with AD fixing on 06.11.24 for appearance & show cause 22/10/24

IN THE HIGH COURT OF ORISSA

Case No. WA-1529/23

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
		Memo No- 20252 Date- 29/10/24 Notice on limitation matter by R.P with AD issued to the ~~sole~~ performa respondent fixing on 06.11.2024 for appearance & show cause 29.10.24 AD received from the ~~sole~~ respondent-1 after valid service. 06/11/24
01	08.10.24	Order No-01 i) I.A no-4043/23 is at flag-'A' for dispensing with filing of C-copy ii) Further order on I.A no-4014/23 is at flag-'B' for condonation of delay. iii) Neither AD nor undelivered notice issued to the performa respondent returned yet, in this regard postal tracking report showing "Item Delivered (Addressee)" is at flag-'M'. For Orders Along with WP(C)-30498/22 Ca disp of case Biswabhusan Nahak 08/11/24 DB Adj. to 12.11.24

IN THE HIGH COURT OF ORISSA

Case No. WA - 1529/23

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
		C - Copy of the impugned order filed. Mahal 26.11.24 M/S Prafulla kumar Mohapatra & his associate entered appearance for R-1.
02	08.10.24	Order No - 02 i) Further order on I.A no - 4044/23 is at Flag-'B' for condonation of delay. For Orders Along with WP(C) - 30498 / 2022 (a disp. of case) Biswabhusan Nahak 26-11-24 DB Adj. to 28.11.24
03	28.11.24	Order No-03 i) Further order on IA no - 4044/23 is at Flag-'B' for condonation of delay. For Orders Along with WP(C) - 30498 / 2022 (a disp. of case) & ~~WA - 814 / 2023 with~~ pending case) Biswabhusan Nahak 06-12-2024 DB Adj. to 10.12.2024 Ref in WA - 814 / 2023

7/12/24

ORISSA HIGH COURT

FILING ACKNOWLEDGEMENT SLIP

CNR	**ODHC010525022023**
Filing No	**WA/0001529/2023**
Date and Time	**10/07/2023-16:14:46**
Misc Case/IA	4043/2023,4044/2023,4045/2023
Petitioner Name	STATE OF ODISHA
Petitioner Advocate Name	HARI KRUSHNA PANIGRAHI,A.S.C
Respondents Name	BANAMALI PANDA
Respondents Advocate	
Amount	
Police Station	
FIR	

Monday 10th of July 2023 05:00:56 PM

STAMP REPORT

CASE NO....W.P.A. 1529/23

LIMITATION

Date of Judgement Awards	24-11-22	
Date of Valid Presentation	10-7-23	
Total Period Occupied	228	days
Limitation	30	days
Certified Copy Period	—	day
Delay in filing	198	days

1. In time .....NO.....Expired on 24-12-22
2. Period of delay 198 days delay. C.A. for Condonation of delay filed.
3. Court Fee of Rs 12/- paid.
4. Authentication fee due on the
   (a) Copy of Trial Court Judgement
   Rs.....X... Decree Rs.....X...
   (b) Appellate Court Judgement Rs....X...
   Decree Rs.....X....
5. (a) Copy of Trial Court Judgement/Order X
   (b) Appellate Court/Revisional Order
   Judgement C. Copy of impugned order not filed. C.A. for dispensing with filed
   (c) Second Copy Petition filed.
   (d)Receipt showing copy on A.G. X
   (e) Vakalatnama properly stamped,
   Executed and accepted Memo of appearance filed.
6. (a)Cause Title in order.
   (b)Provision of Law furnished.
7. Code indicated.
8. Single Judge/Division Bench Case D.B.
9. Other Defects X

24/7/23

STAMP REPORTER

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 1529 / 2023 Date of Regn. 7/7/23

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

R & DM

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

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

3	1		1	6		0	0

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 Act-1948.

5. Section/Sub-Section Involved _____

6. Rules Involved N/A

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 _____

N/A

9. Whether the matter is covered by any judgement of. the Supereme 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 7/7/23

Signature of the Advocate

High Court of Orissa

Acknowledgement

CNR	: ODHC010525022023		
Efiling No	: AOD20220001886C202300465		
Filing No.	: WA/1529/2023	Date of Filing	: 10-07-2023
Petitioner	: STATE OF ODISHA	Time of Filing	: 16:14:46
Petitioners Advocate	: HARI KRUSHNA PANIGRAHI,A.S.C	Respondent	: BANAMALI PANDA
	: 0.00		

Print

IN THE HIGH COURT OF ORISSA, CUTTACK

W.A. No. 1529 of 2023
(Arising out of W.P. (C) No. 30498/2022,
Disposed of on 24.11.2022)

Code No.

State of Odisha & Anr. ....Appellants

-Versus-

Banamali Panda ....Respondents

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Cuttack
Date : 07-7-23

(HARE KRUSHNA PANIGRAHI)
ADDL. STANDING COUNSEL
Enrolment No. O - 1666/ 1995
Mobile No. 9861066138

A

IN THE HIGH COURT OF ORISSA, CUTTACK

W.A. No. 1529 of 2023

State of Odisha & Anr. ....Appellants

-Versus-

Banamali Panda ....Respondents

SYNOPSIS ON BEHALF OF THE APPELLANTS

The appellants have filed the aforesaid Writ Appeal challenging the judgment and order dated 24.11.2022 passed in W.P. (C) No. 30498/2022 by which the Hon'ble Single Judge has directed the appellants to extend all such benefits in favour of the writ petitioner in terms of the directions given by the Courts in the cases namely (i) Nityananda Biswal – Vrs.- State of Odisha & others and (ii) T.A. No.11 of 1993, disposed of on 21.10.1994 (Bhagaban Patnaik – Vrs.- State of Odisha).

Cuttack
Date: 07-7-23 Addl. Standing Counsel

B

IN THE HIGH COURT OF ORISSA, CUTTACK

W.A. No. 1529 of 2023

State of Odisha & Anr. .... Appellants

-Versus-

Banamali Panda .... Respondents

DATE CHART ON BEHALF OF THE APPELLANTS

1.	12.03.1979	:	The Respondent No.1 entered into service as Job Contract Amin .
2.	18.07.2009	:	The Respondent No.1 was brought over to regular establishment vide memo No.1291 dt. 18.07.2009 of Collector, Rayagada.
3.	01.09.2009	:	The Respondent No.1 was joined in the regular post.
3.	29.02.2012	:	The Respondent No.1 retired from service on attaining the age of superannuation.
3.	24.11.2022	:	The impugned order was passed by this Hon'ble Court.

Cuttack
Date : 07-7-23

Addl. Standing Counsel

IN THE HIGH COURT OF ORISSA, CUTTACK

W.A. No. 1529 of 2023
(Arising out of W.P. (C) No. 30498/2022,
Disposed of on 24.11.2022)

Code No. 31160

In the matter of :

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

And

In the matter of :

An appeal challenging the judgment and order dated 24.11.2022 passed in ,W.P. (C) No. 30498/2022 by the Hon'ble Single Judge;

And

Presented on. 10/7/2023

Registrar (Judicial)

In the matter of :

1. State of Odisha represented through its Secretary, Government of Odisha, Revenue & Disaster Management Department, Lok Seva Bhawan, Bhubaneswar, Dist.-Khurda.

2. Director of Land Records Surveys, & Consolidation, Odisha, Board of Revenue, Cuttack, At/Po/Dist.-Cuttack.

3. Collector and District Magistrate, Rayagada, At/P.O./Dist.- Rayagada.

4. Dy. Director of Consolidation, Balasore, At/P.O/Dist.- Balasore.

5. Tahasildar, K. Singhpur, At/P.O- K. Singhpur, Dist.- Rayagada.

6. Secretary to Govt. of Odisha, Finance Department, Lok Seva Bhawan, Bhubaneswar, Dist. Khurda.

...APPELLANTS
(Opposite Party Nos.1 & 6 in the writ application)

-VERSUS-

1. Banamali Panda,aged about 70 years,S/o. Late Purna Chandra Panda,At: Goliha. P.O.- Dungura, Dist.- Balasore, Retd. Asst. Revenue Inspector under the Collector, Rayagada. At/P.O./Dist.- Rayagada.

...RESPONDENT
(Petitioner in the writ application)

2. The Accountant General (A&E), Odisha, Bhubaneswar

.... PROFORMA RESPONDENT

(Opposite Party No.7 in the writ application)

(The matter out of which this writ appeal arises was before this Hon'ble Court in W.P. (C) No. 30498/2022, disposed of on 24.11.2022)

To

The Hon'ble Chief Justice and His Lordships companion justices of the 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 24.11.2022 passed in W.P. (C) No. 30498/2022 by which the Hon'ble Single Judge has directed the appellants to extend all such benefits in favour of the writ petitioner in terms of the directions given by the Courts in the cases namely (i) Nityananda Biswal – Vrs.- State of Odisha & others and (ii) T.A. No.11 of 1993, disposed of on 21.10.1994 (Bhagaban Patnaik – Vrs.- State of Odisha).

2. That the Respondent No.1 approached this Hon'ble Court in W.P.(C) No. 30498 of 2022 with a prayer for a direction to the appellants to grant him pension and pensionary benefits by counting his entire past service rendered under J.C. and regular establishment.

3. That, the facts giving rise to file the aforesaid writ petition was that the Respondent No.1 entered into service as Amin on 12.03.1979 under Dy. Director of Consolidation, Balasore . While continuing as such he was regularized in Service of Asst. Revenue Inspector Post vide Memo No.1291 dated 18.07.2009 issued by the Collector, Rayagada. He was relieved from Consolidation Office, and joined in the regular post on 01.09.2009. Subsequently he retired on 29.02.2012 on attaining the age of superannuation.

4. That it was alleged in the writ petition that after retirement, the Respondent No.1 was granted minimum pension on the basis of the period of service rendered by him in the regular establishment. In other words, the period of service rendered by the applicant in the job contract establishment was not taken into account for the purpose of pension for which the Respondent No.1 filed the aforesaid writ petition with the prayers as aforesaid.

5. That the aforesaid writ application was taken up for hearing before this Hon'ble Court on 24.11.2022 and was disposed of vide order dated 24.11.2022 directing the appellants to extend all such benefits in favour of the writ petitioner in terms of the judgment about which it has been stated in the preceding paragraphs. **The certified copy of the order dated**

24.11.2022 passed in W.P. (C) No. 30498/2022 is filed herewith as <u>Annexure-1</u>.

Being aggrieved by the judgment and order dated 24.11.2022 passed in W.P. (C) No. 30498/2022 under Annexure-1 by the Hon'ble Single Judge, the appellants beg to prefer this Appeal on the following grounds amongst others;

<u>GROUNDS</u>

(A) For that the impugned order under Annexure-1 is wrong, illegal, erroneous and has been passed in contravention of the provisions of OCS (Pension) Rules, 1992.

(B) For that the Hon'ble Single Judge while passing the impugned order under Annexure-1 though has noticed the judgment rendered by a Division bench of this Hon'ble Court in OJC No.2147 of 1991 decided on 24.3.1992, yet was completely oblivious of the directions contained therein. It was specifically held in O.J.C. No.2147 of 1991 (Settlement Class-IV Job Contract Employees Union, Balasore-Mayurbhanj District –Vrs.- State of Odisha & others) that for the purpose of calculating the pensionary benefits so much of their earlier service period shall be reckoned so as to make them eligible for pension. These directions contained in O.J.C. No.2147 of 1991

was completely lost sight of by the Hon'ble Single Judge while passing the impugned order. Therefore, the impugned order is vulnerable and is liable to be set aside.

(C) For that much reliance has been placed by the Hon'ble Single Judge in the impugned judgment under Annexure-1 to the directions contained in the case of Nityananda Biswal and accordingly the impugned order has been passed placing reliance upon the same. Inasmuch as the Hon'ble Single Judge was of the view that the judgment in Nityananda Biswal's case having been upheld by the Apex Court, the same was the settled position of law and accordingly the impugned directions have been passed. True it is the judgment in Nityananda Biswal's case was upheld by the Apex Court in Special Leave to Appeal (C) CC No.12573 of 2015. But nonetheless the SLP so filed by the State Government was dismissed at the stage of admission with the following orders :

> "The Special Leave Petition is dismissed both on the ground of Limitation and merits."

In view of the aforesaid judgment in Nityananda Biswal's case, the Hon'ble Single Judge while disposing of W.P. (C) No.

30498/2022 has placed reliance upon the same and has disposed of the writ application vide order dated 24.11.2022 with the directions as aforesaid.

As a matter of fact the Hon'ble Supreme Court in a very recent pronouncement in the case of State of Odisha & others –Vrs.- Sulekh Chandra Pradhan reported in AIR 2022 SC 2030 has held that mere dismissal of the Special Leave Petition would not mean that the view of the High Court has been approved by the Supreme Court. In such view of the matter, the Hon'ble Single Judge has clearly erred in law in placing reliance on the judgment in the case of Nityananda Biswal. Therefore, it is respectfully submitted that the dismissal of the special leave petition filed by the State Government would not necessarily mean that the judgment rendered by this Hon'ble Court in W.P.(C) No.14244 of 2006 is the correct position of law. Be it stated that W.P.(C) No.14244 of 2006 was filed challenging the judgment of the learned Tribunal in O.A. No.3020(C) of 2003 (Nityananda Biswal) and the writ application having been dismissed on 09.04.2014, the Special Leave Petition as aforesaid was filed before the Apex Court which came to be dismissed by order dated 13.07.2015 which has been quoted

hereinabove. But in view of the judgment of the Hon'ble Apex Court in Sulekha Pradhan's case, mere dismissal of the SLP filed by the State do not lay down that the view of the High Court has been approved by the Supreme Court. In such view of the matter, the impugned judgment is unsustainable and is liable to be set aside.

(D) For that it is further respectfully submitted that while deciding W.P.(C) No.14244 of 2006, this Hon'ble Court has not taken note of the earlier judgment of this Hon'ble Court in O.J.C. No.2147 of 1991, decided on 24.03.1992 and this was so held by the another bench of this Hon'ble Court while deciding W.P.(C) No.11503 of 2003, decided on 07.02.2019. While disposing of W.P.(C) No.11503 of 2003, it was held

> "In our considered opinion, the earlier judgment which is well-reasoned, force the field as the subsequent decision in W.P.(C) No.14244 of 2006 has not referred to the same. Opposite parties will be given benefit only on the basis of the 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."

In view of the above, the conclusion is inescapable that the decision of this Hon'ble Court in W.P.(C) No.14244 of 2006 is no more the good law and cannot be pressed into service as has been done by the Hon'ble Single Judge. Therefore, the Hon'ble Single Judge has completely erred in law in passing the impugned order and as such the same is liable to be set aside.

(E) For that the impugned order under Annexure-1 has taken note of the order passed in T.A. No.11 of 1993 decided by the erstwhile Odisha Administrative Tribunal on 21.10.1994 (Bhagaban Patnaik –Vrs.- State of Odisha) the SLP. filed thereunder by the State in SLP(C) No.13916 of 1995 also came to be dismissed on 17.07.1995. Therefore, reliance has also been placed on the same in the impugned judgment. This approach on the part of the Hon'ble Single Judge is equally erroneous inasmuch as the judgment rendered in T.A. No.11 of 1993 has taken into account the Odisha Pension Rules, 1977 and the employee retired from Government service on 31.08.1988. Therefore, the pensionary benefits due and admissible to the petitioner in T.A. No.11 of 1993 was governed under 1977

Rules. On the contrary the petitioner in the present case retired from Government service on 31.1.2021 by which time 1977 Rules were repealed and OCS (Pension) Rules, 1992 was in place which came into force w.e.f. 1.4.1992. Therefore, the pension of the Respondent is to be governed 1992 Rules. The judgment in T.A. No.11 of 1993 having been decided under the repealed Rules, the same has no application to the facts of the present case. In such view of the matter, the Hon'ble Single Judge has completely erred in law in placing reliance upon the same which vitiates the impugned judgment.

(F) For that the Hon'ble Single Judge has failed to take note of the statutory provision contained in Sub-rule (6) of Rule-18 of the OCS (Pension) Rules which was inserted to the Rules by virtue of an amendment w.e.f. 01.09.2001. Sub-rule (6) of Rule-18 of the Rules reads as follows:-

> "18(6) Notwithstanding anything contained in Clauses (i) and (iii) of Sub-rule (2), a person who is initially appointed in a job contract establishment and is subsequently brought over to the post created under regular/pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular

establishment and would render him eligible for pension."

The aforesaid statutory provision has not at all been noticed by the Hon'ble Single Judge while passing the impugned order which is another facet of illegality. Be it stated that the impugned direction is contrary to the prevailing law and hence, the same is unsustainable.

(G) For that undisputedly the writ petitioner is in receipt of the minimum pension. It is submitted that in view of the above, only that period of service which makes the writ petitioner eligible for pension has been taken into account towards qualifying service so as to make the writ petitioner eligible for minimum pension. The residual service in the job contract establishment is not liable to be taken into account for the purpose of qualifying service and consequential grant of full pension.

(H) 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 be graciously pleased to Admit this Appeal, Call for the Records and after hearing the parties be pleased to set aside the impugned order dated 24.11.2022 passed in W.P. (C) No. 30498/2022 under Annexure-1;

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

By the Appellants through

Cuttack
Date: 7/12/23

Addl. Standing Counsel

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.

(HARE KRUSHNA PANIGRAHI)
ADDL. STANDING COUNSEL
Enrolment No. O-1666/1995
Mobile No. 9861066138

ANNEXURE - 1

IN THE HIGH COURT OF ORISSA; C U T T A C K

W.P.(c) No. _____/2022

(Code No.)

In the matter of:

Banamali Panda, aged about 69 years, S/o. Late Purna Chandra Panda, At:-Goliha, P.O.-Dungura, Dist-Balasore, Retd. Asst. Revenue Inspector under the Collector, Rayagada, At/P.O/Dist.- Rayagada.

.....Petitioner .

Versus

1. State of Odisha represented through its Secretary, Govt. of Odisha, Revenue and Disaster Management Department, Lok Seva Bhawan, Bhubaneswar, Khordha.
2. Director of Land Records, Surveys and Consolidation, Odisha, Board of Revenue, Cuttack, At/Po/Dist-Cuttack.
3. Collector and District Magistrate, Rayagada , At/P.O./Dist- Rayagada .
4. Dy. Director of Consolidation, Balasore, At/P.O/Dist-Balasore .
5. Tahasildar, K. Singhpur, At/P.O.- K. Singhpur, Dist.- Rayagada.
6. Secretary to Govt. of Odisha, Finance Department, Lok Seva Bhawan, Bhubaneswar, Khordha.
7. Accountant General (A & E), Odisha, Bhubaneswar, At/P.O.- Bhubaneswar, Dist. Khordha.

.....Opp. parties.

TRUE COPY ATTESTED

Establishment Officer,
Consolidation Branch
Board of Revenue,
Odisha, Cuttack.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30498 of 2022

Banamali Panda .. *Petitioner*
Mr. P.K. Mohapatra, Advocate

-versus-

State of Odisha and others .. *Opposite Parties*
Mr. A. Behera, A.S.C.
Mr. S.K. Patra,
Standing Counsel for Accountant General.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No. 24.11.2022

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Mr. S.K. Patra, learned Standing Counsel, who usually appears for the Accountant General, Odisha, submits that Accountant General, Odisha is not a necessary party at this stage of the proceeding. Therefore, the name of Opposite Party No.7-Accountant General, Odisha be deleted from the cause title of the writ petition.

In view of such submission, office is directed to delete the name of Opposite Party No.7 from the cause title of the writ petition.

3. Heard learned counsel for the Petitioner and learned Additional Government Advocate appearing for the State-Opposite Parties.

4. The Petitioner has filed this writ petition seeking direction to the Opposite Parties to count his past service rendered in the Job-

TRUE COPY ATTESTED

Establishment Officer,
Consolidation Branch
Board of Revenue,
Odisha, Cuttack.

Contract Establishment for the purpose of extending pensionary benefit within a stipulated period.

5. Learned counsel for the Petitioner contended that similar matter has 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.

6. It is further contended that similar matter has also come up 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) 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.

7. Learned counsel for the State, on the other hand, draws attention of this Court's judgment dated 19th April, 2022 passed in WPC(OAC) No.2276 of 2012 in the case of *Judhisir Padhy vrs. State of Odisha and others*, which was delivered by a single Bench of this Court. On such grounds, learned counsel for the State submits that the relief sought for by the petitioner is not maintainable and is not entitled to pensionary benefits as has been claimed by him. Therefore, prays for rejection of the writ petition at the threshold in view of the judgment of the single Bench passed in the case of *Judhisir Padhy vrs. State of Odisha and others* (supra).

8. 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 Petitioner 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 of the order.

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

Urgent certified copy of this order be granted on proper application.

Sd/- A.K. Mohapatra. J.

Jagabandhu

TRUE COPY ATTESTED

Establishment Officer,
Consolidation Branch
Board of Revenue,
Odisha, Cuttack.

IN THE HIGH COURT OF ODISHA: CUTTACK

WA No. 1529 OF 2023.

State of Orissa & Ors — Appellant/Petitioners

-Versus-

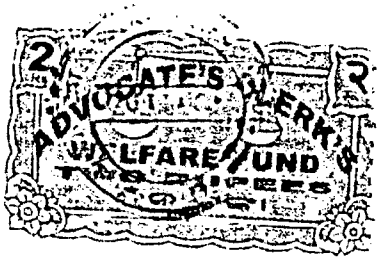
Banamali Panda — Respondent/Opp. Parties

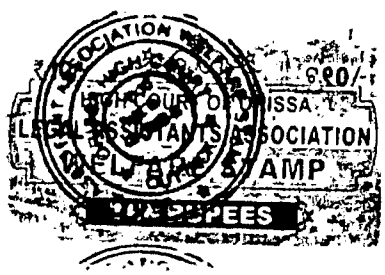
APPEARANCE MEMO

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

CUTTACK
Dt. 07-7-23

~~Addl. Govt. Advocate~~/
Addl Standing Counsel
HARI KRUSHNA PANIGRAHI
EN NO - O-1666/1995
MOB - 9861066138





IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No. 4043 of 2023

(Arising out of W.A. No. 1329 of 2023)

In the matter of :

An application for dispensing under Rule 27(a) of Chapter- VI of the Orissa High Court Rules;

And

In the matter of :

State of Odisha & Anr.

...Appellants/Petitioners

-Versus-

Banamali Panda

...Respondent/Opposite Party

To

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

The humble petition of the above named Appellants/petitioners;

Most Respectfully Sheweth:

1. That the Appellants/petitioners have filed the accompanying writ Appeal challenging the judgment and order dated 24.11.2022 passed in W.P. (C) No. 30498/2022 under Annexure-1.

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 24.11.2022 under Annexure-I to the writ appeal, passed in W.P. (C) No. 30498/2022. 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 24.11.2022 under Annexure-I 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 24.11.2022 passed in W.P. (C) No. 30498/2022 under Annexure-I to the writ appeal may kindly be dispensed with 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.

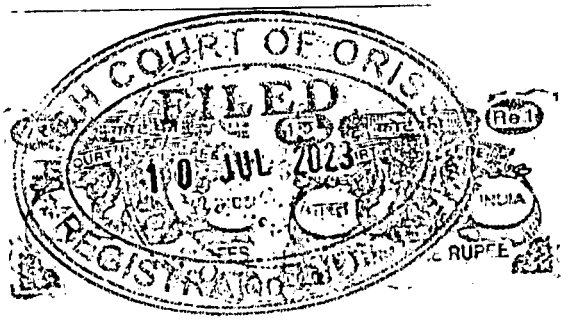
And for this act of kindness, the appellants/ petitioners shall as in duty bound ever pray.

By the appellants/petitioners through

Cuttack

Date : 07-7-23 Addl. Standing Counsel

SEAL OF THE NOTARY PUBLIC

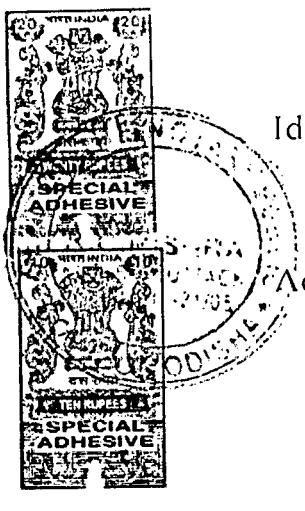


AFFIDAVIT

I, Sri Tushar Kanta Mohanty, aged about 57 years, S/o- Late Baidyanath Mohanty, presently working as Director, Land Records, Survey & Consolidation, Odisha, Board of Revenue Building, At/P.O.-Chandinichowk, Town/Dist.-Cuttack, do hereby solemnly affirm and state as follows:-

1. That I am the Appellant/Petitioner No.2 in the aforesaid case and I have been duly authorized by the other Appellants/ Petitioners to swear this Affidavit on their behalf.

2. That the facts stated above are true to the best of my knowledge and based on records.



Identified by

Mahem Behera

Advocate's Clerk, A.G's Office

Tushar Kanta Mohanty

DEPONENT

Land Records Survey & Consolidation
Board of Revenue, Odisha, Cuttack

CERTIFICATE

Certified that Cartridge papers are not available

Addl. Standing Counsel

HARE KRUSHNA PANIGRAHI
ENROL O-1666/1995
MOB - 9861666138

Solemnly affirm on in Oath by the Deponent at Cuttack on 07.7.23 being identified by Mahendra Advocate/Addl. Govt. Pleader/A.G's office/Notary Personally, that the facts stated above are true to the best of his/her knowledge.

7.7.23

RAMA CHANDRA MISHRA, NOTARY
CUTTACK TOWN, REGD. NO-21/05

IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No. 4044 of 2023

(Arising of W.A. No. 1529 of 2023)

In the matter of :

An application U/s.5 of the Limitation Act;

And

In the matter of :

State of Odisha & Anr.

...Appellants/Petitioners

-Versus-

Banamali Panda

...Respondent/Opposite Party

To

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

The humble petition of the appellants/petitioners named above;

Most Respectfully Sheweth:-

1. That the appellants/petitioners have filed the accompanying writ Appeal challenging the judgment and order dated 24.11.2022 passed in W.P. (C) No. 30498/2022 under Annexure-1.

2. That the averments made in the writ appeal may form a part of this application.

NOTARY PUBLIC R.C. MISHRA CUTTACK

3. That the impugned order having been passed on 24.11.2022, the appeal ought to have been filed on or before 25.12.2022. It is respectfully submitted that on receipt of the order under Annexure-1, the Government in Revenue & Disaster Management Department moved the Law Department seeking their views. The Law Department have decided to file Writ Appeal challenging the order under Annexure-1 and accordingly communicated their views to the Revenue & Disaster Management Department to file Writ Appeal. Accordingly, the Government in Revenue & Disaster Management Department vide Letter dated 02.05.2023 authorized the Director, Land Records & Surveys, Board of Revenue, Odisha for filing writ appeal in consultation with the office of the Advocate General, Odisha. The Additional Secretary, Consolidation Wing submitted the proposal along with all the records in the office of the Advocate General for filing writ appeal vide Letter dated 18.05.2023. The learned Advocate General entrusted the file to the Law Officer on 07.06.2023 where after the Writ Appeal was

prepared and sent for vetting and after vetting the writ appeal was made ready and is being filed on 7/7/23

4. That the delay caused in filing the writ appeal was neither intentional nor deliberate but due to unavoidable circumstances beyond the reasonable control of the appellants/petitioners.

5. That unless the delay caused in filing the writ appeal is condoned, the appellants/petitioners will be highly prejudiced.

PRAYER

Under these circumstances, the appellants/ petitioners most humbly prays that this Hon'ble Court may graciously be pleased to condone the delay caused in filing the Writ Appeal on any terms and conditions as may be deemed fit and proper;

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

By the appellants/Petitioners through

Cuttack
Date : 07-7-23

Addl. Standing Counsel

AFFIDAVIT

I, Sri Tushar Kanta Mohanty, aged about 57 years, S/o- Late Baidyanath Mohanty, presently working as Director, Land Records, Survey & Consolidation, Odisha, Board of Revenue Building, At/P.O.-Chandinichowk, Town/Dist.-Cuttack, do hereby solemnly affirm and state as follows:-

1. That I am the Appellant/Petitioner No.2 in the aforesaid case and I have been duly authorized by the other Appellants/ Petitioners to swear this Affidavit on their behalf.

2. That the facts stated above are true to the best of my knowledge and based on records.

Identified by

Mohan Behera
Advocate's Clerk, A.G's Office

Tushar Kanta Mohanty
DEPONENT
Director,
Land Records Survey & Consolidation
Board of Revenue, Odisha, Cuttack

CERTIFICATE

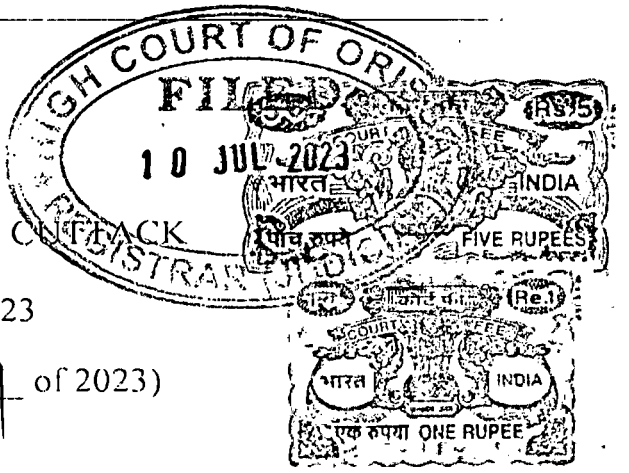
Certified that Cartridge papers are not available

Solemnly affirm on in Oath by the Deponent
at Cuttack on 07.7.15 being identified
by ..... Mohan
Advocate/Adv's Clerk/A.G's office/Notary
Personally known to me the facts stated above are
true to the best of his/her knowledge.

RAMA CHANDRA MISHRA, NOTARY
CUTTACK TOWN, REGD. No-21/05

Addl. Standing Counsel

HARE KRUSHNA PANIGRAHI
ENNO-O-1666/1995
MOB-9861066138



IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No. 4045 of 2023

(Arising out of W.A. No. 1529 of 2023)

In the matter of :

An application for stay under Rule 27(a) of Chapter- VI of the Orissa High Court Rules;

And

In the matter of :

State of Odisha & Anr.

...Appellants/Petitioners

-Versus-

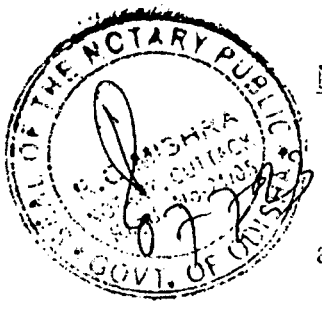
Banamali Panda

...Respondent/Opposite Party

To

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

The humble petition of the above named Appellants/petitioners;



Most Respectfully Sheweth:

1. That the Appellants/petitioners have filed the accompanying writ Appeal challenging the judgment and order dated 24.11.2022 passed in W.P. (C) No. 30498/2022 under Annexure-1.

2. That the averments made in the Writ Appeal may form a part of this application.

3. That the Appellants/petitioners have a prima-facie case to succeed and the balance of convenience lies in favour of the Appellants/Petitioners.

4. That unless operation of the order under Annexure-1 dated 24.11.2022 is stayed, the appellants/ petitioners will sustain irreparable loss and injury.

PRAYER

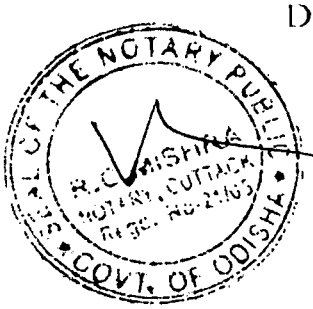
Under these circumstances, the appellants/ petitioners most humbly pray that this Hon'ble Court be graciously pleased to stay operation of the order under Annexure-1 dated 24.11.2022 passed in W.P. (C) No. 30498/2022 pending disposal of the accompanying writ appeal;

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

By the appellants/petitioners through

Cuttack
Date : 07-12-23

Addl. Standing Counsel



HIGH COURT OF ORISSA
FILED
10 JUL 2023
REGISTRAR (JUDICIAL)

AFFIDAVIT

I, Sri Tushar Kanta Mohanty, aged about 57 years, S/o- Late Baidyanath Mohanty, presently working as Director, Land Records, Survey & Consolidation, Odisha, Board of Revenue Building, At/P.O.-Chandinichowk, Town/Dist.-Cuttack, do hereby solemnly affirm and state as follows:-

1. That I am the Appellant/Petitioner No.2 in the aforesaid case and I have been duly authorized by the other Appellants/ Petitioners to swear this Affidavit on their behalf.

2. That the facts stated above are true to the best of my knowledge and based on records.

Identified by

Mohan Behera
Advocate's Clerk, A.G's Office

Tushar Kanta Mohanty
DEPONENT
Director,
Land Records Survey & Consolidation
Board of Revenue, Odisha, Cuttack

CERTIFICATE

Certified that Cartridge papers are not available

Addl. Standing Counsel

Solemnly affirm on in Oath by the Deponent at Cuttack on 07-7-23 being identified by Mohan Behera Advocate/Advt. Clerk/S.O.,AG's office/Notary Personally [illegible] stated above are true to [illegible] knowledge.

RAMA CHANDRA MISHRA, NOTARY
CUTTACK Regd. No. 2115

HARI KRUSHNA PANIGRAHI
ENROL-O-166/1995
MOB 9861166138

SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 7

Branch No : WRIT APPEAL

Receipt No : 130613/2024 Date Of Receiving : 21/10/2024 Time : 04:00:24 PM

Filing No : D- **WA 1529/2023**

Case No : **WA 1529/2023**

Received From : Petitioner

Filed By: ADDL.STANDING COUNSEL

Document(s) Filed :

1- REQUISITE FOR OPS --- (Misc Case No- 4044/2023) --- Postal Fee -Rs.40

ORISSA HIGH COURT 3rd. 21 OCT 2024 CLEARANCE DEPUTY REGISTRAR (J&E)

IN THE HIGH COURT OF ORISSA: CUTTACK

W. A No. 1529 of 2023

State of Orissa & Ors ... . Appellants

-Versus-

Banamali Panda .... Respondents

MEMO

Postage stamp of Rupees 40/-(Rupees Forty) only, along with written process and the copy of limitation filed herewith for service of notice on Respondent in limitation matter in the aforesaid appeal through Registered post with AD.

ASC
For the Appellant

Cuttack

Date- 21.10.2024

MOB NO: 9237183713

SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 7

Branch No : WRIT APPEAL

Receipt No : 132004/2024 Date Of Receiving : 23/10/2024 Time : 01:15:37 PM

Filing No : D- **WA 1529/2023**

Case No : **WA 1529/2023**

Received From : Petitioner

Filed By: ADDL.STANDING COUNSEL

Document(s) Filed :

2- REQUISITE FOR OPS --- (Misc Case No- 4044/2023) --- Postal Fee -Rs.40

IN THE HIGH COURT OF ORISSA: CUTTACK

W. A No. 1529 of 2023

State of Orissa & Ors ... . Appellants

-Versus-

Banamali Panda .... Respondents

MEMO

Postage stamp of Rupees 40/-(Rupees Forty) only, along with written process and the copy of limitation filed herewith for service of notice on Respondent No. 2 in limitation matter in the aforesaid appeal through Registered post with AD.

ASC
For the Appellant

Cuttack

Date- 23.10.2024

MOB NO: 9237183713

ORISSA HIGH COURT 1ST. 23 OCT 2024 CLEARANCE DEPUTY REGISTRAR (JE)

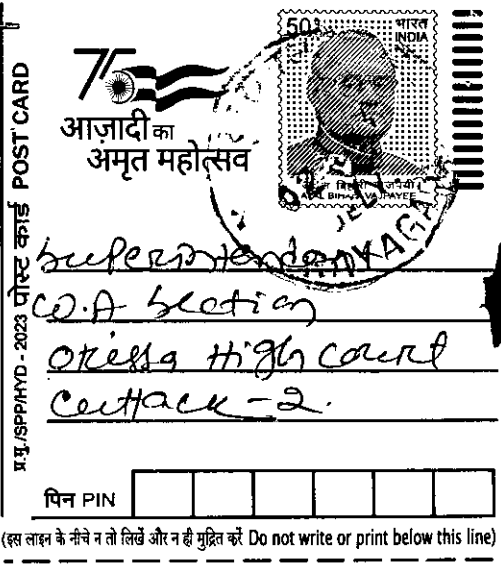
To

The Banamali Panda
S/o-Late Purna Chandra Panda
At-Golina, P.O-Dengiguda
Dist-Balasore
Retd. Asst. A.E.E, under the
Collector, Rayagada
At/P.O/Dist-Rayagada.

Banamali Panda.

W.A.No. 1529/23

8583



Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

RO198772931IN

Track More

Article Type	Delivery Location	Delivery Confirmed On
Registered Letter	Bhubaneswar G.P.O.	30/10/2024 19:06:05

Event Details For : RO198772931IN

Current Status : Item Delivered(Addressee)

Date	Time	Office	Event
30/10/2024	19:06:05	Bhubaneswar G.P.O.	Item Delivered(Addressee)
30/10/2024	10:29:51	Bhubaneswar G.P.O.	Out for Delivery
30/10/2024	10:00:03	Bhubaneswar G.P.O.	Item Received
30/10/2024	09:48:59	Bhubaneswar G.P.O.	Item Received
30/10/2024	08:58:54	Bhubaneswar RMS L1U	Item Dispatched
30/10/2024	08:55:37	Bhubaneswar CRC L1R	Item Dispatched
30/10/2024	08:50:07	Bhubaneswar CRC L1R	Item Bagged
30/10/2024	07:50:01	Bhubaneswar CRC L1R	Item Received
29/10/2024	20:55:21	Cuttack CRC L1R	Item Dispatched
29/10/2024	20:46:10	Cuttack CRC L1R	Item Bagged
29/10/2024	19:24:14	Cuttack CRC L1R	Item Received

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 7
Branch No : WRIT APPEAL
Receipt No : 140734/2024 Date Of Receiving : 13/11/2024 Time : 01:27:12 PM
Filing No : **WA/1529/2023**
Case No : **WA/1529/2023**
Received From : Respondent (1)
Filed By: M/S PRAFULLA KUMAR MOHAPATRA
Document(s) Filed :

3- Vakalatnama --- Court Fee -Rs.12 (33411/2024)

FORM OF VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE ORISSA, CUTTACK

W.A. / No. 1529 of 20 23

State of Odisha & others Petitioner(s)

-VERSUS-

Banamali Panda Opp.Party(ies)

Know all men by these presents, that by this Vakalatnama

I/We Banamali Panda, S/o - Late Purna Chandra Panda, At - Kolika P/o - Dengura, Dist - Balasore, Retd. Asst. R.I. under the Collector, Rayagada At/Po/Dist - Rayagada. (CREP. No: 1)

Appellant/ Respondent/ Petitioner / Opp.party in the application / Writ Case do hereby appoint and retain **PRAFULLA KUMAR MOHAPATRA (Advocate),En. No. O - 141/1990**

Mobile No. 9437067454, SAUBHAGYA CHANDRA SAHOO (Advocate) En. No. O - 470/2007

Mobile No. 9777492518, _____

_____

At Darjee Sahi, P.O.- Chandinichowk, Dist. : Cuttack-453002 Advocate (s) to appear for me/us in the above case and to conduct and prosecute (or defend) the same and all proceeding 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 money that may be payable to me/us in the said case and also in applications for review appeals under Orissa High Court Order and in application for leave to appeal to Supreme Court. I/We authorise my/our Advocate (s) to admit any compromise lawfully in the said case.

Dated..12-11-..20.23...

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
Accepted as above

Banamali Panda.

Signature of Executant

SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 7

Branch No : WRIT APPEAL

Receipt No : 144078/2024 Date Of Receiving : 21/11/2024 Time : 12:58:44 PM

Filing No : **WA/1529/2023**

Case No : **WA/1529/2023**

Received From : Petitioner

Filed By: ADVOCATE FOR THE PETITIONER

Document(s) Filed :

4- Certified Copy

5- Authentication fee - Rs 3. (34776/2024)

IN THE HIGH COURT OF ORISSA: CUTTACK

W.A. No. 1529 of 2023

State of Odisha & Ors ... ... Appellants

-Versus-

Banamali Panda ... ... Respondents

MEMO

Certified Copy of the order dtd.**24.11.2022** arising out of **W.P.(C) Case No. 30498 of 2022** with authentication fees of Rs. 3.00 (Rupees three) Only is filed herewith in the aforesaid appeal.

Addl. Standing Counsel
For the Appellant

Cuttack

Date-21.11.2024

IN THE HIGH COURT OF ORISSA; C U T T A C K

W.P.(c) No. 30498 /2022

(Code No. 31(90)

In the matter of:

An application under Article 226 and 227 of the Constitution of India;

AND

In the matter of:

An application challenging the action/inaction on the part of the opp. parties in not allowing pension and pensionary benefits by counting his entire past services rendered under J.C. estt. and regular estt. despite the principles decided in O.A.No. 3020© /2003, which has been affirmed in W.P.(c) No. 14244/2006 and in S.L.P.No.12573/2015 as well as the benefits given to similarly situated persons.;

AND

In the matter of:

Banamali Panda, aged about 69 years, S/o. Late Purna Chandra Panda, At:-Goliha, P.O.-Dungura, Dist-Balasore, Retd. Asst. Revenue Inspector under the Collector, Rayagada, At/P.O/Dist.- Rayagada.

.....Petitioner

Versus

1. State of Odisha represented through its Secretary, Govt. of Odisha, Revenue and Disaster Management Department, Lok Seva Bhawan, Bhubaneswar, Khordha.

Presented in Court

B.O.

Signature Valid
Digitally Signed
Signed by: BIRAJA MALLIK
Designation: ASSISTANT SECTION OFFICER
Reason: VERIFIED
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 18-Nov-2024 16:42:15

2. Director of Land Records, Surveys and Consolidation, Odisha, Board of Revenue, Cuttack, At/Po/Dist-Cuttack.

3. Collector and District Magistrate, Rayagada, At/P.O./Dist- Rayagada .

4. Dy. Director of Consolidation, Balasore, At/P.O/Dist-Balasore .

5. Tahasildar, K. Singhpur, At/P.O.- K. Singhpur, Dist.- Rayagada.

6. Secretary to Govt. of Odisha, Finance Department, Lok Seva Bhawan, Bhubaneswar, Khordha.

Delete vide Ord. No-1 dtd. 24.11.22

7. Accountant General (A & E), Odisha, Bhubaneswar, At/P.O.- Bhubaneswar, Dist. Khordha.

.....Opp. parties.

The matter out of which this Writ petition arises was never before this Hon'ble Court in it's present form .

To

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

The humble petition of the petitioner above named ;

MOST RESPECTFULLY SHEWETH THAT ;

1. In this Writ petition, the petitioner challenges the action/inaction on the part of the opp. parties in not allowing pension and pensionary benefits by counting his entire past services rendered under J.C. estt. and regular estt. despite the principles decided in O.A. No. 3020© /2003, which has been affirmed in W.P.(c) No. 14244/2006 and in S.L.P.No.12573/2015.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30498 of 2022

Banamali Panda .... ***Petitioner***

Mr. P.K. Mohapatra, Advocate

-versus-

State of Odisha and others .... ***Opposite Parties***

Mr. A. Behera, A.S.C.
Mr. S.K. Patra,
Standing Counsel for Accountant General.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No. **24.11.2022**

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Mr. S.K. Patra, learned Standing Counsel, who usually appears for the Accountant General, Odisha, submits that Accountant General, Odisha is not a necessary party at this stage of the proceeding. Therefore, the name of Opposite Party No.7-Accountant General, Odisha be deleted from the cause title of the writ petition.

In view of such submission, office is directed to delete the name of Opposite Party No.7 from the cause title of the writ petition.

3. Heard learned counsel for the Petitioner and learned Additional Government Advocate appearing for the State-Opposite Parties.

4. 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.

5. Learned counsel for the Petitioner contended that similar matter has 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.

6. It is further contended that similar matter has also come up 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) 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.

7. Learned counsel for the State, on the other hand, draws attention of this Court's judgment dated 19th April, 2022 passed in WPC(OAC) No.2276 of 2012 in the case of ***Judhisir Padhy vrs. State of Odisha and others***, which was delivered by a single Bench of this Court. On such grounds, learned counsel for the State submits that the relief sought for by the petitioner is not maintainable and is not entitled to pensionary benefits as has been claimed by him. Therefore, prays for rejection of the writ petition at the threshold in view of the judgment of the single Bench passed in the case of ***Judhisir Padhy vrs. State of Odisha and others*** (supra).

8. 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 Petitioner 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 of the order.

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

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

Jagabandhu

HIGH COURT OF ORISSA

ORISSA HIGH COURT 3rd. 21 NOV 2024 CLEARANCE DEPUTY REGISTRAR (J&E)

Copy Application No. : 95357/2024

Date of Notification : NA

Date of Supply : NA

Date of Application : 18/11/2024

Date of Ready : 18/11/2024

Date of Delivery : 18/11/2024

HIGH COURT ORISSA सत्यमेव जयते

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Date: 18-Nov-2024 16:42:15

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Signed by: PRAVAT KUMAR MOHANTY
Designation: SUPERINTENDENT (JC)
Reason: EXAMINED
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Date: 18-Nov-2024 16:48:06

Signature valid
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Signed by: LAXMIDHAR MOHAPATRA
Designation: ASST. REGISTRAR (ESTT.)
Reason: CERT. TO BE A TRUE COPY AUTH U/S 75,BSA,2023
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