IN THE HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.18664 of 2008

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Tunu Moharana & others ..... Petitioner

-Versus-

State of Orissa & others and others ..... Opp. Parties

For the petitioner : Ms. S. Mohapatra

For the Opp.parties : Mr R.K. Mohapatra, Government Advocate

P R E S E N T :

THE HONOURABLE CHIEF JUSTICE MR. AMITAVA ROY
AND
THE HON'BLE DR. JUSTICE A.K. RATH

Decided on : 28.01.2015

Amitava Roy, C.J. The instant challenge is to laciniate the judgment and order dated 10.12.2007 passed by the Orissa Administrative Tribunal, Cuttack (for short, hereinafter referred to as "the Tribunal") disposing of a batch of applications including O.A. No.1153 (C) of 1995 preferred by the petitioners herein. Thereby, the learned Tribunal directed the respondents therein to consider the grievance of the applicants vis-à-vis their regularization by bringing them from Nominal Muster Roll (for short, "NMR") status to the work charged establishment and to take a decision with regard to other consequential reliefs by taking into consideration its verdict in O.A. No.1560 (C) of 1993 since disposed of on 2.6.1995.

2. We have heard Ms. S. Mohapatra, learned counsel for the petitioners and Mr R.K. Mohapatra, learned Government Advocate for the State-opp. party.

3. The pleaded versions of the parties before the learned Tribunal would provide the factual setting. The petitioners (applicants before the Tribunal) did aver that they had been initially appointed like Foreman, Charge Man, Fitter, Amin, Surveyor, Driver, Binder, etc. during the period from 1978 to 1986 and had been discharging their duties to the full satisfaction of the authorities concerned. They stated that one P. Sahadev Sahu and others with O.A. No.1650 (C) of 1993

and a batch of applications had approached the learned Tribunal seeking regularization of their service. The learned Tribunal, according to the petitioners, by its order dated 2.6.1995 disposed of the application granting the reliefs. The petitioners have pleaded that the Special Leave Petition filed by the opp. parties before the Hon'ble Apex Court was dismissed on 26.3.1999 and that the application for review filed by them was also rejected on 13.4.2000. As in spite of the above, the service of the petitioners though similarly situated was not regularized, they made a representation to the Sub-Divisional Officer/Assistant Engineer concerned of different Canal Divisions under Dhenkanal-Cuttack districts between 1995 and 2001. As no action was taken on the representation, they apprehended that they may be terminated. They thus approached the learned Tribunal pleading disparity in treatment. In contending so, the petitioners referred to letter No.IRC-103/2001 dated 24.5.2001 of the Department of Irrigation Water Resources, Orissa, whereby the NMR employees of Rengali Dam Project were decided to be treated as work charged from 2.9.1993 with salary and consequential reliefs with effect from that date.

4. According to the petitioners, they were senior to those who had thereby been brought to the work charged establishment and thus claimed that their services ought to be

regularized by similarly bringing them to the work charged establishment with resultant service benefits from the dates of their initial joining as NMR as per the decision of the learned Tribunal in O.A. No.1560 (C) of 1993.

5. The respondents in their counter averred that the petitioners had been engaged and were working as Mulia, Skilled Attendant and Watchman on NMR basis in different Canal Divisions between 1978 and 1986. According to the respondents, the benefit of the decision rendered in O.A. No.1560 (C) No.1993 was not extendable to the petitioners as they were admittedly not parties in the said proceedings. It was mentioned that 1224 workers of the Rengali Irrigation Project had been brought over to the work charged establishment pursuant to the direction contained in O.A. No.1560 (C) of 1993 after the disposal of the Special Leave Petition before the Hon'ble Apex Court. They, however, stated that out of those NMR workers about 300 have already been retrenched as an austerity measure to ease the State of acute financial stringency. They also stated that the petitioners were not within the purview of the letter dated 24.5.2001. That meanwhile the base level posts had been abolished and the Work Charged/NMR/DLR/Job Contract J.C. Workers had been retrenched to down size the establishment in view of the acute financial crisis of the State was also stated. Reference

was also made to a Memorandum Of Understanding between the Government of Orissa and the Ministry of Finance, Government of India in April, 1991 stipulating a number of measures for reduction in non-plan revenue expenditure and resource mobilization measures and strengthening the fiscal position of the State.

6. The learned Tribunal by the impugned judgment and order directed the respondents to consider the grievance of the petitioners qua regularization of service by bringing them from NMR to work charged establishment and to take a decision by taking into consideration the judgment and order rendered in O.A. No.1560 (C) of 1993 and to communicate the said decision to the petitioners within a period of four months. In arriving at this conclusion, the learned Tribunal held that the decision made in O.A. No.1560 (C) of 1993 had no application to the petitioners as they were not parties thereto and that, meanwhile, due to execution of works, the load of the project involved had reduced substantially. The plea of financial crunch of the State resulting in retrenchment of 300 work charged employees was also taken note of. Noticeably, there was no finding of the learned Tribunal to the effect that the petitioners were equally placed in all respects with the applicants amongst others in O.A. No.1560 (C) of 1993 to be

entitled to the reliefs as accorded vide the judgment and order dated 2.6.1995.

7. Ms. S. Mohapatra, learned counsel for the petitioners has emphatically argued that as they (petitioners) are identically placed as the applicants in O.A. No.1560 (C) of No.1993, the learned Tribunal had grossly erred in law and on facts in withholding the reliefs granted vide judgment and order dated 2.6.1995 and instead in remitting the matter to the respondents for consideration of their prayer for regularization and consequential benefits by taking note of the said verdict. Ms. Mohapatra thus urged that this Court ought to direct the respondents to grant the same relief as awarded by the judgment and order dated 2.6.1995 rendered in O.A. No.1560 (C) of 1993 to the petitioners as, meanwhile, the same has become final and binding on the State.

8. Mr R.K. Mohapatra, learned Govt. Advocate for the State-opp. party, per contra, has argued that as admittedly the petitioners are not parties in the batch of applications including O.A. No.1560 (C) of 1993, they are ipso facto not entitled to the reliefs granted by the judgment and order dated 2.6.1995 and thus the learned Tribunal was perfectly justified in remitting the matter to the respondents for consideration of their prayer for regularization and other reliefs by taking note of this decision.

9. We have traversed the pleaded facts and considered the documents on record along with the arguments advanced. As the claim of the petitioners is essentially founded on the decision of the learned Tribunal in the batch of applications including O.A. No.1560 (C) of 1993, it would be expedient to notice the facts therein and the conclusion recorded.

10. The petitioners in the aforementioned batch of applications had claimed to have been employed as NMR workers on daily wage basis between 1978 and 1982 in Rengali Irrigation Project. These applicants, 1236 in number, averred that they had been offering service against regular posts like Foreman, Assistant Foreman, Watchman, Fitters, Amins, etc. which carried prescribed scales of pay but were denied the benefits thereof. Contending that Rengali Project was a major project and that by then only 60% of the work thereof had been achieved, the applicants had pleaded that it would take another twenty years to complete the same. They thus in support of their prayer for regularization of service asserted that as they have been continuing in employment under the project uninterruptedly for a long period, it per se demonstrated that their services were indispensable.

11. The respondents therein i.e. State of Orissa and its functionaries denied in their counter that the applicants

had been serving against regular sanctioned posts and instead contended that project had specific life time and thus it was not feasible to accommodate all the NMR employees by regularizing their services. They instead averred that the barrage for which the NMR employees like the applicants had been engaged had been completed and there was no need to retain them any further. The respondents also referred to the settlement made with the concerned Trade Unions that surplus work charged employees of Rengali Gohira and Samkoi projects would be absorbed in the Rengali Irrigation Project by retrenching the NMR employees of the said project. The learned Tribunal on a consideration of the rival pleadings and following the decision of the Hon'ble Apex Court bearing on the doctrine of "equal pay for equal work" held that there was no reasonable basis whatsoever to distinguish the applicants from the employees discharging identical duties in similar posts under regular/work charged establishment. It also took note of the fact that the respondents have not denied that the duties performed by the applicants as per their designations were identical with those of their counterparts in the regular work charged establishment. Having held so, it concluded that as the Rengali Irrigation Project was an ongoing project and that if the applicants have acquired some right by rendering their services as NMR employees, they

ought not to be denied the benefits thereof. It, however, was of the opinion that as the Project though had continued for a decade was not a permanent one, and thus any direction for regularization of service of the applicants was not possible. It thus disposed of the applications with the following directions:

> "The applicants be brought over to work-charge establishment with effect from 2.9.1993 on which date the first original application No.1560 (C) 1993 was filed. With effect from the said date they be treated as employees born in work-charged establishment, not only for the purpose of their salary but also in respect of other service conditions. They can be retrenched only in accordance with law. They cannot be replaced by persons drawn from other sources. They be paid salary at the initial stage in the scale of pay provided to their counterparts in the work-charged establishment. If in any case, total emoluments per month received at present by any of them exceeds the minimum in the scale provided to his counterparts in the work-charged establishment, the same shall be protected."

12. Thereby the respondents were directed to bring the applicants to the work charged establishment with effect from 2.9.1997 the date of filing of the first original application and the accompanying batch not only for the purpose of their

salary but also in respect of other service conditions. It was directed that they be paid their salary at the initial stage in the scale of pay accorded to their counterparts in the work charged establishment and that in case their total emoluments per month received did exceed the minimum in the scale to be provided, the same be protected. The relief of regularization of service in the permanent establishment was, however, declined.

13. Admittedly, the petitioners herein had not approached the learned Tribunal along with the applicants in the aforementioned batch in the year 1993 and did so only after the judgment and order dated 2.6.1995. To reiterate, the learned Tribunal did not return a finding that they were identically placed in all respects like the applicants in O.A. No.1650(C) of 1993. It is significant to note that the learned Tribunal did not reject the claim of the petitioners but had only remitted the matter to the respondents for consideration of their prayer by taking note of the decision rendered in O.A. No.1560 (C) of 1993. In a way, therefore, the instant petition can be construed to be premature.

14. The Hon'ble Apex Court in ***Federation of All India Customs and Central Excise Stenographers (Recognized) and others v. Union of India and others***, while dwelling on the concept of "equal pay for equal work"

did emphatically observe that the right based thereunder would depend upon the nature of the work done and that it cannot be judged by the mere volume thereof as there may be qualitative differences as regards reliability and responsibility. Their Lordships observed that functions may be the same but responsibilities make a difference, which very often may be a matter of degree. It was held that the scale of pay and other conditions of service are guided by the element of value judgment by those in charge of the administration and that if such value judgment is made bona fide and constitutes an intelligible criterion which has a rational nexus with the object of differentiation, such classification will not amount to discrimination. While ruling that "equal pay for equal work" was a concomitant of Article 14 of the Constitution of India, Hon'ble Apex Court underlined that "equal pay for unequal work" would be a negation of that right.

15. On a scrutiny of the rival pleadings in the case in hand bearing on the aspects of dissention, we are of the comprehension that there exists several factual aspects to be closely examined for taking a decision on the petitioners' claim for regularization of service and other reliefs as prayed for.

In that view of the matter, the direction of the learned Tribunal to remit the exercise to the respondents to be undertaken by taking note of the decision rendered in O.A.

No.1560(C) of 1993, in our view, cannot be faulted with. The petitioners' assertion that they ought to have been granted the same reliefs as averred in O.A. No.1560 (C) of 1993 on the ground that they are senior to the applicants therein do not commend for acceptance. The petition thus lacks in merit and is dismissed.

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Chief Justice

Dr. A.K. Rath, J. I agree.

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Judge

Orissa High Court, Cuttack
Dated 28th January, 2015/PCP