



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6929 of 2022

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

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Tripati Balaji Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : Mr. S. Roy, Adv.

For Opp. Parties : Mr. P.K. Sahoo, ASC
Mr. M.K. Rath, Adv. For O.P. No.4

PRESENT:

THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:17.03.2026 & Date of Judgment: 08.05.2026

Biraja Prasanna Satapathy, J.

The present Writ Petition is filed inter alia challenging order dated 17.02.2022 so passed by Opp. Party No.1 under Anenxure-9. Vide the said order claim of the Petitioner to absorb him as against the post of Night Watchman in the office of Sub-Collector, Jeypore retrospectively with effect from 01.10.1996 was rejected and so also



claim of Petitioner to be covered under the provisions of OCS (Pension) Rules, 1992 and GPF (Odisha) Rules, 1938.

2. While assailing the impugned order of rejection so passed under Annexure-9, learned counsel appearing for the Petitioner contended that Petitioner was appointed as a temporary Peon against an existing vacancy on 44 days basis in the establishment of Sub-Collector, Jeypore - Opp. Party No.3 w.e.f. 01.10.1996 vide order dated 03.10.1996 so issued under Annexure-1. It is contended that even though Petitioner was appointed as a temporary Peon in the vacant post of Night Watchman in the office of Opp. Party No.3 vide order dated 03.10.1996 and he was allowed to continue as such but when was not absorbed as against the post of the Night Watchman, Petitioner claiming his absorption in the regular Class-IV post of Night Watchman, approached the Tribunal by filing O.A. No.108 of 2000.

2.1. It is contended that the Original Application so filed, was disposed of by the Tribunal vide order dated 17.01.2000 under Annexure-2 with the following observation and direction so contained in Paragraph 4 & 5 of the order.

“4. No order can be passed to regularise the appointment of an ad hoc employee contrary to recruitment rules. The applicant shall be allowed to continue to hold the post until the post is filled up by a regularly recruited candidate, if his services have not been terminated in the meantime, and



if his services are required. He shall be given an opportunity to compete with others if a recruitment test is held. His over-age shall be relaxed in case he was within the prescribed age limit at the time of his initial appointment as an ad hoc employee.

5. The system of ad hoc appointment has been deprecated by the Apex Court in several cases.”

2.2. It is contended on the face of the order passed under Annexure-2 when neither Petitioner was regularized nor any recruitment process was initiated to fill up the post in question by giving age relaxation to the Petitioner, Petitioner again approached the Tribunal by filing O.A. No.126 of 2009. The Tribunal while admitting the matter in O.A. No.126 of 2009 vide order dated 04.02.2009, passed the following order.

“We direct that the post of Night Watcher which is presently held by the applicant on adhoc basis will not be filled up by other means excepting by direct recruitment and when such a direct recruitment is held, the applicant would be given opportunity of competing along with others in compliance of the orders of the Tribunal in O.A. No.108/2000. We also direct that the applicant would continue till recruitment test is held according to rules.”

2.3. It is contended that on the face of such orders passed by the Tribunal under Annexure-2 and the observation and direction contained in order dated 04.02.2009 so passed in O.A. No.126 of 2009, no step was taken to absorb the Petitioner in the regular establishment nor any recruitment process was initiated to fill up the post on regular basis by



allowing the Petitioner to participate and by giving age relaxation. In the alternate Petitioner vide order dated 19.02.2021, under Annexure-3 was engaged on ad hoc basis with usual D.A. as admissible.

2.4. Learned counsel appearing for the Petitioner contended that since neither any step was taken to fill up the post on regular basis nor Petitioner was absorbed on the face of his long continuance as a temporary Watchman in terms of order dated 03.10.1996 and as an ad hoc watchman vide order dated 19.02.2021, Petitioner approached this Court by filing W.P.(C) No.9216 of 2021 seeking regularization of his service. This Court vide order dated 09.03.2021 while disposing the Writ Petition, directed the concerned authority to consider the case of the Petitioner for his regularization within a period of 3 (three) months from the date of receipt of the order.

2.5. It is contended that on being so communicated, Petitioner only vide order dated 30.07.2021 under Annexure-6, was appointed as against the vacant Class-IV post of Night Watchman in the office of Opp. Party No.3. However, Petitioner was absorbed against the vacant post of Night Watchman w.e.f.23.07.2021. Pursuant to the said order, Petitioner joined as a regular Night Watchman in the office of Opp. Party No.3 on 30.07.2021 under Annexure-7.



2.6. Learned counsel appearing for the Petitioner contended that since Petitioner continued as a temporary and/or ad hoc Night Watchman against a vacant post of Night Watchman in the office of Opp. Party No.3 w.e.f. 01.10.1996 in terms of order dated 03.10.1996 under Annexure-1 and no step was taken on the face of two successive orders passed by the Tribunal to fill up the post on regular basis by allowing the Petitioner to participate and by giving age relaxation, Petitioner when was regularized against such vacant post only w.e.f.23.07.2021, he made a detailed representation before Opp. Party No.1 with a prayer to absorb him in the vacant post of Night Watchman w.e.f.01.10.1996 and with all service and financial benefits and to cover him under the provisions of OCS Pension Rules, 1992 (in short 1992 Rules) and GPF (Odisha) Rules, 1938 (in short 1938 Rules).

2.7. It is contended that such claim of the Petitioner when was rejected vide order dated 17.02.2022 under Annexure-9, the present Writ Petition was filed inter alia challenging the said order and with a prayer to absorb him retrospectively w.e.f.01.10.1996 and to hold him eligible for his coverage under the 1992 Rules and 1938 Rules.

2.8. Learned counsel appearing for the Petitioner contended that since it is not disputed that the post in which Petitioner continued in the office of Opp. Party No.3 as a temporary Night Watchman in terms of order



dated 03.10.1996 under Annexure-1 and as an ad hoc Night Watchman vide order dated 19.02.2021 under Annexure-3 was vacant sanctioned post from the date of his initial appointment w.e.f. 01.10.1996, regularization of the services of the Petitioner against such vacant post of Night Watchman w.e.f.23.07.2021 vide order dated 30.07.2021 under Annexure-6 is not just and proper.

2.9. It is contended that since Petitioner was absorbed against such vacant post of Night watchman in the office of Opp. Party No.3 w.e.f.23.07.2021, Petitioner was not held eligible for his coverage under the 1992 Rules as well as 1938 Rules. In the alternate, taking the date of regularization to have been given effect to after 01.01.2005, Petitioner was made eligible to be covered under the National Pension System (in short NPS).

2.10. It is contended that since Petitioner continued against the vacant post of Night Watchman in the office of Opp. Party No.3 w.e.f.01.10.1996 and the same is also admitted in the order of regularization issued under Annexure-6, claim of the Petitioner could not have been rejected on the ground indicated vide the impugned order under Annexure-9 and instead Petitioner's claim for regularization should have been made retrospectively w.e.f. 01.10.1996 and thereby



making the Petitioner eligible for his coverage under the 1992 Rules and 1938 Rules.

2.11. It is further contended that since the State machinery on the face of two (2) successive orders passed by the Tribunal, never filled up the post by initiating any recruitment process and Petitioner was allowed to continue against the vacant post of Night Watchman pursuant to order under Annexure-1 dated 03.10.1996, Petitioner is eligible and entitled to get the benefit of absorption retrospectively w.e.f. 01.10.1996 and consequentially for his coverage under the 1992 Rules and 1938 Rules.

2.12. It is further contended that in order to deprive the Petitioner to get the benefit of his coverage under the 1992 Rules and 1938 Rules, Petitioner was regularized w.e.f. 23.07.2021 vide order under Annexure-6. It is further contended that since Petitioner continued against the vacant post in terms of order dated 03.10.1996 under Annexure-1, there was no occasion to regularize him w.e.f. 23.07.2021 instead of absorbing him w.e.f. 01.10.1996.

2.13. It is also contended that similar situated employees engaged on temporary/ ad hoc basis prior to 01.01.2005 and regularized after 01.01.2005, were extended with the benefit of coverage under the 1992 Rules as well as 1938 Rules vide various orders issued by the Government under Annexure-10-Series.



2.14. In support of the claim of the Petitioner that he is entitled for his absorption retrospectively w.e.f. 03.10.1996 and consequential coverage under the 1992 Rules and 1938 Rules, learned counsel appearing for the Petitioner relied on a decision of the Hon'ble Apex Court in the case of ***State of Himachal Pradesh & Anr. Vrs. Sheela Devi*** in SLP(C) No. 10399 of 2020, disposed of vide order dated 07.08.2023. Hon'ble Apex Court in Para 9 to 11 of the said Judgment has held as follows:-

“9. The Learned Advocate General is correct in his interpretation, inasmuch as a facial reading of Rule 2(g) would indicate that contractual employees are excluded from the pale of Pension Rules. However, what is significant is that the rule itself in its opening terms saves the application of other provisions of the pension rules: “Save as otherwise provided in these rules”. If the opening phrase of Rule 2 were to be understood in this context, any interpretation of Rule 17 as is urged by the State would render such substantive provision redundant. Rule 17 was engrafted essentially to cater to the eventuality, where the employees working on contract basis were regularized at a later stage. It is only for the purposes of pension that the past service as a contractual employee is to be taken into account.

10. So far as the other arguments with respect to the voluntariness when the employees enters into contractual services is concerned, this Court is unpersuaded by the submission because those terms were applicable as long as the employees remained on contract. However, his or her status ceased upon regularization.

11. In view of the above reasoning, this court is of the opinion that there is no merit in the appeal however, the following directions are issued:-

(i) The state shall take immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were



engaged i.e. prior to the year 2003 or subsequently, within a time frame, of within eight weeks from today.

(ii) After receiving the options within the time indicated in the notice, the concerned employee(s) who exercise the relevant options should be notified about the amounts they would have to remit in case any amount towards contribution is required, clearly.

(iii) The options should be processed and completed within eight weeks from the last date of receiving options.

(iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued. 12. The appeal is disposed of in the above terms. Pending application(s), if any, are also disposed of.”

2.15. Reliance was also placed to a decision of this Court in the case of ***Swetapadma Samal V. State of Odisha & Ors.*** (W.P.(C) No.26508 of 2017) disposed of on 22.09.2023. This Court in Para 6 to 11, 26 and 27 of the said decision has held as follows:-

“6. Regard being had to the facts and rival contentions, as narrated above, the only question to be determined by this Court is, whether the petitioner, who was initially appointed on contractual basis prior to 01.01.2005 and subsequently regularised after 01.01.2005, can be extended with the benefit of the OCS (Pension) Rules, 1992 and the GPF (O) Rules, 1938 or not?

7. There is no dispute before this Court that the petitioner was appointed on contractual basis pursuant to the appointment order issued on 07.07.2003, as per the prevailing 1972 Rules and the guidelines issued from time to time, being sponsored by the Chairman, Committee of the Chief Engineers and concerned Heads of Department and Engineer-in-Chief (Civil), Odisha, Bhubaneswar. Even though such order of appointment was issued on contractual basis, that itself was against a substantive vacancy. Merely because the Government had taken austerity measures due to mounting revenue deficits, the petitioner was given appointment on contractual basis for fixed term and on completion of six years her services were regularised against a substantive vacant post. This itself indicates that a right had



been accrued in favour of the petitioner, the day she joined in the post on contractual basis and subsequently regularised in the said post on completion of six years of service. By the time the appointment on contractual basis was given on 07.07.2003, the OCS (Pension) Rules, 1992 was in force. Therefore, rightly after completion of six years of service on contractual basis, when the petitioner was brought to the regular establishment, her GPF account was opened and GPF number was allotted in her favour by the opposite parties, bringing her into the pensionable establishment. But all of a sudden, the benefit, which had been extended in favour of the petitioner by opening the GPF Account, was withdrawn on the sole ground contending that by the date of regularisation of the services of the petitioner since the OCS (Pension) Amendment Rules, 2005 has already come into force, the petitioner cannot be brought into the fold of the OCS (Pension) Rules, 1992. But fact remains, if the posts are made available prior to the commencement of the OCS (Pension) Amendment Rules, 2005 giving effect from 01.01.2005, the petitioner ought to have been covered under the old rules, i.e. OCS (Pension) Rules, 1992, instead of bringing her under the OCS (Pension) Amendment Rules, 2005, i.e., New Restructured Defined Contribution Pension Scheme, which has come into force with effect from 01.01.2005.

8. In G.P. Doval (supra), the apex Court held that if the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation.

9. G.P. Doval (supra) has also been referred to in S. Sumnayan (supra), wherein, the apex Court at paragraph 34 of the said judgment observed as follows:-

“34. We may here also appropriately refer to another decision of this Court in the case of G.P. Doval v. Chief Secy., Govt. of U.P. reported in (1984) 4 SCC 329, wherein this Court held that regularization of the services of a person, whose Page 19 of 33 initial appointment although not in accordance with the prescribed procedure but later on approved by an authority having power and jurisdiction to do so would always relate back to the dates of their initial appointment. Para 13 is, which is reproduced hereinbelow:



"13.If the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. That has not been done in this case....."

10. If the above mentioned principle is applied to the present case, it would be seen that the petitioner herein was appointed on contractual basis, pursuant to the order of appointment issued on 07.07.2003, and thereafter her services were regularised on completion of six years and she was allotted with GPF Account bearing No. PW-068189, right from her regularisation, monthly subscriptions towards GPF account were deducted from her salary. Therefore, subsequent denial of such benefit is arbitrary, unreasonable and contrary to the provisions of law and, as such, is hit by Article 14 of the Constitution of India.

11. It is of relevance to mention here that some of the Junior Assistants, who were appointed on contractual basis with consolidated remuneration in different Heads of the Department in the year 2003 and subsequently brought over to regular establishment, like the present petitioner, had preferred O.A. No. 2984 (C) of 2006 and batch for their regularization and for counting of their period of service rendered by them from the date of their actual joining till regular appointment as qualifying service period for the purpose of pension under the OCS (Pension) Rules, 1992. The Tribunal, vide order dated 26.03.2009, allowed the aforesaid Original Applications. The said order of the Tribunal was challenged by the Government in Finance Department before this Court in W.P.(C) No. 12569 of 2010, and the said writ petition was dismissed vide order dated 23.02.2012. Consequentially, in adherence to the direction of the Tribunal, which was confirmed by this Court by dismissing the writ petition filed by the State on 23.02.2012 in W.P.(C) No. 12569 of 2010, the Finance Department extended the benefit of the OCS (Pension) Rules, 1992 and the GPF (O) Rules, 1938 to the employees similarly situated with the present petitioner. Thereby, the Tribunal has committed gross error apparent on



the face of the record and, without taking into consideration the above aspect in its proper perspective, directed the State Government to take a decision regarding applicability of the resolution dated 04.04.2007 to the Junior Engineers engaged on contractual basis, which is absolutely fallacious and, therefore, the same cannot be sustained in the eye of law.

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26. Applying the said analogy to the present case, if the petitioner was appointed against the substantive vacancy on 07.07.2003, i.e., prior to commencement of the OCS (Pension) Amendment Rules, 2005, may be on contractual basis, and discharging her responsibility and subsequently her services were regularised after completion of six years uninterrupted contractual employment, even though the OCS (Pension) Amendment Rules, 2005 came into force with effect from 01.01.2005, that has no application to the present case and the petitioner is entitled to such relief from the date of her initial appointment and not from her regularisation of service after completion of her six years of contractual employment. Under such circumstances, the Tribunal should not have remanded the matter to the State Government for consideration, so far as applicability of the circular issued on 04.04.2007. Even otherwise also, if the benefit has already been extended to the job-contract and work-charged employees, the contractual employee appointed against the substantive vacancy stands on a much better footing than those persons, for which the benefit should have been extended to the petitioner by reckoning her service from the date of initial appointment on contractual basis, otherwise, it will amount to unreasonable and arbitrary exercise of power and, more so, violation of Articles 14 and 16 of the Constitution of India.

27. In view of the facts and law, as discussed above, the order dated 21.09.2016 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 3422 (C) of 2012 under Annexure-9 cannot be sustained in the eye of law and the same is hereby set aside. As a consequence thereof, this Court directs the opposite parties to bring the petitioner to the fold of the OCS (Pension) Rules, 1992 and the GPF (O) Rules, 1938 by reckoning her date of initial appointment on contractual basis, i.e., on 07.07.2003.”

2.16. Reliance was also placed to another decision of this Court in the case of ***Dr. Rajendra Narayan Sahu V. State of Odisha & Ors.***



(W.P.(C) No. 23475 of 2023) disposed of on 04.07.2025. This Court in

Para 8, 9, 10 and 12 of the said decision has held as follows:-

“8. In Swetapadma Samal (supra), this Court have had the occasion to consider an identical case and therein, it has been concluded as such:

“26. Applying the said analogy to the present case, if the petitioner was appointed against the substantive vacancy on 07.07.2003, i.e., prior to commencement of the OCS (Pension) Amendment Rules, 2005, may be on contractual basis, and discharging her responsibility and subsequently her services were regularised after completion of six years uninterrupted contractual employment, even though the OCS (Pension) Amendment Rules, 2005 came into force with effect from 01.01.2005, that has no application to the present case and the petitioner is entitled to such relief from the date of her initial appointment and not from her regularization of service after completion of her six years of contractual employment. Under such circumstances, the Tribunal should not have remanded the matter to the State Government for consideration, so far as applicability of the circular issued on 04.04.2007. Even otherwise also, if the benefit has already been extended to the job-contract and workcharged employees, the contractual employee appointed against the substantive vacancy stands on a much better footing than those persons, for which the benefit should have been extended to the petitioner by reckoning her service from the date of initial appointment on contractual basis, otherwise, it will amount to unreasonable and arbitrary exercise of power and, more so, violation of Articles 14 and 16 of the Constitution of India.”

In sum and substance, on a proper reading of the above decision, the Court finds that in view of the circular of the Government dated 4th April, 2007, the petitioner therein who was initially in job contract and subsequently brought over to the regular establishment having been appointed against a substantive post was allowed to be brought within the fold of the Rules and the GPF Rules with a direction to grant him all consequential benefits due and admissible.

9. In Sheela Devi (supra), the Apex Court, while dealing with a matter of similar nature but with reference to the provisions of the Central Civil Services (Pension) Rules, 1972 concluded that the employees working on contract basis regularized after at a



later stage, the past service rendered by them as contractual employees shall be taken into account for the purpose of pension.

10. Having regard to the case laws discussed hereinbefore and in view of Rule 18 (6) of the Rules and the clarification of the State Government in Finance Department dated 4th April, 2007 and carried forward with the circular dated 18th July, 2007 including the contractual employees brought over to regular establishment within the coverage of General Provident Fund, the ultimate view of the Court is that the petitioner's case should have been accordingly dealt with allowing him similar benefits instead of the order of rejection dated 13th June, 2022. In so far as, the disposal of SLPs by the Apex Court, are concerned, a copy of which is annexed to the rejoinder affidavit of the petitioner, recording the submission of Ms. Dash, learned ASC for the State that it shall not be a precedent but having regard to the fact that the same relates to regularization of services and was affirmed despite a challenge by the State Government, in the humble view of the Court, it is no relevant vis-a-vis demand for pension by the petitioner since pleaded. The Court is, therefore, of the final conclusion that the petitioner, who was engaged contractually and he having been regularized even though after 1st January, 2005, for the discussions made hereinabove, with reference to Page 9 of 9 the circulars of the Government dated 4th April, 2007 and 18th July, 2007 besides Rule 18(6) of the Rules, the rejection order as per Annexure-9 cannot be sustained in law.

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12. In the result, the writ petition stands allowed. As a necessary corollary, the impugned order of rejection dated 13th June, 2022 as per Annexure-9 is hereby quashed with a direction to opposite party No.1 to allow pension to the petitioner as per the Rules and to disburse all such financial benefits as due and admissible concluding the exercise as soon as possible preferably within a period of six weeks from the date of receipt of a copy of this order."

- 3.** Mr. P.K. Sahoo, learned Addl. Standing Counsel on the other hand while supporting the impugned order, made his submission relying on the stand taken by the counter affidavit so filed by Opp. Party No.1 & 2. It is contended that Petitioner was engaged as a Night Watchman on



temporary basis w.e.f. 01.10.1996 vide order dated 03.10.1996 of Opp. Party No.3 so issued under Annexure-1. It is contended that pursuant to the order passed by the Tribunal in O.A. No.108 of 2000 under Annexure-2, no step could be initiated to fill up the post on the regular basis, even though Government was moved, as the post of Night Watchman was meant for the employees working in the Job Contract Establishment of Settlement Organization for their absorption. Accordingly the post was not filled-up by initiating due recruitment process.

3.1. It is further contended that pursuant to the subsequent order passed by the Tribunal in the O.A. No.126 of 2009, though the Tribunal directed to fill up the post by way of direct recruitment and allow the Petitioner to continue till such a process is initiated, but such recruitment could not take place due to imposition of restriction by the Finance Department.

3.2. However, pursuant to the order passed by this Court in W.P.(C) No.9216 of 2021, Petitioner was regularized with due absorption in the post of Night Watchman w.e.f. 23.07.2021 vide order dated 30.07.2021 under Annexure-6. It is contended that after such absorption in the regular establishment, Petitioner challenging his absorption w.e.f. 23.07.2021 again approached this Court by filing W.P.(C) No.31504 of



2021 and with a prayer to absorb him retrospectively and for his coverage under the 1992 Rules and 1938 Rules. This Court vide order dated 07.10.2021 directed Opp. Party No.1 to take a decision on the Petitioner's claim and the same was rejected vide order dated 17.02.2022 under Annexure-9.

3.3. It is contended that since by the time Petitioner was so absorbed w.e.f. 23.07.2021, the OCS (Pension) Amendment Rules, 2005 had already been notified vide Annexure-D/2, Petitioner's regularization being after 01.01.2005, he is required to be covered under the NPS. It is further contended that in terms of the provisions contained under Rule 3 and 4 of the amended OCS (Pension) Rules, 1992 as amended by Finance Department vide Notification dated 17.09.2005, Petitioner's claim for his coverage under the 1992 Rules and 1938 Rules, is not entertainable.

3.4. Making all these submissions, learned Addl. Standing Counsel contended that since Petitioner admittedly was absorbed w.e.f. 23.07.2021 vide order dated 30.07.2021 under Annexure-6, claim of the Petitioner seeking retrospective regularization w.e.f. 01.10.1996 and for his coverage under 1992 Rules and 1938 Rules, has been rightly rejected vide the impugned order under Annexure-9, which requires no interference of this Court.



4. To the submission made by the learned Addl. Standing Counsel, learned counsel appearing for the Petitioner made further submission basing on the stand taken in the rejoinder affidavit so filed. It is contended that since w.e.f.01.10.1996, Petitioner was allowed to continue as a temporary / ad hoc Night Watchman in the office of Opp. Party No.3 against a vacant sanctioned post, and the post was never filled up in terms of the order passed by the Tribunal, Petitioner is eligible and entitled to get the benefit of regularization w.e.f.01.10.1996 with all service and financial benefits. Not only that no such application was made seeking modification of the direction issued by the Tribunal at any point of time that the recruitment cannot be made.

4.1. It is also contended that in view of the benefit extended in favour of similarly situated employees vide order issued under Annexure-10 Series, the ground on which Petitioner's claim has been rejected, is also not sustainable in the eye of law. It is further contended that since Petitioner continued as against the vacant post w.e.f. 01.10.1996, which is not disputed, in order to deprive the Petitioner to get the benefit of the 1992 Rules and 1938 Rules, Petitioner was deliberately regularized w.e.f. 23.07.2021 vide order dated 30.07.2021 under Annexure-6. Petitioner in the view of such continuance against a vacant sanctioned



post w.e.f. 01.10.1996, he is liable to be absorbed w.e.f. 01.10.1996 with extension of his coverage under the 1992 Rules and 1938 Rules and with quashing of the impugned order dated 17.02.2022 under Annexure-9.

4.2. It is also contended that for the alleged latches on the part of the Opp. Parties in not filling up of the post pursuant to the order passed by the Tribunal on two (2) occasion and allowing the Petitioner to continue all through w.e.f.01.10.1996 against a vacant sanctioned post, Petitioner cannot be deprived to get the benefit of retrospective regularization w.e.f.01.10.1996. It is also contended that Petitioner will have no grievance, if Petitioner is so regularized w.e.f.01.10.1996 on notional basis.

4.3. In support of his claim to get the benefit of pension under 1992 Rules and coverage under 1938 Rules, learned counsel appearing for the Petitioner relied on a decision of the Hon'ble Apex Court in the case of ***DS Nakara Vs. Union of India*** reported in ***(1983) 1 SCC 305***. Hon'ble Apex Court in Paragraph 15, 16, 32 and 33 of the said decision has held as follows:-

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have



a rational nexus to the object sought to be achieved by the statute in question.

*16. As a corollary to this well-established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489, 506 : AIR 1979 SC 1628 : (1979) 3 SCR 1014, 1034 : (1979) 2 LLJ 217] when at SCR p. 1034 (SCC p. 506), the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*

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32. Having succinctly focussed our attention on the conspectus of elements and incidents of pension the main question may now be tackled. But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when



*achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice — social, economic and political — shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh v. Union of India* [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] . Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under: (SCC p. 619, para 1)*

“Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence, and the forward-looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their constitutional oath and do justice no less to the pavement-dweller than to the guest of the five-star hotel.”

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.

33. *Recall at this stage the Preamble, the flood light illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular Democratic Republic. Expression “socialist” was intentionally introduced in the Preamble by the Constitution*



(Forty-second amendment) Act, 1976. In the objects and reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call may be extracted:

“The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some time....

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism ... to make the directive principles more comprehensive....”

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied. Ordinarily, therefore, a socialist State provides for free education from primary to PhD but the pursuit must be by those who have the necessary intelligence quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of



doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power — Legislative, Executive and Judiciary — to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step towards the goal.”

4.4. In support of his submission, reliance was also placed to the decisions of the Hon’ble Apex Court in the case of ***Jaggo vs. Union of India & Ors., 2024 SCC OnLine SC 3826; Shripal & Anr. vs. Nagar Nigam, Ghaziabad, 2025 SCC OnLine SC 221*** as well as ***Dharam Singh & Ors. vs. State of U.P. & Anr. (Civil Appeal No(s).8558 of 2018*** and lastly in the case of ***Bhola Nath Vs. State of Jharkhand and Others, 2026 INSC 99.***

4.5. View expressed by the Hon’ble Apex Court in the case of ***Jaggo*** in Para-22 to 25 and 27 reads as follows:-

“22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative



employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration⁶ encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgement of the United State in the case of Vizcaino v. Microsoft Corporation⁷ serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth

Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address

short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- *Misuse of "Temporary" Labels:*

Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of



regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

- *Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

- *Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

- *Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

- *Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.*

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27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment

practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”



4.6. Hon'ble Apex Court in the case of ***Shripal*** in Para-15, 17 has held as follows:-

“15. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature.

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17. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.”

4.7. Placing reliance on the decision in the case of ***Jaggo and Shripal***, Hon'ble Apex Court in the case of ***Dharam Singh***, in Paragraph-17 & 18 has held as follows:

“17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

18. Moreover, it must necessarily be noted that “ad-hocism” thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If “constraint” is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is an institutional discipline that should inform every decision affecting those who keep public offices running.”



4.8. Hon'ble Apex Court in the case of **Bhola Nath** in Para-13.5, 13.6, 13.8 & 13.9 of the judgment has held as follows:-

“13.5. xxx xxx xxx

We are unable to accept the justification advanced by the respondents as the obligation of the State, as a model employer, extends to fair treatment of its employees irrespective of whether their engagement is contractual or regular.

*13.6. This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of “part-time”, “contractual” or “temporary” in perpetuity and thereby exploiting them by not regularizing their positions. In **Jaggo v. Union of India**, this Court underscored that government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.*

xxx xxx xxx

*13.8. In **Dharam Singh v. State of U.P.**, this Court strongly deprecated the culture of “ad-hocism” adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.*

13.9. The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason.”

5. Having heard the learned counsel for the Parties and considering the submission made, this Court finds that Petitioner was engaged as a temporary Night Watchman in the establishment of Opp. Party No.3 w.e.f. 01.10.1996 vide order dated 03.10.1996 under Annexure-1.



Petitioner was so engaged against the vacant post of Night Watchman so available in the office of Opp. Party No.3.

5.1. It is also found that on the face of the order passed by the Tribunal under Annexure-2 and subsequent order passed by the self-same Tribunal in O.A. No.126 of 2009, the post in question was never filled up with initiation of any recruitment process and Petitioner all through was allowed to continue initially as a temporary Night Watchman vide order under Annexure-1 and as an ad hoc Night Watchman vide order dated 19.02.2021 under Annexure-3. Pursuant to the order passed by this Court in W.P.(C) No.9216 of 2021, he was regularized w.e.f. 23.07.2021 against such vacant post of the Night Watchman vide order dated 30.07.2021 under Annexure-6.

5.2. Since it is not disputed that Petitioner continued as against a vacant sanctioned post of Night Watchman in the office of Opp. Party No.3 w.e.f. 01.10.1996 and no step was taken either to absorb the Petitioner or to fill up the post, by the initiating due recruitment process, for such inaction on the part of the Opp. Parties, Petitioner cannot be held to be covered under NPS, which was made effective w.e.f. 01.01.2005.

5.3. Not only that since no step was ever taken to fill up the post on regular basis and Petitioner continued against a vacant sanctioned post of Night Watchman so available in the office of Opp. Party No.3 w.e.f.



01.10.1996, it is the view of this Court that Petitioner is eligible and entitled to get the benefit of regularization w.e.f. 01.10.1996, but on notional basis.

5.4. It is also the view of this Court that on the face of availability of the vacant post of the Night Watchman in the office of Opp. Party No.3, Petitioner could not have been allowed to continue as a temporary / ad hoc Night Watchman till he was absorbed w.e.f. 23.07.2021 vide order dated 30.07.2021 under Annexure-6. It is the view of this Court that State as a model employer, should not deal with its employee in such a manner and intentionally delaying the process of absorption, just to disentitle them to get the benefit of pension under OCS (Pension) Rules, 1992 and GPF (Odisha) Rules, 1938.

5.5. In view of such long continuance w.e.f. 01.10.1996 against the vacant sanctioned post of Night Watchman, this Court placing reliance on the decisions of the Hon'ble Apex Court as cited (supra), is also of the view that Petitioner is eligible and entitled to get the benefit of his coverage under the OCS (Pension) Rules, 1992 and GPF (Odisha) Rules, 1938.

5.6. In view of the aforesaid analysis, this Court while quashing the impugned order dated 17.02.2022 so issued by Opp. Party No.1 under Annexure-9, directs Opp. Party No.1 to absorb the Petitioner as against



the post of Night Watchman in the office of Opp. Party No.3 w.e.f.01.10.1996 on notional basis and allow him to be covered under OCS (Pension) Rules, 1992 and GPF (Orissa) Rules, 1938. This Court directs Opp. Party No.1 to complete the entire exercise within a period of two (2) months from the date of receipt of this order.

6. Accordingly, the Writ Petition stands disposed of.

(BIRAJA PRASANNA SATAPATHY)
Judge

Orissa High Court, Cuttack
Dated the 8th May, 2026/Jyoti