

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4884 of 2020

Laxmidhar Sahoo

.....

Petitioner

Mr. B.S. Tripathy, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Rath, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

Mr. JUSTICE G. SATAPATHY

ORDER

24.09.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. B.S. Tripathy, learned counsel for the petitioner and Mr. S. Rath, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to regularize his service in the post of Attendant which is lying vacant in Orissa High Court Homeopathy Dispensary.

4. Mr. B.S. Tripathy, learned counsel for the petitioner submits that the petitioner is continuing as attendant attached to Orissa High Court Homeopathy Dispensary and in the meantime 23 years have passed and as such, there is need of the post and pursuant to which he has been continuing in his service. Therefore, his service should be regularized against the said post. He has relied upon the judgment of the apex Court in **State of Karnataka and Others v. Umadevi**, 2006 (4) SCC 1, wherein in paragraph 53, the apex Court has held that the State Governments and their instrumentalities should take steps to regularize as a one-time measure the services of such irregularly appointed who have worked for ten years or more in duly sanctioned posts. Similar view has also been taken by the apex Court in **State of Karnataka and others v. M.L.Keshari and others**, 2010(II) OLR (SC) 982, wherein in paragraph 7 the apex Court has held as follows :

“7. It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Umadevi if the following conditions are fulfilled:

- (i) *The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.*
- (ii) *The appointment of such employee should not be illegal even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive-selection, such appointments are considered to be irregular.*

5. In that view of the matter, since the petitioner is continuing against a post of attendant since last 23 years and even though his appointment is irregular, he should be regularized in service in view of the judgment of the apex Court in **Umadevi** (supra) and **M.L.Keshari** (supra).

6. It is of relevance to note that in a similar case, in respect of Angul Municipality, this Court vide order dated 27.11.2014 in W.P.(C) No. 26860 of 2013 directed the opposite parties to regularize the services of the petitioner therein in view of the judgments of the apex Court in **Umadevi** (supra) and **M.L.Keshari** (supra). Against the said order dated 27.11.2014 the State of Odisha, as well as Angul Municipality preferred W.A. No. 407 of 2015 which was dismissed on 19.01.2016. Against the order dated 19.01.2016 passed in W.A. No. 407 of 2015, the State as well as Angul Municipality filed S.L.P. before the apex Court and by a common order dated 13.05.2016 the S.L.P. was dismissed. Consequentially, the State authorities issued office order dated 06.06.2016 for regularizing the petitioner in the said writ application. Similar relief has already been granted to the employee of Paradeep Municipality in W.P.(C) No. 10100 of 2010 disposed of on 07.07.2017. Therefore, the petitioner having same footing, benefit should be extended to him by regularizing his service as expeditiously as possible.

7. Mr. S. Rath, learned Additional Standing Counsel does not dispute such position.

8. Considering the contention raised by learned counsel for the parties and after going through the records since the petitioner is rendering service since last 23 years uninterruptedly and he has been allowed to draw house rent and other allowances as due and admissible to the post that itself indicates that there is need of the said post and as such the petitioner is continuing in service uninterruptedly for a quite long period. In view of the law laid down by the apex Court in *Umadevi* (supra) and *M.L.Keshari* (supra) and also the order of this Court, dated 27.11.2014, which has been confirmed by the apex Court so far as employees of Angul Municipality is concerned, the opposite parties are directed to regularize the service of the petitioner as expeditiously as possible preferably within a period of three months from the date of passing of this order and also grant all consequential benefit as due and admissible to him in accordance with law.

9. With the aforesaid observation and direction the writ petition is allowed.

10. Urgent certified copy be granted on proper application

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Arun/Kishore