

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 7066 of 2020

Subhasis Pattnaik

.....

Petitioner

Mr. R.K. Bisoi, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

28.07.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. R.K. Bisoi, learned Counsel for the Petitioner and Mr. A.K. Mishra, learned Additional Government Advocate for the State.

3. The Petitioner has filed this Writ Petition seeking to quash the order dated 03.07.2019 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 48 of 2017, by which the claim of the petitioner for regularization was rejected.

4. As it appears the Petitioner is a graduate with PGDC qualification. The Opposite Parties vide order dated 20.11.2002 under Annexure-2 informed the RTO of different districts including Nayagarh to engage a Peon-cum-Choukidar on DLR basis on the approval of Finance Department on the condition that wages of such employees should be paid from the office contingency without charging the salary head and before

engagement of the persons as Peon-cum-Choukidar on daily wage basis, an undertaking should be ensured that he/she will not claim any regular appointment in future for such engagement. In pursuance to the order of opposite party no.2, opposite party no.3 engaged the Petitioner as Peon-cum-Choukidar on daily wage basis since 05.02.2003 and since then, he discharged his duty. In the meantime the petitioner had completed 10 years of service. The Petitioner approached the opposite parties on several occasions requesting them to regularize his service. Since no step was taken for regularization of his service, he approached the Tribunal.

5. Mr. R.K. Bisoi, learned Counsel for the Petitioner contended that since the Petitioner had completed more than 10 years of continuous service, his service ought to have been regularized as per the decision of *Secretary State of Karnataka v. Umadevi*, 2006 (4) SCC 1. But without adhering to the same, the Petitioner was denied the benefit of regularization. Therefore, he approached the Tribunal by filing O.A. No. 48 of 2017.

6. On perusal of the order, it is made clear that the Petitioner had never been appointed against the sanctioned post of Peon-cum-Choukidar, rather it is the letter of Opposite Party no.2 to engage the Peon-cum-Choukidar on DLR basis with the approval of the Finance Department. Once the Petitioner was engaged on DLR basis and even though he had completed 10 years of service, that itself cannot entitle him to claim for regularization in the post of Peon-cum-Choukidar, since such post has not been created nor been sanctioned by the authority concerned. If against any non-sanctioned post the petitioner is continuing, he cannot claim that he

should be allowed to continue against the post of Peon-cum-Choukidar. Therefore, the claim of the Petitioner cannot sustain since his claim is neither coming within the purview of the decision of the apex Court in the case of *Umadevi* (supra) nor in the case of *Amarkanti Rai v. State of Bihar and others*, (2015) 8 SCC 265 as because the ratio of such cases is totally different than that of the claim of the Petitioner. Therefore, the Tribunal is well justified in passing the Order impugned, which does not warrant interference by this Court.

7. In view of the above, the Writ Petition merits no consideration and the same is accordingly dismissed.

Arun

