

ORISSA HIGH COURT: CUTTACK

AFR

W.P(C) NO. 9247 OF 2020

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

Srikanta Kumar Behera Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : Mr. Jagannath Patnaik,
Sr. Advocate along with
M/s. B. Mohanty, T.K. Patnaik,
A. Patnaik, S. Patnaik,
B.S. Rayaguru, S. Mohapatra
and R.K. Pati Advocates

For Opp. Parties : M/s. Guru Prasad Mohanty and
H.P. Mohanty, Advocates
(O.Ps. 2 to 4)

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of Hearing: 13.12.2022 :: Date of Judgment : 20.12.2022

DR. B.R.SARANGI, J. The petitioner, who is working on daily wage basis as a Night Watchman in Malati Devi Chhatri Nivas of Utkal University, Bhubaneswar, has filed this writ petition seeking regularisation of his service with

retrospective effect from the date he joined the post, by quashing the order dated 30.08.2019 passed by the Registrar, Utkal University-opposite party no.3 under Annexure-2, whereby the representation filed by the petitioner has been rejected in compliance of the order dated 25.02.2019 passed by this Court in W.P.(C) No. 2013 of 2019, and further seeks for grant of equal pay for equal work, which his counterparts in regular service are getting.

2. The facts of the case, in brief, are that under the Utkal University there are 10 hostels and all are situated within the University Campus. They are:-

- (1) Gopabandhu Chhatranivas,
- (2) Madhusudan Chhatranivas,
- (3) Fakirmohan Chhatranivas,
- (4) Pt. Nilakantha Chhatranivas,
- (5) Godavarish Chhatranivas,
- (6) Kasturiva Chhatrinivas,
- (7) Ramadevi Chhatrinivas,
- (8) Saraladevi Chhatrinivas,
- (9) Brahmakumari Chhatrinivas, and
- (10) Malati Devi Chhatri Nivas.

The petitioner is working as Night Watchman on daily wage basis in Malati Devi Chhatri Nivas. As per the provisions contained in the Utkal University Act, 1966 and Regulations governing the field, all the P.G. hostels inside the campus of the University and the employees employed therein are subject to disciplinary control of the University. The students of the said hostels are also subject to the disciplinary control of the University for their activities in the hostels and are responsible for such conduct. The petitioner, being an employee, is a part and parcel of the University and is being under one of the establishment of the University like other employees.

2.1 Some of the employees of the non-mess category had filed a writ petition bearing O.J.C. No.4411/1997, which was disposed of on 02.12.1998. In the said writ petition, this Court decided that if hostels are run by the University authorities, the persons/employees engaged, either in the messing department or non-messing department, are to be regularized and maintained by the University in accordance with the provisions of the Statute

and other principles of law and equity. The University authorities can make the Scheme to regularize the services of the non-messing staff in the hostels. Such scheme should be formulated regarding the nature and scope of employment and to provide equal pay for equal work like the regular employees. It was also directed that the University authorities shall frame the Scheme, as above, for regularization of the services of the non-mess employees attached to the hostels, including the petitioners therein, within a period of one year from the date of the judgment, and send the same to the State Government within that period. The State Government shall take a decision thereof within a period of 6 months from the receipt of the Scheme from the University to create such posts as would be found necessary and release the financial benefits for the posts as admissible. Until such Scheme is framed and decision is taken by the Government, the services of the petitioner shall not be dispensed with.

2.2 The State Government filed SLP, before the apex Court challenging the judgment dated 02.12.1998 passed

by this Court in O.J.C. No.4411 of 1997, which was ultimately dismissed. Thereby, in compliance of the said judgment dated 02.12.1998, a Scheme was prepared and benefit was extended to the workers, who had filed O.J.C No.4411 of 1997 by regularizing their services. But the petitioner, who is continuing and working in the same post, has not yet been regularized due to inaction of the opposite parties. Even though the Government has already sanctioned 78 number of posts, but the post held by the petitioner has not been created nor has the service of the petitioner been regularized. As against non-regularization of his service, the petitioner, who had rendered continuous service for more than six years, filed a representation for regularization of his service. But the authority did not take any step for regularization of his service. As a consequence thereof, the petitioner filed W.P.(C) No. 2013 of 2019 with a similar prayer for regularization of his service. The said writ petition was disposed of vide order dated 25.02.2019 with a direction to opposite party no.3 to dispose of the representation of the petitioner and also directed to take a

decision with regard to regularization of service of the petitioner within three months from the date of production of the certified copy of the order. On receipt of such order, the opposite party no.3, vide order impugned dated 30.08.2019, rejected the claim of the petitioner for regularization. Hence, this writ petition.

3. Mr. Jagannath Patnaik, learned Senior Counsel appearing along with Mrs. Soma Patnaik, learned counsel for the petitioner vehemently contended that the petitioner is working in the University since last 7 years without any break. Though services of similarly situated persons and juniors to the petitioner have already been regularized, but the case of the petitioner for regularization has been ignored. It is further contended that the services of 78 non-mess employees of Utkal University working under different hostels have already been regularized by the University, pursuant to the directions of this Court dated 02.12.1998 in O.J.C. No. 4411 of 1997, but, when the question of regularization of the service of the petitioner came, the same was rejected by opposite party no.3 taking a different stand

that the regularization of the service of the petitioner cannot be done.

3.1 It is further contended that 78 posts were created by the Government of Odisha to accommodate the non-mess employees of Utkal University, pursuant to the direction of this Court in the earlier writ petition, i.e., O.J.C No. 4411 of 1997. By the time the petitioner sought for regularization of his service, out of 78 nearly 20 employees had already been retired from service. Thereby, posts are lying vacant in the University against which the petitioner's case can be considered for regularization. But the authorities, without applying their mind, rejected the representation of the petitioner and denied him the benefit of regularization of service, which is arbitrary, unreasonable and contrary to the provisions of law and also violates Articles 14 and 16 of the Constitution of India. To substantiate his contention, learned Senior Counsel appearing for the petitioner has placed reliance on the judgment of this Court in the case of **Rabinarayan Mishra and others v. State of Orissa and others**, O.J.C. No.

4411 of 1997 disposed of on 02.12.1998, which has been made confirmed by the apex Court in the Special Leave Petition, and also on the case of **Rajib Lochan Mahanta v. Vice Chancellor, Utkal University**, 2021 (Supp.) OLR 552.

4. Mr. Guru Prasad Mohanty, learned counsel appearing for the University, per contra, contended that the petitioner's claim for regularization of service cannot be acceded to, as because he is not an employee of the University being selected by the committee and appointed by the Registrar. He also never gets his daily/ monthly work dues from the University Office. He disputed the fact that the petitioner has been working over 06 years and contended that had he worked over a period of 06 years, he could have made an application much earlier before the appointing authority and could have mentioned the date he joined in service. According to him, as per the provisions of the Orissa Universities Recruitment and Promotion of Non-Teaching Employees Rules, 1991, the employees are entitled to get the benefits, where the powers has been given to the Syndicate and the functionaries. Thereby, the employees,

who are appointed and regulated under specific provisions of the Rules and the Regulations stated therein, are only entitled to get such benefits, whereas the petitioner has never been engaged in compliance to the provisions of the Rules and Regulations governing the field. It is admitted by him that there are altogether 10 hostels existing in the University campus and employees are serving in all the hostels duly appointed by the University authority, but not the writ petitioner for which he is unable to specifically state the date from which he is serving. Thereby, fictitious persons who might be engaged to perform temporary daily works for a couple of days or a week only claim to get regular benefits, which are not admissible to them. Thereby, the relief sought by the petitioner cannot be granted and, as such, the writ petition is liable to be dismissed. The petitioner also cannot get the advantage pursuant to the judgment passed by this Court in O.J.C. No. 4411 of 1997. Thereby, contended that the rejection of representation vide Annexure-2 dated 30.08.2019 is well justified and does not require any interference by this Court at this stage.

4.1 It is also further contended that as a matter of principle and in compliance of the direction given by this Court in O.J.C. No. 4411 of 1997, the Scheme was prepared by the University and the Government, as matter of principle, sanctioned 78 posts and appointments were made on regular basis to the employees who were rendering service and had approached this Court by filing O.J.C. No. 4411 of 1997. Thereby, as a one time measure the posts having been created and filled up by the opposite parties, no further benefit can be granted to the petitioner. To substantiate his contention, reliance has been placed on the judgment of the apex Court in the case of **Secretary, State of Karnataka v. Umadevi**, AIR 2006 SC 1806.

5. This Court heard Mr. Jagannath Patnaik, learned Senior Counsel appearing along with Mrs. Soma Patnaik, learned counsel for the petitioner and Mr. G.P. Mohanty, learned Counsel appearing for the opposite parties no. 2 to 4 in hybrid mode and perused the record. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties, the writ petition is being

disposed of finally at the stage of admission.

6. The Utkal University Act, 1966 provides under Section 75(19) that the Syndicate shall have the power and functions to establish the College and maintain the University Laboratories, Libraries and the Institute of Research. Sub-section (25) of Section 76 of the Act also provides that the Syndicate shall have powers to establish and maintain hostels. Section 75(15) of the Act also provides that the misconduct of the students in the hostels when brought to the notice of the Syndicate shall be taken cognizance by the Syndicate. Section 154 of the Statute defined the 'Hostel' to mean a place of residence of the students of the University maintained and recognized by the University in accordance with the provisions of the Act. Section 157 of the Statute provides that the students living in the hostels shall be under the disciplinary control of the Superintendent and the Assistant Superintendent of the concerned hostels and may be assigned to individual members of their College staff for such additional supervision as may be necessary.

7. The legislatures of the State of Orissa, under the Orissa Act 5 of 1989, framed a law called “Orissa Universities Act, 1989”. Under section 3 thereof it has been prescribed that the Universities named therein shall be deemed to have been established under the said Act and under sub-section (i) of Section 3 the name of the Utkal University has been indicated and it is stated that that the said Utkal University has been established under the Utkal University Act, 1966. Thus, the Utkal University having been established under the Orissa Universities Act, 1989, the provisions of the said Act are applicable after commencement of the said Act. Furthermore, pursuant to the power conferred under sub-section (3) of Section 24 of the Orissa Universities Act, 1989, the State Government has framed a statute called the Orissa Universities First Statute 1990. Similar provision has been also made in Section 29 as provided under Section 75 of the old statute. Section 21/23 of the Statute has provided to establish and maintain P.G. Departments constituting Colleges and not affiliated to Colleges. The Colleges maintained and

established by the University such as Utkal University, Vani Vihar, the candidates of the P.G. Hostels are established and maintained by the University. In the Statute 21 (18) it has been provided that general inspection is to be done by the Colleges and Hostels at a fixed periods and the Syndicate has similar power to establish and maintain the University Laboratories, Libraries and institute of research Under Section 21(17) of the Statute. In view of such position of law vis-a-vis hostels attached to the University, the employees engaged on N.M.R./D.L.R. basis in the hostels are to be considered as the employees of the University and they need to be given necessary protection and facilities by regularizing their services and enjoyment of the service benefits like the regular employees. Provided further that such appointments are to be done in consonance with the statute applicable to them.

8. With a view to formulating a codified recruitment and promotion rules for non-teaching posts of the Universities, the Chancellor had placed the issue to the Standing Committee of the Vice-Chancellor, vide

Chancellor's Office letter dated 17.11.1988, pursuant to which in the Vice-Chancellor's Coordination Committee Meeting held on 16.02.1989, it was decided that the Standing Committee of the Vice-Chancellors' shall prepare the Draft Recruitment and Promotion Rules. After the same was prepared, the Chancellor, on consultation with the Government in Education Department, was pleased to approve the Rules, called the "Orissa Universities Recruitment and Promotion of Non-Teaching Employees Rules, 1991", which came into force on the date of its publication in the official gazette or the University Gazette, as the case may be. Rules-10 and 34 of the said Rules state as follows:-

"10. (1) Recruitment to all Class-IV posts shall be made by means of a competitive test as may be determined by the appointing authority.

(2) All the vacancies arising in the Class-IV posts shall be notified to all the Employment Exchanges within the jurisdiction of the University concerned.

(3) The Selection Committee constituted by the Vice-Chancellor for the purpose of appointment to the post of Class-IV employees, shall consider the candidates sponsored by different Employment Exchanges.

(4) The Selection Committee may also consider the candidates applied for in response to open advertisement issued for the purpose.

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“34 When it is considered by the Chancellor on the recommendation of the Vice-Chancellor that it is necessary or expedient so to do in the interest of the University and justice, he may, by order, relax any of the provisions of these rules in respect of any case or class of cases or class of persons.”

9. In view of the aforementioned Rules, it is made clear that Recruitment to all Class-IV posts shall be made by means of a competitive test, as may be determined by the appointing authority, and, as such, the same has to be notified to all the Employment Exchanges within the jurisdiction of the University concerned and there will be a selection committee, which may also consider the candidates applied for in response to open advertisement issued for the purpose. Thereby, a detailed procedure has been envisaged under the Rules to be appointed against Class-IV post. Nothing has been placed on record that the engagement of the petitioner has been done in consonance with the rules, as mentioned above. As such, no committee has been formed nor any appointment has been made by

following due process of selection, nor compliance of the provision has been made. But he was allowed to continue to discharge the duties assigned to him. Thereby, the engagement of the petitioner is absolutely irregular one.

10. May it be noted that Registrar is the only appointing authority for Class-IV employees of the University and nothing has been placed on record to show that appointment of the petitioner was made by the Registrar of the University. Even if the petitioner has been receiving remuneration from the Superintendent of the hostel, but fact remains due to non-production of the document to show that the petitioner was engaged by the Registrar, Utkal University, who is the appointing authority, the engagement of the petitioner by incompetent person comes within the purview of irregular engagement. Even though, the petitioner has moved the authority for regularization of his service, the same has been rejected on the ground that on 16.11.2016, the listed employees were given employment after the Scheme was framed and they were recruited after they were selected by a committee.

11. The University First Statute 1990 under Statute 258 prohibits any such appointment. Besides, Rule 10 of the 1991 Rules prohibits any appointment without any selection. Therefore, engagement/appointment of the petitioner if would be taken into consideration, the same is contrary to the Statute and the Rules governing the field.

12. In the case of **Umadevi** (supra) it has been made clear that unless the appointment is in terms of the relevant rules and by way of a proper competition among qualified persons, the same would not confer any right on the appointee. While saying so, the apex Court at paragraphs 34 and 44 of the judgment held as follows:-

“34. While answering an objection to the locus standi of the Writ Petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized, Chief Justice Bhagwati, speaking on behalf of the Constitution Bench in Dr. D.C. Wadhwa & Ors. Vs. State of Bihar & Ors. (1987 (1) S.C.R. 798) stated:

“The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which

is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice.”

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or

permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

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44. *One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, 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 but not under cover of orders of courts or of tribunals and should further ensure that regular*

recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Therefore, the Constitution Bench of the apex Court in the case of **Umadevi** (supra) has deprecated the practice of appointment of persons without following due procedure, but permitted regularization of the services of the employees, whose engagement is irregular but not illegal, as mentioned above.

13. In the present case, it is apparent that earlier similarly situated employees had approached this Court by filing OJC No. 4411 of 1997 (**Rabinarayan Mishra and others v. State of Orissa and others**), which was disposed of on 02.12.1998 and this Court in paragraphs-16 and 17 of the judgment held as follows:-

“16. This Court, in view of the facts disclosed in the case, and in view of the principles of law involved in the matter, in of the considered view that if Hostels are run by the University authorities, the persons engaged therein either in the Housing

Department or Non-Messing Department have to be regularized and maintained by the University in accordance with the provisions of the Statute and other principles of law and equity. The University authorities can make a Scheme to regularize the services of the Non-Messing staff in the Hostels including the case of the petitioners as situation permits. A special Scheme should be formulated regard being had to the nature and scope of employment, financial implication of the posts and proper pay protection and also the principle of equal pay for equal work vis-à-vis the regular employees.

17. For the foregoing reason, we dispose of the writ application. We direct the University authorities to frame a Scheme as above for proper regularization of the Non-Mess employees attached to the Hostels including the petitioners within a period of one year from the date of communication of the judgment and send the same to the State Government within that period. The State Government shall take a decision thereon within six months of receipt of the Scheme from the University to create such posts as would be found necessary and release the financial benefits for the posts as admissible. Until such Scheme is framed and decision is taken by the State Government, the services of the petitioner shall not be dispensed with. We make no order as to costs."

The judgment of this Court was also assailed before the apex Court by filing SLP, which was dismissed. Therefore, the judgment so passed by this Court having been confirmed by the apex Court, the Scheme was formulated and recommendation was made for creation of 78 posts. In pursuance thereof, the services of the petitioners of the said writ petition were regularized. By the time the present

petitioner approached this Court, out of 78 sanctioned posts, 20 have fallen vacant due to retirement of those employees. Therefore, 20 vacancies are available, where the petitioner can be absorbed on regular basis.

14. In **Rajib Lochan Mahanta** (supra), the claim for regularization was granted to a similarly situated person, who was working as a Group-D employee, relying upon the Division Bench judgment of this Court in **Dhrubananda Mishra and others vs. Vice Chancellor, Utkal University**, 77 (1994) CLT 70, wherein it was held that regularization has been accepted as a part and parcel of condition of service and specifically for those, who had completed five years of continuous service. Since all the nine petitioners in the said writ petition had completed more than five years of 3 continuous service, so a case of regularization was made out and the Division Bench of this Court directed the opposite parties to take early steps for regularization of those petitioners, along with other eligible employees, by framing an appropriate scheme and, thereafter, to regularize as per the seniority of the

incumbents. It was also directed that apart from the basic pay, those petitioners at all be entitled to dearness and additional dearness allowance only being paid to the regular hands. That entitlement would be given effect from the date of passing of the judgment, i.e., 13.01.1993. It is apparent that on regularization, the incumbents would get the pay and other allowances as are available to regularly employed employees.

15. The aforesaid judgment of the Division Bench was challenged before the apex Court in SLP (C) No. 9240 of 1993 and the same was dismissed on 13.02.1996. Consequentially, the order passed by the Division Bench was confirmed. After confirmation of the judgment of this Court, the University on 23.05.1996 prepared a seniority list of daily wagers working in its establishment. In compliance of the judgment passed by the Division Bench of this Court in ***Dhrubananda Mishra*** (supra), the services of the petitioners therein have been regularized. Similar regularization has been made in compliance of the order passed by this Court in OJC No. 13005 of 1999 disposed of

on 27.01.2006 (***Parikhit Malik vs. Chancellor Utkal University***). The said order was challenged in SLP No. 19829 of 2006 and the apex Court, vide order dated 16.02.2009, dismissed the said SLP. Thereby, large a number of persons have been regularized in terms of various orders passed in different writ petitions as well as contempt petitions. But the present petitioner has been discriminated.

16. So far as the claim of the petitioner in the present writ petition is concerned, if the judgment of the apex Court in ***Umadevi*** (supra) is considered, the direction contained in paragraph-44 thereof clearly indicates that the object behind the aforesaid direction is of two-fold. First is to ensure that those who have put in more than ten years of continuous service, without the protection of any interim orders of the courts or tribunals before the decision in ***Umadevi*** (supra) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily

wage/ad hoc casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. Following the aforesaid principles rendered in the case of **Umadevi** (supra), in the case of **State of Karnatak v. M.L. Keshari**, AIR 2010 SC 2587, the apex Court held that case of such employees who have completed ten years of service and do not possess the educational qualification prescribed for the post, at the time of their appointment may be considered for regularization in suitable lower posts considering their length of service rendered to the organization.

17. In **Nihal Singh v. State of Punjab**, AIR 2013 SC 3567, the apex Court directed for regularization of service of the appellants creating new posts and on such

regularization, the appellants would be entitled to all the benefits of service attached to the posts, which are similar in nature in the category of police service of the State, and also awarded cost to be paid to each of the appellants in the said case.

18. In the case of **Amarkant Rai v. State of Bihar and others**, (2015) 8 SCC 265, referring to the cases of **Umadevi, M.L. Keshari and Nihal Singh**, mentioned supra, the apex Court came to a conclusion that the appellant served the University for more than 29 years in the post of Night Guard and he has serviced the college on daily wage basis, and therefore, directed the authority to regularize the service of the appellant in the said case retrospectively w.e.f. 03.01.2002.

19. In view of the aforesaid fact and circumstances, since the hostel are run by the University Authorities, the persons engaged therein in housing department and non-mess department have to be regularized and maintained by the University in accordance with the provisions of statute and other principles of law and equity. As against

sanctioned posts of 78, as per the Scheme formulated earlier in compliance to the order dated 02.12.1998 passed in OJC No. 4411 of 1997, 20 persons have retired from service and there exist vacancies, against which if the service of the petitioner can be considered for regularization, it will not cause any prejudice to the University authorities. In the event any vacancy is not available for any reason and the same has already been filled up, then the University authorities can formulate a Scheme to regularize the services of the petitioner and all other similarly situated persons, who are working in the hostel. As such, the said Scheme has to be prepared taking into account the nature and the scope of the employment, financial implication of the posts and proper pay protection and also the principle of equal pay for equal work vis-à-vis the regular employees. If the petitioner can be adjusted against the existing vacancy befitting his qualification, experience, then his case be considered by constituting a selection committee and by giving regular appointment in terms of the rules applicable, so that the irregularities,

which have been created with regard to engagement can be sorted out. In the event no vacancy is available, then even when on the basis of the scheme prepared their cases will be regularized, they have to follow due procedure of rules for regularization. Needless to say, the Scheme should be prepared within a period of six months of the issue of the judgment to create such posts as would be found necessary and release the financial benefits for the posts as admissible. Until such Scheme is framed and decision is taken by the State Government, the services of the petitioner shall not be dispensed with.

20. This writ petition is accordingly allowed.
However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

Orissa High Court, Cuttack
The 20th December, 2022, Arun/GDS