

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8337 of 2022

Birabhadra Singh

..... Petitioner
Ms.Madhumita Panda, Advocate

-versus-

State of Odisha and others

..... Opposite Parties
Mr. Y.S.P.Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

Order No.

ORDER
18.04.2022

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Ms.Madhumita Panda, learned counsel for the Petitioner as well as learned Additional Government Advocate.
3. The present writ application has been filed with the following prayer:

“It is therefore, prayed that this Hon’ble Court be graciously pleased to issue a writ/writs, order/orders, direction/directions under Article 226 of the Constitution of India and ore particularly issue directions and more particularly to issue;

- i) writ of mandamus directing the Opposite Party to consider the case of the Petitioner for regularization in Group-D post from the initial date of appointment and extend the service benefits as admissible under law;
- ii) writ of mandamus declaring the order dated 09.03.2022 Annexure-2 as bad illegal and unconstitutional ;
- iii) order directing all other service benefits as admissible under law;
- iv) And pass any other order/orders, direction/directions as this Hon’ble Court may deem fit and proper in the

interest of justice in the facts and circumstances of the case.”

4. It is submitted by the learned counsel for the Petitioner that the Petitioner was initially engaged by the Horticulture Department in the year 1994 which fact has also been admitted by the Deputy Director, State Botanical Garden Zoological Park, Nandankanan in rejection order dated 09.03.2022 under Annexure-2. Thereafter the services of the employees have been transferred and they were asked to work at State Botanical Garden under the Deputy Director, State Botanical Garden Zoological Park. Learned counsel for the Petitioner further submits that although the Petitioner has been working regularly since several decades his service has not been regularized in the meantime. She further submits that this is a clear case of illegal and arbitrary inaction in regularizing the service of the Petitioner by the State Government and such inaction is also not sustainable in view of the law laid down by the Hon'ble Apex Court in the judgment rendered in the case of **State of Karnataka v. Umadevi, 2006(4) SCC 1** and **State of Karnataka and others v. M.L.Keshari and others, 200(11) OLR (SC) 982**. Learned counsel for the Petitioner further submits that highlighting the grievance, the Petitioner has submitted a representation before the Director, Zoological Park, Bhubaneswar on 15.02.2022. The Petitioner received a communication from the Deputy Director, Nandankanan Zoological Park on 09.03.22 rejecting his prayer for regularization.

5. On perusal of the rejection order dated 09.03.2022 under Annexure-2, it is seen that the representation of the Petitioner has been rejected solely on the ground that the Finance Department Resolution No.31715 dated 04.09.2012 has prohibited any department to engage any DLR on regular basis. Therefore, the grievance of the Petitioner has not been considered by the department

in accordance with law. Upon perusal of the same the ground stated in the impugned rejection order by the authority, this Court could be able to learn that the reasons assigned by the Deputy Director is not proper. The Petitioner, who has been working under the Government since 1994 and thereafter he has been placed at State Botanical Garden under Nandankanan Authority with effect from 01.08.2008, but his service have not yet been regularized by following the law laid down by the Hon'ble Apex Court in the case of **State of Karnataka v. Umadevi, 2006(4) SCC 1** and **State of Karnataka and others v. M.L.Keshari and others, 200(11) OLR (SC) 982**.

6. After considering the entire factual background of the case this Court is of the considered view that the conduct of the Opposite Parties in rejecting the prayer for regularization of the Petitioner's service by a single paragraph order speaks a volume about the highhanded illegal and arbitrary act on the part of the authority. Undisputedly the Petitioner has been working on daily wage basis since 1994. As such he has been exploited by the authority by paying a minimum wage in exchange of his service. Such practice is nothing but exploitation of labour by a model employer like State of Odisha.

7. Learned Additional Government Advocate on the other hand submits that the decision has been taken relying on the Resolution of the State Government. However, he does not dispute that the authority should have considered the case of the Petitioner in the light of the judgment of the Hon'ble Apex Court in **State of Karnataka v. Umadevi, 2006(4) SCC 1** and **State of Karnataka and others v. M.L.Keshari and others, 200(11) OLR (SC) 982**. Learned Additional Government Advocate further submits that the matter may be remanded to the appropriate authority i.e. the Secretary of the concerned department to take a decision in the

matter within a stipulated period of time keeping in view the law laid down by the Hon'ble Apex Court in **State of Karnataka v. Umadevi, 2006(4) SCC 1** and **State of Karnataka and others v. M.L.Keshari and others, 200(11) OLR (SC) 982**.

8. In view of the aforesaid analysis and considering the factual background of the case, this Court disposes of the writ application at the stage of admission setting aside the order dated 09.03.2022 passed by the Deputy Director, Nandankanan Zoological Park. It is further directed that the Petitioner shall file a fresh representation highlighting his grievance along with all supporting documents and the judgments he is relying in support of his claim within a period of two weeks from today. In the event such a representation is filed the same shall be considered by the Opposite Party No.1 in the light of the law laid down by the Hon'ble apex Court as well as the length of service provided by the Petitioner on contractual basis and the representation filed by the Petitioner shall be disposed of by passing a speaking and reasoned order within two months from the date of production of certified copy of this order. Further the decision so taken on the representation of the Petitioner shall be intimated to him within two weeks thereafter.

9. With the aforesaid observation, the writ application stands disposed of.

10. Issue urgent certified copy as per Rules.

RKS

(A.K. Mohapatra)
Judge