

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8972 of 2022

Chittaranjan Swain

....

Petitioner

Mr. R.K. Kanungo, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

18.04.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned counsel for the State. Perused the record.
3. The petitioner has filed this application with the following prayers:

“The petitioner therefore most respectfully prays that:-

This Hon’ble Court may be graciously be pleased to admit this writ petition, Issue notice to the opposite parties in Rule NISI calling upon them to file show cause as to why the service of the petitioner should not be regularized in a vacant post and clear his arrear and current dues,

And

If the opp.parties failed to show cause or, show insufficient cause said Rule be made absolute and the petitioner may be allowed to be regularized in the appropriate post, commensurate with his long service tenure and experience.

And

Issue writ/writs, order/orders, direction/directions as this Hon'ble court deem just, equitable and proper in the facts and circumstances of the case,

And

May pass further order/orders as this Court may deem it fit and proper.”

4. Learned counsel for the petitioner states that the petitioner has been continuing as NMR basis under the opposite parties, but till date he has not been regularized, although more than 26 years have passed in the meantime. He has referred to the case of ***State of Karnataka 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(H) 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 as NMR basis and completed 26 years of service in the meantime, as contended by him, and even though his appointment is irregular, this writ petition is disposed of directing the opposite parties to examine the same and take a decision on the regularization of the petitioner keeping in view of the judgment of the Apex Court in *Umadevi and M.L.Keshari* (supra), as well as *Amarkanti Rai v. State of Bihar and others*, (2015) 8 SCC 265, within a period of three months from the date of passing of this order.

Urgent certified copy of this order be granted on proper application.

Jagabandhu

