

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9085 of 2022

Amit Kumar Sena & another

..... Petitioner
Mr.K.K.Swain, Advocate

-versus-

State of Odisha and others

..... Opposite Parties
Mr.K.K.Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
21.04.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel.
3. Mr.Swain, learned counsel for the Petitioners submits that the Petitioners have been continuing as a DLR employee under the establishment of P.H.Division, Bhawanipatna, Kalahandi with effect from 02.11.2006, but till date they have not been regularized, although more than 16 years have been 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(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 except to the general principles against ‘regularisation’ 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 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.

In that view of the matter, since the Petitioners are continuing as DLR employee under the P.H.Division and completed 16 years of service in the meantime and even though their appointments are irregular they should be regularized in service in view of the judgments 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.

In view of such position, the opposite parties are directed to regularise the service of the petitioners within a period of three months from the date of production of certified copy of this order.

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

Issue urgent certified copy of the order as per Rules.

RKS

(A.K. Mohapatra)
Judge

