

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9358 of 2022

Basanta Kumar Das

..... Petitioner

Mr. A. Pr. Ray, Advocate

-versus-

State of Odisha and others

..... Opposite Parties

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

**CORAM:
JUSTICE A.K. MOHAPATRA**

**ORDER
09.05.2022**

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.
 3. The present writ petition has been filed by the petitioner with the following prayers:-

“it is therefore prayed under the facts and circumstances of the case narrated above your Lordship would be graciously pleased to admit this writ petition.

And further be pleased to direct the opp.parties to regularize the service of the petitioner in equivalent post with all consequential benefits as per law, circulars, executive instructions, orders & Judgment passed in Umadevi case reported in AIR 2006 SC 1806, and in State of Karnataka-vrs-M.L. Kesari & others in SLP(C) No.15774/2006 and W.P.(C) No.26860 of 2013 passed by this Hon’ble Court.

And further be pleased to issue writ(s), direction(s), order(s) as your lordships deem fit and proper for the

ends of justice.”

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 22 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(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 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 view of the analysis of the facts made hereinabove as well as principle of law discussed, this Court is of the considered view that the petitioner’s entire service period is to be taken into

consideration for calculation of his pensionary benefits and he should be extended the benefit of full pension as has been given to the many other similarly situated employees, this Court disposes of the writ petition at the stage admission with a direction to the petitioner to file a fresh representation highlighting his grievances along with copies of the relevant documents in support of his claim before the Opposite Parties within a period of two weeks from today. In the event such a representation is filed within the aforesaid period, the authorities concerned shall do well to consider the case of the petitioner and shall take into consideration the principles of law discussed hereinabove and shall consider the case 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. The entire exercise shall be completed within a period of three months from the date of filing of fresh representation. Any decision so taken on the same shall be communicated to the petitioner within a period of two week thereafter.

6. With the aforesaid observation/direction, the writ petition stands disposed of.

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

(A.K. Mohapatra)
Judge