

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9376 of 2022

Md. Murteza

....

Petitioner

Mr. M. Pratap @ Pratap, 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
09.05.2022

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

“It is, therefore, prayed before the Hon’ble Court to allow the petition,

(i) Further be pleased to issue Writ of Mandamus or any other appropriate writ(s) to direct the O.P.No.2 to absorb the Petitioner in the existing vacancy of Class-IV posts in the office of the B.D.O., Korai or in any other Class-1V vacancy under the jurisdiction of the collector, Jajpur with all service and financial benefits in view of the Order / Judgment dt. 24.03.2021 in W.P.(C) No.10309 / 2021 by this Court was passed following decision in W.P.(C) No.3921/2006 read with decisions through Secretary, State of Karnataka & Others vrs. Uma Devi (3) and Others (2006) 4 SCC 1 and State of Karnataka & Others vrs. M.L. Kesari &

Others (SLP(C) No.15774/2006),

AND

(ii) Further be pleased to direct the O.P.No.1 and 3 to regularize the service of the Petitioner with effect from his initial appointment dated 08.12.1994 with all service benefits,

AND

(iii) Further be pleased to pass any other order(s) / direction(s) as deems fit and proper in the facts and circumstances of the case.”

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 28 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 that view of the matter, since the petitioner is continuing as NMR basis and completed 28 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.

(*A.K. Mohapatra*)
Judge