

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10876 of 2022

Maheswar Samal

.... Petitioner

Mr. L. Mohanty, Advocate

-versus-

State of Odisha and others

.... Opposite Parties

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

13.05.2022

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

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to issue notice to the opp.parties calling upon them to file show cause as to why a direction shall not be issued to regularize the service of the petitioner against any Class-IV post, taking into consideration the long continuance of the petitioner as Cook cum Attendant since 17.02.1986 to till date as well as taking into consideration the benefit extended to opp.party no.5 dated 12.10.2018 under Annexure-5 who have engaged after the engagement of the petitioner as well as the judgment of Hon’ble Apex Court of India rendered in between Amarkanta Ray Versus State of Bihar reported in (2015) 8 SCC 265 and after hearing

the parties be pleased to direct the opp.parties especially opp.party no.2 to regularize the service of the petitioner against a Group IV post and give with all service and financial benefits;

And pass such other other/orders granting complete relief to the petitioner.”

4. It is submitted by learned counsel for the petitioner that although the petitioner has filed representation dated 15.12.2002 under Annexure-6 before the Collector-cum-District Magistrate- Opposite Party No.2, the same is still pending before the said Opposite party and the said Opposite Party has not taken any decision as of now.

5. Learned counsel for the State submits that if the petitioner approaches by filing a representation before the authorities, he has no objection if a direction is given to the authorities to consider the grievance of the petitioner in accordance with law within a stipulated period of time.

6. Learned counsel for the petitioner states that the petitioner has been continuing as DLR 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(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.”

7. 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.

8. 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

