

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13791 of 2022

Ajaya Kumar Sha

..... Petitioner
Mr. P.K. Das, Advocate

-versus-

State of Odisha and others

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

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.07.2022

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:

“On the aforesaid facts and circumstances, it is, therefore, prayed that in the interest of justice this Hon’ble Court may graciously be pleased to

- (i) Direct/order that the opposite Parties to regularize the service of the petitioner as Data Entry Operator from the date of his engagement in the office of the opposite Party No.6 i.e. Bidyadharpur Canal Sub-Division No.II, Anandapur Barrage Project, With all service and consequential benefits;
- (ii) To direct the Opposite Parties to allow the petitioner to discharge his duties as Data Entry Operator in the Office of the opposite Party No-6
- (iii) Pass such other order/orders, direction/directions as may be deemed fit and proper in the interest of

justice.”

4. It is submitted by learned counsel for the petitioner that although the petitioner has filed representation dated 15.05.2019 under Annexure-4 series before the Chief Construction Engineer, Anandapur Barrage Project, Keonjhar-Opposite Party No.4, 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 he has no objection, if a direction is given to the authorities to consider the grievance petition 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 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(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.