

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19767 of 2019

State of Odisha and Others

.....

Petitioner

Mr. A.K. Mishra, AGA

Vs.

P. Prasanna Kumar Patro

.....

Opposite Party

Mr. P.P. Behera, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

02.08.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. A. K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners and Mr. P.P. Behera, learned Counsel appearing for the Opposite Party.

3. The State and its functionaries have filed this Writ Petition seeking to quash the Order dated 10.08.2018 under Annexure-2 passed in O.A. No. 1715 of 2015, by which the Odisha Administrative Tribunal, Bhubaneswar, while allowing the said O.A. directed the State-Petitioners to regularize the service of the Opposite Party within three months from the date of receipt of the copy of the Order.

4. The factual matrix of the case, in brief, is that the Opposite Party, having acquired Diploma qualification in Mechanical Engineering in the year, 1990, was appointed as a DLR Diploma Holder Junior Engineer (Mechanical) under Petitioner No. 4 since 06.07.1993 and continuing as such. The Chief Engineer, R.W, Bhubaneswar, vide Office Letter

No. 13974 dated 18.06.1993 addressed to Petitioner No. 4, forwarded the name of the Opposite Party and three others to engage them at different places under his jurisdiction. Petitioner No.4, on 06.07.1993, wrote to the Assistant Engineer, R.W. (Mechanical) Sub-Division, Bhubaneswar to engage the Diploma Holder Mechanical Engineers on daily wage basis and accordingly, the Opposite Party, vide Office Order No. 114 dated 27.08.1994, was allowed to work under R.W. Mechanical Sub-Division, Bhubaneswar until further orders. The Opposite Party, along with other DLR/NMR/Work Charged/Job Contract employees, approached the Tribunal by filing O.A. No. 2095 of 1996 and batch for their regularization. Those O.As. were disposed of by the Tribunal on 09.02.1999 with the direction to consider the case of the Opposite Party and others in terms of Finance Department Resolution No. 22764/F dated 15.05.1997 and to allow them to continue in their respective posts until further orders are passed on their suitability or otherwise for regular appointment. Pursuant to the said Order, many DLRs/NMRs/Work Charged/Job Contract employees were regularized, but the Opposite Party was not regularized, though he has been rendering his service as DLR as a Diploma Holder Mechanical Engineer since 06.07.1993 and he is being paid emolument of a high skilled DLR employee as per the Minimum wages Act. By the time of filing of the O.A., he had rendered 22 years of service without any protection by the Court. He made several Representations to the Authorities for regularization of his service, but was of no effect. Petitioner No.4, vide letters

dated 09.05.2007 and 07.09.2007, forwarded his Representation to the Chief Engineer, Rural Works, Bhubaneswar for consideration of his case for regularization. But in spite of those Representations, no step was taken. Now the Opposite Party has crossed the age for any other mode of engagement. Though he approached different Authorities by way of filing Representations, but the same were not attended to.

5. The stand of the Opposite Party is that the apex Court in the case of *Amarnedra Kumar Mohapatra v.State of Orissa*, vide Order dated 19.02.2014 in Civil Appeal No. 8322/2009, has upheld the Validation Act passed bearing on the earlier judgment of the apex Court in the case of *Secretary, State of Karnatak v.Uma Devi (3) & Others*, (2006) 4 SCC 1, *State of Karnatak v. M.L. Keshasri and others*, (2010) 9 SCC 247 and other cases and, therefore, on the basis of the ratio of the apex Court judgment, the Petitioners should be directed to regularize his service, as he has rendered uninterrupted service for more than 22 years. It is also further contended that by virtue of interim order dated 07.01.2020, the Opposite Party is still continuing in service and in the meantime, he has already rendered 29 of service.

6. Mr. A. K. Mishra, learned Additional Government Advocate appearing for the Petitioners contended that the Opposite Party was engaged in the Office of Petitioner No.4- Executive Engineer (Mechanical), Rural Works (Mechanical) Division, Bhubaneswar, as per the direction of the Chief Engineer, R. W., Bhubaneswar, on daily wages basis and since 06.07.1993, he has been continuing till date

as such. It is further contended that the R. D. Department do not have its own cadre of Engineers. The Diploma Holders in Mechanical Engineers are being brought on deputation basis from the cadre maintained by the Chief Engineer (Mechanical), Water Resources Department. But in the present case, the Opposite Party neither was appointed in terms of recruitment Rules nor his name was sponsored by the Chief Engineer (Mechanical) Water Resources Department, who is maintaining a panel of Diploma Engineer (Mechanical) for his engagement/appointment. Therefore, in view of judgment of the apex Court, an illegal appointee has no right to claim regularization or continuation in service against the regular post. As such, the Scheme formulated by the Finance Department on 15.07.1997 has no application to the Opposite Party. It is also contended that in view of ratio decided by the apex Court, when the appointment is not illegal and the person appointed is duly qualified against the post and appointed against a vacant post and has continued to work for 10 years or more, without protection of any Court, their cases are to be considered for regularization. But the case of the Opposite Party comes within the sweep observation of the apex Court and, therefore, he is not entitled to get such relief.

7. The contentions raised by Mr. A. K. Mishra, learned Additional Government Advocate for the Petitioners has been refuted by Mr. P.P. Behera, learned Counsel appearing for the Opposite Party by submitting that once there was need of work and the Opposite Party was allowed to work for years together, now at the fag end of his service, the

State-Petitioners should not have taken a stand that his service is no more required. The said stand is contrary to the service jurisprudence. As a consequence thereof, the stand taken by the State-Petitioners has to be rejected and, as such, the Order passed by the Tribunal does not warrant interference of this Court.

8. Having heard learned Counsel for the parties and after going through the records, it appears that the Opposite Party was appointed on DLR basis to discharge his duty as Junior Engineer in the Office of Executive Engineer (Mechanical), Rural Works (Mechanical) Division. It is also admitted that on the basis of recommendation made by the Chief Engineer, Rural Works, he was appointed on DLR basis and continued for years together. In the meantime, he has completed 29 years of service. If he was not appointed against the vacant post and continued for a long tenure, it *ipso facto* shows that there is availability of vacancy, against which the Opposite Party is continuing. Therefore, the ground taken by the State-Petitioners that appointment of the Opposite Party was against non-vacant post, cannot have any justification and as such, his appointment cannot be said to be illegal, rather it can be termed as irregular. Therefore, the principle decided by the apex Court in ***Uma Devi (3)*** and ***M.L. Keshasri*** (supra) is squarely applicable to the present case. So also in the judgment of the apex Court in ***Amarakanta Rai vs. State of Bihar***, (2015) 2 SCC (L&S) 679, reference has been made to the judgment of ***M.L. Keshasri and others*** (Supra), wherein in Clause-ii, the apex Court held that 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 in the present case, the Opposite Party has requisite qualification and he is continuing for last 29 years. His long continuance of service against the post clearly indicates that there is requirement of work to be discharged by him and as such, such requirement is for the public interest. Now, it cannot be said that since he has not discharged his duty against sanctioned post, his service cannot be regularized. Rather, taking into consideration the long service rendered by him, the benefit of regularization has to be extended to him. Therefore, the Tribunal on the basis of para-8 of the Judgment of the apex Court in **Sheo Narain Nagar -Vrs- State of Uttar Pradesh and others**, AIR 2018 SC 233, has directed the Petitioners to regularize the services of the Opposite Party.

9. In the above view of the matter, this Court does not find any error in the order dated 10.08.2018 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 1715 of 2015 so as to cause interference of this Court. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

