

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23983 of 2022

Rabinarayan Nayak

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

28.09.2022

Order No

1. 1. This matter is taken up through Hybrid Mode.
2. 2. Learned counsel for the petitioner states that the petitioner has been continuing as a NMR employee under the Superintending Engineer, Nimapara Irrigation Division, Namapara, Dist. Puri and brought over the work charged establishment on 04.11.2011, but till date, he has not been regularized, although more than 29 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.

3. In that view of the matter, since the petitioner is continuing as NMR and work-charged employee under the Superintending Engineer, Nimapara Irrigation Division, Nimapara, Dist. Puri and completed 29 years of service in the meantime and even though his appointment is irregular he should be regularized in service in view of the judgments 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.

4. In view of such position, the Opposite Party No.2 is directed to regularize the service of the petitioners within a period of three months from the date of passing of this order. With the aforesaid observation and direction the writ petition is allowed. Urgent certified copy be granted on proper application.

(Biraja Prasanna Satapathy)
Judge

Subrat

