

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC(OAC) No.3964 of 2014**

In the matter of an application under Section 19 of the  
Administrative Tribunal Act, 1985.

.....

**Prakash Kumar Mohanty**

....

**Petitioner**

*-versus-*

**State of Odisha & Others**

....

**Opposite Parties**

**For Petitioner :** M/s. J.K.Rath, D.N.Rath,  
P.K.Rout and R.Sahoo.

**For Opp. Parties :** Addl. Standing Counsel  
Mr. M.Balabantaray

**PRESENT:**

**THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY**

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Date of Hearing: 06.04.2022 and Date of Judgment:21.04.2022  
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***Biraja Prasanna Satapathy, J.***

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. J.K.Rath, learned Senior Counsel with Mr. D.N.Rath, learned counsel for the Petitioner and Mr. M. Balabantaray, learned counsel for the State-Opposite Parties.
3. This Present Writ Petition has been filed by the Petitioner with a prayer to direct the Opposite Parties to regularize his service as a Junior Engineer and to grant him

prescribed pay scale in accordance with the provision contained under Annexure-3 and to extent all other financial benefits as due and admissible in his favour.

**4.** Mr. Rath, learned Senior Counsel for the Petitioner in support of the Petitioner's claim submitted that the Petitioner with having the requisite qualification of Diploma in Mechanical Engineer was initially engaged as a Mobile Unit Supervisor under Puri Rural water Supply and Sanitation Section under Rural Development Department in the year 1992.

**5.** It is submitted that while continuing in the said establishment and in consideration of the application made by the Petitioner on 22.10.1992 under Annexure-1, the Petitioner was engaged as a Diploma Engineer (Mechanical) on D.L.R basis with consolidated pay of Rs.1416/- per month vide order dated 20.01.1993.

**6.** It is also submitted that in consideration of his application dated 22.10.1992 though it was proposed to appoint the Petitioner on ad hoc basis, but vide order dated 20.01.1993 the Petitioner was appointed as a DLR Diploma Engineer (Mechanical).

**7.** It is also submitted that the Petitioner though was allowed to continue as a DLR on Diploma Engineer (Mechanical) w.e.f. 20.01.1993, but the State-Opposite Parties never took any step to regularize the services of the Petitioner in terms of the resolution issued by the Finance Department on 12.05.1997, which deals with the provision for such regularization of DLR / NMR employees on completion of 10 years of continuous engagement.

**8.** It is also submitted that in the list prepared by the Executive Engineer RW Mechanical Division, Bhubaneswar on 02.09.2002, the initial date of engagement of the Petitioner was reflected as 20.01.1993 and he was attached to R.W Mechanical Sub-Division, Angul.

**9.** It is also further submitted that while on the one hand, the Petitioner was allowed to continue as a D.L.R and no step was taken to absorb him in the regular establishment, but vide order dated 03.09.2004 issued by the self-same Rural Development Department Graduate Engineers (Civil & Mechanical) continuing as NMR / DLR were engaged as Assistant Engineer on contractual basis with consolidated salary of Rs.7,000/-. Since the Petitioner and similarly situated DLR Diploma Engineers were not considered even for their appointment on contractual basis, they moved the Opposite Party No.1 with a prayer to regularize them as Junior Engineers.

**10.** It is also submitted that while the Opposite Party No.1 never considered the claim of the Petitioner and similarly situated DLR Diploma Engineer for their absorption in the regular establishment, but vide order dated 27.11.2006 issued by the Engineer-in-Chief, Water Resources, similarly situated NMR/DLR Diploma Holders were engaged as a Junior Engineer on contractual basis in Water Resources Department.

**11.** Mr. Rath also submitted that not only the DLR/NMR Diploma Engineer working in Water Resources Department were allowed to continue on contractual basis vide order

under Annexure-11, but also similarly situated DLR Diploma Holder (Electrical) working in the Works Department were allowed to continue on contractual basis vide order dated 06.06.2007 under Annexure-12.

**12.** It is also submitted that the Government in the Housing and Urban Development Department was also moved by the Chief Engineer, Public Health Urban to bring over such NMR/DLR engaged prior to 12.04.1993 to the work charged establishment with creation of required nos. of posts vide letter dated 12.06.2009 under Annexure-13.

**13.** Mr. Rath, further submitted that while on the one hand, the Petitioner continued as a DLR, but on the other hand the Opposite Party No.1 vide letter dated 01.10.2009 decided to bring over 1772 nos. of NMR working in different category and engaged prior to 12.04.1993 to the Work Charged Establishment w.e.f. 01.03.2009 under Annexure-14. In view of such decision of the Opposite Party No.1, the Petitioner was once again left out from being brought over to the work charged establishment.

**14.** Mr. Rath in support of his case also submitted that vide letter dated 9.9.2010 issued by the Finance Department, though various Departments including Rural Development Department where the Petitioner is continuing were moved to furnish details of the DLR engaged prior to 12.04.1993, but the Petitioner's case was never enlisted in the identified list of DLR.

**15.** It is also further submitted that the Chief Engineer Rural Work, Bhubaneswar vide letter dated 11.10.2010 though moved the Opposite Party No.1 to include DLRs

engaged prior to 12.04.1993, but the case of the present petitioner was not recommended on the ground that there is separate procedure to engage Diploma and Degree Engineer. But in the said letter, it was requested to allow such Diploma DLRs to draw the minimum wages @ Rs.9,300/- per month.

**16.** Mr. Rath, further contended that subsequently vide different orders, though the Petitioner was entrusted with independent charge of different sections, but no step was taken to absorb him in regular establishment. Even though the representation submitted by the Petitioner on 25.09.2010 was forwarded by the Opposite Party No.1 to the Chief Engineer vide letter dated 01.10.2010 under Annexure-20-Series, but no action was taken in considering the grievance of the Petitioner for his absorption in the regular establishment.

**17.** It is lastly contended that in spite of his continuance as a DLR w.e.f. 20.01.1993 without any break, which is admittedly prior to 12.4.1993, the Petitioner finding no other alternative moved this Court in the present Writ Petition with the prayer as indicated hereinabove.

**18.** Accordingly, Mr. Rath learned Senior Counsel for the Petitioner prayed that in view of his long continuance as a DLR w.e.f. 20.01.1993, appropriate order be issued to the Opposite Parties to regularize him as a Junior Engineer with all service and financial benefits.

**19.** Mr. Rath in support of his aforesaid contention relied on the decision of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka vs. Uma Devi (3)**, (2006)

4 SCC-1, **State of Karnatak vs. M.L.Keshari**, (2010) 9 SCC 247, **Nihal Singh & Others vs. State of Punjab & Others**, 2013 (14) SCC 65 and **Amarkant Rai vs. State of Bihar & Others**, 2015 (8) SCC 265.

20. Mr. Rath also brought to the notice of this Court, the order passed by a Coordinate Bench on 25.06.2015 in W.P.(C) No.9251 of 2003. In the said decision, this Court relying on the decision of the Hon'ble Apex Court reported in the case of **Secretary, State of Karnataka vs. Uma Devi (3)**, (2006) 4 SCC-1, **State of Karnatak vs. M.L.Keshari**, (2010) 9 SCC 247 as well as another decision in the case of **State of Jharkhand and others vrs. Kamal Prasad and others** reported in **(2014) 7 SCC 223**, directed the Opposite Parties therein to take a decision on the claim of the Petitioner therein for his regularization. In the said decision, this Court also held that the decision in the case of Uma Devi is squarely applicable to the facts of the said case. In the reported decision in the case of **Secretary, State of Karnataka vs. Uma Devi (3)** at Para-53, it has been held as follows:-

*"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the*

*State Governments and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme”.*

Similarly in Para-10 of the decision in the case of **State of Karnatak vs. M.L.Keshari**, the Hon’ble Apex Court held as follows:-

*“At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of*

*some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered”.*

**21.** Mr. Balabantaray, learned State Counsel on the other hand advanced his argument relying on the stand taken by the Opposite Parties in the counter affidavit.

**22.** It is submitted by Mr. Balabantaray, learned State Counsel that even though the Petitioner is continuing as a DLR Diploma Engineer w.e.f. 20.01.1993, but he was not included in the identified card list of the DLR and consequently was not brought over to the work charged establishment as the Petitioner was engaged as a DLR and was never sponsored by the panel constituted by the Government for his appointment as a Diploma Engineer. Since the Petitioner was engaged as a DLR without facing due process of selection and he was never sponsored by the panel, his case was rightly not considered for his absorption in the regular establishment.

**23.** Accordingly, Mr. Balabantaray, learned counsel for the State advanced his argument that no illegality is committed by the Opposite Parties in not regularizing the Petitioner as a Diploma Engineer.

**24.** Having heard learned counsel for the Parties, this Court is of the view that there is no dispute with regard to the initial date of engagement of the Petitioner as a DLR Diploma Engineer w.e.f. 20.01.1993. It is also not disputed

that the Petitioner since 20.01.1993 is continuing as a DLR without any protection from any Court of law. In the meantime the Petitioner was not only allowed to continue without any break but also he was entrusted with independent charge of different sections coming under the Opposite Parties and the Petitioner is discharging his duty efficiently and diligently. In view of such continuance of the Petitioner as a DLR w.e.f. 20.01.1993 without any protection from any Court of law, his claim for regularization clearly comes under the proposition contained in Para-53 in the case of **Secretary, State of Karnataka vs. Uma Devi**. Not only that in view of such long continuance of the Petitioner w.e.f. 20.01.1993 his claim for regularization is also covered by the decision of the Hon'ble Apex Court reported in the case of **Nihal Singh & Others vs. State of Punjab & Others**, 2013 (14) SCC 65 and **Amarkant Rai vs. State of Bihar & Others**, 2015 (8) SCC 265. This Court is also of the further view that the State being a model employee, it is not expected on the part of the State to exploit the Petitioner by allowing him to continue as a DLR for the last 29 years. It is not the case of the Opposite Parties that the Petitioner does not possess the required qualification to hold the post of Junior Engineer on regular basis.

**25.** Therefore, taking everything into account and the decision relied on by the learned Senior Counsel, this Court held that the Petitioner is eligible for his absorption in the regular establishment. This Court accordingly directs the Opposite Party No.1 to take effective steps and regularize

the services of the Petitioner as a Junior Engineer. This Court further directs that the entire exercise with regard to absorb the Petitioner in the regular establishment be completed within a period of two months from the date of receipt of this order.

**26.** With the aforesaid observations and directions, the WPC(OAC) stands disposed of. There shall be no order as to costs.

**(Biraja Prasanna Satapathy)**  
**Judge**

Orissa High Court, Cuttack  
Dated the 21<sup>st</sup> of April, 2022/Subrat

