

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.234 of 2011

Himansu Sekhar Mohapatra

....

Petitioner

Mr. K.K. Swain, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

21.02.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The present writ petition has been filed by the Petitioner with a prayer for a direction to the Opposite Parties to regularize the service of the Petitioner against the post of the Work-charged Clerk effect from the date of his juniors were regularized and further prays for a direction for payment of consequential benefits within a stipulated period of time.
4. Learned counsel for the Petitioner submits that the Petitioner has been continuing as N.M.R. basis w.e.f. 26.07.1984 under Mayurbhanj R.W.S. and S. Divisions, Baripada but, till date he has not been regularized although the Petitioner has requisite qualification and in view of the decision taken in W.P.(C) No.3921 of 2006 order dated 16.06.2019, he is eligible to be regularized in service and all consequential benefits. He has referred to the case of

State of Karnataka vs. 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 vs. 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.

In that view of the matter, since the petitioner is continuing as DLR employee under the Orissa Water Supply and Sewerage Board and completed 24 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.”

5. The Chief Engineer, R.W.S. & S. Division, Baripada by a cryptic order dated 19.01.2011 has rejected the claim of the Petitioner for regularization of service for the post of Work-charged Clerk. On perusal of the order dated 19.01.2011, which is annexed under Annexure-10 of the writ petition. It is revealed that the same is cryptic order and the claims of the Petitioner have not been considered and that no discussion will be made with regard to the eligibility as the allegations made by the Petitioner.

6. Learned counsel for the State, on the other hand, submits that the authorities have examined the case of the Petitioner and found that the Petitioner is not eligible to get service by order dated 19.01.2011 under Annexure-11.

7. Considering the materials available on record, this Court is of the view that the said order has been passed hastily without considering the claim of the Petitioner.

8. In such view of the matter, the order is unsustainable in the eye of law and the same is hereby set aside, this Court instead of keeping the matter pending, which was filed in the year 2011, disposed of the writ petition with a direction to the Petitioner to file a fresh representation along with documents in support of his case as well as citations in support of his claim within a period of two weeks from today along with certified copy of this order. In the event such representation is filed by the Petitioner before the Chief Engineer, RWSS, Odisha, Bhubaneswar-Opposite Party No.2, the same shall be considered and disposed of within a period of three months from the date of filing of fresh representation along with certified copy of this order. It is needless to mention here that the representation of the Petitioner shall be considered by passing a speaking and a reasoned order on the same with the stipulated time. The decision taken on the same shall be communicated to the Petitioner within a period of ten days thereafter.

9. With the aforesaid observation, the writ petition is disposed of.

10. Urgent certified copy of this order be granted on proper application.