

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAPC) No. 140 of 2019

Sudhir Kumar Nath

.....

Petitioner

Mr. S. Roy, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

28.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard learned counsel for the parties.
3. Learned counsel for the petitioner contended that the petitioner does not want to press prayer no. (i) and wants to confine his prayer to prayer no. (ii)
4. In prayer No. (ii), the petitioner has prayed for absorption of the petitioner in regular/wages establishment.
5. 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 30 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.

6. In that view of the matter, since the petitioner is continuing as NMR basis and completed 30 years of service in the meantime, as contended by learned counsel for the petitioner, 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 communication of this order.

Ashok

(DR. B.R. SARANGI, J.)

