

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33010 of 2022

Mahipal Satpathy and others *Petitioners*
Mr. A. Pattanaik, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. A. Behera, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
13.12.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioners as well as learned counsel for the State. Perused the record.
3. The present writ petition has been filed by the petitioners with the following prayers:

“It is therefore prayed that this Hon’ble Court may graciously be pleased to direct the Opp. Party No-1 to fill up and to give appointment to the petitioners as per their qualification out of 564 of vacant posts as mentioned in Annexure-2 (Office Order No-31127/3/RD/CONF6, dated 17.10.2022 of Engineer-in-Chief, Rural Works), who were working near about or more than 27 years of continuous service under different Electrical Sections under RD Department and thereafter to fill up the rest vacant posts through regular recruitment process.

Or in alternatively to direct Opp. Party No-1, to dispose the representation dated 21.10.2022 of the petitioners within a stipulated time bound period.

And/or pass such order/orders, direction/directions in

this Hon'ble Court may think fit and proper for the end of justice;"

4. It is submitted by learned counsel for the petitioners that although the petitioners have filed representation dated 21.10.2022 under Annexure-3 before the Additional Secretary, Rural Development (R.D.) department, Government of Odisha-Opposite Party No.1, the same is still pending before the said Opposite party and the said Opposite Party has not taken any decision as of now.

5. Learned counsel for the State submits that if the petitioners approach by filing a representation before the authorities, he has no objection if a direction is given to the authorities to consider the grievance of the petitioners in accordance with law within a stipulated period of time.

6. Learned counsel for the petitioners state that the petitioners have been continuing as DLR basis under the opposite parties, but till date he has not been regularized, although more than 26 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.”

7. In that view of the matter, since the petitioner is continuing as DLR basis and completed 26 years of service in the meantime, as contended by him, 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 as well as in the case of *Basanta Kumar Barik v. State of Odisha and others* (WPC(OA) No.616 of 2017 decided on 26.11.2021) within a period of two months from the date of production of certified copy of this order. Any decision so taken on the said representation shall be communicated to the petitioners within a period of two weeks thereafter.

8. With the aforesaid observation/direction, the writ petition stands disposed of.

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

(A.K. Mohapatra)
Judge