

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.40752 of 2021

Madan Mohan Moharana

.....

Petitioner

Mr. A.P. Ray, Advocate

Vs.

State of Odisha and others

.....

Opposite party

Addl. Standing Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

11.01.2022

Order No.

01

This matter is taken up through video conferencing mode.

2. Heard Mr. A.P. Ray, learned counsel for the petitioner.
3. Learned counsel for the petitioner contended that though the petitioner has been continue since 01.08.1997 on temporary DLR basis, but till date he has not been regularized, 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.”

4. In that view of the matter, since the petitioner is continuing against a sanctioned post of Driver and completed more than 10 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, M.L.Keshari* (supra), as well as *Amarkanti Rai v. State of Bihar and others*, (2015) 8 SCC 265.

5. It is of relevance to note that in a similar case, in respect of Angul Municipality, this Court vide order dated 27.11.2014 in W.P.(C) No. 26860 of 2013 directed the opposite parties to regularize the services of the petitioner therein in view of the judgments of the apex Court in *Umadevi* (supra) and *M.L.Keshari* (supra). Against the said order dated 27.11.2014 the State of Odisha, as well as Angul Municipality preferred W.A. No. 407 of 2015 which was dismissed on 19.01.2016. Against the order dated 19.01.2016 passed in W.A. No. 407 of 2015, the State as well as Angul Municipality filed S.L.P. before the apex Court and by a common order dated 13.05.2016 the S.L.P. was dismissed. Consequentially, the State authorities issued office order dated 06.06.2016 for regularizing the petitioner in the said writ

application.

6. In view of such position, the opposite parties are directed to consider the case of the petitioner for regularization of his service within a period of three months from the date of passing of this order.

7. With the aforesaid observation and direction the writ petition is allowed.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's Notice No. 4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(DR. B.R. SARANGI)
JUDGE

Arun

