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

**W.P.(C) No. 26041 of 2022**

***Mrutunjaya Mohanty*** .... ***Petitioner***

*Mr. M.K. Khuntia, Advocate*

*-versus-*

***State of Odisha & Ors.***

.... ***Opposite Parties***

*Mr. A. Tripathy, AGA*

**CORAM:**
**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**
**09.04.2026**

**Order No.**

**06.** **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

**2.** Heard learned counsel appearing for the Parties.

**3.** The present Writ Petition has been filed *inter alia* with the following prayer:-

> *"It is therefore humbly prayed that this Hon'ble Court may graciously be pleased to admit the case, call for the records and after hearing both the parties pass the following reliefs;*
>
> *i. To quash the order dt.5.9.2022 under Annexure-9*
>
> *ii. To direct the direct the Opp.Parties to regularize the service of the petitioners as per the ratio decided in the case Secretary, State of Karnatak versus Umadevi (AIR 2006 SC 1806) and State of Karnataka Vrs. M.L. Keshari (2010) SCC 243 as well as the ratio decided in the case of Sagalilal Murmu versus State of Odisha (2015 (Suppl-II) OLR 301).*

*iii. To direct the Opposite Parties to grant all financial and consequential benefits from the date of regularization of his service.*

*iv. To pass such other orders /orders as would deem fit and proper;*

*And for this act of kindness, the petitioner as in duty bound shall ever pray."*

**4.** It is contended that basing on the recommendation issued by the Government on 13.06.2007 under Annexure-1 and compliance of the request made by the Chief Medical Officer, Bhubaneswar on 05.07.2007, Petitioner's name was sponsored by the Mission Director, NRHM, Bhubaneswar vide order dtd.07.08.2007 under Annexure-2-Series for his appointment as against the post of Telemedicine Technician in the establishment of Opposite Party No.3. Accordingly vide order dtd.04.09.2007 under Annexure-3 of Opposite Party No.3, Petitioner was appointed as a Telemedicine Technician on contractual basis. Claim of the Petitioner was also recommended for taking further action by the CDM & PHO, Khurda vide letter dtd.05.04.2019 under Annexure-6.

**4.1**. It is contended that in terms of the letter issued under Annexures-1 and 2, Petitioner was appointed as a Telemedicine Technician on contractual basis vide order dtd.04.09.2007 under Annexure-3 of CMO, Bhubaneswar now Director, Capital Hospital-Opposite Party No.3.

**4.2**. It is contended that on being so appointed as a contractual Telemedicine Technician vide order dtd.04.09.2007 under Annexure-3, Petitioner was allowed to continue as such on contractual basis.

**4.3.** It is contended that taking into account the continuance of all such Telemedicine Technician in three different Hospitals of the State in various proceedings under Annexure-4-Series, decision was taken to move the Government for creation of separate cadre for employees continuing under the Telemedicine cadre.

**4.4**. It is contended that in terms of the decision of the Committee so taken in various Review Meeting under Annexure-4-Series, no separate cadre was created by the Government-Opposite Party No.1. However, Opposite Party No.3 vide his letter dtd.05.04.2019 under Annexure-6 forwarded the claim of the Petitioner along with two others for further needful action.

**4.5**. Learned counsel appearing for the Petitioner contended that on the face of such continuance on contractual basis pursuant to the order of appointment issued under Annexure-3 and the recommendation made under Annexure-6, when no step was taken to regularize the services of the Petitioner, Petitioner made a detailed representation before Opposite Party No.1 on 01.06.2021 under Annexure-7. But the same when was

not considered, Petitioner approached this Court by filing W.P.(C) No.19689 of 2021.

**4.6**. This Court vide order dtd.20.07.2021 under Annexure-8 when directed for consideration of the Petitioner's claim to get the benefit of regularization taking into account the ratio decided in the case of ***Uma Devi & M.L. Keshari*** as well as the decision in the case of ***Sagalilal Murmu versus State of Odisha*** read with Rule-10 of the Orissa Group-C & Group-D Post (Contractual Appointment) Rules, 2013, without proper appreciation of the said order, claim of the Petitioner was rejected vide the impugned order dtd.05.09.2022 under Annxure-9. Claim of the Petitioner was rejected *inter alia* on the following ground so indicated in Para-6 of the impugned order:-

> *"6.a. Contractual appointment must have been made with prior concurrence of Finance Deptt.*
>
> *b. Due recruitment procedure prescribed for the corresponding regular post must have been followed.*
>
> *c. Reservation of vacancies as per ORV Rules must have been followed while making such appointment."*

**4.7**. Learned counsel appearing for the Petitioner contended that since Petitioner was duly appointed pursuant to the communications issued under Annexures-1 & 2 vide order dtd.04.09.2007 under Annexure-3 and recommendation was made under Annexure-6 for taking needful action on the issue, no fault lies with the Petitioner, if the reservation principle

was not followed while providing appointment to the Petitioner.

**4.8**. It is also contended that since Petitioner was appointed as against a single post, reservation principle is not applicable in view of the settled position of law.

**4.9**. It is accordingly contended that since Petitioner which is not disputed is continuing as a contractual Telemedicine Technician w.e.f. 04.09.2007 pursuant to the order of appointment issued on 04.09.2007 under Annexure-3, rejection of the Petitioner's claim on the ground indicated in the impugned order is not sustainable in the eye of law and liable for interference of this Court.

**4.10.** It is also contended that Petitioner's claim is covered by the resolution issued by the GA & PG Department on 17.09.2013 and the notification issued by the GA Department on 12.12.2013 as well as the notification dtd.16.10.2022.

**4.11**. It is contended that as provided in the notification dtd.16.10.2022, all such employees who were continuing on contractual basis as on the date of repealing of the 2013 rules, were deemed to have been regularized on completion of six years of service on contractual basis. Para-4 of the repeal rule reads as follows:-

*"**4. Special Provisions**.- (1) The initial appointees appointed under the contractual Rules now in positions shall be deemed to have been appointed against the post on regular basis as on the date of commencement of these rules.*

*(2) On such regular appointment under sub-rule (1), the pay of such employees shall be fixed by way of granting notional Increments considering the date of their contractual appointment.*

*(3) The employees who have been regularly appointed in the service after completion of 6 years of service under the respective Contractual Rules shall be allowed for fixation of their pay as on the date of commencement of these rules by way of granting notional increments considering the date of their contractual appointment.*

*(4) The employees whose services have been so regularized shall be allowed service benefits like promotion etc. In the cadre on notional basis to which they would have been entitled as per rules, had they been recruited on regular basis.*

*(5) On commencement of these rules, the employees shall be assigned seniority in the cadre to which they would have been entitled as per rules, had they been recruited on regular basis."*

**4.12**. Making all the submissions, learned counsel appearing for the Petitioner contended that Petitioner is eligible and entitled to get the benefit of regularization which has been illegally rejected vide the impugned order dtd. 05.09.2022 under Annexure-9 and appropriate direction be issued to Opposite Party No.2, to regularize the services of the Petitioner as against the post in question with due sanction of the Government-Opposite Party No.1.

**5**. Mr. C.K. Pradhan, learned Addl. Government Advocate for the State on the other hand made his

submission basing on the stand taken in the counter affidavit.

**5.1**. It is contended that Petitioner even though was appointed as against the post in question vide order dtd.04.09.2007 under Annexure-3, pursuant to the communications issued under Annexures-1 & 2, but since while providing appointment to the Petitioner reservation principle was not followed, and such an appointment was made without prior concurrence of the Finance Department, Petitioner is not eligible and entitled to get the benefit of regularization.

**5.2.** It is also contended that in terms of the decision taken in the meeting dtd.17.02.2010 under Annexure-4-Series and in the subsequent meetings, since no separate cadre has yet been created for such employees as like the Petitioner, in absence of creation of any cadre, Petitioner cannot be regularized as against the post in question. The stand taken in Para-7 & 9 of the counter affidavit reads as follows:-

> *"**7**. That, in reply to the averments made in Paragraphs-10 to 14 of the writ petition, it is humbly submitted that, Resolution dated, 17.09.2013 and 16.01.2014 are as follows:-*
>
> *a. Contractual appointment must have been made with prior concurrence of Finance Deptt.*
>
> *b. Due recruitment procedure prescribed for the corresponding regular post must have been followed.*
>
> *c. Reservation of vacancies as per ORV Rules must have been followed while making such appointment.*

*The GA & PG Department vide their letter No. 7210/ Gen dated, 03.03.2021 have also clarified that the employees who are not engaged as per Odisha Group-C and Group-D posts (contractual appointment) Rules, 2013 cannot be regularised as per the said Rules as it is not applicable to them. However, some of them can be regularised as one time relaxation measure as outlined in the Uma Devi judgment of Hon'ble Supreme Court of India.*

*In view of the facts narrated above it is revealed that the present petitioner does not meet all of the above mandatory conditions for his regularization as laid down in Resolution of G.A. & P.G. Department letter No. 26108/Gen dated, 17.9.2013, Resolution No.1066 dated, 16.01.2014 & G.A. Department Notification No. 32010/Gen. dated, 12.11.2013 i.e. Odisha Group-C&D posts (Contractual Appointment) Rules, 2013, read with GA & PG Deptt. clarification issued vide their letter dated, 03.03.2021.*

*xxx xxx xxx*

***9**. That the Petitioner has not been appointed against any sanctioned post and there is no cadre for the post in question. Moreover, neither any recruitment procedure has been followed while employing the Petitioner nor reservation policy has been followed. For the aforesaid reasons the prayer of the Petitioner for regularization cannot be allowed as he is not covered under the Uma Devi judgment".*

It is accordingly contended that Petitioner's claim has been rightly rejected, which requires no interference.

**6**. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that Petitioner was appointed vide order dtd.04.09.2007 as against the post of Telemedicine Technician in the establishment of Opposite Party No.3 under Annexure-3, pursuant to the communications issued under Annexures-1 & 2.

**6.1**. The fact which is not disputed, Petitioner was so appointed as a contractual Telemedicine Technician vide order under Annexure-3. It is also found that while forwarding the claim of the Petitioner along with two others vide letter dtd.05.04.2019 under Annexure-6, CDM & PHO, Khurda was requested to take needful action.

**6.2**. However, on the ground that reservation principle has not been followed and prior concurrence of the Finance Department has not been taken, claim of the Petitioner was rejected vide the impugned order dtd.05.09.2022 under Annexure-9.

**6.3**. This Court taking into account the nature of order issued under Annexure-3, pursuant to Annexures-1 & 2 communication finds that one post of Telemedicine Technician in the establishment of Opposite Party No.3 was filled up with due appointment of the Petitioner. Since in terms of Annexures-1 & 2, a single post was filled up, it is the view of this Court that no reservation principle could have been followed.

**6.4.** Not only that no fault lies with the Petitioner in getting the benefit of appointment, if prior concurrence of the Finance Department was not taken as contended.

**6.5.** Placing reliance on the provisions contained in the resolution issued by the GA & PG Department

dtd.17.09.2013 and the Notification dtd.12.11.2013 and further notification issued on 16.10.2022, since it is not disputed that Petitioner is continuing as a contractual Telemedicine Technician w.e.f. 04.09.2007 pursuant to the order issued under Annexure-3 on dtd.04.09.2007, Petitioner as per the considered view of this Court is eligible and entitled to get the benefit of regularization.

**6.6**. However, since pursuant to the decision taken in the meeting dtd.17.02.2010 under Annexure-4-Series and in the subsequent meetings, no separate cadre has yet been created for such post of Telemedicine Technician, this Court while disposing the Writ Petition directs Opposite Party No.1 to create the post of Telemedicine Technician in the establishment of Opposite Party No.3 within a period of two (2) months from the date of receipt of this order. On such creation of the post, Opposite Party No.2 shall take appropriate step for regularization of the Petitioner with passing of an appropriate order within a further period of one (1) month. Consequentially impugned order dtd. 05.09.2022 under Annexure-9 stands quashed.

**7**. Accordingly, the Writ Petition stands disposed of.

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Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 21-Apr-2026 11:04:09

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