



IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.1490 of 2014

***Krushna Chandra
Mahapatra***

.....

Petitioner

Mr. S. Mohanty, Adv

-versus-

State of Odisha & Others

.....

Opposite Parties

Mr. S. Jena, AGA

CORAM:

THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

05.08.2024

Order No.3

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the parties.
3. Petitioner has filed the present Writ Petition inter alia with the following prayer.

“Under such circumstances, it is humbly prayed that this Hon’ble Court may kindly be pleased to admit the case and issue notice to the Opp. Parties to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and give a direction to the Respondents more particularly 2 and 3 for regularisation of the service of the applicant in the light of the law laid down by the Hon’ble Supreme Court and the applicant be paid all the financial and consequential benefits.

And/or pass any other order(s) which deems fit and proper for adjudication of the case.”

4. Learned counsel for the Petitioner contended that Petitioner was engaged as a Night Watcher cum Sweeper vide order of engagement issued on 21.11.2003 under Annexure-3



of Opp. Party No.4. Pursuant to the order issued under Annexure-3, petitioner joined as a Night Watcher-cum-Sweeper in the office of Sub-Registrar, Machkund on 02.01.2004 as reflected in Annexure-4. Subsequently vide Office Order dt.18.10.2005 of Opp. Party No.4 under Annexure-6, Petitioner was posted in the Office of Sub-Registrar, Pattangi where he joined on 21.10.2005.

4.1. It is further contended that vide Office order dt.09.09.2011 of Opp. Party No.4, Petitioner was posted in the Office of Sub-Registrar, Machkund and accordingly he was relieved vide Order dt.16.09.2011 under Annexure-8 for his joining. It is contended that in terms of the order issued under Annexure-8, Petitioner till date is continuing as a Night Watcher-cum-Sweeper in the office of Sub-Registrar, Machkund on daily Wage basis.

4.2. Learned counsel for the Petitioner contended that since w.e.f 02.01.2004 to till date, Petitioner is continuing as a Night Watcher-cum-Sweeper in the office of Sub-Registrar, Machkund and/or Sub-Registrar, Pattangi without any break in engagement and without being protected by any interim order passed by any Court of law, he is eligible and entitled to get the benefit of regularisation, in view of the decision of the Hon'ble Apex Court in the case of ***State of Karnatak Vs. Uma Devi, (2006) 4 SCC-1*** as well as the decision in the case of ***Amarkant Rai Vs. State of Bihar & Others, 2015(8) SCC 265***

In the case of ***Uma Devi***, Hon'ble Apex Court in Para-44 has held as follows:-

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa



(supra), R.N. Nanjundappa (supra) and B.N. Nagarajan (Supra), and referred to in paragraph-15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, 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 but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgement, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

In the case of **Amarkanti Rai**, Hon'ble Apex Court in Para-8, 9, 11 to 14 has held as follows:-

“8. Insofar as contention of the respondent that the appointment of the appellant was made by the Principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as night guard was done out of necessity and concern for the College. As noticed earlier, the Principal of the College vide letters dated 11-3-1988, 7-1-1993, 8-1-2002 and 12-7-2004 recommended the case of the appellant for regularisation on the post of night guard and the University was thus well acquainted with the appointment of the appellant by the then Principal even though the Principal was not a competent authority to make such appointments and thus the appointment of the appellant and other employees was brought to the notice of the University in 1988. In spite of that, the process for termination was initiated only in the year



2001 and the appellant was reinstated w.ef. 3-1-2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, the University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of the BSU Act. Having regard to the various communications between the Principal and the University and also the educational authorities and the facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.

9. The Human Resources Development, Department of Bihar Government, vide its Letter dated 11-7-1989 intimated to the Registrar of all the Colleges that as per the settlement dated 26-4-1989 held between Bihar State University and College Employees' Federation and the Government it was agreed that the services of the employees working in the educational institutions on the basis of prescribed staffing pattern are to be regularised. As per sanctioned staffing pattern, in Ramashray Baleswar College, there were two vacant posts of Class IV employees and the appellant was appointed against the same. Further, Resolution No. 989 dated 10-5-1991 issued by the Human Resources Development Department provides that employee working up to 10-5-1986 shall be adjusted against the vacancies arising in future. Although, the appellant was appointed in 1983 temporarily on the post that was not sanctioned by the State Government, as per the above communication of the Human Resources Development Department, it is evident that the State Government issued orders to regularise the services of the employees who worked up to 10-5-1986. In our considered view, the High Court ought to have examined the case of the appellant in the light of the various communications issued by the State Government and in the light of the circular, the appellant is eligible for consideration for regularisation.

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11. Elaboration upon the principles laid down in Umadevi (3) Case and explaining the difference between irregular and illegal appointments in State of Karnataka Vs. M.L Kesari, this Court held as under (ML Kesari case SSC p 250, para 7) 7. It is evident from the above that there is an exception to the general principles against 'regularisation enunciated in Umadevi (3). 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 persons 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.”

12. *Applying the ratio of Umadevi (3) case, this Court in Nihal Singh v. State of Punjab directed the absorption of the Special Police Officers in the services of the State of holding as under: (Nihal Singh Case, SCC pp. 79-80, paras- 35-36)*

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State. 36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the Various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in the banks to meet such additional burden Apparently no such demand has ever been made by the State. The result is the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks

13. *In our view, the exception carved out in para 53 of Umadevi (3)3 is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any*



qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.

14. *Considering the facts and circumstances of the case that the appellant has served the University for more than 29. years of the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar)."*

4.3. It is accordingly contended that since Petitioner w.e.f 02.01.2004 to till date is continuing on Daily Wage basis, Petitioner is eligible and entitled to get the benefit of regularisation and appropriate order be issued in that regard to Opp. Party No.4, who is the appointing authority with regard to the post in question which is admitted in the counter affidavit so filed by Opp. Party Nos.1 to 5.

5. Learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party Nos.1 to 5.

Basing on the affidavit, learned Addl. Govt. Advocate contended that since Petitioner has been engaged against a non-sanctioned post vide orders issued by Opp. Party No.4, Petitioner is not eligible and entitled to get the benefit of regularisation. However, it is not disputed that Petitioner was so engaged vide order issued under Annexure-3 and



subsequent orders issued under Annexure-6 & 8 so issued by Opp. Party No.4.

5.1. It is contended that since the Petitioner is being paid from Contingency on Daily Wage basis, he is not eligible and entitled to get the benefit of regularisation. It is accordingly contended that the prayer as made in the Writ Petition is not entertainable.

6. Having heard learned counsel for the parties and considering the submission made, this Court finds that Petitioner was engaged as a Night Watcher-cum-Sweeper vide order dt.21.11.2003 of Opp. Party No.4 so issued under Annexure-3. In terms of the said order, Petitioner joined as a Night Watcher-cum-Sweeper in the office of Sub-Registrar, Machkund on 02.01.2004. As further found from the various documents enclosed to the Writ Petition, Petitioner since 02.01.2004 is continuing as a Night Watcher-cum-Sweeper under Opp. Party No.4 on daily wage basis.

6.1. Considering the continuation of the Petitioner w.e.f 02.01.2004 without any break in the engagement and without being protected by any interim order passed by any Court of law, this Court is of the view that claim of the Petitioner to get the benefit of regularisation requires appropriate consideration by Opp. Party No.4.

This Court accordingly while disposing the Writ Petition directs Opp. Party No.4 to take a decision on the claim of the Petitioner to get the benefit of regularisation following the decision in the case of ***Uma Devi and Amarkanta Rai*** as cited (supra). Such a decision be taken within a period of two(2) months from the date of receipt of this order with due communication to the Petitioner.



Till a decision as directed, is taken, no coercive shall be taken against the Petitioner.

With the aforesaid observation and direction, the Writ Petition is disposed of.

(BIRAJA PRASANNA SATAPATHY)
Judge

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