

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15096 of 2014

In the matter of an application under Article 226 & 227 of the Constitution of India.

Ranjan Kumar Rout **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : **Mr. S. Mohanty, Advocate**

For Opposite Parties : **Mr. S.N. Pattnaik, AGA**
Mr. A.K. Mishra, Advocate

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING : 22.06.2023

DATE OF JUDGMENT: 20.12.2023

V. Narasingh, J.

1. The Petitioner who was working as a Data Entry Operator being aggrieved by the order passed dated 9.7.2014 by the Project Director, DRDA Jagatsinghpur, Opposite Party No.3 at Annexure-9 rejecting his representation for regularization in terms of the earlier order passed by this

Court dated 28.5.2014 in W.P.(C) No. 10053 of 2014 at Annexure-9 has invoked the writ jurisdiction of this Court.

2. Heard Mr. Mohanty, learned Counsel for the Petitioner and Mr. Pattnaik, learned AGA and Mr. A.K. Mishra, learned counsel for the Opposite Parties.

3. The Petitioner being eligible in all respects applied in terms of an advertisement issued by Project Director, DRDA Jagatsinghpur for the post of Data Entry Operator. Thereafter engagement letter was issued on 10.11.2000. Petitioner was making contribution to Provident fund regularly as per the order of the authority.

4. It is contended by the Petitioner that though he has completed almost 15 years of continuous service in the mean time without intervention of any court of law and his performance has been found to be satisfactory, yet no steps were taken by the Project Director, DRDA (Opposite Party No.3) Jagatsinghpur to regularize his service.

5. He also relied on the correspondences made by the Opposite Party No.3 while forwarding the name of the staff of DRDA, Jagatsinghpur including the name of the present Petitioner as per discussions made on the issue of regularizing the staffs of DRDA, Jagatsinghpur including the post of Data Entry Operators.

6. Accordingly, being aggrieved with the inaction of the authorities in regularizing his service, the Petitioner had earlier approached this court in W.P.(C) No.10053 of 2014 which was disposed of on 28.5.2014 directing the authorities to consider the representation submitted by the Petitioner for

regularization of his service, keeping in view the judgment of Apex Court. It is contended that without due application of mind and in violation of the decision of Apex Court passed in **Secretary, State of Karnataka and others versus Uma Devi and others** reported in **2006 (4) SCC 1**, the representation of the Petitioner has been rejected vide Annexure-9 which, is assailed in the present Writ Petition.

7. The Opposite Parties have jointly filed a counter justifying their action rejecting the representation submitted by the Petitioner claiming regularization in service inter alia on the ground that the Petitioner has never been engaged continuously. Rather, DRDA has issued engagement letter to the Petitioner on daily wages basis at the rate of ₹40 per day for the work of data entry of BPL/IAY and other works as and when required by the order of Project Director, DRDA Jagatsinghpur.

8. The competency of the Additional PD to give any engagement order is also questioned. The Opposite Parties further denied that the Petitioner has been discharging his duties continuously against the regular post or vacancy without any interruption and has completed 15 years of service by stating that neither the post of Data Entry Operator is a sanctioned post available in DRDA nor he has been appointed as contingent paid Data Entry Operator against particular designated post. Petitioner's claim of Continuous service, is disputed by the Opposite Parties on the ground that the Petitioner being a daily wage employee was paid wages for the period(s) he discharges his duties in

a particular month which varies from month to month and accordingly the same sets at naught the claim of the Petitioner relating to continuity.

9. Disputing the mode of engagement, it is further contented by the Opposite Parties that the initial entry on daily wages basis of the Petitioner was through patronage and unfair method without following the regular procedure statutory rules and regulation governing such entry. Once the Petitioner has accepted the condition of service under which he has been engaged with eyes open fully knowing the nature of it and the consequences flowing from it, it is not open for the Petitioner to claim regularization citing his temporary engagement on daily basis as the foundation seeking regularization of service.

10. After hearing both sides and on perusal of the impugned order at Annexure 9 dated 9.7.2014, it is found the grievance of the Petitioner for regularization has been rejected inter alia on the ground that the Petitioner has been irregularly engaged without going through regular recruitment process rather on pick and choose method and there was no existing vacancy.

11. It is well-settled law that the grounds which do not form part of the order of rejection, cannot be raised by the authorities to support their claims while filing the counter affidavit. (Ref:- **Mahender Singh Gill vs. Chief Election Commissioner** reported in **AIR 1978 SC 851**)

12. As such, this Court is of the considered opinion that the authorities have rejected the representation for

regularization of service primarily on the ground that the Petitioner is irregularly engaged without going through the rigours of regular recruitment process and there was no vacant post.

13. Therefore, it is to be tested whether these grounds can justify the action of the Opposite party in rejecting the representation of the Petitioner at Annexure-9.

14. Learned counsel for the Petitioner referring to the judgment of the Hon'ble Supreme Court reported in the case of **Secretary, State of Karnataka and others Vrs. Umadevi and others** : reported in **AIR 2006 SC 1806** and in the case of **State of Karnataka Vrs. M.L. Kesari & Ors.**: reported in **AIR 2010 SC 2587** submits that since the Petitioner has been working for more than 10 years as a temporary employee against various regular posts, lying vacant under the Opposite Party No.3's institution, Opposite Party No.3-authority should have considered his case for regularization/absorption in service.

15. After going through the pleadings and the submissions made by the respective Parties, this Court is of the firm view that it is no more open to the Opposite Party to take the plea of irregular recruitment/non selection through a valid recruitment process, since such a stand at the instance of the Opposite Parties would amount to allowing Opposite Parties to take advantage of their own wrong, having utilized the service of the Petitioner for more than a decade. The law laid down by the Hon'ble Apex Court in **Umadevi (supra)** is a clear guideline to be followed in matters of this nature.

16. The judgment of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnatak Vrs. Uma Devi (supra)** does not preclude the claims of employees who seek regularization after the exercise has been undertaken with respect to some employees, provided that the said employees have completed the years of service as mandated by **Uma Devi**. The ruling casts an obligation on the State and its instrumentalities to grant a fair opportunity of regularization to all such employees and ensure that the benefit is not confined to a limited few or a selected few as per the whims of the employees. The subsequent regularization of employees who have completed the requisite period of service is to be considered as a continuation of the one-time exercise. The relevant paragraph of the judgment in **Uma Devi (supra)** has been extracted here in below.

"53. ...In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise 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 the 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 wagers 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 sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and

regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

17. The directions issued in **Uma Devi** have been considered by subsequent Benches of the Hon'ble Supreme Court of India in **State of Karnataka Vrs. M.L. Kesari:** reported in **(2010) 9 SCC 247.**

18. The Hon'ble Supreme Court of India in matter of **Nihal Singh and Ors. Vrs. State of Punjab and Ors.:** reported in **(2013) 14 SCC 65** has taken note of the fact as to how the State and its instrumentalities are subjecting the daily wagers/casual workers to exploitation. It has been specifically observed that the judgment in **Uma Devi's (Supra)** case doesn't give the State and its instrumentality a licence to indulge in exploitation. The relevant extract of the judgment is quoted here in below;

"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 at par with the police officers of similar rank employed by the State results in

further financial commitment it is always open for the State to demand 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.

37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.

38. For all the above mentioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside."

20. In **Sheo Narain Nagar and Ors. Vrs. State of Uttar Pradesh and Ors.** : reported in (2018) 13 SCC 432, the Hon'ble Supreme Court has held in paras 8 and 9 as under;

"8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a

temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned Counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

9. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But, the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today." (Emphasized)

21. In the backdrop of the factual matrix as borne out from records placed before this Court and from the analysis

of law laid down by the Hon'ble Supreme Court of India in **Uma Devi's Case (Supra)**, which has been consistently followed by subsequent Supreme Court judgments as well as by this Court (**Ref:- Rudrakanta Panda & Ors. Vs. State of Odisha & others** reported in **2022 (Supp.) OLR-194**), it is manifestly evident that the long uninterrupted services of the Petitioner should have been considered by the Opp. Party No.3 for regularization immediately after the Uma Devi's judgment. **The Petitioner's initial appointment was only irregular and not illegal as revealed from the records of the case.** The Opp. Parties have failed to carry out the direction issued by the Hon'ble Supreme Court of India in Uma Devi's case as no such exercise, as mandated, have been carried out till date vis-à-vis the Petitioner. Even after the said judgment, the exploitation of the Petitioner was unabated at the hands of the Opp. Parties.

22. In such view of the matter, "irregular appointment" cannot be a ground for rejecting claim of the Petitioner for regularization. Therefore, the impugned order at Annexure-9 is not sustainable and accordingly it is quashed.

23. The Opp. Parties are hereby directed to carry out the exercise as mandated in Uma Devi's case forth with and shall do well to reconsider the case of the Petitioner to regularize his service with consequential benefits within a period of three months from the date of communication of this judgment.

24. Accordingly, the Writ Petition stands allowed.
However, there shall be no order as to cost.

(V. Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the, 20th December, 2023/Ayesha

