

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 6213 OF 2014

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR Rajib Lochan Mahanta Petitioner

-Versus-

Vice-Chancellor, Utkal University
and others Opp. Parties

For Petitioner : M/s. Digambar Mishra and
S. Satpathy, Advocates

For Opp. Parties : M/s. T. Pattanayak, S. Pattanaik,
and M. Ojha, Advocates
[O.Ps. No. 1 & 2]

Mr. Y.S.P. Babu,
Addl. Govt. Advocate
[O.P. No.3]

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing: 25.03.2021 :: Date of Judgment: 31.03.2021

DR. B.R. SARANGI, J. Rajib Lochan Mahanta, who was working as a Group-D employee in Utkal University, Khurda, has filed this writ petition seeking direction to the opposite

parties to remove the discrimination and regularize him in the Group-D post available in the establishment of opposite party-University and place him in the gradation list meant for Class-IV posts for consequential services and financial benefits as due and admissible to him at par with similarly situated persons, whose services have already been regularized.

2. The factual matrix of the case, in hand, is that in ***Dhrubananda Mishra and others vs. Vice-Chancellor, Utkal University***, 77 (1994) CLT 70, nine petitioners had approached this Court seeking two directions from this Court- the first was relating to regularization of service and the second was to pay them equal to that of their counterparts in regular service. The Division Bench of this Court held that regularization has been accepted as a part and parcel of condition of service and specifically for those, who had completed five years of continuous service. Since all the nine petitioners in the said writ petition had completed more than five years of

continuous service, so a case of regularization was made out and the Division Bench of this Court directed the opposite parties to take early steps for regularization of those petitioners, along with other eligible employees, by framing an appropriate scheme and, thereafter, to regularize as per the seniority of the incumbents. It was also directed that apart from the basic pay, those petitioners at all be entitled to dearness and additional dearness allowance only being paid to the regular hands. That entitlement would be given effect from the date of passing of the judgment, i.e., 13.01.1993. It is apparent that on regularization, the incumbents would get the pay and other allowances as are available to regularly employed employees.

2.1. The aforesaid judgment was challenged before the apex Court in SLP (C) No. 9240 of 1993 and the same was dismissed on 13.02.1996. Consequentially, the order passed by the Division Bench was confirmed. After confirmation of the judgment of this Court, the opposite

party–University on 23.05.1996 prepared a seniority list of daily wages working in its establishment, wherein the petitioner’s name found place at serial no. 171 and one Niranjana Patra at serial no. 170. The opposite party–University also prepared the list indicating deduction of EPF from the wages of non-regular employees according to the seniority, wherein, the petitioner’s name found place at serial no. 83, Niranjana Patra was placed at serial no. 82, Sarbeswar Gochhayat at serial no. 85, Mohan Kumar Muduli at serial no. 86. In terms of the judgment passed by the Division Bench of this Court in ***Dhrubananda Mishra*** (supra), the University regularized the employees in two spells, in 1st spell 87 and in 2nd spell 77 totaling to 164 employees, who were in the seniority list under Annexre-2, were regularized. In the 2nd spell, Niranjana Patra, who was at serial no. 170, just above the petitioner, was regularized on 06.02.2014. As per information received under the Right to Information Act, 2005, all total 174 posts were available in Class-IV cadre in the opposite

party-University establishment. Thereby, 10 more vacancies were left out, against which the petitioner, who is standing at serial no. 171, could have been regularized, but, for the reasons best known to the authority, his services have not been regularized, though one Niranjana Patra standing just above the petitioner at serial no. 170 was regularized.

2.2 Therefore, the petitioner, along with fourteen others, filed W.P.(C) No. 7391 of 2006 before this Court. The Division Bench of this Court, vide order dated 26.02.2009, disposed of the said writ petition directing the State Government to take a decision on the proposal given by the University within a period of fifteen days from the date of receipt of a copy of that order. Prafulla Kumar Barik and three others filed another writ petition bearing W.P.(C) No. 6567 of 2006 and this Court, vide order dated 18.03.2011, disposed of the said writ petition with a direction to the opposite party-University to move the State Government to obtain clearance to regularize the

services of those petitioners, and that if such a move was made, the Department of Finance would pass necessary orders directing the Utkal University to regularize the services of those petitioners within three months from the date of communication of that order. Similar direction was also made in OJC No. 13005 of 1999 (***Parikhit Malik vs. Chancellor Utkal University***), which was disposed of on 27.01.2006. The said order was challenged in SLP No. 19829 of 2006 and the apex Court, vide order dated 16.02.2009, dismissed the said SLP. Thereby, a large number of persons have been regularized in terms of the various orders passed in different writ petitions as well as contempt petitions. Similarly, pursuant to the order passed in CONTC No. 3374 of 2011, arising out of W.P.(C) No.6567 of 2006, four persons have been regularized. But the petitioner has been discriminated, though Nirranjan Patra, standing at serial no. 170 just above the petitioner, has been regularized. Due to such discriminatory action of

the authority, the petitioner has approached this Court by filing this application.

3. Mr. D. Mishra, learned counsel for the petitioner vehemently contended that once the matter has been settled by the apex Court in SLP, in compliance of the order dated 13.01.1993 passed in ***Dhrubananda Mishra*** (supra), the petitioner, who is coming under the other eligible employees category, having completed five years of continuous service, is entitled to be regularized and as such, he is also entitled to get equal pay for equal work. In compliance of direction of the Division Bench of this Court, though seniority list was prepared and the name of the petitioner was found place at serial no. 171, but his services were not regularized, even though the services of one Niranjan Patra, who was just above the petitioner at serial no. 170, have been regularized. Thereby, the petitioner along with others again approached this Court by filing W.P.(C) No. 7391 of 2006, which was disposed of on 26.02.2009 taking into

averments made in paragraph-7 of the counter affidavit, wherein it was specifically stated that pursuant to the order of this Court in OJC No. 348 of 1990, the University prepared a list of DLRs according to their date of engagement and regularized 77 persons according to the vacancies. In the meantime, the Government on 14.03.2001 imposed ban on the recruitment as a part of austerity measure. Furthermore, the University had also moved the State Government to permit it to fill up the vacancies in Group-D category. Till then the University had not received any reply from the State Government. Thereby, this Court disposed of the said writ petition on 26.02.2009 directing the State Government to take decision on the proposal given by the University within a period of fifteen days from the date of receipt of the copy of that order. Consequentially, in compliance of such order, some of the persons have already been regularized, but the petitioner has only been discriminated. As such, his service has not been regularized nor has he been

granted the benefit as due and admissible to him, in view of judgment of this Court in ***Dhrubananda Mishra*** (supra). On the other hand, he has not been allowed to continue in service and no such communication has been made to the petitioner. To substantiate his contention he has relied upon the judgments in ***Dhrubananda Mishra v. Vice-Chancellor, Utkal University***, 77 (1994) CLT 70; ***State of Punjab v. Amar Singh Harika***, AIR 1966 SC 1313; ***Dulu Devi v. State of Assam***, 2016 (1) SCC 622; and ***State of Karnataka v. M.L. Keshari***, AIR 2010 SC 2587.

4. Mr. T.N. Pattanayak, learned counsel appearing for opposite parties no. 1 and 2-University referring to the counter affidavit contended that since the petitioner was engaged on 22.08.1994, which is after the cutoff date, i.e., 12.04.1993, his services could not be regularized. It is further contended that the employees, who were engaged prior to 12.04.1993, were to be conferred with temporary status. Since the petitioner's

case is not so, being engaged on 22.08.1994, i.e. after the cutoff date, he was not conferred with the temporary status, for not being eligible as per the criteria enumerated in the Finance Department Resolution dated 04.09.2012. It is further contended that pursuant to judgment dated 13.01.1993 passed by this Court in OJC No. 348 of 1990, a list of DLRs containing the names of 175 persons was prepared on 23.05.1996, out of which, the services of 77 DLRs were regularized against the substantive vacancies in phased manner up to 2002, prior to imposition of selective ban on recruitment by the Government vide letter dated 14.03.2001. It is further contended that though the name of the petitioner was enlisted at serial no. 171, yet later on it was found that his engagement admittedly was after the cutoff date i.e., 12.04.1993, as per the Finance Department Resolution dated 04.09.2012, and thereby his services have not been regularized. As such, no illegality or irregularity has been committed by the authority.

5. Mr. Y.S.P. Babu, learned Addl. Government Advocate appearing for opposite party no.3 contended that since it is a matter between the petitioner and opposite parties no. 1 and 2-University, unless the University placed the matter before the Government for approval, it cannot be considered. Therefore, for non-implementation of the judgment passed by this Court, responsibility can be fixed on opposite parties no. 1 and 2, but not on opposite party no.3.

6. This Court heard Mr. Digambar Mishra, learned counsel appearing for the petitioner; Mr. T.N. Pattanayak, learned counsel appearing for opposite parties no.1 and 2; and Mr. Y.S.P. Babu, learned Additional Government Advocate appearing for opposite party no.3. Pleadings have been exchanged between the parties and since this matter is of the year 2014, with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. In view of the factual matrix, as delineated above, there is no dispute that the petitioner was continuing in a Group-D post in Utkal University and has completed more than five years of continuous service to be eligible for regularization. In **Dhrubananda Mishra** (supra), this Court, vide judgment dated 13.01.1993, observed as follows:-

“2. Regularization has been accepted as a part and parcel of condition of service and specially for those who have completed five years of continuous service. In the present case, according to Shri Mohapatra, all the nine petitioners before us have completed by now more than five years of continuous service, as, a case for regularization has been made and we direct the opposite parties to take early steps for regularization of those petitioners along with other eligible employees by framing an appropriate scheme and thereafter to regularize as per the seniority of the incumbents.”

As a consequence thereof, the services of petitioners therein and other eligible employees from the seniority list were regularized. The petitioner herein is one of those eligible employees whose name found place at Serial No.171 of the list prepared in consonance with the direction given by the Division Bench of this Court. In **Dhrubananda Mishra** (supra), this Court also directed to

pay equal to that of regularly employed class-IV incumbents which reads as follows:

“..... Placed in such a situation, we can only direct to make available to all the nine petitioners the pay equal to that of regularly employed class IV incumbents and we do so.”

“.....So, order that apart from the basic pay, the petitioners at all be entitled to dearness and additional dearness allowance only being paid to the regular hands. This entitlement will be given effect from today. It is apparent that on regularization the incumbents would get the pay and other allowances as are available to regularly employed employees.”

8. The aforesaid judgment of this Court was challenged before the apex Court in SLP No.9240 of 1993, which was dismissed vide order dated 13.02.1996. Consequentially, the judgment dated 13.01.1993 passed by this Court in OJC No.348 of 1990 was confirmed. In consonance with the said judgment, a list of daily wagers working under the Utkal University was prepared vide Annexure-2 dated 23.06.1996, wherein the petitioner's name found place at Serial No.171. The University also prepared a list indicating deduction of EPF from the wages of non-regular employees from the month of January,

2009 wherein the petitioner's name found place at Serial No.83, Sarbeswar Gochhayat at Serial No.85, Mohan Kumar Muduli at Serial No.86 in terms of the judgment passed by this Court in ***Dhrubananda Mishra*** (supra). The University regularized the services of the employees in two spells, i.e. in 1st spell 87 and 2nd spell 77 persons. In the 2nd spell, Niranjana Patra, whose name stands at Serial No.170, just above the petitioner, was regularized on 06.02.2014 vide Annexure-11 to the writ petition. In two spells, all total 164 (87+77) persons were regularized, who were in the seniority list under Annexure-2. According to the information received under the RTI Act, 2005, there were 174 posts available in Class-IV cadre in the opposite party-University. As such, even though 10 vacancies were available, the services of the petitioner could not be regularized, whereas services of Niranjana Patra, whose name stands just above the petitioner at Serial No.170, have been regularized.

9. Due to inaction of the authority, fifteen persons, including the petitioner, filed W.P.(C) No.7391 of 2006 and the Division Bench of this Court, vide order dated 26.02.2009, disposed of the said writ petition on the basis of the averments made in paragraph-7 of the counter affidavit filed by the University. The said paragraph-7 is quoted below:

“7. That it is apt to state here that pursuant to order of this Hon’ble Court in OJC No.348 of 1990, the university has prepared a list of DLRs according to their date of engagement and regularized 77 persons according to vacancies. In the mean time the Government have imposed a ban on the recruitment on 14.03.2001 as a part of austerity measure. Furthermore, the university has also moved the State Government to permit it till fill up the vacancies in Group-D post category. Still yet the university has not received any reply from the State Government.”

In terms of paragraph-7, as quoted above, this Court disposed of the said writ petition directing the State Government to take a decision on the proposal submitted by the University within a period of 15 days from the date of passing of the order.

10. Thereafter, Prafulla Kumar Barik and three others filed W.P.(C) No.6567 of 2006 and this Court vide order dated 18.03.2011 disposed of the said writ petition wherein reference was made to the following effect:

“Counter affidavit has been filed by the opposite party-university and in paragraph-7 thereof it has been indicated that pursuant to the order passed by this Court in OJC No.348 of 1990, they have prepared a list of DLRs according to their date of engagement and regularized 77 persons according to the vacancy. In the meantime the state government has issued a ban order vide office memorandum no.10954/F Bt1-9/2001 dated 14.03.2001 and due to ban order, the University is not in a position to regularize the DLRs and moved the state government for necessary permission. It is further indicated that the university mostly depends on the state government for funds for payment of salary to its employees for their financial need. This affidavit is filed on 04.01.2009.”

Finally, this Court disposed of the said writ petition with the following direction:

“Accordingly, we direct the opposite party-University to move the state government to obtain clearance to regularize the services of the petitioners. If such a move is made, the government in the department of Finance is directed to pass necessary orders directing the Utkal University to regularize the services of the petitioners. Let the entire exercise be completed within three months from the date of communication of this order.”

11. Similar direction was also given in OJC No.13005 of 1999 (***Parikhit Mallik v Vice-Chancellor, Utkal University***) disposed of on 27.01.2006. The said order was challenged before the apex Court in SLP No.19829 of 2006, which was also dismissed on 16.02.2009. As a consequence thereof, a large number of persons were regularized in terms of various orders passed in different writ petitions and contempt petitions. Similarly, pursuant to order passed in CONTC No.3374 of 2011 arising out of W.P.(C) No.6567 of 2006, the services of four persons were regularized vide Annexure-10 dated 06.02.2014. Thereby, the petitioner claims that he should not have been discriminated in the matter of regularization, as the similarly situated persons have been regularized.

12. The sole contention raised by the University is that the services of the DLRs, who were engaged prior to cutoff date, i.e. 12.04.1993, were conferred temporary status pursuant to Finance

Department Resolution No.31715/F dated 04.09.2012, wherein it has been specifically mentioned that employees, who were engaged prior to 12.04.1993 shall be conferred with temporary status. As the petitioner was engaged on 22.08.1994, i.e., after the cutoff date 12.04.1993, he was not conferred with temporary status. But, subsequently, by filing rejoinder affidavit on 27.06.2017, the petitioner disputed such fact and specifically stated as follows:

“Further the case of the university is that since the petitioner was appointed after 12.04.1993 his case was not taken into consideration. This ground also falls to the ground in as much as persons engaged after the petitioner had already been regularized. For kind perusal a true copy of the letter dated 22.07.2014 is used by the Warden and which had already been brought to the knowledge of this Hon’ble Court in a contempt proceeding is annexed hereto as Annexure-13.”

He has given an extract of Annexure-13 annexing to the rejoinder affidavit stating, inter alia, the persons engaged subsequent to the petitioner as DLR/NMR by the University, even after the cutoff date, i.e. 12.04.1993, their services have been regularized. The same is given below:

Sl.no. in Annexure- 13	Name	Date of joining	Appointed as	Regularized with effect from
16	Maker Bhoi	01.02.1996	Daily wage	31.05.2006
21	Sudhir Nayak	01.02.1996	Daily wage	31.05.2006
37	Ramesh Panda	08.06.1994	Daily wage	31.05.2006
49	Gitanjali Upadhyay	08.06.1994	Daily wage	31.05.2006
60	Saraswati Rao	01.05.1996	Daily wage	31.05.2006
67	Pratima Nayak	07.02.1995	Daily wage	31.05.2006

As the services of juniors to the petitioners have been regularized, the University should not have taken an apathetic attitude to the petitioner taking the plea that the petitioner was engaged after the cutoff date, i.e., 12.04.1993, which indicates that the University is bent upon not to regularize the services of the petitioner even though he is otherwise entitled to.

13. Pursuant to direction issued by this Court, if the University has already prepared a seniority list of 175 persons and out of them 170 persons have been regularized in two spells, i.e. 87+77 and the petitioner's name found place in Sl. No.171, there is no valid and justifiable reason not to regularize the services of the

petitioner and put him to harassment for no fault of him. A specific pleadings have been made by the petitioner in reply affidavit to the additional affidavit filed by opposite parties no.1 and 2 that Makar Bhoi, whose date of joining is 01.02.1996, Sudhir Nayak, whose date of joining is 01.02.1996, Ramesh Panda, whose date of joining is 08.06.1994, Gitanjali Upadhyay, whose date of joining is 08.06.1994, Saraswati Rao, whose date of joining is 01.05.1996 and Pratima Nayak, whose date of appointment is 07.02.1995 were appointed as daily wager, their services have been regularized w.e.f. 31.05.2006. Therefore, it is evident that the persons, having been appointed after the cutoff date and also after the petitioner, have been regularized, but the petitioner has been discriminated. In response to the rejoinder affidavit, a further affidavit has been filed on behalf of opposite parties no.1 and 2 stating as follows:

“However the government in its own prudence has been pleased to turn down such proposal of the university in negative stating therein that since the university has never appointed such NMRs/DRLs

with the permission of the government there is no question of regularization with the concurrence of the government vide letter no.10999 dated 06.04.2009 of the S.L.O.-cum-Deputy Secretary to Govt., Govt. of Odisha, Department of Higher Education, Odisha, Bhubaneswar. Copy of the said letter no.10999, dated 06.04.2009 of the S.L.O.-cum-Deputy Secretary to Govt., Govt. of Odisha and a legible typed copy of the said letter is annexed hereto as Annexure-A/4.

4) *That further it is pertinent to bring to the kind notice of the Hon'ble Court that in the past vide circular FDOM No.17815/F, dated 12.04.1993 of the Finance Dept., Govt. of Odisha as regards the following subject "Ban of recruitment of Work-charge employees and NMRs and Ban on engagement of persons on daily wage personal responsibility on person engaging and or disbursing wage for such persons", the Syndicate in its meeting held on dated 24.07.2013 had resolved as follows:- "the Vice-Chancellor was authorized to disposed off the case" of the petitioner Sri Rajib Lochan Mohanta along with certain other similarly persons.*

However, the Vice-Chancellor in his own prudence considered it proper to place the said matter of disengagement of the petitioner along with others as stated above for necessary reconsideration at the level of Syndicate of its earlier decision dated 24.07.2013. Thus the same was placed as item no.4, dated 04.11.2013 before the Syndicate. Yet the Syndicate resolved as follows:- "Resolved that the steps to be taken to disengage 4 (four) DLRs with effect from 05.11.2013 and the Vice-Chancellor is authorized to make suitable alternatives."

Thus as per the official records as on date the petitioner stands disengaged. Copy of the said circular FDOM No.17815/F, dated 12.04.1993 of the Finance Dept., Govt. Odisha, the list of Item to the Syndicate to be held on 04.11.2013 for reconsideration of the case of the petitioner and

others duly signed by the Registrar on dated 01.11.2013 and the decision of the Syndicate dated 04.11.2013 thereafter are annexed hereto as Annexure-A/5 series.”

In view of such affidavit, an attempt has been made to bring to the notice of this Court that the petitioner was disengaged from service pursuant to decision taken by the Syndicate on 04.11.2013. The said document has been placed at page-105 of the brief, by which along with the petitioner, one Sarbeswar Gochhayat, Mohan Muduli and Smt. Saraswati Barik were also disengaged from service.

14. The ban so imposed on recruitment of work charged employees and NMRs on 14.03.2001 is only applicable to the fresh engagement but not for regularization of services. Therefore, the petitioner has been discriminated in all the times even though he made his grievances time and again and consequentially, he faced disengagement.

15. Mohan Kumar Muduli, who was disengaged along with the petitioner pursuant to decision of the Syndicate on 04.11.2013 and was engaged after the

cutoff date, i.e. 12.04.1993, approached this Court by filing W.P.(C) No.13254 of 2014 and this Court on 21.11.2019 passed a detailed order which reads as follows:

“Heard Mr. S. Mohanty, learned counsel for the petitioner, learned Additional Government Advocate for the State and Mr. T. Pattanayak, learned counsel for opposite party nos. 1 & 2-Utkal University.

In the accompanied writ application, the petitioner, who was engaged as a DLR employee to the Utkal University has filed the instant writ petition for correction of graduation list published on 12.04.2013. The name of the petitioner has not been approved and petitioner further prays for grant of all financial consequential benefits.

Bereft of unnecessary details, relevant facts delineated in the writ petition is that initially the petitioner was engaged as a DLR employee on 01.01.1989 and was discharging his duties as and when required and whatever work has been assigned by the Utkal University till 14.03.1995 with intermittent breaks. Subsequently, the petitioner was allowed to discharge duties like DLR continuously till 12.04.2013. In the year 2013 the Registrar, Utkal University- opposite party nos. 1 & 2 prepared a gradation list of DLR employees as per the information available in the establishment where the petitioner’s position in the gradation list is at Serial No. 103 and his date of joining in the University was reflected as 15.03.1995 as per Annexure-2 to the writ petition. After coming to know about incorrect reflection of date of joining of the petitioner, the petitioner brought this matter to the notice of the opposite parties which fell on deaf years. The services of 87 DLR employees were conferred with temporary status and services were

regularized in various Group-D posts with effect from 18.03.2011, as evident from Annexure-4 when the petitioner was not allowed to discharge his duties and was not paid his salary in the month of February, 2014. In spite of the fact that no order of termination/retrenchment/dismissal/removal has been issued, the petitioner came to know under RTI Act that the syndicate at its meeting held on 04.11.2013 has resolved to discharge the DLRs those who were engaged after 12.04.1993 pursuant to the Finance Department circular no. 17815 (45)/F dtd. 12.04.1993, as evident from Annexure-6 series. The petitioner has approached this Court under Article, 226 of the Constitution of India for redressal of his grievances.

Learned counsel for the petitioner submits that the petitioner in fact was engaged as DLR in the year 1989. Prior to the cutoff date and there was some intermittent breaks on 01.01.1989 to 1995. Since 1995, the petitioner continued in his duties uninterruptedly till 2013. Thereafter, the name of the petitioner ought to have been reflected in the gradation list, since the appointment/engagement of the petitioner was prior to the cutoff date.

Learned counsel for the petitioner in order to buttress his claim refers the decision of the Hon'ble Apex Court in the cases of **Secretary, State of Karnatak v. Umadevi**, AIR 2006 SC 1806; **State of Karnatak v. M.L. Keshari**, AIR 2010 SC 2587; **Nihal Singh v. State of Punjab**, AIR 2013 SC 3567; and **Amarkant Rai v. State of Bihar and others**, (2015) 8 SCC 265.

Learned counsel for the petitioner submits that in view of the aforesaid dictum of the Hon'ble Apex Court, the petitioner's service deserves to be regularized and he is entitled to all consequential service benefits.

Controverting the averments made in the writ application, counter affidavit has been filed by opposite party no. 1 & 2 wherein it has been stated

that since there is a break in service of the petitioner from the very initial date of engagement i.e. 28.11.1988, his date of engagement in the said service has been computed from 15.03.1995, i.e. from when he has rendered continuous service. Therefore, his representation dated 12.04.2013 soliciting correction in the gradation list was not considered by the authorities of the University authority.

It is further submitted in the counter affidavit that the petitioner was never in continuous service for long 26 years as claimed; rather he was absent continuously from more than two years, i.e. from July, 1992 to 14.03.1995. Long authorized absence from duty amounts to discontinuity in service.

Also counter affidavit filed by opposite party nos. 1 and 2 to consolidated writ application, where it has been stated that the petitioner remained absconded from 08.01.1992 to 14.03.1995 for which his name could not be reflected in the gradation list with effect from 28.11.1988. Besides, as per the circular issued by the Registrar dated 26.11.1999, the daily wager who is absent/ will be absent continuously for one month or more without prior permission of the controlling officer be discontinued. Hence for breakage in service his date of engagement has been taken as 15.03.1995 from where he rendered his duty after return from the absconding period.

After hearing the learned counsel for respective parties and discussing the rival submissions made, it appears that there is absolutely no dispute with regard to the fact that the petitioner rendered continuous services from the year 1995 to 2013 and there is also no dispute with regard to the services rendered by the petitioner prior to the cutoff date. i.e. 12.04.1993 as DLR employee though it was replete with immediate breaks.

It would be profitable be quote the relevant paragraphs of the decision of the Hon'ble Apex

Court in **Umadevi, M.L. Keshari, Nihar Singh and Amarkant Rai** cited (*supra*) hereunder :

“ In **Umadevi** mentioned *supra*, paragraph-53 of the said judgment (para-44 of AIR), the Apex Court held as follows :

“ 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa (1967 (1) SCR 128): (AIR 1967 SC 1071) R.N. Nanjundappa (1972) (1) SCC 409 : AIR 1972 SC 1767) and B.N. Ngarajan (1979 (4) SCC 507) AIR 1979 SC 1676) and referred to in para-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 the 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 Government and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularity appointed, who have worked for ten years of 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.....”*

The object behind the aforesaid direction is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of the courts or tribunals before the decision in *Umadevi (supra)* was rendered, are considered for regularization in view of their long service. Second is to be ensure that the departments/instrumentalities do not perpetuate

the practice of employing persons on daily wage/ad hoc casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years without the protection of any interim order of any Court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. Following the aforesaid principles rendered in the case of Umadevi in M.L. Keshari (supra), the apex Court held that case of such employees who have completed ten years of service and do not possess the educational qualification prescribed for the post, at the time of their appointment may be considered for regularization in suitable lower posts considering their length of service rendered to be organization.

*In **Nihal Singh** mentioned supra, the apex Court directed for regularization of service of the appellants creating new posts and on such regularization, the appellants would be entitled to all the benefits of service attached to the posts, which are similar in nature in the category of police service of the State, and also awarded cost to be paid to each of the appellants in the said case.*

*In the case of **Amarkant Rai** (supra) taking into consideration the cases of **Umadevi, M.L. Keshari and Nihal Singh**, mentioned supra, the apex Court came to a conclusion that the appellant served the University for more than 29 years in the post of Night Guard and he has serviced the college on daily wage basis, and therefore, directed the authority to regularize the service of the appellant in the said case retrospectively w.e.f. 03.01.2002.*

Considering the contention raised by learned counsel for the parties and after going through the records, without expressing any opinion on the merits of the case, this writ petition is disposed of directing the opposite parties-University to consider

the grievance of the petitioner with regard to regularization of his service as expeditiously as possibly preferably within a period of four months from the date of communication of this order.

Needless to say that while considering the grievance of the petitioner, the authority shall take into account the case of the similarly situated person, who has already been regularized by the authority concerned.

It is made clear that the Government will not cause any further delay in granting necessary approval with regard to request made by the University for approval of the post.

With the above observation and direction, the writ petition stands disposed of.”

Issue urgent certified copy as per rules.”

16. Subsequently, he filed I.A. No.17102 of 2019 for modification of order dated 21.11.2019 passed in W.P.(C) No.13254 of 2014 and this Court on 28.01.2020 passed the following order:

“This is an application for modification of order dated 21.11.2019 passed in W.P.(C) No.13254 of 2014.

Considering the submission made by the learned counsel for the petitioner, in 6th line of para-1 of page no.7 of the order dated 21.11.2019 insert the words ‘reinstatement and’ after the word ‘to’. Rest part of the order shall remain unaltered. Office to do the needful.

The I.A. is accordingly disposed of.

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

Since the said order was not complied with, he filed CONTC No.1720 of 2020, which was disposed of on 08.06.2020. In compliance of the said order, Mohan Kumar Muduli and Sarbeswar Gochhayat, who were appointed after the cutoff date and disengaged along with the petitioner pursuant to the decision of the syndicate dated 04.11.2013, were regularized and allowed to equal pay with equal work. Admittedly, both are juniors to the petitioner and were engaged after the cutoff date.

17. Much reliance has been placed on Syndicate decision held on 04.11.2013, but the same was not communicated to the petitioner nor was any opportunity of hearing given while disengaging the petitioner from service.

18. In ***Dulu Devi*** (supra), the apex Court held that mere passing of an order of dismissal or termination would not be effective unless it is published and communicated to employee concerned.

Merely a decision was taken by the Syndicate and an order was passed and kept in file, need not be treated as order of disengagement/termination from service as the said order was not communicated to the petitioner.

19. In **Amar Singh Harika** (supra), a Constitution Bench of the apex Court held that the order of termination without communication shall not have any effect.

20. This Court, while considering the case of **Mohan Kumar Muduli** in W.P.(C) No. 13254 of 2014, taking into consideration the judgments of the apex Court in **Umadevi, M.L. Keshari, Nihal Singh and Amarkant Rai** mentioned supra directed for regularization of service of the petitioner-Mohan Kumar Muduli and Sarbeswar Gochhayat, as a consequence whereof, in view of the order passed in contempt application, the services of Mohan Kumar Muduli and Sarbeswar Gochhayat have been regularized.

21. The cumulative effect of factual and legal aspects, as discussed above, is that the petitioner in the present writ petition has been discriminated at all stages and for the reasons best known to the authorities the services of the petitioner have not been regularized, though services of similarly situated persons and the persons engaged after him have been regularized long since. As it appears, the petitioner has only been victimized by the uncommunicated order of the syndicate disengaging him from service. Thereby, such order of the syndicate dated 04.11.2013 disengaging the petitioner is liable to be quashed and is accordingly quashed. The petitioner shall be deemed to be continuing in service and, as such, his service shall be regularized forthwith with all consequential benefits as due and admissible to him at par with his counterparts from the date his immediate juniors have been extended with such benefits. Accordingly, his seniority shall be fixed and he shall be granted both service and financial benefits as due and

admissible to the post, against which he shall be regularized from the date his juniors have been extended such benefits. The entire exercise shall be completed within a period of three months from the date of communication of this judgment.

22. The writ petition is thus allowed. However, there shall be no order as to costs.

.....
DR.B.R.SARANGI,
JUDGE

Orissa High Court, Cuttack
The 31st March, 2021, Alok/Ajaya/GDS