

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2440 OF 2010
[Arising out of SLP© No.5938 of 2009]

Satya Prakash & Ors.

... Appellants

Versus

State of Bihar & Ors.

... Respondents

JUDGMENT

K.S. Radhakrishnan, J.

1. Leave granted.
2. Appellants who had worked on daily wages for over ten years have approached this Court claiming benefit of paragraph 53 of the Constitution Bench judgment of this Court in **Secretary, State of Karnataka And Others v. Umadevi (3) And Others** (2006) 4 SCC 1. Some doubts were there with regard to the meaning and content of paragraph 53 read with paragraphs 15, 16 and paragraph 8 read with paragraph 55 of the judgment in **Umadevi's case** (supra) which has been subsequently explained by this Court in several judgments. Reference may

be made to the judgment of this court in ***Punjab Water Supply & Sewerage Board v. Ranjodh Singh And Others*** (2007) 2 SCC 491, ***State of Punjab v. Bahadur Singh And Others*** (2008) 15 SCC 737, ***C. Balachandran And Others v. State of Kerala And Others*** (2009) 3 SCC 179, ***State of Karnataka And Others v. G.V. Chandrashekar***, (2009) 4 SCC 342, etc. Almost identical situation arises for consideration in this case as well.

3. The appellants who had worked for more than 10 years on daily rated basis in the Bihar Intermediate Education Council has approached the Patna High Court for regularization of their services and a learned Single Judge of the Patna High Court directed the Council to consider their request for regularization treating them as a separate class after relaxing their age. Since no positive direction was given to the Council for regularization of their services, an appeal was preferred before the Division Bench of the Patna High Court. The Division Bench held that merely because they had worked as daily waged employees with the Council would not confer any right for regularization as no public appointment was permissible *de hors* the recruitment rules. Letters Patent Appeal was, therefore, dismissed *in limine*. Aggrieved by the same this appeal has been preferred with a petition for special leave to appeal.

4. Mr. Gaurav Agrawal, learned counsel appearing for the appellants submitted that the appellants belong to the reserved community and that they had worked on daily wage basis in sanctioned posts from February/July, 1995 to February, 2005 and that too not on the strength of any order passed by the Court or Tribunal. Learned counsel submitted that the appellants are entitled to get the benefit of the judgment in ***Umadevi's*** Case(3) (supra). Reference was made to paragraph 53 of the aforesaid judgment and submitted that this Court had directed the Union of India, the State Governments and their instrumentalities to take steps to regularize as a one-time measure, the services of irregularly appointed persons who had worked for ten years or more in duly sanctioned posts. Learned counsel submitted that the same benefit be extended to persons who had worked on daily wage basis for over 10 years.

5. Learned counsel appearing for respondent Nos. 3 to 5 submitted that the Council had engaged the appellants only on daily wage basis and they were never appointed in any sanctioned posts and, therefore, they would not get the benefit of the directions contained in *Umadevi's case* (supra) which are applicable only to those qualified employees who were appointed irregularly in sanctioned posts. Learned counsel submitted that the Council in the year 1995 had decided to fill up the posts of Assistant/Routine Clerk and Peon on regular basis and an advertisement to that effect was

published on 25.2.1995. Appellants and several other persons applied but no panel or merit list was prepared by the Council. Accordingly, no appointments were effected. Council, though took a decision on 16.12.1999 to complete the selection process including preparation of merit list by 15.01.2000, it did not materialize due to the creation of new State of Jharkhand by the Bihar Re-organisation Act, 2000. Further, the Bihar Education Council itself was dissolved by the Bihar Intermediate Education Council (Repeal) Act of 2007 and hence there was no question of regularization of any employee in the Council. The functions of the erstwhile Intermediate Council are now being performed by the Bihar School Examination Board which is following its own recruitment rules. Under such circumstances, it was stated that the directions sought for by the appellants for regularization of their services in the Council cannot be granted.

6. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages in the Bihar Intermediate Education Council. In *Umadevi's case* (supra) this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or *ad hoc* employees. This Court held that

such directions issued could not be said to be in consistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

7. Paragraph 53 of Umadevi's Judgment, deals with irregular appointments (not illegal appointments). Constitution Bench specifically referred to the judgment in S.V. Narayanappa vs. State of Mysore (1967) 1 SCR 128, B.N. Nanjudappa vs. T. Thimmiah (1972)1 SCC 409, in paragraph 15 of Umadevi's judgment as well.

8. Let us refer to paragraphs 15 and 16 of Umadevi's judgment in this context. Necessity of keeping in mind the distinction between regularization and conferment of permanence in service jurisprudence has also been highlighted by this Court by referring to the following passages from R.N. Nanjundappa's case, which reads as follows:-

“ If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of

the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment.”

Further Constitution Bench referred to in **B.N. Nagarajan's** case in para 16 of the judgment and stated as follows:-

“ We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.”

Then, in Umadevi's case in paragraph 53 the Court is stated as follows:-

“ One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **S.V. Narayanappa R.N. Nanjundappa** and **B.N. Nagarajan** 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 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 or 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.”

9. Constitution Bench has, therefore, clearly drawn a distinction between temporary employees, daily-wagers and those who were appointed irregularly in the sense that there was non-compliance of some procedure in the selection process which did not go to the root of the selection process. Appellants in our view will not fall in the category of the employees mentioned in paragraph 53 read with paras 15 and 16 of the Constitution Bench Judgment.

10. Above view is further reinforced when we read paragraphs 8 and 55 in Umadevi's case, wherein similar arguments were raised but rejected by the Constitution Bench. Paragraphs 8 of the Constitution Bench judgment refers to CA No.3595-612 of 1999 filed by the Commercial Taxes Department. Respondents therein were engaged on daily wages in some of the districts in the State of Karnataka and they claimed that they had worked in that department for more than 10 years, hence, claimed regularization. They approached the Tribunal without success. They took up the matter before the High Court of Karnataka. The Karnataka High Court ordered that they are entitled to wages and allowances equal to

regular employees and also gave a direction to the State Government to consider their case for regularization within four months.

11. Aggrieved by the judgment of the Karnataka High Court the Commercial Taxes Department approached this Court. Allowing the appeal preferred by the Commercial Taxes Department, this Court set aside the directions given by the High Court for regularization of services of those daily wage employees who had more than 10 years of service. The Court held as follows:-

“ We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in Government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant(they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in Civil Appeal No. 3595-612 and those in Commercial Tax Departments similarly situated will be allowed to compete,

waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time.

12. In our view, the appellants herein would fall under the category of persons mentioned in paragraphs 8 and 55 of the judgment and not in paragraph 53 of judgment of Umadevi's.

13. Appellants in their reply affidavit filed on 14.10.2004 before the High Court has specifically stated in paragraph 5 that they were only engaged as Assistant Routine Clerks and Peons on daily wages. Further in paragraph 20 of the affidavit it was stated that they were discharging their duties on daily wages basis since 1995 and had entertained a legitimate expectation for regularization of their services. Appellants' own case is that they were only engaged on daily wages basis and never appointed in service either on a temporary basis or on ad-hoc basis.

14. Appellants stated that they had undergone a selection process held fourteen years back, following an advertisement published in the year 1995 but the merit list was neither prepared nor published. Selection process, though had undertaken by the Council was not completed and now the Council is no more in existence. However, if Board proposes to undertake any regular selection process to fill up the posts, the applications, if any, submitted by the appellants may also be considered after giving age relaxation. In Umadevi's case in paragraph 55 of the judgment, the

Constitution Bench has also permitted such persons to participate in selection process waiving the age relaxation and giving the weightage for having been engaged or worked in the department for a significant period of time.

15. The appeal, therefore, lacks merits and the same is disposed of as above.

.....J.
(R.V. Raveendran)

.....J.
(K.S. Radhakrishnan)

New Delhi;
March 16, 2010.

