

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10779/2008

(From the judgment and order dated 18/12/2007 in
The HIGH COURT OF MADRAS)

WP No. 12707/2007 of

UNION PUBLIC SERVICE COMMISSION

Petitioner(s)

VERSUS

D.SANKAR & ANR.

Respondent(s)

(With prayer for interim relief and office report)

WITH SLP(C) NO. 12618-12619 of 2008

(With prayer for interim relief and office report)

Date: 14/03/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s)

Ms. Binu Tamta, Adv.

For Respondent(s)

Mr. R. Venkataramani Sr. Adv.
Mr. V. G. Pragasam, Adv.
Mr. S. J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

Mr. G. Balaji, Adv.
Ms. Mahlakshmi Pavani, Adv.
M/S. Mahalakshmi Balaji & Co., Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

Let the record of this case be placed before
Hon'ble the Chief Justice of India for constituting a
larger Bench for reconsidering the correctness of
Umadevi's case (Supra).

(Deepak Joshi)
Sr. P. A.

(Indu Satija)
Court Master

(Signed reportable order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

REPORTABLE

CIVIL APPEAL NO.2011
(ARISING OUT OF SLP(C)NO. 10779 OF 2008)

UNION PUBLIC SERVICE COMMISSION

.....APPELLANT (S)

VERSUS

WITH

CIVIL APPEAL NOS.....2011
(ARISING OUT OF SLP (CIVIL) Nos. 12618-12619 OF 2008)

O R D E R

Leave granted.

Heard learned counsel for the parties

By means of the impugned judgment of Madras High Court dated 18.12.2007 in Writ Petition No. 12707 of 2007 the appellants were directed to regularize the service of respondents. It has been stated in para 16 of the impugned judgment that the petitioners have been working for over 25 years or so.

Learned counsel for the appellant has relied on the five-Judge Constitution Bench judgment of this Court in Secretary State of Karnatka and other v. Umadevi (3) and others, 2006 4 SCC 1.

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In our opinion the aforesaid decision requires to be reconsidered by a larger Bench of this Court because of the reasons mentioned below.

A seven-Judge Bench decision of this Court in Maneka Gandhi v. Union of India has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government or instrumentality of State must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi's case was decided by a seven-Judge Bench, whereas Umadevi's case is a decision of

a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, Maneka Gandhi's case does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

In the present case the respondents have been admittedly working for over 25 years. Hence, in our opinion, it is wholly arbitrary and unreasonable not to regularize them now, after they have put in so long service.

In our opinion, when a person is appointed temporarily then within two or three years or within a reasonable period of his appointment the authorities

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should make up their minds whether to regularize the person or to terminate his service, but they cannot keep a damocles sword hanging over the head of such temporary or ad hoc or casual employee for several decades. This is wholly unreasonable and hence violative of Article 14 of the Constitution of India. Such a person would probably have married and have a family to support. In our opinion Umadevi's case is too harsh and needs to be reconsidered.

For the reasons given above let the record of this case be placed before Hon'ble the Chief Justice of India for constituting a larger Bench for reconsidering the correctness of Umadevi's case (Supra).

.....J.
[MARKANDEY KATJU]
.....J.
[GYAN SUDHA MISRA]

NEW DELHI;
MARCH 14, 2011