

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 17.09.2013

+ **LPA 686/2013, C.M. APPL. 14501/2013 (for stay),
14502/2013 (for exemption) and 14503/2013 (for
condonation of delay)**

SH. BHOOP SINGH Appellant
Through: Sh. A.K. Bajpai with Sh. M.F.
Khan, Advocates.

versus

DIRECTOR GENERAL, CPWD Respondent
Through: Sh. Saqib, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Issue notice. Mr. Saqib, Advocate, accepts notice on behalf of respondent. With the consent of learned counsel, the matter was heard finally.

2 The Appellant, Shri Bhoop Singh, is challenging an order of a learned Single Judge dated 11.04.2013 passed in W.P.(C) 1737/2011. Briefly, the facts of this case are that on 01.09.1981, the appellant was engaged as a muster roll employee, as a carpenter in the Central Public Works Department (hereinafter "CPWD".) Subsequently, on

03.06.1989, he was regularized. On 18.11.1986, another individual, Shri Ramji Lal, junior to Shri Singh, was also engaged as a muster roll employee, as a carpenter. Shri Lal was regularized with effect from 18.11.1986, pursuant to an award dated 02.09.1997, in ID No. 26/1996. As a result of this development, the appellant raised an industrial dispute on 13.09.1999, which was referred by the Central Government (as ID No. 196/1999), seeking regularization with effect from 18.11.1986, (i.e. the same date as Shri Lal, the appellant's junior in employment).

3. In the industrial dispute so raised by the appellant, an award was made by the Labour Court on 12.02.2010, granting regularization with all consequential benefits to him with effect from 18.11.1986. Challenging this, the CPWD filed W.P.(C) 1737/2011, under Article 226 of the Constitution, challenging the above award. The learned Single Judge set aside the award, and held in favour of the CPWD, rejecting the appellant's request for regularization with effect from 18.11.1986. The present proceedings challenge that order of the learned Single Judge.

4. The learned Single Judge based his judgment- impugned in the present appeal on the reasoning of a Division Bench of this Court in *Union of India and Others v. Kilob Singh and Others*, W.P.(C) 20155-59/2003. There, the Central Administrative Tribunal granted regularization to certain employees from the date their juniors had been regularized. Basing the decision, in turn, on the decision of the Supreme Court in *Secretary, State of Karnataka and Others v. Umadevi and Others*, AIR 2006 SC 1806, the Division Bench held

that regularization of employees, as an act of individualization of justice, based on the equities of each litigant's case, results in bypassing the Constitutional framework for public employment, and thus, interference by the courts in such matters (especially the question of regularization) is incorrect. Relying on this *dictum*, the learned Single Judge quashed the award of the Labour Court.

5. Learned counsel for the appellant submits that the impugned order is contrary to well-settled service jurisprudence. It was submitted that the case of the appellant is one of discrimination, and not where the principle laid down in *Umadevi (supra)* will apply. Moreover, learned counsel relied on the decision of the Supreme Court in *Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmchari Sanghatana*, (2009) 8 SCC 556, in support of the proposition that the Industrial Court's powers are not to be denuded by a reading of the *Umadevi (supra)* case. Further, learned counsel submitted that the learned Single Judge failed to appreciate that since the judgement in *Kilob Singh (supra)*, several other orders have been passed, both by this Court and the Supreme Court, wherein regularization was granted on similar facts. Learned counsel also argued that the Labour Court was correct in its findings that no junior shall be confirmed or promoted without considering the case of his senior, given that any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.

6. Contrary to this, learned counsel for the CPWD argued that the principle in *Umadevi (supra)* squarely applies to the facts of this case,

as any interference by this Court in terms of an order directing regularization would amount to judicial overreach contrary to the constitutional framework for public employment. Accordingly, the learned counsel placed reliance on the decision of the Division Bench in *Kilob Singh (supra)*, wherein an order of the CAT directing regularization was held to fall foul of the *Umadevi (supra)* principle.

7. The question that arises for the Court's consideration is extremely narrow, i.e. whether the appellant is entitled to regularization from 18.11.1986, the date on which Shri Lal was regularized, or whether his regularization stands from 03.06.1989, the date on which his regularization order was passed by the CPWD. Here, it is not in dispute that Shri Lal was the appellant's junior. Neither is it disputed that the appellant *was* regularized by the CPWD; the only question that arises is the date of this regularization, whether from 18.11.1986 or 03.06.1989. One has to, therefore, closely examine the principle in *Umadevi (supra)* and whether it represents as broad a proposition as the CPWD reads. In *Umadevi (supra)*, the Supreme Court cautioned against High Court interference in matters of public employment and held that as a rule only those with the relevant credentials and those who have gone through the regular employment process are to be regularized. The Supreme Court also noted that the principle of equality in public employment should not translate into perpetuation of an illegality. The Court, *inter alia*, also noted:

“15.*This right of the executive and that of the court, would not extend to the executive or the*

court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

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20..... The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.”

8. The Court also cautioned that

“24.....if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules.”

9. However, equally, the Court also noted that:

“34..... it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.....”

10. Accordingly, in this case, the appellant requests this Court not to order his regularization (based on the equities of this case, the fact that he has been working in a non-regularized post for several years etc.), but rather, to determine *when* that regularization should be traced to (the fact of his regularization has been decided by the

CPWD already). While the former would no doubt violate the principle in *Umadevi*, the latter exercise is only a limited judicial scrutiny to ensure equality in public employment, and to ensure to employees are treated equally amongst each other. Thus, as the Supreme Court noted in *Casteribe Rajya P. Karmchari Sanghatana* (supra), while

“31. there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts.....”

11. The question of regularization of Shri Singh is not an exercise of this Court creating a post, as this has already been done by the CPWD. The Court’s function, here, is to ensure equality within the seniority list in promotion, given that Shri Lal was the appellant’s junior, and had been, like him, regularized. The fact that this was given with effect three years before the appellant was regularized creates a question of unequal treatment of equals, and in the absence of any justification provided by the CPWD, engages an Article 14 violation. Equally, this Court must also be conscious of the fact that in the decision in *Umadevi*, in the words of the Supreme Court in *Casteribe*, “26.....the powers of ... Labour Courts ... were not at all under consideration ...”, and thus, the action of regularization of the appellant by the Labour Court to ensure parity ought to be viewed with greater deference by this Court. The Court, or

for that matter the Labour court, does not act as a primary decision maker in ordering regularization. The regularization order was, in the present case made by the executive, i.e. the Union of India, through the CPWD itself, long ago, in the case of the Appellant. The effect given to the regularization of his junior – who had entered the service later than him, led to discontent; naturally he complained that even if his regularization were not to be granted from the date of his entering upon employment, at least, on and applicability of what can generally be described as a “*next below rule*” (a term used in service jurisprudence) he should be given regularization benefits from the date the junior was given. The demand was just and reasonable; the Labour Court in our opinion correctly found it to be so, and granted that limited relief. The finding of the Single judge is premised upon applicability of the *Umadevi* principle. That would apply to bar Courts from granting the primary relief of (a direction to regularize or) regularization. That cannot in the opinion of the Court be a ground to deny the larger right to equality. Denial of relief would amount to an utterly unjustifiable perpetuation of rank discrimination, which the Supreme Court surely never intended.

12. Thus, for the above reasons, the appeal has to be and is accordingly allowed. The respondents are hereby directed to treat the appellant in the same manner as Shri Ram Ji Lal and accord him the due date of regularization with effect from the date Shri Lal was given such benefit (i.e. 18.11.1986) and not from the latter date (i.e. 03.06.1989), as he is being presently given. The order shall be complied within six weeks’ time. It is clarified that the order of

regularization is confined to the continuity of service for the purpose of inclusion of pension and other terminal benefits.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

SEPTEMBER 17, 2013