



CNR: KAHC010072652021

NC: 2026:KHC:44641-DB
WP No. 3231 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE R DEVDAS

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

WRIT PETITION NO. 3231 OF 2021 (S-KSAT)

BETWEEN:

SMT. K. P. KAMALA
W/O M. PADMANABHAN
AGED ABOUT 70 YEARS
(RETIRED CLERK CUM TYPIST)
P.U. EDUCATION DEPARTMENT
R/AT NO.15, 9TH CROSS
MOTINAGAR, R T NAGAR P O
BENGALURU – 560 032.

...PETITIONER

(BY SRI VARUN SAI Y., ADVOCATE FOR
SRI B.S. SACHIN, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ITS SECRETARY
EDUCATION DEPARTMENT
M S BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001.
2. DIRECTOR
PRE-UNIVERSITY EDUCATION DEPARTMENT
18TH CROSS, MALLESHWARAM
BENGALURU – 560 012.

Digitally signed
by JUANITA
THEJESWINI

Location: HIGH
COURT OF
KARNATAKA



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3. COMMISSIONER
FOR PUBLIC INSTRUCTION
NEW PUBLIC OFFICES
NRUPATHUGNA ROAD
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI HARISHA A.S., AGA FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL DATED 07.12.2020 IN APPLICATION No.11154/2016 VIDE ANNEXURE-C AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R DEVDAS
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

ORAL ORDER

(PER: HON'BLE MR. JUSTICE R DEVDAS)

This writ petition is filed by the original applicant assailing the impugned order passed by the Karnataka State Administrative Tribunal in Application No.11154/2016 dated 07.12.2020.



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2. The brief facts as contented by the applicant before the Tribunal are that the petitioner was appointed as a daily wager on 05.09.1983, as Clerk-cum-Typist, in the National Service Scheme Cell (NSS Cell), although, till 31.03.1984, on daily wages of Rs.12/- per day purely on temporary basis subject to certain conditions. Subsequently, vide a memo dated 05.05.1984, the petitioner was continued from 01.04.1984 till 31.03.1985 on temporary basis subject again to the same conditions. Further, vide memo dated 13.12.1984, in supersession of the earlier orders, the petitioner was appointed as clerk-cum-typist and continued from 01.12.1984 to 31.03.1985 on contract basis fixing her pay at Rs.10/- less than the minimum pay of the post of SDC subject again to the same conditions. Further, vide memo dated 28.04.1985, the services of the petitioner was continued from 01.04.1985 until further orders but on a consolidated pay of Rs.480/- per month. Vide memo dated 14.08.1986, the petitioner was sanctioned regular scale of pay as of a



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Second Division Assistant with typing allowances of Rs.15/- per month and with the usual rates of allowances of DA, HRA and CCA, as in the case of a regular Government Employee with effect from 01.08.1986 subject to certain conditions. One of the conditions was that the petitioner had to execute a bond that she will work in the NSS Cell for a minimum period of 5 years or till the end of the operation of the scheme, whichever is earlier.

3. The Government of India, Ministry of Human Resources Development issued an Office Order bearing No.29/87-VS-III, New Delhi dated 30.03.1987 realising the importance of NSS as an integral part of the educational system and it was decided that the NSS should continue as a permanent scheme with immediate effect.

4. Pursuant thereto, the Commissioner for Public Instructions, Bangalore issued a memo dated 03.04.1991 regularising the services of the petitioner along with a few



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other persons from the respective initial dates of their appointments and the services of the petitioner was confirmed with effect from 01.11.1990. The Government of Karnataka, Department of Public Instructions issued an Official Memorandum on 24.04.1998 transferring the NSS cell which was till then functioning under the Department of Public Instructions to the Pre-University Education Department along with the staff, which includes the petitioner at Sl.No.3 working as Second Division Assistant-cum-typist. There was no difficulty for the petitioner, since the salary was regularly being paid by the PU Education Department, but in the matter of payment of Time Bound Increments, having regard to the representations given by the petitioner and others, the Principal Secretary, Department of Primary and Secondary Education made a communication dated 23.11.2009 to the Director, Pre-University Education Department stating that the request made by the petitioner and others for payment of Time Bound Increments cannot be considered, since except the



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petitioner, the other persons who were transferred from the Department of Public Instructions to the Pre-University Education Department were illegally regularised by the then Commissioner, without the approval of the Government. However, an exception was carved out in the said communication insofar as the petitioner is concerned, having regard to the fact that the petitioner was employed as a daily wager from the year 1983 unlike the others. Nevertheless, the petitioner gave a representation on 10.02.2010 seeking regularization of her services and the petitioner attained the age of superannuation on 30.04.2011. The impugned communication dated 19.05.2011 at Annexure-A14 was made by the Principal Secretary to the Director, Pre-University Education Department, declining to regularise the services of the petitioner on the ground that the initial appointment made in the NSS Cell was not against the sanctioned post and it was a scheme sponsored by the Central Government and the State Government was only supporting the scheme.



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5. Aggrieved by the same, the petitioner approached the Karnataka State Administrative Tribunal in Application No.4611/2011. The Tribunal held that while passing the impugned order dated 19.05.2011, the government has not taken into consideration its earlier Government Order bearing No.DPAR 2 SLC 1990, Bengaluru, dated 06.08.1990 issued by the Department of Personnel and Administrative Reforms in the matter of regularization of casual/daily rated employees. It was therefore held that if the order earlier passed by the Commissioner was by an incompetent authority, then the government itself could have taken a decision in accordance with the Government Order dated 06.08.1990. Accordingly, the application was allowed while setting aside the order dated 19.05.2011 and directing the Principal Secretary of Department of Primary and Secondary Education to issue an order in favour of the petitioner within a period of three months from the date of receipt of a copy of the order. However, the government



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issued the impugned endorsement dated 17.08.2016 declining to regularize the services of the petitioner on the ground that the initial appointment of the petitioner was not against sanctioned post and, therefore, if the services of the petitioner are regularized, it would be contrary to the directions issued by the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka Vs. Uma Devi and others*** reported in ***2006(4) SCC 1***.

6. The petitioner once again approached the Tribunal in Application No.11154/2016, but the Tribunal dismissed the application, accepting the contention of the respondents - State and its authorities that the original order of appointment and all the subsequent memos issued by the Department of Public Instructions clearly indicated that the petitioner was appointed as a daily wager, on temporary basis and till the scheme sponsored by the Central Government known as the National Service Scheme is in operation. Therefore, The Tribunal upheld the



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contentions of the respondents - State and its authorities that the services of the petitioner cannot be regularised.

7. Learned counsel for the petitioner submits that a plain reading of the impugned order passed by the Tribunal clearly shows that the Tribunal took into consideration the services rendered by the petitioner between 05.09.1983 to 31.07.1986 and it has not considered the order of regularisation passed by the Commissioner, Department of Public Instructions and the Government Order dated 24.04.1998 at Annexure - A11 by virtue of which the petitioner along with 5 other persons, as staff working under the Department of Public Instructions were transferred to the Pre-University Education Department. Learned counsel would further submit that the order of regularization passed by the Commissioner for Public Instructions on 03.04.1991 regularizing the services of the petitioner along with few other persons had attained finality and no action has been taken by the government. Even after noticing the fact that



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the Commissioner, who according to the government was an incompetent authority had passed an order in the year 1991 and, thereafter, the government itself had passed an order in the year 1998 transferring the services of the petitioner along with 5 other persons from the Department of Public Instructions to the Pre-University Education Department. That being the position, it was impermissible for the government to issue an order or make such a communication as was done on 23.11.2009, by simply stating that the Commissioner had no authority to regularize the services of the petitioner and others.

8. Even otherwise, it is submitted that in the communication dated 23.11.2009, directions were issued to the Director, Pre-University Education Department to review the earlier order passed by the Commissioner in the matter of regularization of the services of the petitioner and others. However, no further action has been taken either by the Director, Pre-University Education Department or the State Government to set aside the



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order dated 03.04.1991 passed by the then Commissioner. In that view of the matter, it is submitted that the government, having acquiesced to the position recognizing the regularization of services of the petitioner and others and issuing a Government Order transferring the petitioner and others from the Department of Public Instructions to the Pre-University Education Department, cannot now be permitted to say that the services of the petitioner cannot be regularized. In fact, it is submitted that, as long as the order dated 03.04.1991 issued by the Commissioner, Public Instructions Department is not set aside in a manner known to law, the regularization of the services of the petitioner cannot be set aside by a mere communication made by the Principal Secretary in terms of Annexure - A12 dated 23.11.2009 or the impugned endorsement.

9. Moreover, it is submitted that the Tribunal earlier rightly held, having regard to the judgment of the Hon'ble Supreme Court in the case of ***State of Karnataka***



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Vs. M. L. Kesari reported in **(2010) 8 SCC 247** that in terms of paragraph No.53 in ***Umadevi's*** case, it is clear that the petitioner has put in more than 10 years of continuous service without protection of any interim order of Courts or Tribunals, before the date of decision in ***Umadevi (3)*** was rendered. It was noticed that the true effect of the directions issued in ***Umadevi*** was to enable all persons who have worked for more than 10 years as on 10.04.2006 (the date of decision in ***Umadevi***) without the protection of any interim orders of any Court or Tribunal, in vacant posts, possessing the requisite qualification, be regularized, as a one time measure.

10. Moreover, the State Government did not challenge the decision of the Tribunal, when there was a positive direction issued by the Tribunal that the government shall issue an order in favour of the petitioner within a period of 3 months from the date of receipt of a copy of the order. The Principal Secretary could not have issued the impugned endorsement, without challenging



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the orders passed by the Tribunal. Moreover, the petitioner has attained the age of superannuation on 30.04.2011 and the government cannot be permitted to now issue such an endorsement which would deprive the petitioner of the legitimate rights to seek retirement benefits and pension.

11. The learned counsel for the petitioner is also right while pointing out to Annexure - A3 that the initial appointment of the petitioner was against *ad hoc* sanctioned post.

12. *Per contra*, learned AGA submitted, while placing reliance on a very recent decision of the Hon'ble Supreme Court in the case of ***Hemant Kumar and others Vs. State of Haryana*** in ***SLP(C)Nos.12017-12018/2023*** decided on ***18.08.2026*** that an illegality means something which is contrary to law; something which is wrong right from the inception. It is *void ab initio*. Illegality cannot be cured and made legal and valid by



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lapse of time. It was held that an illegality which is distinct and different from irregularity, cannot be regularized by taking a sympathetic view on the ground of long continuance in service. Learned AGA submitted that the Commissioner, Public Instructions Department could not have passed an order regularizing the services of the petitioner and others, because, admittedly there was no sanctioned post of Clerk-cum-Typist, since the appointment order initially issued in favour of the petitioner makes it very clear that the appointment to the said post of Clerk-cum-Typist was issued to enable the services of the petitioner in the National Service Scheme Cell (NSS cell) established in the department to enable the scheme sponsored by the Central Government to function effectively till the scheme is in force. Although, it is true that the State Government also supported the scheme, nevertheless, it is clear that the appointment of the petitioner in the NSS cell was only for the limited period till the scheme was functioning effectively.



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13. In that view of the matter, learned AGA submits that no infirmity can be found in the order dated 23.11.2009 or the order dated 19.05.2011 or the impugned endorsement dated 17.08.2016 which was impugned before the Tribunal. Learned AGA submits that the petitioner cannot deny the fact that in the memo of appointment issued in favour of the petitioner, it is clearly stated that the appointment is only for a particular period and on the condition that the appointment is purely temporary; her services can be terminated at any time without assigning any reasons and that the petitioner cannot claim any other allowances other than what was stated in the appointment order. It is further stated that the order passed by the Commissioner on 03.04.1991 was not communicated to the government and the government has not approved the order passed by the then Commissioner. That being the position, and having regard to the recent judgment of the Hon'ble Supreme Court, since the order passed by the Commissioner is illegal and



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without authority of law, the same has to be held as void ab initio. No rights would flow from such an illegal order and therefore the State Government is right in directing that the services of the petitioner cannot be regularised.

14. Heard the learned counsel for the petitioner, learned AGA for the respondents and perused the petition papers.

15. Having regard to the facts narrated hereinabove, it is clear that the then Commissioner for Public Instructions issued a memo dated 03.04.1991 regularizing the services of the petitioner along with a few other persons from the respective initial dates of their appointments. It is also undisputed that the Government of Karnataka, Department of Public Instructions issued an official memorandum on 24.04.1998 transferring the NSS cell which was till then functioning under the Department of Public Instructions to the Pre-University Education Department along with the staff, which includes the



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petitioner at Sl.No.3 working as Second Division Assistant-cum-Typist. Regular salary was being paid to the petitioner and all other allowances and perks which were given to the regular employees were also given to the petitioner whose services were transferred to the Pre-University Education Department. That being the position, by a mere communication dated 23.11.2009 issued by the Principal Secretary, Department of Primary and Secondary Education to the Director, Pre-University Education Department, that too on a request of the petitioner and others for grant of time bound increments, the order of regularization passed by the Commissioner could not have been set aside, without following due process of law. No notice was issued to the petitioner and the principles of natural justice were not followed by the respondents - State and its authorities in the matter of recalling the order of regularization passed in favour of the petitioner and others in the year 1991. Prior to that, it is also an undisputed fact that the petitioner was initially appointed



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on 05.09.1983 as Clerk cum Typist in the National Service Scheme cell and her services were continued from time to time till the order of regularization was passed by the then Commissioner on 03.04.1991.

16. This Court should also notice the fact that the Hon'ble Supreme Court in paragraph No.53 in ***Umadevi's*** case has clearly directed and clarified that regularization, if already made, but not *sub-judice*, need not be reopened, based on the judgment in ***Umadevi***. Therefore, the action of the respondents-State in issuing a communication on 23.11.2009 to the Director, Pre-University Education Department stating that the order dated 03.04.1991 issued by the then Commissioner for Public Instructions were without authority of law and therefore issuing directions to the Director to review the order dated 03.04.1991, will be in the teeth of the directions issued by the Hon'ble Supreme Court. It is clear that the decision was rendered by the Apex Court in the case of ***Umadevi***



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on 10.04.2006 and, such a communication could not have been issued recalling the order of regularisation issued on 23.11.2009, in contravention of the directions issued by the Hon'ble Supreme Court. Further, it is also clear from the communication dated 23.11.2009 issued by the Principal Secretary, Department of Primary and Secondary Education to the Director, Pre-University Education Department, that directions were issued to review the order dated 03.04.1991 passed by the then Commissioner for Public Instructions, Bangalore. On the face of it, it is clear that no action was taken by the Government in a manner known to law to set aside the order of regularization passed by the then Commissioner. The contention of the learned AGA that the order passed by the then Commissioner in the year 1991 was illegal and therefore *void ab initio*, cannot be accepted for the simple reason that the government recognized the order of regularization passed by the Commissioner in the year 1991 and issued a Government Order/Official



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Memorandum on 24.04.1998 transferring the NSS cell to the Pre-University Education Department along with the staff, including the petitioner.

17. On the other hand, it is clear that the government recognized the regularization of the petitioner and others in the year 1991 and, thereafter, transferred the petitioner and others from the Department of Public Instructions to the Pre-University Education Department in the year 1998 and continued to pay the salary without any let or hindrance on the part of the government. It would therefore be futile on the part of the respondents - State and its authorities to now contend that the Commissioner had no authority or power to regularize the services of the petitioner in the year 1991. The learned counsel for the petitioner is right in his submission that the respondents - State has acquiesced to the position that the services of the petitioner has been regularized on 03.04.1991 and till the petitioner attained the age of superannuation, there



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was no action taken by the government to challenge and set aside the orders passed by the then Commissioner on 03.04.1991. The learned counsel for the petitioner is therefore right in his submission that having regard to the directions issued by the Tribunal in Application No.4611/2011 dated 16.09.2015 directing the government to issue necessary orders in favour of the petitioner not being challenged by the State Government, the impugned endorsement dated 17.08.2016 at Annexure-A18 could not have been issued. The impugned endorsement is illegal, arbitrary and contrary to the directions issued by the Tribunal. The question of declaring the regularization of services of the petitioner as illegal and *void ab initio*, without there being a challenge to the orders passed by the Tribunal and without following due process of law, would not arise.

18. Another important aspect of the matter is that the NSS Scheme sponsored by the Central Government was made permanent by the Government of India vide



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Office Order bearing No.29/87-VS – III, New Delhi dated 30.03.1987. It is by virtue of the said action of the Government of India and further directions issued to the State Government that the then Commissioner for Public Instructions, Bangalore, issued a memo dated 03.04.1991 regularising the services of the petitioner along with few others from the respective initiate dates of their appointments.

19. The services of the petitioner was confirmed with effect from 01.11.1990. Therefore, the respondent-State and its authorities cannot contend that the appointment of the petitioner stood discontinued at any point of time. The Official Memorandum issued by the State Government on 24.04.1998 transferring the NSS Cell along with the staff including the petitioner to the Pre-University Education Department, is as a consequence of the NSS scheme being made permanent.



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20. The learned Counsel for the petitioner is right in his submission that the communication dated 23.11.2009 made by the Principal Secretary to the Director of Pre-University Education Department to review the order of regularization would be in the teeth of the judgment and directions issued by the Apex Court in ***Uma Devi*** (3), more particularly, paragraph-53. No such action for de-regularising the services of the petitioner could be taken by the respondent-State and its authorities which would be contrary to the directions issued by the Hon'ble Supreme Court.

21. It is noticeable that in the Official Memorandum dated 27.01.1983 at Annexure 'A3', it is clearly stated that the proposal has already been sent to the Government for sanction of the posts of State Co-ordinator in the cadre of Deputy Director of Public Instructions, First Division Clerk, Clerk-cum-Typist and Peon was already sent to the Government for approval. Accordingly, orders were passed after careful examination of the proposal of the



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Commissioner for Public Instructions, the Director of Youth Services and Sports and sanction was accorded by the Government to establish NSS Cell in the office of the Commissioner for Public Instructions, Bangalore with the following staff:

- i) Programme Coordinator, NSS in the grade of Deputy Director of Public Instruction - 1*
- ii) First Division Clerk - 1*
- iii) Clerk-cum-Typist - 1*
- iv) Peon - 1*

22. It is also clearly mentioned that the sanction of the above posts is subject to the condition that the posts sanctioned are purely on ad-hoc basis. It is therefore clear that after the Government of India decided to make the NSS Scheme permanent and issued directions to the State Governments to continue the scheme under the respective State Governments, action was taken by the Government of Karnataka, through the Commissioner, Department of Public Instructions to regularize the



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services of the staff mentioned therein. Any submission made contrary to the above, cannot be accepted.

23. In that view of the matter, this Court is of the considered opinion that since the petitioner fulfilled all the requirements of the directions issued by the Apex Court in the case of ***Uma Devi (3)***, no other action could be permitted to be taken by the respondents to recall the order of regularization passed by the Commissioner.

24. Accordingly, this Court proceeds to pass the following:

ORDER

- i) The writ petition is ***allowed***.
- ii) The impugned order passed by the Karnataka State Administrative Tribunal, Bengaluru in Application No.11154/2016 dated 07.12.2020 is quashed and set aside.
- iii) The impugned endorsement dated 17.08.2016 at Annexure - A18 issued by the respondents - State, Department of Pre-University Education is also quashed and set aside.



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- iv) The petitioner is entitled for all retirement benefits and pension. Accordingly, directions are hereby issued to the second respondent - Director, Pre-University Education Department and the first respondent - Principal Secretary, Department of Education to settle the pensionary benefits and retirement benefits to the petitioner while also considering the increments that are due to the petitioner, pass necessary orders as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this order.

Ordered accordingly.

**Sd/-
(R DEVDAS)
JUDGE**

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

DL, GSR, JT/-
CT:NJ