

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

W.A.No. 1449 of 2013 IN WP(C).18129/2011

AGAINST THE JUDGMENT IN WP(C) 18129/2011 of HIGH COURT OF KERALA DATED 27-08-2013

APPELLANT/2ND RESPONDENT:

DR.R.GEETHA DEVI
LECTURER (ASSISTANT PROFESSOR)
DEPARTMENT OF MALAYALAM
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
REGIONAL CENTRE, ETTUMANOOR
KOTTAYAM DISTRICT (RESIDING AT KEDARAM
CHEMMAKKAD P.O., KOLLAM-691 603)

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS/PETITIONER AND RESPONDENT NO.1:

1. SOMALAL.T.M
RESEARCH SCHOLAR, DEPARTMENT OF MALAYALAM
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, KALADY
RESIDING AT THEVALLIL VETTELAPPARA P.O
THRISSUR DISTRICT-680 721.
2. SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,
KALADY, ERNAKULAM DISTRICT
REPRESENTED BY ITS REGISTRAR-683 574.

R2 BY ADV. SRI.ARUN B.VARGHESE,SC, SREE SANKARACHARYA UTY.
R1 BY ADV. SRI.A.JAYASANKAR
R1 BY ADV. SRI.SUNDARAM GOVIND
R1 BY ADV. SRI.MANU GOVIND
R1 BY ADV. SRI.JOPHY POTHEN KANDANKARY
R BY SRI.V.VARGHESE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2015 ALONG WITH
WA 1475/13, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal Nos.1449 & 1475 of 2013

Dated this the 18th day of June, 2015

JUDGMENT

Antony Dominic, J.

These writ appeals are filed by respondents 2 and 3 in W.P.Nos.18129/11 and 10582/11. Both these writ petitions were filed by the first respondent in these writ appeals and in the writ petitions the challenge was against the orders issued by the respondent University regularizing the service of the appellants as Assistant Professors. By judgment under appeal, the learned Single Judge held that the appointment made otherwise than on regular basis without conducting normal selection process is illegal and, therefore, Ext.P1 orders in the writ petitions regularizing services of the appellants were quashed. It is aggrieved by this judgment of the learned Single Judge, these appeals are filed.

2. We heard the counsel for the appellants, learned counsel appearing for the first respondent, Standing Counsel appearing for the University and the learned Government Pleader appearing for respondents 3 and 4 in W.A.1475/13.

3. The factual background which led to the litigation are that Sree Sankaracharya University of Sanskrit Act, 1994 was preceded by an Ordinance and on the basis of the Ordinance, the University was established in 1993. In 1995, the University issued a notification inviting applications for appointment to various posts including Lecturers. Appellants in these cases being qualified for the post of Lecturer, responded to the notification. In the selection process that ensued, they came out successful and the appellant in W.A.1449/13 was appointed on 1.1.1995 as Lecturer (Malayalam) and the appellant in W.A.1475/13 was also appointed to the post of Lecturer (Malayalam) with effect from 8.5.1996.

4. While they were continuing in service, the validity of the appointments made were challenged before this Court and judgment was rendered on 10.4.1995 setting aside the appointments made. This judgment was confirmed by a Division Bench of this Court dismissing the appeals filed by the respondent University and others in the judgment in **Sree Sankaracharya University of Sanskrit v. State [1996 (2)KLT 378]**. In view of the judgment of this Court, the University

issued order dated 15.5.1997 terminating the services of the persons who are appointed in pursuance to the notification mentioned above, which included the appellants as well.

5. In the meantime, on 17.3.1997 Government issued Ext.R2(c), an order directing that the teachers who have joined the service of the University while working in other institutions, will have lien in their parent institutions and that the period spent by them in the University will be treated as deputation. Taking advantage of this Government Order many teachers whose services were terminated returned to their parent institutions. However, in so far as the appellants herein are concerned, who were raw hands at the time they joined the service of the University, they could not take advantage of the Government Order.

6. It would appear that during the said period several teaching posts in the University were remaining unfilled and in order to meet its exigencies, University was engaging, Lecturers, whose services were terminated, on contract basis. According to the University, such arrangement was necessitated also for the reason that the Statutes regulating the terms of appointment were not framed by the University

and as a result regular appointment was not possible. The appellant in W.A.1449/13 was accordingly engaged by the University on contract basis with effect from 13.8.1997 and the appellant in W.A.1475/13 also was engaged on similar terms with effect from 10.6.1997.

7. While they were thus continuing as contract employees, statutes were framed by the University and on 5.9.1997 fresh notification was issued inviting applications to various vacant posts. The appellants herein, being eligible candidates applied in response to the notification and on completion of selection process rank list was published by the University on 21.5.1998. In the rank list thus published, the appellant in W.A.1449/13 was included at Sl.No.25 whereas the appellant in W.A.1475/13 was included at Sl.No.41. From the rank list, upto Sl.No.22 were appointed and as a result, all the remaining candidates including the appellants herein did not get employment.

8. In this context, it is also worth mentioning that notification of 5.9.1997 was challenged in about 18 original petitions filed before this Court and except one case all the remaining original petitions were

heard and dismissed by a Division Bench of this Court by judgment dated 27.11.2002. The one case which was not dismissed is O.P.9613/98 filed by Dr.Sheela and in her case, considering the peculiar facts, this Court directed confirmation of her services if she was not otherwise disqualified and her services were hitherto satisfactory.

9. In compliance with the judgment in O.P.9169/98, University issued order dated 3.2.2006 regularising Dr.Sheela as a fresh appointee. During this period, the appellants in these cases continued as contract employees, and the term of their appointments were also renewed periodically. Subsequently, the appellant in WA.1475/13, who was also continuing as a contract employee, moved the Petitions Committee of Kerala Legislative Assembly, which, after a hearing, by its letter dated 22.2.2011, directed the University to regularise him in service with immediate effect and report the matter to the Committee. The Standing Committee of the Syndicate on staff considered the matter in its meeting held on 14.3.2011 and made its recommendations, based on which the University issued order dated 1.3.2011, permitting the appellant in WA.1475/13, to join duty as Assistant Professor with effect

from 1.3.2011 on regular basis. Though the recommendation based on which the appellant in W.A.1475/13 was appointed on regular basis contained a recommendation in favour of the appellant in W.A.1449/13 also, in so far as she is concerned, she was not still made a permanent employee.

10. Therefore, the appellant in W.A.1449/13 filed W.P.(C) No.9246/06 before this Court which was disposed of by judgment dated 3.4.2006 directing the Syndicate to consider her request for regularization in its next meeting. Accordingly, the matter was considered by the Syndicate on 6.5.2006 and communication dated 8.8.2007 was issued by the Registrar informing the appellant in W.A.1449/13 that it has been resolved to give her weightage for the service rendered and relaxation in age. Thereupon, she again filed W.P. (C)25893/10 and during its pendency the Syndicate passed its resolution dated 17.3.2011 resolving to regularise the service of the appellant in W.A.1449/13 as Assistant Professor in Malayalam. On the basis of the said proceedings, order dated 20.4.2011 was also issued by the University, regularizing her services. It would also appear that on

getting her services thus regularised, W.P(C)25897/10 filed by her was got dismissed as withdrawn by judgment dated 27.5.2011.

11. It was at that stage that the first respondent in these cases, filed Writ Petition 10582/11, challenging the regularization of the appellant in W.A.1475/13 and Writ Petition No.18129/11, challenging the regularization of appellant in W.A.1449/13. As we have already stated, by the common judgment rendered, the learned Single Judge held that the regularization ordered by the University was impermissible in the light of the principles laid down by the Apex Court in ***Secretary, State of Karnataka v. Umadevi [2006(4)SCC 1]*** and on that basis set aside the orders of regularization produced as Ext.P1 in the writ petitions. It is in this background, these appeals are filed.

12. While the counsel for the appellants contended that the judgment of the learned Single Judge is illegal for the reason that, though the appellants were appointed on contract basis, it was after a process of regular selection and to the existing vacancies. According to them, they have rendered service for about 20 years and that, therefore, they were entitled to be regularized in service even applying the

principles laid down by the Apex Court in *Umadevi's case*. On the other hand, the counsel for the first respondent, a person who contended that he being eligible to apply if the posts were notified for open recruitment, argued that regular appointment can be made only in compliance with the provisions of the University Act and Chapter III of the First Statute. According to him, admittedly these appointments were made in total non compliance of the statutory provisions, which did not confer any legal right or equity in favour of the appellants. Counsel also contended that this was a case where the theory of misfeasance of public office would apply and that the persons who made these appointments without notifying the vacancies for open recruitment are liable to be penalized.

13. On behalf of the University, learned Standing Counsel contended that the contract appointments in question were made at the time when University had shortage of teaching staff and when the Statutes were not even framed. According to him, the University cannot be faulted for having made such arrangement in order to meet the then existing exigencies. It was also contended that the regularization

ordered by the University was for bonafide decision in the light of the then prevailing facts. Counsel also filed an additional affidavit, in which it is declared that the present Syndicate, which is in office for the last three years, has not ordered regularization of any one and that its decision is to conduct recruitments fully in compliance with the provisions of the Act and the University Statutes.

14. The question that arises for consideration is whether the regularization of the service of the appellants in these cases ordered by the University could be sustained or not. It is true that in the judgment in ***Secretary, State of Karnataka v. Umadevi [2006 (4) SCC 1]*** Apex Court reiterated the principle that public appointment cannot be made otherwise than in compliance of the provisions of Articles 14 and 16 of the Constitution of India and that regularization cannot be ordered bypassing statutory rules of recruitment. However, while laying down the above principle, the Apex Court has also laid down an exception in paragraph 53 of the judgment which reads thus:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, R.N.Nanjudappa 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 regularisation 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 abovereferred 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 regularise 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 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. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

15. Reading of the paragraph 53 shows that where irregular appointments, not illegal appointments, have been made, of duly qualified persons in duly sanctioned vacant posts and employees have continued to work for ten years or more without the intervention of

orders of the Courts or Tribunals, the question of regularisation of service of such employees may have to be considered on merits as a one time measure. What is irregular appointment has been explained in paragraph 15 of the judgment where the principles laid down by the Apex Court in ***R.N.Nanjundappa v. T.Thimmiah and another (1972) 1 SCC 409*** has been quoted and this paragraph reads thus:

“Even at the threshold, it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. In State of Mysore v. S.V.Narayanappa this Court stated that it was a misconception to consider that regularisation meant permanence. In R.N.Nanjundappa v. T.Thimmiah this Court dealt with an argument that regularisation would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

“Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. 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 regularised. Ratification or regularisation 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. Regularisation cannot be said to be a mode of

recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

16. The reading of the above paragraph shows that an appointment will be an irregular one, if it is made without complying with the procedure or manner that is prescribed in making such appointment. It is seen that these principles laid down by the Apex Court in Umadevi's case were followed in subsequent judgments of the Apex Court and one such judgment reported in ***State of Jharkhand and Others v. Kamal Prasad and Others (2014) 7 SCC 223*** where, after extracting para 53 of Umadevi's judgment, it has been held thus:

"40. We have heard the factual and legal contentions urged by the learned Senior Counsel for both the parties and carefully examined the findings and reasons recorded in the impugned judgment with reference to the evidence produced on behalf of the respondent employees. The evidence on record produced by the respondent employees would clearly go to show that they have been rendering services in the posts as ad hoc Engineers since 1987 and have been discharging their services as permanent employees with the appellants. Additional 200 posts were created thereafter by the State Government of Bihar. However, the respondents continued in their services as ad hoc employees without any disciplinary proceedings against them which prove that they have been discharging services to their employers to their satisfaction.

41. *The learned Senior Counsel on behalf of the appellants have failed to show as to how the interim orders upon which he placed strong reliance are extended to the respondents which is not forthcoming except placing reliance upon the decision of this Court in Amrit Lal Berry, without producing any record on behalf of both the State Governments of Bihar and Jharkhand to substantiate the contention that the interim orders obtained by the similarly placed employees in the writ petitions referred to supra were extended to the respondent employees to maintain parity though they have not obtained such interim orders from the High Court. Therefore, the learned Senior Counsel has failed to prove that the respondents have failed to render continuous services to the appellants at least for ten years without the intervention of the orders of the court, the findings of fact recorded by the Division bench of the High Court is based on record, hence the same cannot be termed as erroneous in law. In view of the categorical finding of fact on the relevant contentious issue that the respondent employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in Umadevi (3) case at para 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent employees are entitled for the relief, the same cannot be interfered with by this Court.*

42. *In fact, the Division Bench of the High Court by regularising the respondent employees vide its impugned order has upheld the constitutional principles laid down by this Court in Olga Tellis, the relevant para of which reads as under: (SCC pp. 571-72, para 32)*

“32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if

they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely,

eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Barsky that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. 'Life', as observed by Field, J. in Munn v. Illinois, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P.

43. *In view of the foregoing reasons which we have assigned in this judgment and in upholding the findings and reasons recorded by the Division Bench of the High Court in the impugned judgment, it cannot be said that the findings and reasons recorded by the High Court in arriving at the conclusions on the contentious issues that arose for its consideration can be termed either as erroneous or error in law.*

44. *In view of the foregoing reasons, we are inclined to conclude that the High Court was legally correct in extending the benefits of Umadevi (3) case to the respondent employees. Therefore, we answer Points (i) and (ii) in favour of the respondent employees."*

17. Bearing in mind the above principles, the facts of these cases need to be seen. Appellants in these cases are persons who satisfied the eligibility that was prescribed by the University in the notifications that was issued by it on 5.9.1997. In the selection process that ensued rank list was published and in the rank list, the appellants were included at

Sl.No.25 and 41 respectively. However, the University appointed only 22 candidates from this rank list, and therefore the appellants did not get an opportunity for regular employment. In spite of the regular appointments made from the ranked list, the University still had vacant posts and University required the services of teaching staff. It was therefore that contract appointments were made by the University and contract period was extended from time to time. This arrangement continued till by orders dated 1.3.2011 and 20.4.2011, the services of the appellants in these cases were regularised by University. Nobody has a case that any order passed by any Court or Tribunal enabled the appellants to continue in service.

18. This, therefore, means that the appointments made by the University, at best, were only irregular appointments and the contract appointees continued in service for about 20 years as of now and they are now about 53 years of age. Even today University has no case that their services are unsatisfactory. In such a situation, we are of the view that the appellants were fully entitled to the benefit of the exception carved out by the Supreme Court in paragraph 53 of the judgment in

Umadevi's case. If that be so, they were entitled to be regularised in service.

19. It is true that the appellant in WA.1475/13 was regularised pursuant to the directions in the Petitions Committee in the Kerala Legislature and the learned Single Judge held that the Petitions Committee did not have power to issue such any directions. To contend that it was within the power of the Petitions Committee to issue such a direction, learned counsel for the appellant referred us to the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly and in particular, Clause 224 thereof. Clause 224 deals with the functions of the Committee on Petitions and it provides that the manner in which the Committee should deal with the petitions. However, the proviso to the Rule excludes certain category of petitions and among which Clause 4 is representations on matters which fall within the cognizance of a court of law having jurisdiction in any part of India or a court of enquiry or a statutory Tribunal or authority or a quasi-judicial body or a commission.

20. It cannot be disputed that if a person has a claim for regularisation of his services, remedy lay before this Court or other appropriate Court or Tribunal and if that be so, such an issue stood excluded from the jurisdiction of the Petitions Committee by virtue of aforesaid provisions referred above. We were also referred to the Division Bench judgment of this Court in WA.233/07 and connected cases where the direction issued by the Petitions Committee preventing the Sub Registrar from registering documents was held to be beyond the powers of the Petitions Committee. Therefore, we approve the view of the learned Single Judge that Petitions Committee in the Kerala Legislative Assembly could not have directed the regularisation of services of the appellant in WA.1475/13.

21. But, however, irrespective of the above finding, since the appellant in WA.1475/13 is eligible to the benefit of paragraph 53 of Umadevi's case, this conclusion of ours cannot have any impact on the relief that he is entitled.

22. It is true that the counsel for the first respondent contended that appointments made otherwise than in accordance with the

statutory provisions and the provisions of the University Statutes, are illegal and that therefore no rights were conferred on the appointees. In so far as this contention of the learned counsel is concerned, as we have already stated the rank list was prepared and finalised strictly in compliance with the statutory provisions. It is thereafter the contract appointments were made from the rank list. Therefore, such appointments cannot be a total illegal one, but at best were irregular as contemplated in paragraph 15 of *Uma Devi's judgment (supra)*.

23. Learned counsel for the first respondent submits that this is a case of misfeasance in public office and the learned counsel relied on the Apex Court decisions in ***Common Cause, A Registered Society v. Union of India and Others (1996) 6 SCC 530*** and ***Shivsagar Tiwari v. Union of India and Others (1996) 6 SCC 558***. In so far as these cases are concerned, the alleged tort was committed long in the past and therefore tort-feasors are not before us nor are they identified by any one. There is no case that the present Syndicate or Vice Chancellor has committed any such tort. In such a situation, we are not in a position to

apply the principles laid down by the Apex Court in the decisions cited above.

24. Therefore, we uphold the impugned orders, which are dated 1.3.2011 in the case of the appellant in W.A.1475/13 and 20.4.2011 in the case of the appellant in W.A.1449/13. The judgment of the learned Single Judge is set aside.

Appeals are allowed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

jes