

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
W.P.No.27706 of 2011

ORDER:

In the present writ petition, the challenge is to the action of the respondent University in not absorbing the petitioners into the cadre posts of faculty in the category of Assistant Professors.

2. In response to a Circular No.S.II(4)/010/2000-2001 dated 29.11.2000 issued by the respondent university, inviting applications for the posts of Teachers in the Department of Theatre Arts, petitioners herein made applications and they were called for interview on 04.12.2000. Thereafter, the respondent University appointed the petitioners as teaching staff on consolidated pay of Rs.6,000/- per month in the Department of Theatre Arts. After continuing the petitioners in the said capacity for five years, the respondent university again conducted interviews in the year 2005 for the posts of Teacher Associates in the Department of Theatre Arts and once again the petitioners were selected for the said posts with the salary of Rs.10,000/- per month and the petitioners have been in continuous service since 2000 till now and now the petitioners are being paid @ Rs.12,000/- per month. According to the petitioners, they made representations dated 24.02.2010 and 05.08.2011, requesting the respondent University to regularize their services and to re-designate their cadre from Teacher Associate to that of Associate Professors against the vacant budget posts available in the Department. Complaining in action in regularizing the service of the petitioners and non-payment of pay on par with the regular Assistant Professors, the present writ petition came to be filed.

3. This Court issued *Rule Nisi* on 11.10.2011 vide orders dated 03.07.2012 in WPMP.No.25669 of 2012 directing the respondents to continue the petitioners in service in the Department of Theatre Arts.

4. The respondent herein filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

5. Heard Sri D.V.Seetha Rama Murthy, learned Senior Counsel representing Sri N.Ashwani Kumar, learned counsel for the petitioners on record and Sri K.Jyothi Prasad, learned Standing counsel for the respondent University apart from perusing the material available before this Court.

6. Submissions/contentions of Sri D.V.Seetha Rama Murthy, learned Senior Counsel appearing for the petitioners.

6.1. Petitioners were appointed as Teaching Staff under the teaching arrangements made in the Department of Theatre Arts on a consolidated pay of Rs.6,000/- per month against the vacant budget posts through a Committee constituted by Vice-Chancellor after the process of interview.

6.2. Respondent authorities are issuing orders every year, confirming the places of the petitioners as Teaching Associates in the Department and it is an undisputed fact that the respondent acknowledged the existence of vacant posts owing to superannuation.

6.3. In 2005 petitioners were selected as Teaching Associates after a through selection process and interview by constituting a committee.

6.4. Petitioners were nominated as Members of Board of Studies in the Theatre Arts for a period of three years in 2009 and re-nominated for the next tenure in the capacity of regular internal members and not as outside members and the same indicates that the respondent university recognized the petitioners as regular and permanent and their duties also as permanent.

6.5. Petitioners are Doctorates in Theatre Arts and had research works published to their credit and have the qualification more than that is prescribed by the University Grants Commission for the posts of Assistant/Associate Professors.

6.6. The Executive Council of the respondent University also approved the minutes of the nominated Selection Committee.

Learned Senior Counsel in support of his submissions and

contentions takes the support of the Judgments of the Hon'ble Apex Court in the **STATE OF KARNATAKA AND OTHERS v. M.L. KESARI AND OTHERS**^[1], **AMARKANT RAI v. STATE OF BIHAR AND OTHERS**^[2] and **NIHAL SINGH AND OTHERS v. STATE OF PUNJAB AND OTHERS**^[3].

7. Submissions/Contentions of Sri K.Jyothi Prasad, learned Standing Counsel for the respondent University:

7.1. Petitioners were appointed as Teaching Associates on consolidated pay and purely on temporary basis under a teaching arrangement in the Department of Theatre of Arts due to lack of sufficient permanent faculty in the department.

7.2. The services of the petitioners are being utilized and renewed every academic year by issuing proceedings and remuneration is being enhanced from time to time and their services are being utilized for teaching on consolidated pay, but they are not given any designation, except terming them as Teaching Associates under teaching arrangements.

7.3. Vice-Chancellor constituted a Committee consisting of Rector, Registrar, Dean of Academic Affairs and Programme Coordinator to identify the eligible candidates to teach the master level classes to solve the problem of teaching workload in the department and the petitioners were selected on temporary basis with consolidated pay under teaching arrangements and the Committee so constituted is not a duly constituted committee within the meaning of A.P. Universities Act.

7.4. Petitioners are not the Members of the Board of Studies, but are only special invitees and there is no scheme to absorb or regularize Teaching Assistants/part-

time lecturers.

8. In the above back ground, now the issue that emerges for consideration of this Court is:

“Whether the petitioners are entitled to any relief from this Court under Article 226 of the Constitution of India?

9. The information available before this Court amply discloses that there is no controversy with regard to the reality that the petitioners have been working in the respondent university since the year 2000 and teaching the students, whatever be the designation, the petitioners are being paid consolidated amounts and the same are being enhanced from time to time and the petitioners 1 and 2 belong to the Schedule Caste and the third petitioner belongs to Backward Class. There is also no controversy with regard to the reality that the posts against which the petitioners are working are regular vacant posts fallen vacant because of superannuation. It is also not in dispute that the respondent university constituted a committee and after the process the selection Committee selected the petitioners and appointed them. It is also not disputed that the same was approved by the Executive Council of the respondent university. In this context, it may appropriate to refer to the Judgments rendered by the Hon’ble Apex court.

10. In the case of **STATE OF KARNATAKA AND OTHERS** (*supra* 1), the Hon’ble Apex Court at paragraphs 4 to 7, held as under:

“4. When the matter came up for hearing on 10.3.2006, the matter was adjourned to await the decision of the Constitution Bench in CA Nos. 3595-3612/1999 State of Karnataka v. Umadevi. However, subsequently notice was directed to be issued both on the application for condonation of delay for 361 days' in filing the SLP as also on the special leave petition.

5. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in [MANU/SC/1918/2006](#) : 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article [226](#) of the Constitution should not

ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates.

6. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles [14](#) and [16](#) of the Constitution. This Court however made one exception to the above position and the same is extracted below:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [MANU/SC/0232/1966](#): 1967 (1) SCR 128; R.N. Nanjundappa [MANU/SC/0680/1971](#): 1972 (1) SCC 409 and B.N. Nagarajan [MANU/SC/0450/1979](#) : 1979 (4) SCC 507 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 the 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 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....

7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its

instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006)."

12. In the case of **AMARKANT RAI** (*supra* 2), the Hon'ble Apex Court at paragraphs 11, 12, 14 and 16, held as under:

"11. As noticed earlier, the case of the Appellant was referred to Three Members Committee and Three Members Committee rejected the claim of the Appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in Umadevi's case (*supra*). In Umadevi's case, even though this Court has held that the appointments made against temporary or ad-hoc are not to be regularized, in para 53 of the judgment, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken one time measure to regularize them. In para 53, the Court observed as under:

53. 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 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 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 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.

The objective behind the exception carved out in this case was prohibiting regularization of such appointments, appointed persons whose appointments is irregular but not illegal, ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years.

12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka and Ors. v. M.L. Kesari and Ors. [MANU/SC/0557/2010](#) : (2010) 9 SCC 247, this Court held as under:

7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi [MANU/SC/1918/2006](#) : (2006) 4 SCC 1, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should

not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

14. In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the Respondents that the Appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The Appellant although initially working against unsanctioned post, the Appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010.

16. The impugned order of the High Court in LPA No. 1312 of 2012 dated 20.02.2013 is set aside and this appeal is allowed. The authorities are directed to notionally regularize the services of the Appellant retrospectively w.e.f. 03.01.2002, or the date on which the post became vacant whichever is later and without monetary benefit for the above period. However, the Appellant shall be entitled to monetary benefits from 01.01.2010. The period from 03.01.2002 shall be taken for continuity of service and pensionary benefits.”

13. In the case of **NIHAL SINGH AND OTHERS** (*supra* 3), the Hon'ble Apex Court at paragraphs 19, 21 and 24, held as follows:

“19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No. 209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording

that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the Appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under Section [17](#) of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the Appellants.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the Appellants for decades to say that there are no sanctioned posts to absorb the Appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

24. Even going by the principles laid down in ***Umadevi's case***, we are of the opinion that the State of Punjab cannot be heard to say that the Appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.”

14. As the respondent University appointed all the petitioners as long back as in the year 2000 and the petitioners have been continuing as such till date without there being any break, this Court finds absolutely no justification on the part of the respondent/University authorities in not absorbing the petitioners against the regular vacancies despite the availability. Having regard to the principles laid down in the above referred judgments, in the considered opinion of this Court, the said action on the part of the respondent authorities is a patent transgression of not only the fundamental rights guaranteed to the petitioners under Chapter III of the Constitution of India and in the definite opinion of this Court the same also tantamounts to violation of human rights. Keeping

the employees in suspended animation for decades together and extracting the work on par with the regular employees is highly discriminatory, and if it is tested on the touch stone of Article 14 of the Constitution of India, the same cannot be sustained. The reasons assigned by the respondent University in the counter affidavit do not stand for the judicial scrutiny.

15. For the aforesaid reasons, writ petition is allowed, directing the respondent University to absorb the petitioners in the regular vacancies, within a period of six (6) months from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:07.01.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.27706 of 2011

Dated: 07th January, 2016

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[\[1\]](#) (2010) 9 SCC 247

[\[2\]](#) (2015) 8 SCC 265

[\[3\]](#) (2013) 14 SCC 65