

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**WRIT PETITION No. 22971 OF 2014**

**ORDER:**

This writ petition is filed by the petitioner, who was working in the 5<sup>th</sup> respondent College on temporary basis, questioning the in action of the 4<sup>th</sup> respondent for not regularizing his service in the 5<sup>th</sup> respondent College, even after the sanction of the aided post in the 5<sup>th</sup> respondent College vide Lr.Rc. No.107/A2/2012 dated 28.10.2013 issued by the 3<sup>rd</sup> respondent, and declare the same as arbitrary, illegal etc.

The petitioner belongs to a Scheduled Caste (SC), joined as an Unaided Attender in the 5<sup>th</sup> respondent College on 03.07.1996 and discharging his duties to the satisfaction of his superiors on payment of Rs.4,200/-. The petitioner made a request to the 5<sup>th</sup> respondent and other respondents for regularization of his services, thereupon the 3<sup>rd</sup> respondent addressed a letter in Rc.No.107/A2/2012 dated 28.10.2013 informing that there are certain vacancies available with the 5<sup>th</sup> respondent College to be filled by the Management. The Commissioner of Education-2<sup>nd</sup> respondent has responded and issued Memo No.391/Admn.I-2/2013 dated 06.03.2014 inviting certain remarks from the 5<sup>th</sup> respondent and called for the backlog vacancies position to be filled in accordance with the roster points.

The information called for by the 3<sup>rd</sup> respondent vide letter dated 28.10.2013, the 5<sup>th</sup> respondent furnished information by letter dated 12.12.2013 for consideration of Boy/ Peon against the roster point No.2 of Scheduled Community (Women) as indicated by the office in their proceedings. Despite availability of aided post, the services of the petitioner were not regularized and therefore sought the above said relief.

Learned counsel for the petitioner, during hearing, furnished a copy of appointment letter dated 28.02.1996, while reiterating the contentions urged in the writ petition, drawn attention of this Court to the notification in Rc.No.107/A2/2012, dated 28.10.2013 wherein the 5<sup>th</sup> respondent furnished details to the 3<sup>rd</sup> respondent etc. However, the petitioner having served 19 years continuously in the 5<sup>th</sup> respondent college is entitled for regularization of his services in the aided post on permanent basis, and prayed to allow the writ petition.

Whereas, learned Government Pleader for School Education (A.P.) would contend that, as per order dated 28.02.1996, the petitioner was appointed purely on temporary basis, on a consolidated pay of Rs.700/- per month, and thereby not entitled to claim regularization of his services without facing any selection process and prayed for dismissal of the writ petition.

The petitioner, undisputedly, appointed as Peon on payment of Rs.700/- per month, purely on temporary basis with a condition that his services can be terminated without any prior notice and without assigning any reason. Therefore, the petitioner was a temporary employee and worked for a long time i.e. for 19 years. But it is settled law that a temporary employee or ad hoc employee cannot claim any right to become permanent without facing selection process. This issue is no more *res integra* in view of the Judgment of the Apex Court reported in **Karnataka State Private College Stop-Gap Lecturers Association etc. v. State of Karnataka and Others**<sup>[1]</sup>, wherein it was held as follows:

...A temporary or ad hoc employee may not have a claim to become permanent without facing selection or being absorbed in accordance with rules but no discrimination can be made for same job on basis of method of recruitment. Such injustice is abhorrent to the constitutional scheme.”

Relying on the **Karnataka State Private College Stop-Gap Lectures Association** (supra), the Apex Court held in **Surendra**

**Prasad Tewari v. Uttar Pradesh Rajya Krishi Utpadan Mandi**

**Parishad and Others**<sup>[2]</sup> as follows:

“In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme.”

Here the petitioner was appointed purely on temporary basis on consolidated payment of Rs.700/- per month and thereby his status is temporary and not entitled to claim any right to regularize his services. This issue was no more *res integra* in view of the Constitutional Bench judgment of the Apex Court in the case of **Secretary, State of Karnataka and Others v. Umadevi and others**<sup>[3]</sup> which comprehensively dealt with the identical issue involved in this case and observed in paragraph 47 as follows:

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission....”

It is further held that,

“the Courts cannot encourage appointments which are made outside the constitutional scheme and it is improper for the courts to give any direction for regularization of the person who has not been appointed by following the procedure laid down under Articles 14, 16 and 309 of the Constitution.”

In view of the principles laid down in the above judgment this Court cannot issue any direction as it is contrary to the law declared by the Apex Court in **Uma devi's** case and other Judgments referred to supra. However, the petitioner sought liberty to approach appropriate authorities for redressal of his grievance.

With the above direction, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

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**M. SATYANARAYANA MURTHY, J**

Date: 18.04.2016

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[\[1\]](#) MANU/SC/0479/1992

[\[2\]](#) 2006(1) ADJ 222

[\[3\]](#) (2006) IILLJ 722 SC