

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.20726 of 2010

Date :29.12.2016

Between :

T.Yadagiri S/o Venkataiah
O/o Divisional Manager of Civil Supplies,
Warangal and another

Petitioner

And

The District Manager
A.P.S.Civil Supplies Corporation Ltd
Warangal and others

Respondents

The Court made the following:



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ORAL ORDER:

First petitioner was appointed as watchman/sweeper on a meager wage of Rs.60/- per month basis in August, 1991 and from 1998 he is working on full time basis. Since, August, 1991 he continue to work without break. Father of second petitioner was appointed as daily wage employee in the year 1982 and having worked for considerable time, he died at a young age. As a consequence to the death of the father, second petitioner was appointed as watchman on daily wage basis on 22.11.1993. Petitioners claim to be continuously working as on today. According to petitioners, their appointments have to be treated as regular and continuous on account of the fact that they have been working for a long time. The services rendered by petitioners are perennial in nature. Instead of regularizing their services and granting all consequential benefits, they have been continued on daily wage basis without any other service benefit and they have also been denied the wages as applicable to regular employees.

2. Legislature of erstwhile State of A.P., enacted Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 1994) which prohibits appointment to public service or service to its corporations/authorities dehorse regular procedure of recruitment. However, by subsequent amendment to the Act, scheme of regularization was given statutory backing. In terms of the scheme, a person who has completed 5 years of service as on 25.11.1993 is entitled to consideration for regularization. It appears there was no review against the further

continuation of petitioners as per Act 2 of 1994 and their services are continued.

3. In **Secretary, State of Karnataka and Others Vs. Umadevi (3)**¹, Supreme Court while deprecating the practice of back-door appointments, appointments on daily wage basis and subsequent regularization, directed formulation of scheme for regularization, if services of persons are utilized uninterruptedly for more than 10 years. Supreme Court held:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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 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.”

4. Considering the scope of decision in **Umadevi**, in **State of Karnataka and others Vs. M.L. Kesari and others**² Supreme Court held:

¹ (2006) 4 SCC 1

² (2010) 9 SCC 247

“11. The object behind the said direction in para 53 of *Umadevi (3)* [(2006) 4 SCC 1] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi (3)* [(2006) 4 SCC 1] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi (3)* [(2006) 4 SCC 1]] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi (3)* [(2006) 4 SCC 1] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi (3)* [(2006) 4 SCC 1] as a one-time measure.”

5. In **Amarkant Rai v. State of Bihar**³, Supreme Court held that “The objective behind the exception carved out in this case was to permit regularisation of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years”. In that case, employee was working for 29 years. This decision approves earlier view expressed in **M.L.Kesari** (supra) extracted above.

6. In **State of Jharkhand v. Kamal Prasad**⁴, similar view was taken. Supreme Court held:

“41.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 [*State of Karnataka v. Umadevi (3)*,

³ (2015) 8 SCC 265

⁴ (2014) 7 SCC 223

(2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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.”

7. In the instant case also petitioners have been working for more than 20 years. The fact that petitioners have been working for long time, it is deemed that the nature of work undertaken by them is regular and the post occupied by them is regular and is required under regular establishment of the respondent corporation. Petitioners have been working continuously without intervention of the Court. It is not the case of respondent corporation that petitioners are not qualified to hold the posts regularly. They have completed 10 years of service by 10.4.2006.

8. Having regard to the directions issued by Supreme Court in **Umadevi**, the respondents are directed to consider the claim of the petitioners for regularisation, if necessary by examining the requirement to formulate a scheme as directed by the Supreme Court in **Umadevi**. Such exercise shall be completed and decision to this extent shall be taken as expeditiously as possible, preferably within a period of two months from the date of receipt of copy of this order.

Accordingly, the writ petition is disposed of. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P.NAVEEN RAO,J

DATE: 29.12.2016
TVK

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