

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 2608 of 2009

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in not regularizing the services of petitioners in the cadre of G.Helper (Presently working) as illegal, arbitrary, unconstitutional and contrary to law; and consequently direct the respondents to regularize their services from their date of initial appointment and pay all the arrears, revised pay scales and other consequential benefits permissible under law.

2) The averments in the affidavit filed in support of the writ petition would show that on a requisition given by the Tourist Information Officer, Tirupathi, to the Employment Officer, to sponsor candidates for filling up the post of part-time scavenger, the name of the first petitioner was sponsored. After following the procedure, the first petitioner was selected and appointed as part-time scavenger vide proceedings No.TG/ 51/ 80, dated 01.05.1993 and he was posted at Tourist Rest House, Kailasanathakona, on a consolidated pay of Rs.250/- per month. The second petitioner herein was appointed as a part-time sweeper-cum-watchman on 10.04.1992 by following the due procedure. The name of the second petitioner was also sponsored by the Employment Exchange on 04.03.1992. Thereafter, both the petitioners were transferred from place to place.

Consolidated pay of Rs.250/- was increased and the last drawn pay was about Rs.4,500/- per month. While things stood thus, all the rest houses were handed over to Andhra Pradesh Tourism Development Corporation along with the staff vide letter dated 06.11.2000, with a direction to report before the Divisional Manager, Andhra Pradesh Tourism Development Corporation Limited, Tirupati. In the said proceedings it was mentioned that the remuneration would be Rs.2,550/- to Rs.4,550/- per month. But it is urged that the petitioners were never paid that amount and the third respondent has not taken any steps for regularization of their services till date. However, the services of the persons, who were appointed along with the petitioners, were regularized when they approached this Court. Hence, the present writ petition.

3) The main argument of the learned counsel for the petitioners is that since the appointment of the petitioners was through a regular process, the authorities ought to have regularized their services after completion of five years of service in view of G.O.Ms.No.212, dated 25.11.1993. He also relies upon the orders passed by this Court in W.P.No.23699 of 1995 to show that the services of the persons, who were on the same footing as that of the petitioners, were regularized pursuant to the said order.

4) A counter came to be filed by the Joint Manager, A.P.Tourism Development Corporation, Hyderabad, disputing the

averments made in the affidavit. It is stated that insofar as the regularization of the services are concerned, the department of tourism has to initiate the same since the petitioners were appointed by the said department. Insofar as the non-payment of wages is concerned, it is stated in the counter that due to budgetary problems they were not paid the requisite wages. Hence, the Corporation took a decision to take these petitioners on contract basis as there are no regular appointments vide proceedings dated 06.10.2001.

5) It is to be noted here that the petitioners herein were appointed in the year 1993 and 1992 respectively by following the procedure established under law. Their names were sponsored by the Employment Exchange and after conducting interviews, they were selected for their respective post. An agreement was also entered into between the A.P.Tourism Development Corporation and the petitioners, with regard to terms of the employment. It is to be noted here that in the year 1995, some of the employees, whose position was identical to the petitioners, approached this Court. After referring to the judgments of the Apex Court, this Court in W.P.No.23699 of 1995 passed the following order:

“The services of the petitioners shall be regularized with effect from the date or dates they complete five years of continuous service and they shall be paid wages not less than the minimum wage on par with the salaries paid to the permanent employees of their category.”

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

¹ (2006) 4 SCC 1

permanent, those not duly appointed as per the constitutional scheme.”

7) In *State of Karnataka and others v. M.L.Kesari and others*² the Apex Court held as under:

“11. The object behind the said direction in para 53 of Umadevi case (s supra) is two- fold. 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 was rendered, are considered for regularization 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 for long periods and then periodically regularize 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) 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 regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.”

8) Similarly in *Amkant Rai v. State of Bihar and others*³ the Apex Court held that “the objective behind the exception

² (2010) 9 SCC 247

³ (2015) 8 SCC 265

carved out in this case was to permit regularization 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”.

9) After considering all the above judgments, a learned Single Judge of this Court in W.P.No.20726 of 2010 held as under:

“Having regard to the directions issued by the Supreme Court in Umadevi case (1 supra), the respondents are directed to consider the claim of the petitioners for regularization, if necessary by examining the requirement to formulate a scheme as directed by the Supreme Court in Umadevi case (1 supra). 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.”

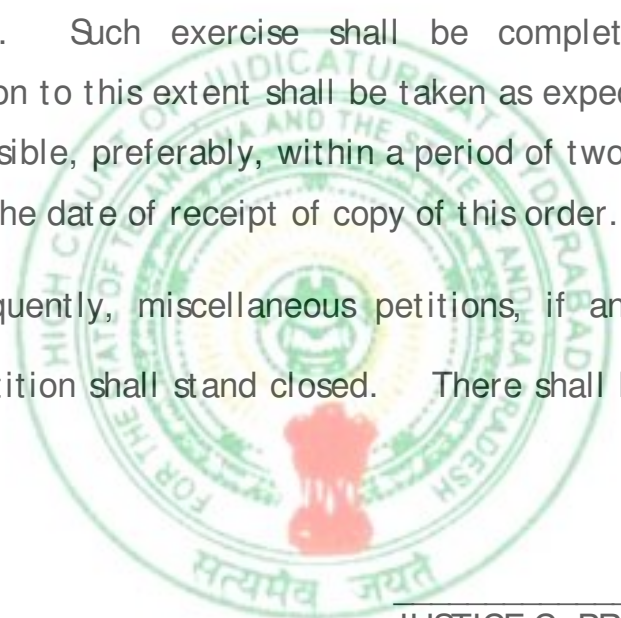
10) In the instant case, the petitioners were appointed after following the due procedure. As stated earlier, their names were sponsored by the Employment Exchange and thereafter the petitioners were appointed after conducting an interview to the vacant posts in the said department. The counter does not anywhere indicate that the appointment of the petitioners was irregular. Therefore, the case of the petitioners stand on much better footing than the cases of irregular appointments, which were directed to be regularized, in Umadevi case (1 supra). Admittedly, the petitioners have been in service for more than ten years and it is not the case of the respondents that their services were terminated and then recruited. On the other hand, the

petitioners were transferred from place to place and their salary was also enhanced from time to time.

11) In view of the above discussion, the writ petition is disposed of on the same terms and conditions as ordered by this Court in W.P.No.20726 of 2010, which is as under:

“The respondents are directed to consider the claim of the petitioners for regularization, if necessary by examining the requirement to formulate a scheme as directed by the Supreme Court in Umadevi case (1 supra). 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.”

12) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.



JUSTICE C. PRAVEEN KUMAR

07.09.2017
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