

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.17814 OF 2011

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in trying to terminate the services of the petitioners, who were appointed as Mentors subsequent to their selection through five stage regular selection process, by replacing them with fresh contract candidates; in not calling for regular selections to permanent vacancies and in not considering the petitioners' cases for regularization, as illegal and arbitrary, and consequently, to direct the respondents to continue the petitioners as Mentors till their cases are considered for regularization.

2. Heard Sri K.R. Prabhakar, learned Counsel for the petitioners and the learned Government Pleader for Higher Education.

3. It has been submitted by the petitioners that all of them are fully eligible and qualified to be appointed as Mentors and they participated in the selection process conducted by the respondent-University for the posts of Mentors during October, 2006, and after being successful in the said selection process, they were recruited as Mentors in the respondent-university. It has been submitted by the petitioners that at the time of their

appointment, the Chancellor of the University assured that at the end of 10 years of service, their services would be regularized. But contrary to the said assurance, the respondents are taking steps to terminate the services of the petitioners, and in those set of circumstances, the present writ petition is filed for regularization of their services. Further, it has been submitted by the petitioners that on 5.7.2011 while admitting the writ petition, this Court granted interim direction to continue the petitioners in service, and in pursuance of the said interlocutory order, the petitioners are being continued in service.

4. The learned Counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and others Vs. Umadevi and others***¹ wherein the Hon'ble Supreme Court held as under:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (AIR 1967 SC 1071), R.N. NANJUNDAPPA ((1972) 1 SCC 409), and B.N. NAGARAJAN ((1979) 4 SCC 507), and referred to in paragraph 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 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 courts or of tribunals and should further ensure that

¹ (2006) 4 SCC 1

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 regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

The learned Counsel for the petitioners also relied on the judgment of the Hon’ble Supreme Court in **Nihal Singh and others Vs. State of Punjab and others**², wherein it was held as follows:

“We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi’s judgment cannot become a licence for exploitation by the State and its instrumentalities.

For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

We direct the State of Punjab to regularize the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularization, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs.10,000/- to be paid to each of the appellants.”

Relying upon the above judgments, the learned Counsel for the petitioners contended that when the employees have continued to work for ten years or more, the employer should consider their case for regularisation and that the petitioners have put in service for more than one and half decade and therefore, their case deserves to be allowed for regularization.

² (2013) 14 SCC 65

5. The learned Government Pleader for higher education contended that the petitioners were appointed on temporary basis and therefore, they have no right to seek for regularization as a matter of right, and that there are no merits in this writ petition and the writ petition is liable to be dismissed.

6. This Court having considered the rival submissions made by the parties, is of the view that this writ petition can be disposed of directing the respondents to consider the case of the petitioners for regularization in terms of the judgments (cited supra).

7. Accordingly, the Writ Petition is disposed of directing the respondents to consider the case of the petitioners for regularization of their services in terms of the judgments of the Hon'ble Supreme Court (cited supra) and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 5th October, 2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



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05.10.2018

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