

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.23851 OF 2003

ORDER:

1. This Writ Petition is filed seeking to issue a writ of *Mandamus* by directing the respondents to regularize the services of the petitioners with effect from the initial dates of their entry into service, with all consequential and monetary benefits.

2. Heard Sri V.V.L.N. Sarma, learned counsel for the petitioners, and Sri K.G.Krishna Murthy, learned Standing Counsel, appearing for the respondents.

3. It has been contended by learned counsel for the petitioners that the petitioners are working with the 3rd respondent – institute in different capacities; the 1st petitioner is working as Attender (Office Boy) since January, 1992; 2nd petitioner is working as Watchman since July, 1996; 3rd petitioner is working as Sweeper since March, 1998; 4th petitioner is working as Laboratory Helper since January, 1998 and 5th Petitioner is working as Attender (Helper) since September, 2000. Learned counsel further submits that while the petitioners 1, 2, 4 and 5 are working on a consolidated salary at the rate of Rs.76/- per day, the 3rd petitioner is being paid salary at the rate of Rs.550/- per month by the 3rd respondent - institute. Subsequently, the petitioners came to know that the 2nd respondent issued Circular No.6/17/03-NIH (SAO), dated 13.10.2003, to the 3rd respondent to dispense with engaging all workers on daily wage basis and directed to engage the services of persons on contractual basis through reputed contractors on the basis of open advertisement. In reply to the said Circular, the 3rd respondent appears to have written Lr.No.4/2/03-NIH/DRC dt.28.10.2003 reporting requirement of barest minimum labour and stating that after approval, open tender enquiry from

reputed and registered firms would be called for. Thus, pursuant to the directions of the 2nd respondent, the 3rd respondent is actively contemplating to terminate the services of the petitioners by engaging the services of new hands on contractual basis. Challenging the same, the present writ petition is filed.

4. The petitioners further contend that, at the time of admission, this Hon'ble Court was pleased to grant *interim* direction to continue the petitioners in service, if they are in service as on that day, *vide* orders dated 12.11.2003, and by virtue of the said interlocutory orders the petitioners are being continued in their respective services. But, the petitioners further contend that Hon'ble Supreme Court in **Secretary, State of Karnataka and others Vs. Umadevi and others**¹, held as follows at Para No.53, which is 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**¹¹, **R.N.Nanjundappa**¹² and **B.N.Nagarjan**⁸ 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 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 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

¹ (2006) 4 SCC (1)

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.”

5. Learned counsel for the petitioners submits that, in view of the principle laid down by the Apex Court in the decision referred *supra*, the case of the petitioners deserves to be considered for regularization of their services and further contend that appropriate orders be passed directing the respondents to consider regularization of the services of the petitioners.

6. Learned Standing Counsel appearing for the respondents had contended that the petitioners are not entitled for regularization as they were not appointed regularly and, hence, the question of considering their cases for regularization, at this point of time, would not arise.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that this writ petition can be disposed of directing the respondents to consider the case of the petitioners for their regularization in the light of the observations made by the Apex Court in ***Umadevi***¹ and pass appropriate orders within a period of four (4) weeks from the date of receipt of a copy of this order.

8. With the above observations, the writ petition is disposed of. No costs.

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

ABHINAND KUMAR SHAVILI, J

Date: 23.11.2018.
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