

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.34951 OF 2011

ORDER

This writ petition is filed seeking the following relief:

“... to issue a writ or order or direction especially one in the nature of Mandamus (i) declare that petitioner is eligible and entitled for regularization as per the dicta laid down in the case of State of Karnataka vs. M.L.Kesari & (ii) direct the respondents to consider the proposal dated 30.5.1997 sent by the respondent management in accordance with Apex Court decision (iii) consequently, direct the respondent to regularize the petitioner services from date of my eligibility along with all other consequential benefits and to pass such other or further reliefs which the Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Smt M.Shalini, learned counsel appearing for the petitioner and learned Government Pleader for Higher Education appearing for the respondents 1 and 2.

Learned counsel appearing for the petitioner contends that the petitioner was appointed as Chowkidar in the 4th respondent-College on 07.09.1992 and ever since then, he has been discharging his duties without any remarks; that in spite of rendering more than 26 years of service, the respondents are not considering his case for regularization. In support of her contention, she placed reliance on the Judgment of the Apex

Court in *State of Karnataka Vs. U.Uma Devi*¹, wherein it was observed as under:

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

Learned Government Pleader appearing for the respondents submits that the petitioner is not entitled for regularization as per G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22.04.1994. He further submits that the petitioner has completed only one (1) year 79

¹ (2006) 4 SCC 1

days of service as on 25.11.1993, but the said G.O stipulates five years of service.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that ends of justice would be met if a direction is given to the respondents to consider the case of the petitioner for regularization in terms of paragraph No.53 of the judgment of the Apex Court in *State of Karnataka Vs. U.Uma Devi*.

Accordingly, the Writ Petition is disposed of directing the respondents to consider the case of the petitioner for regularization in terms of the judgment of the Apex Court in *State of Karnataka Vs. U.Uma Devi* and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

4th October, 2018
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