

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 15943 of 2002

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 1st respondent in issuing proceedings dated 05.04.2002 and also the failure of the 1st respondent in taking steps in pursuance of the proceedings dated 13.05.2002 issued by the 2nd respondent, as illegal and arbitrary. A consequential direction is also sought to the respondents to absorb the petitioners in any of the vacancies available in the other departments or district offices forthwith.

Heard Sri M. Sudheer Kumar, learned counsel for the petitioners, and learned standing counsel for the respondents and perused the material placed on record.

Briefly, the case of the petitioners is that they were appointed on N.M.R. basis in the work charged establishment of the respondents 1 and 2 on 01.04.1991, 01.09.1991 and 01.02.1992 respectively, and since then, they have been working without any interruption and break in service. On completion of five years of service, they requested the respondents 1 and 2 to regularize their services in terms of G.O.Ms.No.212 dated 22.04.1994. As no action has been taken by the respondents 1 and 2, they filed writ petitions before this Court in W.P.Nos.6810, 7440 and 6142 of 1998 respectively and this Court disposed of them directing the respondents to consider their case for

regularization vide orders dated 12.08.1998, 17.08.1998 and 28.07.1998 respectively. In compliance with the said orders, the 2nd respondent considered their case for regularization, but rejected their request vide order dated 12.11.2011 on the ground that they have not satisfied some conditions of G.O.Ms.No.212, however, requested the 1st respondent to absorb them into last grade service in other departments or district offices, provided that they work as last grade servants. Pursuant thereto, the 1st respondent issued proceedings dated 05.04.2002 in an arbitrary manner stating that they have not completed five years of service as on 25.11.1993 and, as such, they are not eligible for regularization of their services. It is also stated that the clearance of the Finance and Planning Department is to be obtained before issuing orders for regularization and that the matter is required to be referred to the Government, on receipt of a copy of which, the 2nd respondent again addressed a letter dated 13.05.2002 to the 1st respondent requesting to absorb them in any of the vacancies available in the district offices or other department as last grade servants. But, the 1st respondent did not choose to take any further action. Aggrieved thereby, the present writ petition is filed.

The learned counsel for the petitioners submits that even as on today the petitioners are being continued in service and their cases deserve to be considered for regularization in view of the judgment of

the Apex Court in the case of *Secretary, State of Karnataka V.*

*Umadevi(3)*¹ wherein it is 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, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified person 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 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 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 regularization, 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 regularizing or making permanent, those not duly appointed as per the constitutional scheme.”*

In the light of the judgment of the Supreme Court and in view of the fact that the petitioners have rendered more than twenty years of service, the case of the petitioners deserve to be considered for regularization.

Learned standing counsel for the respondents has contended that the petitioners are not eligible for regularization in terms of

¹ (2006) 4 SCC 1

G.O.Ms.No.212, dated 22.04.1994 and G.O.Ms.No.26, dated 06.02.2001, as such, their services have not been regularized.

This Court, having considered the rival contentions of both the parties, is of the opinion that in view of the fact that the petitioners have been continuing in service from 1991 till date, ends of justice would be met if the respondents are directed to consider the case of the petitioners for regularization of their services in terms of judgment of the Supreme Court cited supra, if the petitioners are otherwise found eligible and qualified, and pass appropriate orders, within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

27th August, 2018
cbs

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(disposed of)

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