

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.12857 OF 2004

ORDER

This Writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with G.O.Rt.No.219, dated 20-05-2004 and to quash or set aside the same by holding it as arbitrary and illegal and consequently to direct respondents 1 to 4 to regularize the services of the petitioner in the existing vacancy with all consequential benefits.

Heard Sri K.G.Krishna Murthy, learned counsel appearing for the petitioner and Sri G.Seena Kumar, learned Standing Counsel appearing for the respondents.

It is the case of the petitioner that he was appointed as Night Watchman on 1.4.1992 and later, his services were converted into full time contingent employee. The petitioner studied upto SSC and is fully eligible to be appointed as regular Night Watchman. When the respondents have not considered his case for regularization, he had filed W.P.No.28499 of 1995 before this Court. This Court *vide* order dated 15.07.1996 disposed of the said writ petition, directing the

respondents to consider the case of the petitioner on regular basis provided there is a regular vacancy available in the 4th respondent-organization. In pursuance of the same, the respondents have considered the case of the petitioner and rejected *vide* order dated 19.01.1997 as he did not fulfill the conditions stipulated in G.O.Ms.No.212, dated 22.02.1994 and as there was no regular vacancy in the 4th respondent-organization. Questioning the said rejection order, once again the petitioner has filed another Writ Petition No.13539 of 1997 and the same was disposed of on 10-04-1998, along with other cases, and the operative portion of the order reads as under:

“In the light of the Judgment of the Supreme Court, the services of the petitioners herein should be regularized and a direction is given to that effect and they should fulfil the other conditions laid down in G.O.Ms.No.212, dt 22.04.1994. With this direction, the writ petition is disposed of. No costs.”

Aggrieved by the same, the respondents have filed W.A.No.922 of 1999 and the same was dismissed confirming the order passed in W.P.No.13539 of 1997. Thereafter, the respondents had carried the matter to the Supreme Court by filing Civil Appeal No.5453 of 2002 and the Apex Court also dismissed the same. After dismissal of

the said Civil Appeal, the respondents have once again considered the case of the petitioner and rejected the case *vide* G.O.Rt.No.219, dated 20-05-2004. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that as on today, the petitioner is continuing as Night Watchman and whenever a person is allowed to continue for more than three decades, the respondents cannot contend that there is no sanctioned and regular post and the case of the petitioner deserves to be considered for regularization in view of 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

¹ (2006) 4 SCC 1

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 counsel appearing for the respondents contended that there are no vacancies in the respondent-organization and the petitioner has not fulfilled the conditions stipulated in G.O.Ms.No.212 dated 22.04.1994 and the respondents have rightly rejected his case.

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 allowed and the impugned G.O.Rt.No.219, dated 20-05-2004 issued by the 1st respondent is set aside. The 1st respondent are directed

to consider the case of the petitioner afresh in terms of the decision rendered 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

28th August, 2018
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