

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5889-2018 (O&M)

Date of Decision:-09.03.2018.

Rajinder Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ajay Pal Singh Rehan, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has sought for the following relief:-

“1. an appropriate writ, order of direction, specially in the nature of a writ of mandamus for directing the respondents to grant extension of two years in services of the petitioner (from 12.01.2018 to 11.01.2020) at par with the extension granted to the similarly situated co-employees of the petitioner by the Respondents No.2 to 4 vide Office Order dated 03.11.2017 (Annexure P-8) who were selected along with the petitioner in pursuance of the same Advertisement dated 04.12.2014 (Annexure P-1) and for further directing the respondents to release the salary etc. of the petitioner at par with the similarly placed co-employees of the petitioner from 12.01.2018 onwards.”

Contract appointee has no legal right to hold regular post as held by the Supreme Court in number of cases. In the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others (2006) 4 SCC 1.**

Para 43 reads as under:-

“43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, **to absorb them in permanent service or to allow them to continue.** In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

Following the Uma Devi's decision cited supra Supreme Court in the case of **Upendra Singh Vs. State of Bihar and others** decided on

23.02.2018 in para 8 held as under:-

“8. Law pertaining to regularisation has now been authoritatively determined by a Constitution Bench judgment of this Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1. On the application of law laid down in that case, it is clear that the question of regularisation of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be disputed by the learned counsel for the appellant as well. That is why she continued to plead that the appointment of the appellant was made after following due procedure and in accordance with law. However, that is not borne from the records. Pertinently, order dated August 13, 2003, vide which the appellant was refused regularisation on the aforesaid ground was not even assailed by the appellant at that time. It may be mentioned that in Uma Devi, the Court left a small window opened for those who were working on ad hoc/ daily wage basis for more than ten years, to regularise them as a one-time measure. However, that was also subject to the condition that they should have been appointed in duly sanctioned post. Further, while counting their ten years period, those cases were to be excluded where such persons continued to work under the cover of orders of the courts or the tribunal. The High Court has, in the impugned judgment, discussed these nuances and has also referred to the judgment in Uma Devi and held that the benefit of one-time measure suggested in that case could not be extended to the appellant because of the following reasons:

“The Appellants clearly fall in the exception noticed in paragraph-53 of Umadevi (supra) as their claims were sub judice on the date the pronouncement of the Constitution Bench was made in view of pendency of C.W.J.C. No. 12235 of 2005

disposed subsequently on 29.08.2006. Such litigious continuation in employment stands excluded from the directions of Umadevi. The Appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their initial appointment by the Managing Committee was in consonance with Article 14 of the Constitution of India by open advertisement and competitive merit selection. On account of various interpretations by more than one Bench of M.L. Kesari (supra) reference was made to the Full Bench. We have already noticed from the order refusing regularization dated 13.08.2003 that the appointment of the Appellants on daily wage was not in consonance with the law. The conclusion in Ram Sewak Yadav (supra) at paragraph 43 is as follows:

“43 (A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc, and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and

he person must have continued in service for over ten years without intervention of any court orders.”

In view of the above decisions, case of the petitioner is premature.

Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

March 09, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.