

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.06.2019

Delivered on: 18.07.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.19311 of 2015

1. D.Rajendran

2. S.Dhinesh Kumar @ S.Johnson ..Petitioners

Versus

***The Asset Manager,**

Oil & Natural Gas Corporation Ltd.,
Southern Region, Nearavey Complex,
Karaikkal-609604.

...Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondent to regularize the petitioners' services from the date they have completed 240 days of service as held by the Hon'ble Supreme Court in SLP No.5532 of 2012 dated 17.4.2015 with all benefits as applicable to the regular workman.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.Vijayan for
M/s.King & Patridge

ORDER

This Writ Petition has been filed by the petitioners, praying for the issuance of Writ of Mandamus, to direct the respondent to regularize the petitioners' services from the date when they have completed 240 days of service as per the dictum of the Hon'ble Supreme Court in SLP No.5532 of 2012 dated 17.4.2015 with all benefits as applicable to the regular workman.

2. The petitioners herein are working as Car Drivers in the respondent Corporation. They have been employed as contingent staff since 1988 and paid consolidated wages which were

increased from time to time. At the time of filing the Writ Petition, they were paid Rs.15,860/- plus allowance, totalling about Rs.18,500/- per month and they were paid directly by the respondent organization.

3. In 1994, the petitioners raised an industrial dispute before the Assistant Commissioner of Labour, seeking regularization of their service. However, the dispute came to be closed before the Assistant Commissioner on the basis of understanding that the matter would be discussed and the grievance of the petitioners would be settled. However, since nothing was forthcoming in favour of the petitioners, the petitioners were constrained to approach this Court in W.P.No.11777 and 11778 of 1994. This Court, vide order dated 2.11.2000 disposed of the writ petitions, directing the respondent to consider the claim of the petitioners for regularization of their service. However, despite the direction of this Court, the grievance of the petitioners was not addressed by the respondent.

4. While so, similarly placed employees who were working as contingent staff, raised an industrial dispute in I.D.No.66 of 1991 seeking for regularization of their services. The Industrial Tribunal, on completion of the proceedings, passed an award, directing the respondents to regularize the services of the contingent employees who were parties in the dispute. A Writ Petition was filed in W.P.No.1846 of 2000 against the award by the Management and the same was dismissed. On 26.05.1999, a Writ Appeal was filed in W.A.No.1006 of 2011 and the same was also dismissed by this Court on 11.8.2011. Against the order passed in Writ Appeal, an SLP 5532 of 2012 was filed before the Hon'ble Supreme Court and the same also came to be dismissed on 17.4.2015. While dismissing the SLP, the Hon'ble Supreme Court directed as follows:

"The Corporation is directed to comply with terms and conditions of the award passed by the Tribunal and regularize the services of the concerned workmen in their parts and complete back wages, monetary benefits and other consequential benefits payable to the concerned workmen on the basis of the periodical revision of pay scales applicable from the date of their entitlement, namely, by regularizing them in their services after their completion of 240 days of service in a calendar year in the corporation as provided in the Clause 2(ii) of the certified standing orders of the Corporation within eight weeks from the date of receipt of the copy of this judgment."

5. Although these writ petitioners have been in employment from 1988 continuously as contingent workers like that of the workers in the above said ID, they have been treated only as contingent workers without regularization of their service. In view of non-regularization of their services despite their long years of service, the petitioners are before this Court with the prayer as afore mentioned.

6. Shri Balan Haridas, learned counsel appearing for the petitioners would submit that the Standing Orders applicable to the respondent establishment, have clearly provided that if a workman completes 240 days of attendance in a period of 12 consecutive months, his case may be considered for regularization of his service. He would draw the attention of this Court to a particular Clause in support of his contention in para 2 of the Standing Orders, which reads as under:

"Certified Standing Orders for Contingent Employees of the Oil and Natural Gas Commission:

1.

2. (i) Classification of workmen. The contingent employees of the Commission shall hereafter be classified as:

(a) Temporary and

(b) Casual.

(ii) A workman who has been on the roll of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman, who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by the Commission may be considered for conversion as regular employee.

(iii) A workman who is neither temporary nor regular shall be considered as casual workman."

7. According to the learned counsel, the factum that the petitioners have been in employment for 27 years and also the factum that they were contingent staff is not in dispute and that being the case, the benefit of the Award of the Industrial Tribunal passed in ID No.66 of 1991, ought to have been extended to the petitioners as well. In fact, the learned counsel for the petitioners would submit that a proposal was also mooted way back in 1992 by the HR Manager, recommending for absorption of these petitioners on the ground that they were also similarly placed as that of the employees who succeeded before the Industrial Tribunal and the Award of the Industrial Tribunal has been confirmed by the Hon'ble Supreme Court. The learned counsel would also draw the attention of this Court to Clause 12(3) of the Settlement entered into between the

Management and the Union wherein, it was agreed to engage these petitioners as Drivers on contingent basis with effect from 1.7.1994 and subsequent to the agreement, these petitioners were also paid bonus.

8. The learned counsel would further draw the attention of this Court to the order, dated 29.03.2016 in Civil Appeal No.3727 of 2015 passed by the Hon'ble Supreme Court wherein, originally an employee was not included in the list of workmen before the Industrial Tribunal, but the workman had directly approached the Hon'ble Supreme Court and the Supreme Court directed extension of similar benefit to him also. Therefore, the learned counsel would submit that inaction on the part of the respondent in not regularizing the petitioners is per se illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India. According to him, when similarly placed persons have got the benefit of regularization by virtue of Court orders, it is incumbent upon the respondent Organization to treat the petitioners on par with the similar employees and ought to have extended the same benefits to them as well. The non-grant of benefit of regularization to the petitioners in the circumstances of the case, is opposed to fair play, equity and good conscience.

9. On notice, Mr.Vijayan learned counsel entered appearance and filed a counter affidavit. He would strenuously oppose to grant any relief to the petitioners, stating that these petitioners, first of all, are not qualified in terms of the qualifications prescribed for recruitment to either Class III or Class IV posts. According to the respondent Organization, the qualification for recruitment to Class III and Class IV posts is prescribed as follows:

- "1. Class III: Matric with Driving Licence for Heavy Vehicle and 3 years driving experience of HV - Age limit: 30 years.
2. Class IV: Minimum qualification: Matric - Age limit: 27 years."

10. According to the learned counsel, the petitioners had only passed VII Standard and therefore, they do not possess minimum educational requirement even for Class IV post. Even otherwise, the petitioners are over aged and cannot be considered for regular employment presently. According to the learned counsel, in fact, as early as on 18.10.2002, their request for regularization was rejected, but without challenging the rejection order, which was passed in 2002, the present writ petition has been filed only for the purpose of issuance of Writ of Mandamus, directing the regularization. Therefore, on this ground alone, the Writ Petition is liable to be dismissed.

11. According to the learned counsel, the petitioners herein cannot take advantage of the award passed in ID No.66 of 1991 since that was filed by a different set of employees, namely, Security Guards. As far as the present claim of these petitioners is concerned, he would submit that the Security Guards in Chennai Office directly approached this Court by way of writ petitions, claiming regularization and those writ petitions were dismissed relying on a ratio decidendi laid down by the Hon'ble Supreme Court in Uma Devi case and other decisions. Against which, a batch of Writ Appeals in W.A.Nos.299 of 2010 etc., were filed and the same were also dismissed by a detailed order passed by a Division Bench of this Court vide order dated 20.11.2015. The learned counsel would draw specific attention of this Court to paragraphs 46 and 47 of the order of the Division Bench, which are extracted hereunder:

"46. As pointed out by the Hon'ble Supreme Court in the case of Uma Devi (supra), it would not be just and proper to pass an order in exercise of jurisdiction under Article 226 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Further, it was held that the High Court acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regular and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which was described as 'litigious employment', he would not be entitled to any right to be absorbed or made permanent in service. Thus in our view, the appellants would not be justified in seeking for issuance of a Writ of Mandamus to regularise their services.

47. In the light of the above discussion, we hold that the decision rendered by the Hon'ble Supreme Court in the case of PCLU (supra), was rendered while testing the correctness of the award passed by the Industrial Tribunal as affirmed by this Court. Therefore, the said decision cannot ipso facto apply to these facts of these case and no Writ of Mandamus, could be issued as prayed for by the appellants. Accordingly, Question No.1 framed by us is answered against the appellants. In the light of the conclusion we have arrived at on Question No.1, there would be no necessity to decide the

second question as to whether the decision in the case of PCLU (supra), is obiter and not a binding precedent or to be considered as a judgment on the facts of the case, as we have concluded that the decision was rendered while examining the correctness of an award passed by the Industrial Tribunal which was based on facts and circumstances and evidence placed before the Tribunal and not as one claimed by the appellants herein."

12. He would submit that the above decision would squarely cover the present issue on hand and in which case, no relief could be granted to the petitioners. The reliance placed on the award of the Labour Court and also the ultimate decision of the Hon'ble Supreme Court in respect of that award, cannot be relied upon by these petitioners in view of the above Division Bench order which clearly held that such regularization cannot be ordered or directed. In the said circumstances, the learned counsel would submit that the petitioners are not entitled to regularization as the law declared by the Hon'ble Supreme Court in Uma Devi's case is clearly against them and only because of their continuation in service, it cannot be claimed as a matter of right for regularization as their employment was through back door entry and hence, the Division Bench has rightly discountenanced the claim for regularization made by the employees who directly approached this Court and the above decision can be squarely applied to the factual matrix of the present case as well. As far as the employees who went before the Industrial Tribunal, their case can be distinguished for the simple reason that there was an award by the Industrial Tribunal after adjudication of factual disputes which were ultimately considered by the Hon'ble Supreme Court of India. Therefore, the petitioners cannot place any reliance on the Award of the Labour Court to advance their case any further towards regularization of their services.

13. On the other hand, the learned counsel appearing for the petitioner, Shri Balan Haridas would submit that as far as the decision of the Division Bench of this Court reported in 2015 SCC OnLine Mad 12815 (M.Rajan vs. Oil and Natural Gas Commission, rep. by its Regional Director, Chennai) is concerned, he would draw the attention of this Court to paragraph 41 of the judgment, which is extracted as under:

"41. It is reiterated by the learned counsel appearing for the appellants that all the appellants are entitled to the relief granted to the 240 Security Guards, who were covered by the award of the Industrial Tribunal, which was confirmed by the Hon'ble Supreme Court. We do not propose to convert our jurisdiction into one

that could be exercised by the Tribunal to render a factual finding as regards the similarity of the terms and conditions of employment. This exercise has to be necessarily done by a forum created under the Industrial Disputes Act which remedy those 240 Security Guards availed of at the earliest point of time. They raised an industrial dispute, conciliation having been failed, failure report was considered by the Government and the Government on being satisfied there exists an industrial tribunal made an order of reference to the Tribunal to adjudicate the same."

14. He would submit that the above said decision was rendered in the context of the employees therein, who did not go before the Industrial Adjudicator for having their dispute adjudicated and in that context, the entire decision came to be rendered.

15. The learned counsel also relied upon a decision of the High Court of Hyderabad (For the State of Telangana and the State of Andhra Pradesh) reported in "2018(2) LLN 408 (DB) (Hyd.) (Vasapu L.Kumar vs. ONGC Field Operators' Union and others)", wherein, the learned counsel would draw the attention of this Court to few paragraphs of the order, viz., 12, 16, 25 and 33 to 35, 56, 57, 84 and 85 which are extracted as under:

"12. After recording the historical facts, the learned Judge took note of the contentions of both the parties and formulated the following points for consideration:

(a) Whether the contention of the respondents that the cases involve disputed questions of fact and cannot be entertained under Article 226 of the constitution of India is correct?

(b) Whether the existence of a remedy of seeking a reference through the ONGC Field Operator Union under Section 10 of the Industrial Disputes Act, 1947 is, in the facts and circumstances of these case, a bar for entertainment of these Writ Petitions by this Court?

(c) Whether, in the facts and circumstances of these cases, it can be said that the ONGC is guilty of unfair labour pactice as defined in Section 2(ra) r/w Item 10 of Schedule V of the Act?

(d) Whether, on the facts of these case, the relief of regularization of their services sought by the petitioners in these Writ Petitions can be granted

by this Court exercising power under Article 227 of the Constitution of India?

(e) Whether the decision in Umadevi (11 Supra) is a bar for grant of any relief of regularization to the petitioners?

(f) What is the relief to be granted?

16. On points (d) (e) and (f), the learned Judge took note of the reliance placed by the management on the decision of the Supreme Court in State of Karnataka v. Umadevi and the decision of the Supreme Court in Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmachari Sanghatan , in which Uma Devi was distinguished. The learned Judge also took note of the decision in Nihal Singh v. State of Punjab and others , and concluded that the decision in Petroleum Coal Labour Union pushed of the other decisions to the background. Thereafter the learned Judge went on to point out that at least two High Courts, viz., Delhi and Gujarat has considered identical issues respectively in Krishan Gopal v. ONGC and the Executive Director/Basin Manager Oil and Natural Gas Corporation Ltd. v. ONGC Employees Mazdoor Sabha and held in favour of the workmen. Therefore, the learned Judge thought fit not to follow the decision of the Division Bench of the Madras High Court in M. Rajan v. Oil and Natural Gas Corporation and eventually held that the relief of regularization can be granted by the writ Court and that the decision in Umadevi was not a bar for grant of regularization.

25. The question as to the nature of the duties performed by the respondents and the question as to the existence of posts to which such duties are assigned in the organization, are all questions that may be relevant, from the point of view of service jurisprudence. These questions have no relevance to industrial or labour law jurisprudence. Unfortunately, the dichotomy between service law and labour law is lost sight of many a time and the principles applicable in one branch are applied wrongly in the other.

26 to 32.

33. Yes, it is true that the workmen as well as the Unions repeatedly raised industrial disputes, participated in conciliation proceedings, but came up before this Court invoking the writ jurisdiction. But we do not think that there was anything wrong in the respondents choosing to do so. On the other

hand, we are of the view that the Management left them with no alternative except to invoke the extraordinary jurisdiction of this Court, in the peculiar facts and circumstances. This can be seen from the number of times the workmen raised an industrial dispute and how such industrial disputes came to be resolved. At the cost of repetition, we shall record the following:

(i) The story that unfolds in the batch of cases on hand has its origin, to a strike notice served on the Management by the ONGC Limited Contract Workers Union, Narsapur, on 06-11-1996. Since the expression industrial dispute is defined in Section 2(k) of the Industrial Disputes Act, 1947, to mean any dispute between employers and employees or employers and workmen or workmen and workmen, which is connected either with employment or with non employment or the terms of the employment or with the conditions of labour of any persons, the service of a strike notice by the ONGC Limited Contract Workers Union was construed rightly as giving rise to an industrial dispute within the meaning of the Act. This lead to the initiation of conciliation proceedings and upon failure of the conciliation, the matter appears to have been referred to the Industrial Tribunal, Visakhapatnam, by the Ministry of Labour, Government of India. These facts are stated in para 02 of the Memorandum of Understanding reached between the Management and the Union in the presence of the local Member of Parliament on 11-12-1997.

(ii) Three more strike notices dated 16-7-1997, 03-10-1997 and 20-10-1997 were served by the Union, forcing the Assistant Commissioner of Labour (Central), Visakhapatnam to initiate fresh conciliation.

(iii) But both parties went out of the conciliation proceedings and participated in a high level meeting held on 25-11-1997, at the behest of the local Member of Parliament, as seen from para 03 of the Memorandum of Understanding, dated 11-12-1997. The agreements reached between the parties on 11-12-1997 have already been discussed by us elsewhere and hence they are not repeated. But it is sufficient to point out that under the said understanding, persons who were working through contractors, were formed into Cooperative Societies and they were engaged through these Cooperative Societies for a period of five years with effect from 01-01-1998.

(iv) Towards the end of the five year period, a Joint Action committee was formed by the Unions of Contract Workers and they served a notice on 20-12-2002. Immediately, a meeting was organized on 12-01-2003 between the representatives of the Management and the office-bearers of the Union, in the presence of one Union Minister of State in the Government of India and another Minister of the State Government. The Director (HR) of ONGC also participated in the meeting convened in the presence of the Minister of State for Consumer Affairs, Government of India and the Minister for Energy, Coal and Boilers of the Government of Andhra Pradesh.

(v) In the agreement reached on 12-01-2003, the contracts of the Cooperative Societies were agreed to be renewed for a further period of five years. In para 6 of the said agreement, an understanding was given by the Management to convert semi-skilled workmen to skilled category, if they were technically/ academically qualified in the areas of their assignments. In para 8 of the said Memorandum of Understanding dated 12-01-2003, 300 posts were agreed to be created over a period of five years, to be filled up at the rate of 60 posts per year. Thus an industrial dispute was averted probably before even the initiation of conciliation proceedings, in January, 2003.

(vi) History repeated itself towards the end of the five year term under the Memorandum of Understanding dated 12-01-2003, when a strike notice was served by the Union on 12-12-2007. The Assistant Commissioner of Labour, Vijayawada, initiated conciliation and they were taken over by the Regional Labour Commissioner (Central), Hyderabad, on 08-01-2008. In the minutes of the conciliation proceedings held on 08-01-2008 the Regional Labour Commissioner (Central), Hyderabad, informed all parties that around 280 society members who are technically qualified will be considered for term based employment. With regard to relaxation in physical requirements, the matter was taken up with the Chief Labour Commissioner (Central), New Delhi. In fact, the proceedings dated 08-01-2008 were signed even by the Regional Labour Commissioner (Central), Hyderabad, we do not know why the proceedings dated 08-01-2008 were not accorded the status of a settlement under Section 12(3) of the Industrial Disputes Act, despite the fact that the agreement was reached in the course of conciliation proceedings. In the last paragraph of the minutes of

the conciliation proceedings dated 08-01-2008, the Unions as well as the members of the Cooperative Societies agreed to withdraw the cases from the Courts/Tribunals/Conciliation Officers/High Court and to submit proof of withdrawal of cases to the Management, so as to enable the Management to provide term based employment to the society workers. The Unions also agreed, as seen from the last paragraph of the minutes of the conciliation proceedings dated 08-01-2008, not to facilitate any proceedings before any Forums in respect of any issues which are directly or indirectly related with the subject matters covered by the meeting, during the subsistence of the fresh contracts for a period of five years.

(vii) But unfortunately, the members of the Societies were subjected to a process of written examination followed by interview, in the year 2008, to be given a term based appointment for four years. Upon expiry of the period of four years, they were again subjected to similar written examination followed by interview in the year 2012, to be granted just an extension for another 4 years.

34. The above sequence of events which are not controverted would demonstrate that every time the workmen served a strike notice leading to the initiation of conciliation proceedings, some kind of sops were given by the Management for a temporary period of time to avert the danger of the drilling operations coming to a grinding halt. But even the undertaking given by the Management before the Regional Labour Commissioner (Central), does not appear to have been fulfilled. The Management appears to have gained an expertise in dousing the fire of labour unrest once in five years, without actually conceding to the demand made by the workers for more than 20 years from 1996. It is in these circumstances that the workmen have taken recourse to the Constitutional remedy, since their right to life and livelihood guaranteed under Article 21, has been made a mincemeat by the Management.

35. To be precise, whenever there was labour unrest and an industrial dispute was raised, the same was tackled either through political intervention or through the Conciliation Officer. From the year 1997 till date, the industrial disputes were resolved twice in the presence of the political leaders and twice in the presence of the Conciliation Officers, without the original demand

for absorption and permanency not bearing fruit at all. Probably one more round of industrial dispute and conciliation would have ensured for the Management that those who staked a claim for regularization in 1997 would have reached the age of superannuation. If this is what the Management actually wanted, the workers were well within their rights to come to this Court."

36 to 55.

"56. On admitted facts it is seen that the Management is fighting a similar litigation before various Courts across India from persons who are identically placed as the respondents herein. All those litigations are meaningless and they all can come to a close if the Management was extending the same benefits as admissible to the regular employees.

"57. The next contention of the Learned Senior Counsel for the Management is that even by the standards stipulated in the decision of the Constitution Bench in Umadevi, a Writ Court cannot direct regularisation of the services of the workmen. The learned Senior Counsel for the Management conceded that the decision in Umadevi arose under the Service law, as it concerned (a) the cases of persons engaged in the Commercial Taxes Department of the State of Karnataka, whose claim for regularisation was rejected by the Administrative Tribunal and (b) the cases of persons engaged by the Government of Karnataka and its local bodies. But according to the Learned Senior Counsel the Constitution Bench laid down the law in para 43 of the report, in general terms, to the effect that the High Courts acting under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme. Therefore the Learned Senior Counsel for the Management contended that the principle laid down by the Constitution Bench in Umadevi is not confined to service law, but also applicable to industrial law and that a Writ Court under Article 226, cannot issue a direction for regularisation/absorption.

58 to 83.

84. As rightly contended by Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for some of the respondents, the decision of the Gujarat High

Court relied upon by the learned single Judge, was confirmed by the Supreme Court. The learned Senior Counsel was also right in pointing out that the Constitution Bench, in Umadevi, exempted persons selected through a constitutionally accepted mode. In the batch of cases on hand, the respondents herein were made to appear for written examination followed by interview, not once but twice, first in the year 2008 and then in the year 2012 and were granted term basis employment for 4 years at a stretch. They have now completed 8 years under two terms. Therefore, even if we ignore that the decision in Umadevi arose out of the Service Law, the respondents cannot be non-suited.

85. In the light of the above, we are of the considered view, that none of the grounds of attack to the well considered and well crafted judgment of the learned single Judge are sustainable in law or on facts. Therefore, all the 24 writ appeals filed by the management are liable to be dismissed. Accordingly, they are dismissed."

16. Therefore, the learned counsel for the petitioners would submit that the contention that the dictum laid down by the Hon'ble Supreme Court of India in respect of Uma Devi's case, there is legal impediment to grant any relief, may not hold good for the simple reason that the claim of the petitioners herein arose under the industrial jurisprudence and not fallout of Service Law. Therefore, in the circumstances, the learned counsel would implore that the Writ Petition may be allowed and provide parity to these employees as that of the employees who had the benefit of regularization who were covered by the Award passed in ID No.66 of 1991 confirmed upto the Hon'ble Supreme Court.

17. Heard Shri Balan Haridoss, learned counsel for the petitioners and Shri M.Vijayan, learned counsel for the respondent Organization and perused the entire materials available on record.

18. The factum of the petitioners being employed as contingent staff for the last 27 years or more, is not in dispute at all. However, the bone of contention is, whether these petitioners can seek parity in treatment as that of the employees who were covered under under ID No.66 of 1991 in the teeth of this Court taking a different view in respect of Security Guards of Chennai Office who approached this Court in a batch of Writ Petitions, which were dismissed and which were also confirmed in WA Nos.299 of 2010 etc. batch, vide judgment

dated 20.11.2015 by the learned Division Bench of this Court. While dismissing the appeals, the learned Division Bench was guided by the dictum of the Hon'ble Supreme Court in Uma Devi's case and held that there cannot be any regularization of the employees who had been appointed through back door. However, as far as the present case on hand is concerned, the matter has to be viewed little more differently, particularly, with reference to a detailed judgment of the Division Bench of the High Court of Hyderabad, which was heavily relied upon by the learned counsel for the petitioners, reported in '2018 (2) LLN 408 (DB) (Hyd.) (cited supra, wherein, the Division Bench of the Hyderabad High Court has touched the nerve center of the controversy of issue seeking regularization by the industrial employees and made a fine and nuanced distinction between the claims arising out of Service Law and out of Industrial jurisprudence. The learned Division Bench of the Hyderabad High Court has succinctly held that in regard to regularization of industrial employees, the same has to be viewed differently and cannot apply the dictum laid down in Uma Devi's case mechanically and non-suit the claims of the industrial employees. Scholarly observations of the learned Division Bench have been extracted in extenso above, which in fact, would answer two important objections raised on behalf of the Management. Firstly, the law laid down in Uma Devi's case can be applied more aptly in respect of the claim relating to Service Law and such dictum cannot be ipso facto applied at all to the industrial employees who are like the present petitioners who are governed by the Standing Orders. Secondly, in view of the facts herein being admitted, namely, that these petitioners are contingent employees and working since 1988 continuously, the factual adjudication is not required in their claims and therefore, this Court can directly entertain the claim for regularization in a Writ Petition under Article 226 of the Constitution of India. In fact, the learned Division Bench of the Hyderabad High Court has criticized the Management's stand about questioning the jurisdiction of any Court wherever workmen approach, seeking benefit of regularization. Further, in view of the specific provision as provided in the Standing Order, which is extracted supra, when an employee completes 240 days of attendance in any period of 12 consecutive months and who possess minimum qualification, may be considered for conversion as regular employees. In this case, admittedly, the petitioners completed 240 days of attendance long ago as they have been employed continuously for more than 27 years as of now. Therefore, as per its own Standing order, the respondent Organization ought to have converted the contingent character of the petitioners' employment into one of regular character by granting regularization of their service. As regards the qualification is concerned, the learned counsel appearing for the respondent Organization would submit that these petitioners did not fulfill the present qualification prescribed even for a

Class IV post which is 'Matric pass', whereas these petitioners are only VII standard. Such objections cannot legitimately emanate from the respondent Organization for the simple reason that the Organization thought fit to engage the services of the petitioners continuously for over a period of 27 years. Having employed these petitioners for 27 years, it does not lie in the mouth of the respondent to raise such objections about the qualification of the petitioners. After all, the petitioners herein have been employed as Drivers and they have been discharging their duties as Drivers and therefore, the so-called paper qualification prescribed today, cannot be put against the petitioners from being otherwise considered for regularization of their services.

19. As regards one of the objections raised, stating that even in 2002, the claim of the petitioners was rejected and without challenging the same, the petitioners herein have approached this Court seeking only a Writ of Mandamus, such objection hardly merits any serious consideration by this Court for the reason that the issue of regularization is continuous and recurring and as long as the services of the petitioners are not regularized, they have a legitimate cause to complain and hence, non-challenge to the rejection order, cannot be said to be fatal to the present claim of the petitioners.

20. As far as the orders passed by the Division Bench of this Court in negating the claim of the Security Guards working in Chennai, the learned counsel, in fact, would draw the attention of this Court to paragraph 41 of the order, which discloses the basis for taking such a decision against the appellants therein, namely, that the workmen did not go to Labour Court or Industrial Tribunal for adjudication. However, as stated above, as far as the present claim of the petitioners herein is concerned, their service details have not been disputed and their continuous employment is also not in dispute and the period of employment for more than 27 years is also uncontroverted. When such is the position, this Court does not think that their claim can be non-suited on the ground that the same has to be adjudicated by the Industrial Adjudicator. As rightly held by the Division Bench of the Hyderabad High Court, this Court can decide the claim of the petitioners for regularization in view of the admitted facts.

21. The employment of the petitioners as contingent staff is well established beyond any doubt. In fact, the Management has entered into 12(3) Settlement with the petitioners on 23.05.1996 terming the nature of employment as 'contingent'. This fact is too evident to be ignored by this Court. In fact, the learned counsel also would draw the attention of this Court to the communication of the Manager (HR) in 1992 wherein, strong recommendation was made to regularize the Drivers on par with

the employees covered in I.D. No. 66 of 1991. When all these factors are put together, it would only strengthen the claims of the petitioners in an abundant measure towards regularization of their services.

22. From the entire narrative of the facts and the materials produced before this Court, this Court is unable to see any negative factor while considering the claim of the petitioners. The contentions put forth on behalf of the Management as well as their objections, have to be discountenanced for the simple reason that the petitioners have been employed for more than 27 years continuously and it would defy justice and fair play if such employees can be kept on contingent basis for indefinite period of time. Fairness and justice demand that these employees who have been employed continuously for more than 27 years, have to be provided with succor, namely, the regularization of their services and any other view in the matter would defeat the ends of justice.

23. In fact, one other instance was brought to the knowledge of this Court, namely, one of the workmen, who was left out from the ambit of the decision of the Hon'ble Supreme Court in SLP filed against the award of the Labour Court in ID No.66 of 1991, the Hon'ble Supreme Court of India, has ordered inclusion of that workman for extending the benefit of regularization, which means, that even a person who was not a party to any of the proceedings, can be extended with the benefit of regularization. Moreover, in the present case, the petitioners have approached this Court, seeking for the relief of regularization by comparing their claim with that of the workmen covered under the Award passed in ID No.66 of 1991. Once the workmen are governed by the provisions of the Standing Orders, their nature of the employment has to be determined on the basis of the Standing Orders and in such circumstances, the application of principles laid down by the Hon'ble Supreme Court of India in Uma Devi's case does not arise. In this case, having put in more than 240 days of attendance in 12 consecutive months long ago and have been employed continuously, the petitioners have right to be regularized in terms of the respondent Organization's own Standing Orders.

24. For all the above reasons, this Court finds that the petitioners have made out a clear case for grant of the relief as prayed for.

25. In the result, the Writ Petition is allowed. There shall be a direction to the respondent organization to regularize the services of the petitioners from the date when they completed 240 days in terms of the Order of the Hon'ble Supreme Court passed in SLP No.5532 of 2012 dated 17.4.2015 read with Clause 2 (11) of the certified Standing Orders for contingent employees,

with all attendant and consequential benefits. The respondent is directed to pass appropriate orders in compliance with the direction of this Court, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)
Dated : 23/07/2019

***Corrected as per the order of this Court
dated 04/12/2019 made in WP No.19377/15**

Sd/-
Assistant Registrar(CS VII)
Dated : 05/12/2019
//True Copy//

Sub Assistant Registrar

Suk

To:

**To be substituted to the order
already despatched on
25/07/2019**

***The Asset Manager,,**
Oil Natural Gas Corporation Ltd.,
Southern Region,
Nearavey Complex,
Karaikal-609604

+1cc to M/s.King and Partridge, Advocate, S.R.No.61541

W.P.No.19311 of 2015

MG(CO)

RRS (23/07/2019)
GMY (06/12/2019)

सत्यमेव जयते

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