

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE ANIRUDDHA ROY**

**M.A.T. 1671 of 2019
With
CAN 1 of 2020
(Old No. CAN 1024 of 2020)**

**Calcutta State Transport Corporation & Ors.
vs.
Bimal Chandra Roy & Ors.**

For the Appellants	:	Mr. Amal Kumar Sen Mr. Sabyasachi Mondal
For the Respondents	:	Mr. Soumitra Banerjee Mr. Rabindranath Chakraborty
Heard on	:	23/12/2020
Judgment on	:	11/03/2021

ANIRUDDHA ROY, J.:

1. The instant appeal impugns the judgment and order dated September 27, 2019 passed by the Hon'ble Single Bench in *W.P. No. 32861(W) of 2014 (Bimal Chandra Roy & Ors. -versus- The State of West Bengal & Ors.)* (for short, the writ petition), whereunder the writ petition filed by the private respondents was

allowed by directing the first appellant to consider the regularization of service of the second writ petitioner, being the second respondent herein w.e.f. his date of appointment, i.e. December 29, 2003 on notional basis without any monetary benefit but by taking the pensionary benefit and the said second respondent herein was directed to be given the service benefit as of a permanent employee from the date of his regularization.

Though there were five individuals who filed the said writ petition but the direction was made only in respect of the second writ petitioner being the second respondent herein, which was impugned in this appeal and as such the second respondent herein had contested the appeal. It appears to this Court that only the second respondent had pursued his remedy in the said Original Application before the Tribunal. Before this Court also the second respondent had defended the present writ petition. Hence, this Court proceeds with the present writ petition accordingly.

2. The second writ petitioner being the second respondent herein was engaged provisionally as Driver-cum-Conductor-Mechanic (for short, the said post) on daily wages basis by the first respondent Corporation (for short, the said Corporation). The second respondent was engaged on December 29, 2003 and is still continuing in service. From the appointment letter of the second respondent dated November 6, 2003 issued on December 11, 2003 by the fourth appellant, it appears that the appointment was on a contractual and provisional basis. The relevant Clauses of the said appointment letter are, *inter alia*, set out herein below:-

“2. This engagement on contract is purely on adhoc extra temporary day to day “No work no pay” basis depending upon day to day requirement on crew-cum-mechanic at the depot assigned to you and you would be required to report daily for duty to the depot authority of assigned depot on your own volition in any shift as per duty schedule.

6. For days of your engagement as Driver-cum-Mechanic, you would be paid wages @ Rs.100/- only per day in any shift for a period of 8.5. hours including tiffin of half an hour.

8. As adhoc extra temporary worker, you would have no claim for permanent absorption in service in the Corporation and the Corporation/the depot authority any strike out your name from the panels without assigning any reason and without any notice at any moment during the period of contract.

9. Your empanelment on contract basis will be valid initially for one year which may be extended upto 7 (seven) years with option from further extension for 2(two) years more years i.e. upto 9(nine) years only subject to their satisfactory performance of duty.

12. You would be allowed one day of the rest at the end of continuous 6(six) days duty on “No work no pay” basis.”

3. Prior to filing of the said writ petition, in which the order impugned was passed, all the writ petitioners had filed two writ petitions namely, W.P. 19515(W) of 2013 and W.P. 19517(W) of 2013, claiming their permanent absorption/regularisation on the ground that they had worked for 720 days being 240 days per year for 3 years. The two writ petitions were disposed of by directing the second appellant to consider the desirability of absorbing the writ petitioners in regular service within 3 (three) months. Pursuant to and in terms of the said directions the second appellant had decided the issue by its decision dated October 25, 2013 rejecting the claim of the writ petitioners for their permanent absorption.

4. Challenging the said decision of the second appellant dated October 25, 2013 all the said writ petitioners had filed another writ petition being W.P. No. 37670(W) of 2013 which was disposed of by an order dated June 30, 2014 directing the concerned authority to consider the case of the petitioners and to pass reasoned order afresh. Pursuant to and in terms of the said direction of the Writ Court the second appellant had considered and by a reasoned order dated September 26, 2014 rejected the claim of the writ petitioners. While deciding the issue in the said decision dated September 26, 2014, the second appellant held that the said Corporation cannot create any post of its own and as such no regular employment in the Corporation was possible.
5. Challenging the said decision of the second appellant dated September 26, 2014 the said writ petition was filed.
6. Mr. Amal Kumar Sen, Ld. Advocate, appearing with Mr. Sabyasachi Mondal, Advocate, on behalf of the appellants submitted that the issue regarding the regularization and for granting permanent employment have already been decided in the previous writ petitions filed before this Hon'ble Court and as such the same cannot be reopened and to that extent the direction made in the order impugned are not sustainable and should be set aside. Moreover, Mr. Sen submitted that there is no sanctioned post exists of the same category existing and qua the status of the second respondent. Therefore, the question of giving any permanent employment to the second respondent did not and could not and does not and cannot arise and the Writ Court had failed to appreciate the same and erred in passing the direction in the impugned order.

7. Mr. Sen then submitted that the second respondent herein is not entitled to permanent employment in the Corporation and his terms of appointment also speak of the same. Therefore, the second respondent who has no right in law or otherwise to be absorbed in the permanent employment of the Corporation could not be directed to be considered for the same at all. The post at which the second respondent served the Corporation on a contractual basis is not even a sanctioned post. In support of his contention Mr. Sen, relied upon the judgments *In the matter of: State of Karnataka -versus- Uma Devi (3) and others reported at (2006) 4 SCC 1* and *In the matter of: State of Karnataka and others - versus- M.L. Kesari and others reported at (2010) 9 SCC 247*.
8. Mr. Sen then submitted that the direction made in the impugned order for considering the case of the petitioner for his permanent employment is against the established principles of law as discussed above. In such circumstances no constitutional Court can direct to carry out any act which is contrary to the due and established principles of law. In support of such contention learned counsel for the appellants relied upon the judgment of Hon'ble Supreme Court *In the matter of: Renu and others -versus- District and Sessions Judge, reported at (2014) 14 SCC 50*.
9. Mr. Sen next submitted that the law is still well settled as laid down *In the matter of: Uma Devi (Supra)*. The second respondent also does not fall within the category and exception carved out in paragraph 53 of the said judgment. And as such the Writ Court ought not to have directed to consider the case of the second appellant to make him permanent. He, in support of his

contention, relied upon the judgment of the Hon'ble Supreme Court *In the matter of: State of Jammu Kashmir and others -versus- District Bar Association, reported at (2017) 3 SCC 410.*

10. Mr. Rabindra Nath Chakraborty, learned advocate, appearing for the second respondent herein, who was the second writ petitioner before the Hon'ble Single Bench, submitted that, the terms and conditions of the engagement and employment of the second respondent are governed by the document being Annexure P-2 to the writ petition (at page 77 of the stay application filed with the appeal). The second respondent claims that this is a document which was issued by the Corporation mentioning the terms and conditions in respect of offer of engagement as daily rated trainee for the post of Driver-cum-Conductor-cum-Mechanic in Calcutta State Transport Corporation on verification of medical fitness. The relevant clause referred to on behalf of the second respondent from the said document is set out hereunder:-

“ xii) Question of absorption in regular establishment would be considered as per provisions made under G.O. No. 1700 EMP dt. 3.8.79 read with Circular No. 002/354 dt. 29.9.2000 and on completion of 720 days satisfactory duty, from the date of engagement as daily rated trainee worker according to availability of vacancy.”

11. Referring to the above clause Mr. Chakraborty submitted that the question of absorption for the second respondent in regular establishment would be considered as per the Circular dated September 29, 2000 mentioned therein and on completion of 720 days satisfactory duty from the date of engagement as daily rated trainee worker according to availability of vacancy and as such

the second respondent is entitled to be considered for absorption in regular establishment as he had the requisite qualification under the said condition.

12. Mr. Chakraborty, Learned Advocate for the second respondent, placed reliance on the judgments of the Hon'ble Supreme Court *In the matter of : M.L. Keshari (Supra) and In the matter of : Durgapur Casual Workers Union & -versus- Food Corporation of India and others, reported at (2014) 42 SCD 162*. He submitted that, considering the fact that the second respondent had served the Corporation for more than 10 years and 720 days duty, i.e. 240 days per year for 3 years as daily rated Driver-cum-Conductor, is entitled to a permanent employment in exercise of the terms and conditions of his initial appointment. He further submitted that, while rendering the decisions mentioned above, the second appellant failed to appreciate the ratio of the judgment of the Hon'ble Supreme Court *in the matter of: M.L. Keshari (Supra)* which, makes the second respondent entitled to be absorbed in the permanent employment of the Corporation.
13. After considering the submissions made on behalf of the parties and perusing the materials before this Court by the parties, it appears that pursuant to the said direction of the Writ Court dated July 23, 2013 the said decision dated October 25, 2013 was rendered whereby the second appellant rejected the prayer, *inter alia*, of the second respondent for absorbing in regular service on the grounds that the absorption was to be on the basis of availability of vacancy and since there was no vacancy available the absorption in the regular service of the Corporation was rejected. Subsequently, pursuant to the

direction of the Writ Court by its order dated June 30, 2014 the second appellant rendered its decision dated September 26, 2014 after considering the relevant law laid down by the Hon'ble Supreme Court, *In the matter of: M.L. Keshari (Supra)*.

14. The relevant law as was laid down by the Hon'ble Apex Court, *inter alia*, stipulated two conditions for absorption in the permanent posts which are: first, the employee concerned should have worked for 10 years or more and secondly, the appointment of such employee should not be illegal. The second appellant while deciding the issue relating to the second respondent held that his appointment was not against any sanctioned post. As such, the appointment of the second respondent being illegal, he ought to have been discontinued from the service of the Corporation as per the contract. It was also observed in the said decision of the second appellant that the Corporation cannot create any post of its own and as such no regular employment in the Corporation is possible. Accordingly, the prayer for absorption of the second respondent in the permanent post of the Corporation was rejected. The said decision dated September 26, 2014 was impugned in the said writ petition in which the order impugned was passed.
15. The said document giving appointment was pleaded by the second respondent in paragraph 3 of his writ petition and the same was dealt with by the Corporation in its affidavit-in-opposition to the said writ petition. It was contended on behalf of the Corporation that the said Clause XII was contrary to Clause 8 of the actual appointment letter dated November 6, 2003, in which

the second respondent specifically agreed to have no claim for permanent absorption in service in the Corporation and the Corporation authority may strike out his name from panels without assigning any reasons and without any notice at any moment during the period of contract. It was further contended on behalf of the Corporation that the said document was never made a part of the actual terms and conditions of employment dated November 6, 2003 and the said document and the terms mentioned thereunder are also not applicable to the second respondent. The said document was never issued to the second respondent. It is pertinent to mention that in paragraph 4 of the affidavit in reply filed by the second respondent in the writ proceeding, he had also admitted to the said appointment letter dated November 6, 2003 being a part of Annexure P-1 to the writ petition (at page 65 of the stay application in appeal). On the strength of the said two documents namely, Annexures P-1 and P-2 to the writ petition, the second respondent claimed to be absorbed permanently in the employment of the Corporation.

16. Thus, the points falling for consideration before this Court is that, whether the second respondent is entitled to be absorbed in the permanent post of the Corporation, in view of the law laid down by the Hon'ble Supreme Court *In the matter of: Uma Devi (supra)* and *In the matter of: M.L. Keshari (supra)*.
17. The appointments made without following the due process or the rules relating thereof do not confer any right on the appointees and the Courts cannot direct their absorption, regularization or re-engagement nor make their service permanent and the High Court in exercise of jurisdiction under Article 226 of

the Constitution should not issue directions for absorption, regularization or permanent continuance unless the recruitment had been done in a regular manner in terms of the constitutional scheme and that the Courts must be careful that they should not lend themselves to facilitate the bypassing of the constitutional and statutory mandates.

18. Adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a Court cannot be disabled from passing an order upholding a violation of Article 14 or in overriding the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, unless the appointment of an employee is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right upon the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

19. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. The right for invocation of the Doctrine of Legitimate Expectation for a permanent post cannot arise.
20. In the instant case, the initial appointment of the second respondent was on contractual basis and not against any sanctioned post. The terms of employment under the contract, *inter alia*, provides for sudden termination of the second respondent without assigning any reason. Such an appointment of the second respondent cannot be termed as an appointment through a selection process which is the procedure for appointment duly established in law.
21. Paragraph 53 of the judgment of the Hon'ble Supreme Court, *In the matter of: Uma Devi (Supra)* carves out an exception wherein a direction was given to the Union or State or, their instrumentalities, to take steps to regularize as an one time measure the services of irregular appointees who had worked for 10 years or more in duly sanctioned post.
22. In the judgment of the Hon'ble Supreme Court, *In the matter of: M.L. Keshari (supra)*, the said exceptions as held in *Uma Devi (supra)* was considered and discussed. The relevant paragraphs from the judgment of the *M.L. Keshari (supra)* are quoted herein below:-

“6. This Court in Umadevi (3) further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below:

(SCC p.42, para 53)

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Najundappa and B.N. Nagarajan 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 abovereferred to and in the light of the 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.”

7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3), if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.*
- (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against*

sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. Umadevi (3) casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3) directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-04-2006).

9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi (3), cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employee who were entitled to be considered in terms of para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi (3) has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-04-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3), but did not consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only

when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-04-2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

23. From impugned decisions rendered by the second appellant both dated October 25, 2013 and September 26, 2014, it is evident that, the law laid down in *Umadevi (Supra)* and *M.L. Keshari (Supra)*, which is settled and governing field on the subject being the subject matter of the issue in this appeal were duly considered and appreciated by the second appellant and/or the Corporation in rightly rejecting the prayer of the second respondent for his absorption in a permanent post of the Corporation.

24. The Hon'ble Supreme Court while rendering the judgment *in the matter of: Durgapur Casual Workers Union (Supra)*, relied upon on behalf of the second

respondent, duly considered the ratio decided in the matter of *Umadevi (Supra)*. The concerned employee of the rice mill was a contract labour under the contractor who was retrenched from his employment and was entitled for reemployment under the provisions of the Industrial Disputes Act. The present case is not relating to retrenchment of the second respondent. Thus, the ratio of the said judgment has no application in the facts and circumstances of the instant case.

25. In view of the above discussions and the reasons stated, the present appeal being **MAT 1671 of 2019** succeeds and the order impugned dated September 27, 2019 passed in the said writ petition stands set aside and reversed.
26. On the above terms **MAT 1671 of 2019** and **CAN 1024 of 2020** stands thus **allowed**.
27. There will be however, no order as to costs.
28. Parties are permitted to act on a server copy of this order downloaded from the official website or this Court.
29. Urgent Xerox certified photocopies of this judgement, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Aniruddha Roy, J.)

