

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.35664 OF 2017

Between:

Ravinder Reddy and others

... Petitioners

And

The State of Telangana

Rep. by its Chief Secretary and others.

... Respondents

JUDGMENT PRONOUNCED ON: 09.12.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?**
- 3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Sri Chikkudu Prabhakar

^Counsel for the Respondents: G.P. for Services II

? Cases Referred:

1. (2013) 14 SCC 65

2. (2017) 1 SCC 148

3. 2006 (4) SCC 1

4. 2010(9) SCC 247

5. (1978) 4 SCC 257

6. (2015) 8 SCC 265

7. (2015) 8 SCC 265

8. (2014) 7 SCC 223

9. 2015 SCC Online SC 1797

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No.35664 OF 2017****ORDER:**

Heard learned counsel for the petitioners, learned Government Pleader for Services II and learned standing counsel for respondents.

2. This Writ Petition is filed to issue a writ, order or direction more particularly one in the nature of Mandamus to declare the action of the respondents in issuing the Proceedings No. 37/CPR&RE/C2/2015, dated 27.10.2015 in not regularizing the service of the petitioners as regularized the service of the one of the members of the union Md. Masood Ali, Bore-well Mechanic, working on the basis of NMR at both, Adilabad District through G.O.Rt.No.182, dated 14.03.2017 as illegal, arbitrary, highly discriminatory, unjust, unfair, irrational, unconstitutional, unlawful and against to Articles 12, 14, 16, 19, 21 and 23 of the Constitution of India and against to the principles of natural justice and against to the G.O.Ms.No.212, Finance Department, dated 22.04.1994 and against to a catena of Judgments of the Apex Court and set aside the same, Consequently direct the 1st respondent to

regularize the service of the petitioners as regularized the service of the colleague of the Petitioners Sri Md. Masood Ahmed, Bore well Mechanic working on the basis of NMR basis at both Adilabad District through G.O.Rt.No.182, dated 14.03.2017.

3. The case of the petitioners in brief, is as follows:

- a) The petitioners, having completed their Technical Qualification (I.T.I) were appointed through various proceedings by Respondents 10 to 14 as Bore well mechanic.
- b) Despite petitioners providing better services and working hard, they were neither paid lawful wages nor were they absorbed and regularized by Respondents.
- c) Many representations were made to the respondents to pay lawful salary to the petitioner, but no action was taken by the respondents.
- d) Despite being appointed as Bore Well Mechanics on N.M.R basis few decades ago, they were neither absorbed nor paid lawful salary for the past 2 (Two) decades. In the past, they were abruptly and without notice, were orally instructed

not to attend their duties. Aggrieved by such decision, they have filed W.P. No 40210 of 2015 before this court and this court was pleased to pass orders directing the respondents to pass appropriate orders in accordance with law.

e) Subsequently, W.P. No. 14145 of 2016 was filed against the respondents for not considering the representations of Borewell Mechanics Union of the State and the High Court had passed orders on 25.04.2016 directing the respondents to consider the representation of Borewell Mechanics Union of the State and pass appropriate orders within Eight Weeks. As no orders were passed, Contempt Case No. 1908 of 2016 has been filed. After filing of said contempt case, the respondents passed orders without considering the quantum of law, vide proceedings No. 37/CPR&RE/C2/2015 dated 27.10.2016. Instead of regularizing all the members in service, only one Mr. Sri Masood Ali, has been regularized in the service through G.O.Rt.No.182 dated 14.03.2017. They are highly discriminated against by the Petitioners and even though their Qualification, Nature of Work, Duties and Responsibilities are similar between N.M.R and Regularized employee, they were not regularized and issued Proceeding No.

37/CRP&RE/C2/2015 dated 27.10.2016 and the same is against the Constitution of India.

f) The question of Daily wages or Contract Employees is not the question here. When there are similar work and same working conditions, they are entitled to Equal Remuneration for Equal Work and same has been held by the Apex Court in Marathwada Agricultural University and Others vs. Marathwada Krishi Vidyapith M.S.K.S and other (2007) 8 SCC 497 and in State of Punjab vs. Jagjit Singh & others (C.A. No. 213 of 2013 and it's batch), dated 26.10.2016. Hence, this Writ Petition is filed.

2. Counter Affidavit filed by Respondents 1 to 3, in brief, is as follows:

a) The Hand Pump mechanics were engaged as per need by the Concerned Mandal Parishad Development Officers on piece work basis and they are not termed as NMR/Contract employees. There is no individual contract between the employer and employee in writing and even if there is any such contract, the same will become invalid as and when the work is complete.

b) They were working under a scheme which had no future and their payment was from the fund available under the Fund available in the scheme and in some cases wages are being paid through 3rd party. They were paid for the said piece of work done by them. On basis of assessment of RWS authorities and the petitioners were not appointed on regular or contract basis. They were engaged whenever hand pumps are required and when the petitioners do not work for the whole day, paying of fixed pay does not arise.

c) As per G.O.Ms.No. 498 PR&RD (Samithi.III) Dept. dated 12.10.1999, there are no part time or full time hand pump mechanic post in sanctioned posts. The Scheme of maintenance of the hand pumps and the 100% grants are issued exclusively to Gram Panchayats according to 14 the Finance Commission recommendations and the petitioners were being directly by Gram Panchayats That the services of Sri Md.Masood Ahmad were regularized on the proposals submitted by Engineer-in-chief, RWS& amps and not by the Commissioner. Sri Md.Masood Ahmad was regularized against the post of BPO/Tracer and the posts of BPO/Tracer were not available in the Gram Panchayats or Mandal Parishads. The

regularization of the petitioners cannot be done as there is no sanctioned post of Bore well mechanic in Mandal Praja Parishad at all. Hence, the Writ Petition is liable to be dismissed.

3. The case of the 9th Respondent, in brief, is as follows:

a) The petitioners are not eligible for regularization under G.O.Ms.No 212, dated 22.04.1994 or G.O.Ms.No112, dated 23.07.1997 since they were working on daily wages either full time or part time and they were appointed by any authority. They were only used wherever and whenever their services were required for maintenance of bore well in Mandal and paid on per piece basis. Hence, their services cannot be regularized.

b) They were earlier paid from the funds allocated for the maintenance of hand pumps from the grants of XIII Finance Commission and no specific grant or funds are provided for their payment. Since, the scheme of maintenance of the hand pumps and the grants are issued to Gram Panchayat according to XIV Finance Commission vide proceedings No.

A2/4855/2016 dated 09.01.2016, the payments for the works done by the Petitioners are being paid from the funds of XIV Finance Commission.

c) The impugned orders were passed by the 3rd respondent, considering all aspects of petitioners to the representations made by the petitioners and orders in W.P. No. 14145 of 2016 dated 10.03.2016 of the High Court.

d) Hence, this respondent is not at all concerned with the 2nd Petitioner who in Mahamuttaram Mandal since the maintenance of hand pumps are vested with the Gram Panchayat. Therefore, the writ petition is devoid of merits and hence the Writ Petition is liable to be set aside.

4. The 10th Respondent (The Mandal Praja Parishad Development Officer, Kataram Mandal, Telangana), filed counter reiterating the contents of the counter affidavit filed by the 9th respondent.

PERUSED THE RECORD

RELEVANT CASE LAW ON REGULARIZATION:

5. **In the judgement of the Apex Court in Nihal Singh and others v. State of Punjab reported in (2013) 14 SCC**

65, the Supreme Court considered the case of absorption of Special Police Officers appointed by the State, whose wages were paid by Banks at whose disposal their services were made available. It held that the mere fact that wages were paid by the Bank did not render the appellants 'employees' of those Banks since the appointment was made by the State and disciplinary control vested with the State. It held that the creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State, but if the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship, its action is arbitrary. It also refused to accept the defence that there were no sanctioned posts and so there was justification for the State to utilise services of large number of people like the appellants for decades. It held that "sanctioned posts do not fall from heaven" and that the State has to create them by a conscious choice on the basis of some rational assessment of need. Referring to Umadevi, it held that the appellants before them were not

arbitrarily chosen, their initial appointment was not an 'irregular' appointment as it had been made in accordance with the statutory procedure prescribed under the Police Act, 1861, and the State cannot be heard to say that they are not entitled to be absorbed into the services of the State on permanent basis as, according to it, their appointments were purely temporary and not against any sanctioned posts created by the State. It was held that the judgment in Umadevi cannot become a licence for exploitation by the State and its instrumentalities and neither the Government of Punjab nor those public sector Banks can continue such a practice consistent with their obligation to function in accordance with the Constitution.

6. The Apex Court in a judgment reported in (2017) 1 Supreme Court Cases 148, in State of Punjab and others vs Jagjit Singh and others at Paras 54 (1)(2)(3) of the said judgment observed as under:

“54 “The Full Bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale,

merely for the reason, that the activities carried on by daily-wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-

“(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.”

7. In State of Karnataka v. Uma Devi reported in 2006 (4) SCC 1 the Supreme Court has held as under:

Any public employment has to be in terms of the constitutional scheme and a sovereign Government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages.

It declared that a regular process of recruitment or appointment has to be resorted to when regular vacancies in posts at a particular point of time are to be filled up and filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. It is also declared that regular appointments must be the rule.

It then went on to hold that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following due process of selection as envisaged by the constitutional scheme. It held that there is only limited role of equity in such matters and otherwise it would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted in the country.

It held that in situations where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts are made, and all the employees have continued to work for ten years or more, but without the intervention of orders of Courts or of Tribunals, their claim for regularization of services have to be considered on merits.

It directed that the Union of India, the State Governments and their instrumentalities should take steps for regularization, as a one-time measure, the services of such irregularly appointed persons who have worked for ten (10) years or more in duly sanctioned posts but not under cover of orders of Courts or of Tribunals.

It also directed that Court should ensure that regular appointments are undertaken to fill those vacant sanctioned posts.

It directed the said process to be set in motion within six (06) months from the date of pronouncement of its order in Uma Devi i.e., 10.04.2006.

8. The judgment of the Apex Court reported in 2010(9) SCC 247 between: State of Karnataka and others v M.L.Kesari and others, in particular, paras 4 to 9 reads as under:

4. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and 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 ordinarily 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 in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court 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 :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N.

Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] 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 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 abovereferred 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.

"5. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, 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.

(iii) *Umadevi* casts a duty upon the concerned Government or instrumentality, to take steps to regularize 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*, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi*, 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, regularize their services.

7. At the end of six months from the date of decision in *Umadevi*, 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 regularization 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 employees who were entitled to be considered in terms of Para 53 of the decision in *Umadevi*, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of *Umadevi* has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 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, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should 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, are so considered.

8. The object behind the said direction in para 53 of Umadevi is two- fold. 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 was rendered, are considered for regularization 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 for long periods and then periodically regularize 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.

9. The Supreme Court in a judgment in Hussain Bhai v. Alath Factory Thezhilali Union reported in (1978) 4 SCC 257 observed as follows :

In that case, the petitioner before the Supreme Court was a factory owner manufacturing ropes. A number of workmen were engaged to make ropes from within the factory, but these workmen, according to the petitioner, were hired by contractors who had executed agreements with the petitioner to get such work done. Therefore, the petitioner contended that the workmen were not his workmen but the contractors' workmen.

The industrial award, made on a reference by the State Government, was attacked on this ground.

The learned Single Judge of the High Court, in an elaborate judgment, rightly held that the petitioner was the employer and the members of the respondent-

Union were employees under the petitioner. A Division Bench upheld this stand and the petitioner has sought special leave from this Court.

While refusing leave and dismissing the SLP the Court held that mere contracts are not decisive and the complex of considerations relevant to the relationship is different; and that where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. The Court explained :

"mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the Rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of' law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.

The true test may with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued

employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local condition and the like may be restored to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the mischief of legal appearances.

If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off."

10. In a similar identical factual situation workers employed through out sourcing by GHMC approached this Court by filing WP No.47675/2018.

(A) In G.Srinivasa Chary, Petitioner v. State of Telangana in IA No.1/2019 in WP No.47675/2018 vide its order dated 07.08.2020 was pleased to observe as follows :

*" In the result,
(a) The Writ Petition is allowed;*

(b) the respondents' action in engaging the petitioners on "outsourcing basis" as Sanitary Supervisors (SFA), Sanitation Workers, Entomology Field Workers, Entomology Superior Field Workers, Supervisors (EFA), Superior Field Assistants through intermediaries/agencies/contractors is contrary to law, violative of Article 14, 16 and 21 of the Constitution of India and also the law declared by the Supreme Court in Uma Devi (1 supra) mandating periodic regular recruitment to sanctioned posts;

(c) that the "outsourcing" system adopted by the GHMC is only a sham and a ruse to avoid extending to the petitioners their genuine service entitlements; and that the presence of such intermediary/contractor has to be ignored, and the petitioners are held to have been directly engaged by the GHMC and they are also held entitled to be considered for regularisation of their services;

(d) consequently, the respondents, while continuously engaging the services of the petitioners directly henceforth, are directed to consider the case of the petitioners for regularisation of their services, by ignoring the existence of the intermediaries/agencies/contractors in the posts of Sanitary Supervisor (SFA), Sanitation Workers, Entomology Field Workers, Entomology Superior Field Workers, Supervisors (EFA), Superior Field Assistants within two (2) months from the date of receipt of a copy of the order.

(e) the petitioners are entitled to minimum of time scale of pay attached to the posts of Sanitary Supervisor (SFA), Sanitation Workers, Entomology Field Workers, Entomology Superior Field Workers, Supervisors (EFA), Superior Field Assistants in which they are now discharging their functions till their claim for regularisation is considered by the GHMC in accordance with para 53 of the decision in Uma Devi (1 supra); and such payments shall be made by the GHMC directly to the petitioners w.e.f the date of filing of this Writ petition (after deducting the payments already received by them during this period from the contractor/intermediary) and shall be continued till the cases of the petitioners are considered for

regularisation by the GHMC. The arrears upto 31.7.2020 shall be paid on or before 15.9.2020.

(c) I.A.No.1 of 2019 is dismissed. No costs.

B) The judgment of the Apex Court reported in 2015 SCC Online SC 1797 between B.Srinivalusu and others v Nellore Municipal Corporation Rep.by its Commissioner, Nellore District, Andhra Pradesh and others, in particular paras 7 and 8 reads as under:

(7) We find it difficult to accept the reasoning adopted by the High Court. The right of the appellants to seek regularization flows from the G.O. No.212 dated 22.4.1994. The appellant have been in service of the first respondent not only prior to the issuance of the said G.O. but even subsequent to the issue of G.O. till today. The respondent Municipality being a statutory body is obliged by the G.O. 212(supra). In spite of the above mentioned G.O. the respondents kept quite for almost 20 years without regularising the service of the appellants and continued to extract work from the appellants.

8. In the circumstances, refusing the benefit of the above mentioned G.O. on the ground that the appellants approached the Tribunal belatedly, in our opinion, is not justified. In the circumstances, the appeal is allowed modifying the order under appeal by directing that the appellants' services be regularised with effect from the date of their completing their five year continuous service as was laid down by this Court in District Collector/Chairperson & Others vs. M.L. Singh & Ors. 2009 (8) SCC 480.

C) In Amarkant Rai v State of Bihar reported (2015) 8 SCC 265, the Supreme Court held that 'The objective behind the exception carved out in this case was to

permit regularisation and to ensure appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years". In that case, employee was working for 29 years. This decision approves earlier view expressed in M.L.Kesari extracted above.

D) In State of Jarkhand v Kamal Prasad reported in (2014) 7 SCC 223, similar view was taken by the Supreme Court and it was held as follows :

"41.... In view of the categorical finding of fact on the relevant contentious issue that the respondent employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in Umadevi case (State of Karnataka v Umadevi (2006) 4 SCC 1 : 2006 SCC (L&S) 73) at para 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent employees are entitled for the relief, the same cannot be interfered with by this Court."

11. The Hon'ble Apex Court in its judgment dated 12th August, 1992 in Civil Appeal No.2979 of 1992 and batch have also observed to evolve an appropriate policy for regularization and an effort and endeavour should be undertaken by the Government to regularise as many

NMR/daily wage employees as possible, who are otherwise qualified depending of on the requirement of the work load duly keeping in mind the hardship that would be caused, if their services are not regularised.

DISCUSSION AND CONCLUSION

12. The case of the petitioners is that the petitioners are appointed as bore well mechanics in respective Mandals i.e. the 9th to 14th respondents herein. The 1st petitioner had been appointed on 01.08.1997, the 2nd petitioner had been appointed on 01.08.1998, the 3rd petitioner was appointed on 01.03.2002, the 4th petitioner was appointed 01.02.1996, the 5th petitioner was appointed on 01.07.1994 and the 6th petitioner was appointed on 01.08.1994 respectively.

13. The petitioners as material documents have also filed service certificates issued to the petitioners by the 9th to 14th respondents. The plea of the petitioners is that they have rendered services continuously to the 9th to 14th respondents herein for the last more than 15 years, but, however, inspite of working continuously for several years and rendering services perennial in

nature, the services of the petitioners had not been regularized.

14. ORDER impugned in the present W.P. No. 35664 OF 2017 dated 27.10.2016 in proceedings No. 37/CPR and RE /C2/2015 reads as under:

In the reference 1 read above, the Government have requested the ENC, RWS&S and Director, PR&RE to hold a joint meeting and problems of Pump Mechanics working in MPPS on contract basis and furnish the recommendations for taking further action in the matter.

In this office letter 2nd cited, the ENC, RWS was requested to furnish specific recommendations on the problems of Pump Mechanics. But the Engineer-in-Chief, RWS Department informed that they does not deal with pump mechanics as they have been paid by MPDO.

In the reference 3rd cited, the President RWS Pump Mechanics, Contract Employees and workers union requested to consider the judgment of Hon'ble High Court Judicature in W.P No.14145/2016 to pay lawful salary and to regularize them in service.

The Hon'ble High Court in W.P.No.14145/2016 filed by Sri E. Prathap, President, RWS Pump Mechanics, Contract Employees and workers union, issued orders on 25.04.2016 "that the W.P is disposed of, without expressing any opinion on the merits and demerits of the matter, directing the 2nd (Govt.) and 3rd (CPR&RE) respondents to consider and pass appropriate orders on the representation, dated 10.03.2016 said to have been submitted by the petitioner herein, in accordance with law, within a period of three (3) months from the date of receipt of a copy of this order".

The president RWS Pump Mechanics, Contract Employees and workers union in their representation dt:10.03.2016 informed that the Hon'ble Chief Minister is regularising all contract employees In Telangana State and requested to regularize their services.

In the reference 4th read above, instructions were issued to all the District Panchayat Officers and Chief Executive Officers for payment of wages to Bore well mechanics from 14th Finance G.P fund under the supervision of MPDO whenever the bore well repairs are being taken up by these Pump Mechanics in Gram Panchayats jurisdiction.

The pump mechanics were earlier being utilized by MPDOs to carry out repairs of drinking water bore wells in the Gram Panchayats. They were paid from the funds received under 13th Finance Commission for drinking water schemes repairs. They were outsourced as per need basis and not termed as contract employees. Keeping in view of this the request of regularizing their services is not considered.

In view of the above position and also as per the directions of the Hon'ble APHC the representation dt:10.03.2015 of President RWS Pump Mechanics, Contract Employees and workers union is considered and discussed in terms of existing rules and rejected.

The CEO, ZPP, Warangal is directed to communicate the same to the individual concerned and acknowledge the same."

15. The material documents filed by the petitioners refers to proceedings No.B/ages/Pump Mechanic, 2007, dated 11.07.2017 by the Mandal Parishad

Department, initially MPP, Bhopalapally and the said proceedings read as under:

“Through re 1st, 2nd and 3rd cited, the commissioner PR & RD Telangana state has issued circular stating that the pump mechanic wages are being paid from the mandal Parishad 13th/14th finance grants, at present due to not releasing the TFC/FFC grants it is not possible to pay the pump mechanic wages in the TFC/FFC grant are being releasing directly to Gram Panchyat. Hence, issued instructions to pay the wages from the Gram Panchayats TFC/FFC grants on rotation basis.

Through ref 4th cited, the CEO, ZPP Warangal has issued directions to pay the pump mechanic wages as per SSR is Rs.506/- per day for skilled labour and RS.506/- per day for semiskilled labour.

In view of the above, it is decided to pay the wages of pump mechanic from the Gram Panchayats 14th grants as per population basis as the 14th grant is being released as per population basis. And the wages to pump mechanic is fixed per Rs.506/- per day, as the present working pump mechanic is semiskilled labour.

As per the population basis the one year wages for March, 2017 to February, 2018 (12) months average 28 years per month comes to Rs.170016/- this amount divided to the all G.Ps as per population as follows:

Sl.No.	Name of the Gram Panchayat	Population	Amount
1.	Neredpally	12324	13340
2.	Gorlaveedu	4581	26290
3.	Gudapally	1287	7380
4.	Kothapally (SM)	1343	7700
5.	Moranchapally	1617	9280
6.	Kompally	2320	13300
7.	Kamalapur	2444	14020
8.	Rampur	1068	6366
9.	Pambapur	1478	8480
10.	Nagaram	3081	17690
11.	Azamnagar	2767	15880

12.	Nandigama	1099	6300
13.	Deekshakunta	1187	6310
14.	Dudekulapally	929	5330
15.	Golla Budharam	2066	11860
	Total	29591	170016

All the Sarpanch and Panchayath Secretaries are requested to adjust the amounts to the following A/c immediately from the 14th finance grants of G.Ps of the further A/c for payment of wages to the pump mechanic for 3/2017 to 2/2018.

A/c No.52173975473 – SBI(H) BPLP A/C holder Mandal Parishad Development Officer Mandala Praja Parishad, Bhupalapally.

16. Interim Order dated 17-12-2018 passed in I.A.

No. 1 of 2018 in W.P. No. 5819 of 2018 reads as under:

“Heard the learned counsel for petitioners, learned Government Pleader for General Administration appearing for 1st Respondent and learned Government Pleader Service – II appearing for respondent Nos. 2 to 8 and Sri G. Narender Reddy, learned Standing Counsel for respondent Nos.9 to 14.

Having regard to the documents filed along with the Writ Petition by the petitioners, it is clear that petitioners have been engaged in the Panchayat Raj Department though for some period, their services were utilized by the Rural Water Supply Department as well and they are being paid as on date from the grants received by the respective Gram Panchayats as per XIV Finance Commission as per proceedings No.A2/4855/2016 (Pts) dt.09-01-2016.

Though in the counter-affidavit of the 10th respondent, it is stated that petitioners are being paid on piece rate basis, having regard to the certificates filed by petitioners, which shows that petitioners had been engaged on monthly remuneration and the statement by learned Standing Counsel for respondent Nos.9 to

14 that their remuneration prior to the filing of the Writ Petition was around Rs. 15,000/-, the plea that they were being paid on piece rate basis cannot be accepted.

Respondents have not filed any counter affidavit.

Though learned Government Pleader for Services-II contends that the principle of equal pay for equal work in State of Punjab and others Vs. Jagjit Singh and others will not apply since the petitioners are not rendering similar duties and responsibilities as are being discharged by regular employees holding same/corresponding posts in the Panchayat Raj Department, this contention is prima facie without any merit since petitioners have been admittedly engaged for more than 10 years in post of Pump Mechanic on monthly remuneration basis, which admittedly according to the learned Standing Counsel for respondent Nos.9 to 14 is around Rs.15,000/- p.m.

In this view of the matter, I am of the opinion that petitioners are entitled to be paid by respondents wages on par with minimum of pay scale of regularly engaged Government employees holding such post of Pump Mechanic as per the above decision."

17. Interim Order dated 18.10.2019 passed in I.A. No. 1 of 2019 in W.P. No. 5819 of 2018, reads as under:

"This application is filed to vacate the order dt.17.12.2018 passed in Interlocutory Application No.1 of 2017 [Old No. WPMP. No. 44322 of 2017] in Writ Petition No.35664 of 2017.

*In the said order passed, it was noted by this Court that the learned Standing Counsel appearing for respondent nos. **8 to 14** in the Writ Petition stated that remuneration being paid to petitioners prior to the filing of Writ Petition was around Rs.15,000/-, and that Certificates filed by petitioners also showed that*

petitioners were being engaged on monthly remuneration.

Now, in the Vacate Stay petition filed by respondent nos.1 to 3 in the Writ Petition, the respondents seek to contend that petitioners are being paid on piece-rate basis/ hourly basis.

Since respondent nos.1 to 3 are not paymasters to petitioners, their statement about how the petitioners were being paid for the duties being rendered by them to the Gram Panchayats cannot be taken into account.

Therefore, in my opinion the order dt.17.12.2018 passed in order Interlocutory Application No.1 of 2017[Old No. WPMP. No. 44322 of 2017]in Writ Petition No.35664 of 2017 does not require any modification and does not need to be vacated.

Accordingly, the order dt.17.12.2018 passed in Interlocutory Application No.1 of 2017[Old No. WPMP. No. 44322 of 2017] in Writ Petition No.35664 of 2017is made absolute, and Interlocutory Application No.1 of 2019in Writ Petition No.35664 of 2017 is dismissed.

Post the Writ Petition along with Contempt Case No.90 of 2019 on 01.11.2019."

18. The plea of the respondents in their counter affidavit that the respondents engaged the service of the petitioners whenever and wherever their services are required for the repairing of pumps within the jurisdiction of the concerned Mandal Parishad and the petitioner were paid for the piece of work done by them on the basis of assessment of respondent authorities

from the source of funds provided for the maintenance of sanitation and drinking water under the 13th Finance Commission and the petitioners were not appointed on regular or contract basis cannot be said to be true, having regard to the documents filed along with the writ petition by the petitioners and a bare perusal of the same indicate that the petitioners have been engaged in the Panchayat Raj Department though for some period their services were utilized by the Rural Water Supply Department as well and they are being paid as on date from the grants received by the respective Grampanchayats as by 14th Finance Commission as per proceedings No.A2/4855/2006 (Pts), dated 09.01.2016 as observed by the High Court in its order dated 17.12.2018 passed in I.A.No.1 of 2018 and as admitted by the 1st to 3rd respondents in their counter affidavit filed in the present writ petition that after completion of 13th Finance Commission grants are directly released to the Grampanchayats in support of Mandal Praja Parishad and the petitioners have been paid from the funds of the 14th Finance

Commission by the Grampanchayats as per the work extracted from the petitioners.

19. In the counter affidavit at page 2 para one, respondents 1 to 3 it is specifically pleaded that in some cases wages are being paid through third party (through contractor), the same is extracted as under:

“It is to submit that, the hand pump mechanics were engaged as per need by the concerned Mandal Parishad Development Officers on place work basis and they are not termed as NMR/contract employee, there is no individual contract between the employer and employee in writing even if there is any such contract the same will become invalid as and when the work completes, payment was made and they are working under a scheme which has no permanent future. Once the works under scheme are completed, it will not be in force. The wages paid to the persons who attended the work (repairing of hand pumps) from the funds available in the scheme and in some cases wages are being paid through third party (through contractor).”

20. This Court opines that where a worker is engaged through a contractor or through agencies, they, after deducting their commission, pay the wages to the workers and probably with a fond hope that their services would be regularized subsequently, they work as contract workers or through agencies. This is nothing but exploiting the helplessness of those

workers and thereby denying them the minimum wages. It certainly violates the right to life guaranteed by Article 21 of the Constitution of India to those workers/ employees like the petitioners.

21. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State and the respondents herein, but if they did not choose to create a cadre or fill up the available vacancies in accordance with the applicable procedure /Rules, but chose to make appointments of persons creating contractual relationship, their action would be arbitrary.

22. Thus, the respondent authority cannot avoid recruitment to the posts in question and engage persons like the petitioners through intermediaries/ contractors through the system of "outsourcing", pay them paltry wages, and deny them regularisation of services saying the decision in Uma Devi entitles them to deny relief of regularisation. Engagement of the persons like the petitioners through outsourcing

agencies/ intermediaries violates the law laid down in Uma Devi's case.

23. This Court opines that the engagement of the persons like the petitioners through 3rd party (through contractor) as admitted in the counter affidavit at page 2, para one, for more than 15 years without undertaking any exercise to identify regular vacancy in the above posts in the various mandals pertaining to respondents 6 to 10 and fill up the same as per applicable rules by properly qualified personnel and instead engaging persons through 3rd party (through contractor) is in clear violation of law laid down in Umadevi's case and it also violates Articles 14, 16 and 21 of the Constitution of India. This Court is of the firm view that the respondents cannot contend that the petitioners are not entitled to be considered for regularisation of their services in the said posts on the ground that they were not recruited through a process of selection or on the ground that they have been engaged through 3rd party (through contractor) without there being any individual contract between the

petitioners and respondents 6 to 10 and further on the plea that they were engaged as per need by the respondents or on the plea that there are no sanctioned posts in view of para 53 of the decision in Umadevi's case which permits one time exercise on regularisation to be done for the persons employed on temporary basis/daily wages etc, who have rendered continuous service for more than 10 years.

24. A bare perusal of the order impugned in the present writ petition indicates that the only ground taken for rejecting the petitioner's request for regularization of service, as it reflected in the order impugned in proceedings No. 37/CPR&RE/C2/2015, dated 27.10.2016 is that the petitioners are outsourced as per need basis and not termed as contract employees. The same is reiterated in the counter affidavit filed by the respondents. The counter affidavit, however, specifically takes the plea that there is no individual contract between the employer and employee in writing and further it is contended by the respondents that even if there is any such contract, the

same will become invalid as and when the work completes payment is made and they are working under the scheme which has no permanent future and further the wages are paid to the petitioners, who attend the work from the funds available in the scheme and in some cases wages are paid through 3rd party (through contractor). In fact, there is a clear observation of this Court in its order dated 17.12.2018 passed in I.A.No.1 of 2018 in present W.P.No.496 of 2018 in favour of the petitioners (extracted above) that the petitioners are rendering similar duties and responsibilities as are being discharged of regular employees and holding the same post/corresponding post in Panchayat Raj Department and further the High Court taking into consideration the fact that admittedly the petitioners had been engaged for more than 10 years in the post of pump mechanic on monthly remuneration basis, very clearly specified the same in its order dated 17.12.2018 and further this Court very clearly opined and observed that the petitioners are entitled to be paid the wages by the respondents on par

with minimum pay scale of regularly engaged Government Employees holding such post of pump mechanic and the said orders are in force as on date.

25. A bare perusal of the observations of the Apex Court in various judgments referred to and extracted above clearly indicate that the claim of the petitioners for regularization has to be necessarily considered in view of the fact that the concept of one time measure as explained at paras 6 to 10 of the Judgment of the Apex Court in State of Karnataka v M.L.Kesari which in clear explicit terms said that one time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Uma Devi are so considered and the mandate and object in Uma Devi's case as explained in para 53 of the said judgment, to do periodic regular recruitment of qualified personnel for vacant posts and regularise the services of those engaged for more than 10 years, as a one time measure and the clarification of Uma Devi's case and the observation as held at para '5' of the decision of the Supreme Court in State of Karnataka

and Others vs. M.L.Kesari and others that Uma Devi casts a duty upon the concerned Government and Instrumentality to take steps to regularize 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 has not been diluted and the observations in para 54(2) of the Judgement of the Apex Court in State of Punjab and Others v. Jagjit Singh still hold good, which has clearly said that a legally permissible scheme has to be framed in respect of daily wagers, adhoc or contractual appointees who are not appointed against sanctioned posts, but their services are availed continuously with notional breaks by the State Government or its instrumentality for a sufficient long period i.e., for ten years.

26. The respondents herein cannot deny the relief of regularization to the petitioners as per para 53 of the decision in Umadevi's case, which permits one time exercise of regularization to be done for personal employed on temporary basis/daily wages etc. who

have rendered continuous service for more than 10 years. The respondents herein cannot take the services of the petitioners for years together without regularising their services and indulge in such a practice inconsistent with their obligation to function in accordance with the constitution as observed by the Apex Court in Nihal Singh and others v State of Punjab which clearly held that “sanctioned posts do not fall from heaven” and the State has to create them by a conscious choice on the basis of some rational assessment of the need.

27. Taking into consideration the above referred facts and circumstances and in view of the observations of the Apex Court in various judgments referred to and discussed above, the writ petition is allowed duly setting aside the order impugned in Procs No.37/CPR&RE/C2/2015, dated 27.10.2016 and the respondents while continuously engaging the services of the petitioners herein are henceforth directed to consider the case of the petitioners for regularization of their services in accordance to law, in the posts whose

work they are discharging now in the light of the various judgments of the Apex Court referred to and discussed above and pass appropriate orders, within a period of two months from the date of receipt of copy of this order duly communicating the decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 09.12.2022

Note : L.R. copy to be marked
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