

04.09.2023
Item No.16
Ct. No.5
CHC

WP.ST 20 of 2014

**The State of West Bengal & ors.
Vs.
Smt. Rumki Bhaumik & ors.**

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Pinaki Dhole,
Mr. Somnath Naskar
...for the State-writ petitioner

We directed service of notice of the writ petition upon the private respondents by an order dated August 2, 2023. We extended the time to comply on August 29, 2023. We are informed that the private respondents were served with the notices.

Affidavit-of-service was filed.

The writ petition is directed against an order dated April 12, 2012 passed by the West Bengal Administrative Tribunal in O.A.109 of 2011.

By the impugned order, the Tribunal, directed the State to regularize the service of the respondent nos.1 and 2.

Learned advocate appearing for the writ petitioners/State submits that, the respondent nos.1 and 2 were engaged on contractual basis as Pharmacist for the period from October 2002 till November 30, 2005. The respondent nos.1 and 2 did not approach the Tribunal at the relevant point of

time. He subsequently filed the Original Application in 2011 and obtained the impugned order.

Learned Senior Advocate appearing for the writ petitioners/State submits that, the Tribunal proceeded on the basis of the ratio enunciated in **(2006) 4 SCC 1 [Secretary, State of Karnataka vs. Uma Devi (3) and ors.]**. He submits that, in **Umadevi (3)** Supreme Court observed that, there must be 10 years of contractual service, amongst other criteria to be fulfilled, as on April 10, 2006 for consideration in a scheme for regularisation. Moreover, the initial appointment must be regular and not illegal. The appointment must be towards a sanctioned post. He submits that all criteria laid down in **Umadevi (3)** were not satisfied. Respondent nos.1 and 2 worked for a period from October 2002 till November 30, 2005. They did not put in 10 years of service. Therefore, the ratio of **Umadevi (3)** was incorrectly applied.

None appears for the respondents.

Respondent nos.1 and 2 as contractual employees sought regularisation of service before Tribunal which was allowed by the impugned order. The respondents worked as a Pharmacist from October 2002 till November 30, 2005. They waited till 2011 to approach the Tribunal. On that ground alone, the respondent nos.1 and 2 are not entitled to any

relief. Be that as it may, the Tribunal, noted the ratio laid down in **Umadevi (3)** and proceeded to hold that respondent nos.1 and 2 were covered therein. With respect, the Tribunal overlooked the fact that, there must be 10 years of tenure of service for a contractual employee to be considered for a scheme for regularization. The respondent nos.1 and 2 herein did not meet such criteria.

In such circumstances, we set aside the impugned order of the Tribunal dated April 12, 2012.

W.P.S.T.20 of 2014 is allowed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)