

04.09.2023
Item No.17
Ct. No.5
CHC

WP.ST 21 of 2014

**The State of West Bengal & ors.
Vs.
Sri Jayanta Kumar Jha & 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.

The writ petition is directed against an order dated April 12, 2012 passed by the West Bengal Administrative Tribunal in O.A.108 of 2011.

By the impugned order, the Tribunal, directed the State to regularize the service of the respondent no.1.

Learned advocate appearing for the writ petitioners/State submits that, the respondent no.1 was engaged on contractual basis as Pharmacist for the period from October 2002 till November 30, 2005. The respondent no.1 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 regularization. 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 no.1 worked for a period from October 2002 till November 30, 2005. He did not put in 10 years of service. Therefore, the ratio of **Umadevi (3)** was incorrectly applied.

None appears for the respondents.

Respondent no.1 as contractual employee sought regularization of service before Tribunal which was allowed by the impugned order. The respondent no.1 worked as a Pharmacist on October 2002 till November 30, 2005. He waited till 2011 to approach the Tribunal. On that ground alone, the respondent no.1 was 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 no.1 was 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 no.1 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.21 of 2014 is allowed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)