

April 18, 2023
Sl. No.7
Court No.19
s.biswas

WPA 7638 of 2023

Shibpada Mandal

vs.

The State of West Bengal and others

Mr. Sanjib Kumar Mukhopadhyay,
Ms. Nargish Parveen, Advocates

... for the petitioner

Mr. Susanta Pal,
Mr. A. Dulal Sarkar, Advocate

... for the State

Affidavit of service filed by the petitioner is taken on record.

The petitioner prays for regularization in the post of Sahayak at Dulduli Gram Panchayat or in any Group-D post which would commensurate with his educational qualification. The petitioner claims to have passed Secondary Examination, through open schooling.

Initially, the petitioner was engaged by the Pradhan, Dulduli Gram Panchayat to render some service to the panchayat from January 15, 2001 to March 2003. The said decision of the Pradhan was preceded by a resolution of the gram panchayat dated January 3, 2001. The petitioner was engaged as a temporary staff, on the basis of such resolution.

The records reveal that a recruitment process for engagement of 'Sahayaks' had been initiated by the respondent authorities. The petitioner's name had not been sponsored by the Employment Exchange. The petitioner moved this Court under

Article 226 of the Constitution of India. A Co-ordinate Bench of this Court directed that the petitioner should be allowed to appear in the interview in case persons junior to the petitioner had been sponsored by the Employment Exchange, but the petitioner had been left out. Such order was passed on February 18, 2004 in WPA 2310(W) of 2004.

It is submitted by the learned advocate for the petitioner that although the petitioner was present at the venue,, he was not allowed to participate in the same. Such claim is sought to be substantiated on the basis of a certificate issued by the Pradhan of Dulduli Gram Panchayat dated February 26, 2004. The Pradhan of Dulduli Gram Panchayat certified that the petitioner was an unemployed youth. He was present at the venue but he was not allowed to participate at the interview by the authorities of the Hingalganj Panchayat Samity.

WP 2310(W) of 2004 came up for hearing before another Co-ordinate Bench of this Court. The said writ petition was disposed of on September 3, 2012, directing the authorities to consider the case of the petitioner sympathetically. The contention of the petitioner that he had not been allowed to appear at the interview, had been recorded in the order.

The Sub-Divisional Magistrate at Basirhat had passed an order on an appeal preferred by the petitioner from the order passed by the Block Development Officer, rejecting the petitioner's claim for regularization. According to the petitioner, the order was passed without considering the factual aspects and the true meaning of paragraph 53 of the decision in **Secretary, State of Karnataka and others vs. Umadevi and others** reported in **(2006) 4 SCC 1**.

The petitioner submits that taking into account his prolonged service as a temporary staff of the Dulduli Gram Panchayat, this Court must pass necessary order regularizing the petitioner.

Although the Court finds that the order of the Sub-Divisional Magistrate, Basirhat may not be well-reasoned, the Court does not deem it necessary to interfere with the order as the conclusion is correct. The court supplies its own reasons for not allowing the petitioner's prayer for regularization as hereunder: -

- (a) The engagement of the petitioner as a casual/temporary staff of the gram panchayat was a private arrangement.
- (b) Such arrangement was from January 2001 to March 2003, which is for a period for two

years two months. The petitioner was not engaged against any particular post.

- (c) The petitioner did not appear at the interview for the post of Sahayak at gram panchayat. The petitioner did not move this Court alleging non-compliance of the order of this Court. In any event, such non-appearance would not have any impact on the issue of regularization.
- (d) Apart from the certificate of the Pradhan, the petitioner has not been able to produce any records to show that the petitioner had taken immediate steps when he was allegedly restrained from appearing at the interview. Prayer for regularization is an afterthought.
- (e) The certificate dated February 26, 2004 issued by the Pradhan of Dulduli Gram Panchayat clearly indicates that the petitioner was unemployed. He was not engaged temporarily, against any sanctioned post for a prolonged period.
- (f) The above-mentioned certificate of the Pradhan, has been heavily relied upon by the petitioner. It is clear that from March 2003, the petitioner was neither serving at Dulduli Gram Panchayat nor under any

other authority. The Pradhan mentioned that the petitioner was an unemployed youth.

The relevant paragraph relied upon by the petitioner in **Uma Devi** (supra) is quoted below:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V.

Narayanappa, (1967) 1 SCR 128, R.N. Nanjundappa Vs. T. Thimmiah, (1972) 1 SCC 409, and B.N.

Nagarajan vs. State of Karnataka, (1979) 4 SCC 507, and referred to in paragraph 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 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 above referred 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 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.

We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

This is not a case where the petitioner can be given one time regularization under any scheme for having worked more than 10 years in a sanctioned post. The benefit of Paragraph 53 in **Uma Devi** (supra) and in the subsequent decision in the case of **State of Karnataka vs. M. L. Kesari and others** reported in **(2010) 9 SCC 247** are not applicable in the case of the petitioner. The relevant paragraph of **Kesari** (supra) reads as follows:

“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) [(2006) 4 SCC 1] , 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) [(2006) 4 SCC 1] , 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 employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3) [(2006) 4 SCC 1] , 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) [(2006) 4 SCC 1] 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 10-4-2006 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 (3) [(2006) 4 SCC 1] , but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3) [(2006) 4 SCC 1] , 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 (3) [(2006) 4 SCC 1] , are so considered.

11. The object behind the said direction in para 53 of Umadevi (3) [(2006) 4 SCC 1] 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) [(2006) 4 SCC 1] 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 10-4-2006 [the date of decision in Umadevi (3) [(2006) 4 SCC 1]] 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) [(2006) 4 SCC 1] 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) [(2006) 4 SCC 1] as a one-time measure.”

In the case of **Kesari** (supra), the Hon’ble Apex Court, while dealing with paragraph 53 of **Uma Devi** (supra), arrived at the conclusion that the true meaning of paragraph 53 of **Uma Devi** (supra) would

be that persons whose services had been utilized for more than 10 years in any establishment deserve regularization, if the one-time measure for their regularization had not been undertaken by the concerned department. It was observed that all departments must commence the process of one-time regularization.

In this case, the petitioner has not been able to satisfy the Court on the basis of the records that he was continuing in service after March, 2003 at the gram panchayat. He was not engaged against any sanctioned post. The certificate of the Pradhan also indicates that the petitioner was an unemployed youth and such certificate was issued sometime in February, 2004. This means that the petitioner was not in employment of the gram panchayat after March, 2003. It is admitted that the petitioner worked for only two years and two months.

The interview was for a permanent post of Sahayak and the petitioner did not appear at the interview. Hence, the issue as to whether the petitioner could not appear at the interview for no fault of his own, is not relevant for consideration of the case for regularization. The co-ordinate bench also did not pass any mandatory direction either to appoint the petitioner or regularize him. However, if the petitioner was not working against any

sanctioned post for the past 10 years, the question of regularization would not arise at all.

In the decision of ***Sheo narain Nagar & Ors. vs State of Uttar Pradesh & Ors.*** reported in **(2018) 13 SCC 432** the Hon'ble Apex Court allowed regularization as the workers had been conferred temporary status by the government with retrospective effect from 2002 and they had served for more than 23 years in all. There was already a direction for regularization of these persons in the past.

Regularization cannot be a mode of appointment. The Supreme Court in the case of ***National Fertilizers Ltd. and Others vs. Somvir Singh*** reported in **(2006) 5 SCC 493**, by referring to the ratio of Umadevi's case (Supra) held that persons who had been only appointed for temporary periods or were temporary employees in posts, could not claim regularization. The relevant paragraphs of National Fertilizers Ltd. (supra) read as under:-

"20. The Constitution Bench opined that any appointment made in violation of the Recruitment Rules as also in violation of Articles 14 and 16 of the Constitution would be nullity. The contention raised on behalf of the employees that those temporary or ad hoc employees who had continued for a fairly long spell, the authorities must consider their cases for regularisation was answered, thus: [Umadevi (3) Case (supra), SCC p.29, para 26]
"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is

bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of *State of Haryana v. Piara Singh*: (1992) 4 SCC 118 are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

21. It was furthermore opined: [Umadevi (3) Case (supra), SCC p.32, para 33] "33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment."

22. Taking note of some recent decisions of this Court, it was held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution of India. It further quoted with approval a decision of this Court in *Union Public Service Commission v. Girish Jayanti Lal Vaghela*: (2006) 2 SCC 482 in the following terms: (SCC p. 490, para 12) "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from

eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

Hence, the writ petition is dismissed.

All the parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)