

The Deputy Director of Health Services, }
Kolhapur Circle, Kolhapur }
Central Administrative Bldg. Bawada Road, }
Kolhapur }..Petitioner
(Original Respondent)

Smt. Mangal Baburao Ballal	}
R/o-Government Quarters,	}
Vasumbe Phata, Rural Hospital Tasgaon,	}
Dist. Sangli	}..Respondent
(Original Complainant	

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Judgement

1. The Government of Maharashtra through the Deputy Director of Health Services, Kolhapur Circle has filed present petition challenging Judgment and order dated 27 April 2016 passed by the Industrial Court, Kolhapur allowing Respondent's complaint and directing grant of permanency to her on the post of Ward Servant with further directions to pay difference in wages and privileges arising out of permanency.

2. Respondent came to be appointed as Ward Servant against a leave vacancy on 20 July 2000 initially for a period of 29 days at District Health Laboratory, Kolhapur. Her appointment was extended from time to time by issuing appointment orders for tenure of 2 months. She continued to work as temporary Ward Servant in District Health Laboratory, Kolhapur. She filed Complaint (ULP) no. 72 of 2001 before Labour Court, Kolhapur seeking a direction against Petitioner not to terminate her services. It appears that an order of *status quo* was granted on 07 March 2001 by Labour Court, Kolhapur. However, by order dated 29 June 2011 complaint ULP no.72 of 2001 came to be dismissed by Labour Court, Kolhapur.

3. After dismissal of her Complaint ULP no.72 of 2001, Respondent filed two proceedings. On or about 05 July 2011 she filed Revision (ULP) No. 75 of 2011 challenging the Labour Court's order dated 26 September 2011. Parallely, she instituted a separate substantive Complaint (ULP) No. 147 of 2011 before Industrial Court, Kolhapur on or about 07 July 2011 seeking conferment of benefit of permanency from the date of completion of 240 days of service. It appears that though Complaint ULP No.72 of 2001 seeking restraining order against termination was not granted on 29 June 2011, services of Respondent were not discontinued.

4. By Judgment and Order dated 27 April 2016, the Industrial Court has allowed Complaint (ULP) No.147 of 2011 and has directed conferment of permanency on the Respondent on the post of Ward Servant (Class IV) as per Rules. The Industrial Court has further directed to pay difference of wages and privileges to her arising out of the permanency.

5. Since Complaint (ULP) no.147 of 2011 came to be allowed on 27 April 2016, the Industrial Court disposed of

Revision (ULP) No. 75 of 2011 as infructuous by order dated 24 June 2016.

6. Petitioner is aggrieved by the Judgement and order dated 27 April 2016 passed in Complaint (ULP) no.147 of 2011 and has filed the present petition.

7. Mr.Vanarse, the learned AGP would appear on behalf of the Petitioner-State and submit that the Industrial Court has erred in allowing the Complaint ignoring the fact that Respondent's earlier complaint bearing Complaint (ULP) no.72 of 2001 was dismissed by the Labour Court on 29 June 2011. That Petitioner cannot be permitted to file repeated proceedings for same cause. He would further submit that the Model Standing Orders would not apply to Petitioner as they had never been adopted *qua* the service conditions of the Respondent. That Respondent has no right to seek permanency on completion of period of 240 days of service. He would further submit that the appointment of Respondent was merely against leave vacancy and she did not acquire any right of regularization. He would further submit that mere continuation on the post on temporary basis does not give right of regularization. That, initial appointment of

Respondent was *de-horse* the Recruitment Rules and was made without following selection process. That she is back door entrant. Her appointment was not against regularly sanctioned post. That therefore she does not qualify the criteria prescribed by the Apex Court in its judgment in **Secretary, State of Karnataka Vs. Umadevi & Ors.**¹ for regularization of services.

8. *Per Contra*, Mr. Ghanavat the learned counsel for the Respondent would oppose the petition and support the order passed by the Industrial Court. He would submit that the Respondent has continued in service for the last 23 long years and deserves to be regularized. That, her initial appointment is against regularly sanctioned post as the same was made against leave vacancy and she fulfilled qualification and eligibility criteria for holding the post of Ward Servant (Class-IV). That therefore the Industrial Court has rightly allowed the Complaint and directed regularisation of Respondent.

9. Rival contentions of the parties now fall for my consideration.

1 (2006) 4 SCC 1

10. Perusal of initial order of engagement of the Respondent would show that she was appointed against leave vacancy created on account of absence of one Shri. Katkar. The order dated 20 July 2000 refers to Respondent's application dated 24 May 2000 and absence of Shri. Katkar. It does appear that Petitioner was appointed on purely temporary basis for only one month on 20 July 2000 against vacant post due to absence of Shri. Katkar. She was however granted payscale of Rs.25505-32000. At the end of the tenure of the first appointment, a fresh appointment order was issued on 31 August 2000 once again appointing her for 2 month. Further appointment letter was issued on 09 November 2000 for a period of 2 month. The 4th appointment was issued on 02 January 2001 for a period of 2 months. Every time, Petitioner used to submit her application and appointment order used to be given to her. Further continuation of appointment after February/March 2001 appears to be in pursuance of *status quo* order dated 07 March 2001 passed by the Labour Court, Kolhapur in Complaint (ULP) No. 72 of 2001, which was filed by Respondent to restrain Petitioner from terminating the services. It appears that Complaint (ULP) No. 72 of 2001 was dismissed for default on 21 April 2006, on account of which the services of the Respondent were not continued. She

however got the Complaint restored by filing Miscellaneous Application (ULP) no.56 of 2006, which came to be allowed on 16 December 2006. Therefore, by order dated 18 January 2007, she was once again appointed on temporary basis. This arrangement continued till dismissal of Complaint (ULP) no.72 of 2001 vide order dated 29 June 2011.

11. Contention of Mr. Vanarase that Complaint (ULP) no.72 of 2001 was also filed for regularization appears to be incorrect in that the said Complaint was filed only for the purpose of continuation in service. The relief of permanency was not sought in that Complaint.

12. Ideally after dismissal of Complaint (ULP) no.72 of 2001 on 29 June 2011 and on account of vacation of *status quo* order, services of the Respondent ought to have been discontinued. This is particularly so because, the Industrial Court refused to pass any further interim order in Revision Application (ULP) no.75 of 2011. By order dated 05 July 2011, the Industrial Court observed that it would be improper to pass any *ex-parte* interim order. No other order is brought on record by either of the parties to suggest that any interim order was granted by the Industrial Court in Revision (ULP)

no.75 of 2011. The Respondent apparently is continued in service despite withdrawal of protection on account of dismissal Complaint (ULP) No. 72 of 2001 on 29 June 2011.

13. The Industrial Court has proceeded to allow Complaint (ULP) no.147 of 2011 for conferment of permanency by holding that initial appointment of Respondent was on the vacant posts. The same was apparently against post occupied by one Shri. Katkar, who was remaining absent. It is however not known as whether Shri. Katkar resumed his duties and what was the exact post against which services of the Respondent were continued. However, the fact remains that Respondent has continued in service since 20 July 2000 till date. It has been more than 23 years that she has been working on Class IV post. She has been drawing salary in payscale of Class IV post for the last 23 long years. She cannot be granted the benefit of permanency on account of completion of 240 days of services as the Model Standing Orders are not applicable to the establishment in question. Right of regularization however needs to be considered on the basis of continuation in service coupled with her eligibility to hold the post, her placement in regular payscale and she holding the post within the sanctioned strength.

14. Regularisation of temporary employees in Government service is now governed by law laid down by the Apex Court in ***Umadevi*** (*supra*). Now mere continuation of service for long time does not entitle a temporary employee to claim regularization of services. The judgment in ***Umadevi*** envisage one time measure of regularization of irregularly appointed temporary employees completing 10 years of service. However, while computing such period, services rendered on account of interim order granted by Courts cannot be computed. Therefore, in ordinary course, services rendered by the Respondent from the order of *status quo* of the Labour Court dated 07 March 2001 till dismissal of Complaint (ULP) no.72 of 2001 on 29 June 2011 are required to be excluded. However even if the period from 07 March 2001 to 26 June 2011 is executed, Respondent has still rendered about 13 long years of service without any protection by any Court/Tribunal. Her case may not entirely fit into criteria laid down by the Apex Court in *Umadevi* due to variety of reasons. Initial appointment of Respondent is not against regularly sanctioned post and she did not complete 10 years of service on the date of Judgement in *Umadevi* and her continuation in service was owing to interim order of *status quo* passed by the

Labour Court. However, as held by the Apex Court in ***Harinandan Prasad Vs. Food Corporation of India*** (2014) 7 SCC 190 though ordinarily regularization cannot be granted by Industrial Court only on account of long continuation in service, it depends on facts of each case. The Apex Court has held:

39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.

40. The aforesaid examples are only illustrative. It would depend on the facts of each case as to whether the order of regularisation is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.

15. In ***Nihal Singh v. State of Punjab***, (2013) 14 SCC

65 the Apex Court has held as under:

37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. **Umadevi (3) judgment cannot become a licence for exploitation by the State and its instrumentalities.**

(emphasis supplied)

16. The above judgments are not quoted to suggest any departure from principles enunciated in Constitution Bench Judgment in ***Umadevi***. It also cannot be that Industrial Court/Labour Court can direct regularization *de-horse* the Judgment in ***Umadevi***. However, in deserving cases like the present one where the Respondent has continued in service for 23 long years, the Industrial Court would be justified in directing absorption by taking into consideration unique circumstances of the case. This is particularly so because she holds eligibility criteria of the post. She has earned wages in a payscale. Her initial appointment was against a vacant post, albeit caused by absence of a regular employee. There is nothing on record to indicate that she occupied post outside the sanctioned strength.

17. Respondent has been in service since 20 July 2000, and it has now been over 23 years that she has worked with the Petitioners. She cannot be treated as temporary employee till she attains the age of superannuation. She is continued in service despite dismissal of Complaint (ULP) no. 72 of 2001 on 26 June 2011. The learned counsel for the Respondent has submitted that she has rendered duties in a hospital during Covid-19 pandemic. In my view, it would be too iniquitous to continue the services of Respondent on temporary basis till she attains the age of superannuation. On account of these peculiar circumstances of the case, I am inclined to uphold the Order passed by the Industrial Court with slight modification that regularisation of service of the Respondent would be from the date of the Order of the Industrial Court. This relief is however granted in the light of the peculiar facts and circumstances of the case, and this shall not be cited as a precedent in any other case.

18. I accordingly uphold Judgment and order dated 27 April 2016 passed by Industrial Court, Kolhapur with modification that Respondent shall be regularised in service on the post of Ward Servant (Class IV) with effect from the Judgment of the Industrial Court i.e. 27 April 2016 with all consequential

benefits. Arrears of pay and allowances arising from such regularization be paid to the Respondent within a period of four months from today. With above directions, the Writ Petition is disposed of.

SANDEEP V. MARNE, J