

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Prasenjit Biswas.

FMA 477 of 2020

Najmina Khatun
Vs.
The State of West Bengal and others.

For the Appellant : **Mr. Golam Mastafa,**
Mr. Tarasankar Samanta.

For the State : **Mr. Pinaki Dhole,**
Mr. Avishek Prasad.

Heard on : 16.07.2024

Judgment on : 16th July 2024.

The Court:

An unmeritorious claim is being furthered in the instant mandamus appeal in pursuit of regularizing the service of the appellant when admittedly the appointment was not in accordance with the Rules and Regulations nor following any other norms in this regard.

The aforementioned observation can be corroborated with the facts discerned from the record that the mother in-law of the

appellant was working in the said Madrasah and approached the Court for absorption and/or regularization of service.

The writ petition was pending for a pretty long time and thereafter the said mother in-law abandoned her claim and did not pursue with the writ petition. Interestingly, the mother in-law approached the Madrasah Committee and offered to give up her job provided the same is given to the appellant, the daughter in-law.

Firstly, there is no concept of barter in the Service Jurisprudence. One cannot give up his service in lieu of accommodating the other. If such is brought within the Service Jurisprudence, the post would remain permanent and perennial in the family as the moment the employee senses that he is going to demit such post or office would immediately abandon such service in lieu of his service to his own family member. Apart from the same, the service of the mother in-law was never approved nor regularized and, therefore the tenure, which she spend in the said Madrasah, cannot be attached to the appellant's engagement nor the appellant can claim the right of the mother in-law as she consciously abandoned such right during her lifetime.

Admittedly, the appellant was appointed in the said Madrasah on 11th April 2007, much after the judgment of the Constitution Bench rendered in case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others**, reported in **AIR 2006 SC 1806**. The Constitution Bench have cautioned the appointments by the executives of the State in circuitous manner and exploiting potentials and human resources without following any procedures of recruitment or in some cases the Recruitment Rules have been adhered to but not in its strict sense.

The Constitution Bench, thus, made a distinction between an appointment, which is per se illegal and an appointment, which can

be termed as irregular. In case of irregular appointment, it was held that the persons, who were working for continuous period of ten years prior to the date of the said judgment uninterruptedly, continuously, without being backed by any order of the Court, are entitled to be absorbed and/or regularized in the sanctioned post and the State must adopt one time measure in this regard. So far as the illegal appointments are concerned, the Constitution Bench in categorical terms held that such appointments cannot seek the blessings from the Court and, therefore, no protection can be extended to them.

Taking a clue from the judgment of the Constitution Bench, the Counsel for the appellant relies upon a subsequent judgment of the Supreme Court in case of **Sheo Narain Nagar and others vs. State of Uttar Pradesh and others**, reported in **AIR 2018 SC 233**. According to the Counsel for the appellant, it has been held in the said judgment that a person, who has worked for a considerable period of time, is entitled to get a permanent status.

After meticulous reading of the said judgment, we do not find that the Apex Court has laid down the law in this regard. The appellant in the said report was engaged as a daily rated worker in month of August 1993 and later on was appointed on contractual basis in the year 1996. Since the said appellant was found to have worked more than ten years prior to the date of the judgment of the Constitution Bench in **Umadevi (3) (supra)**, the Apex Court held:

“9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done,. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with

retrospective effect on 2.10.2022. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when the order was passed. Thus, the submissions raised by learned counsel for the respondents that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they have rendered service for three years, when they were offered the service on contract basis, it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rule available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of the Uma Devi (3) (AIR 2006 SC 1806) (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequently benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.”

We do not find that the law laid down in the aforesaid report has any manner of application in the facts of the present case. The decision is what is decided on the basis of the facts involved therein and the ratio of the law has to be culled out from the context it is used. One stray sentence or observation made in the judgment cannot be regarded as the exposition of law unless the same is read as a whole and to be understood in the perspective of the context.

Admittedly, the appellant herein was appointed without following any procedures in the year 2007 solely on the basis of the request of her mother in-law and, therefore, cannot get any benefit before the Court of Law and Equity.

The Single Bench has rejected the writ petition with certain directions, but we do not intend to make any comment except that we find that the dismissal of the writ petition was an inevitable conclusion.

Accordingly, the appeal is dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

ab

(Prasenjit Biswas, J.)