



2024:DHC:6097-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 05.08.2024
Judgment pronounced on: 14.08.2024

+ **LPA 720/2024 & CM APPL. 43237/2024****MUNICIPAL CORPORATION OF DELHI**

.....Appellant

Through: Ms. Sriparna Chatterjee, Standing
Counsel.

versus

PRADEEP RANA AND OTHERS

.....Respondents

Through: Ms. Nandita Abrol, Mr. Rajiv
Aggarwal, Ms. Meghna De, Mr.
Laksh Tuli, Mr. Lakshay Luthra, Mr.
L. Gangmei, Ms. Akansha Sharma,
Mr. Shireen Goyal and Ms. Komal
Narula, Advocates.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J.:**

1. This Letters Patent Appeal seeks to assail judgment and order dated 31.05.2024, passed by the learned Single Judge of this court in Writ Petition bearing No. WP(C) 3339/2024, titled Municipal Corporation of Delhi vs Pradeep Rana & Ors. On the basis of advance notice, respondents entered appearance through counsel and at request of both sides we heard final arguments at the initial stage itself.

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2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The present respondents joined the North Delhi Municipal Corporation (*now the unified Municipal Corporation of Delhi, the appellant herein*) as Assistant Malaria Inspector on contractual basis in the months of September-October 2010 through interview process in pursuance of vacancy advertisement.

2.2 During the period from the year 2012 to 2014, the appellant conducted process for direct recruitment for the post of Assistant Malaria Inspector through a vacancy notice/advertisement published by the Delhi Subordinate Services Selection Board (DSSSB). According to the appellant, some of the contractual employees opted not to appear in the recruitment examination while some of them failed to qualify the same. Through the recruitment examination conducted by DSSSB, regular appointments to the post of Assistant Malaria Inspector were carried out in the year 2017.

2.3 In the meanwhile, the present respondents through Union raised an industrial dispute and filed a Statement of Claim before the Industrial Tribunal, thereby seeking regularization of their contractual services with retrospective effect from the initial date of their joining and payment of difference of salaries on the principle of “Equal Pay For Equal Work”.

2.4 By way of judgment and order dated 11.08.2023, the learned



Industrial Tribunal decided the Industrial Reference in favour of the present respondents, directing regularization of their services on the post of Assistant Malaria Inspector with effect from the initial dates of their joining and also awarded consequential benefits; the present appellant was directed to ensure compliance within 60 days of publication of the Award, failing which it would pay interest at the rate of 8% per annum from the date of accrual till the date of payment to the present respondents.

2.5 The appellant preferred a writ petition against the said award of the Industrial Tribunal, but the said writ petition was dismissed by the learned Single Judge of this Court by way of the judgment and order impugned in this intra-court appeal.

3. During arguments, learned counsel for appellant took us through the above matrix and contended that the impugned order is not sustainable in the eyes of law. Learned counsel for appellant contended that since the respondents did not undertake any examination conducted by the recruitment agency of DSSSB, they cannot be brought at par with the regularly recruited Assistant Malaria Inspectors. Learned counsel elaborated that in the case of *Vinod Kumar & Ors vs Union of India & Ors.*, relied upon by the learned Single Judge the contractual employees had undergone a selection process, which did not happen in the present case, so reliance on the said judgment was not correct. It was also argued on behalf of the appellant that implementation of the award passed by the learned Industrial Tribunal would lead to seniority disputes and heartburn between the present respondents and those recruited through direct recruitment examination.



Learned counsel for appellant also argued that the principle of ‘Equal Pay for Equal Work’ could not be invoked in the present case by treating the contractual employees at par with regular employees. It was also argued on behalf of appellant that regularization of the respondents in compliance with the impugned order would not only be at the cost of those waiting to compete, but would also lead to avoidable financial burden on the Corporation, so the impugned order is liable to be set aside. It was also argued on behalf of appellant that the respondents had voluntarily opted to get engaged on contractual basis in the year 2010, so now they cannot claim being unfairly treated by way of denial of regularization. In support of his arguments, learned counsel for appellant placed reliance on the judgments titled *State of Karnataka vs Umadevi*, (2006) 4 SCC 1; *University of Delhi vs. Delhi University Contract Employees Union & Ors.*, (2021) 16 SCC 71; *State of Rajasthan & Ors. vs. Daya Lal & Ors.*, (2011) 2 SCC 429; *S. Mariappan vs. The State of Tamil Nadu & Ors.*, WP (MD) No. 23062-23081/2015, decided on 25.06.2019 by the Madurai Bench of the Madras High Court; *Cyprian Kujur & Anr. vs. Union of India & Ors.*, 2023 SCC OnLine Del 3248; and *Oil and Natural Gas Corporation vs. Krishan Gopal & Ors.*, (2021) 18 SCC 707.

4. On the other hand, learned counsel for respondents supported the impugned order and contended that the present appeal is totally devoid of merit. Learned counsel for respondents argued that since the respondents have been working as contractual employees over a long period of time, they ought to have been regularized, especially keeping in mind the nature of job dealing with the malaria and similar public health issues, which is perennial



in nature. It was argued on behalf of respondents that keeping the respondents as contractual employees across more than a decade is an unfair labour practice that should be curtailed. Learned counsel for respondents in support of his arguments also referred to certain judicial precedents, as cited hereafter.

5. Thence, the issue before us is as to whether the present respondents deserve to be regularized in the post of Assistant Malaria Inspector in view of the facts and circumstances of this case. According to the appellant side, services of the respondents cannot be regularized in view of law laid down in the case of **Umadevi** (supra). On the other hand, the respondents side seeks to rely upon various judicial precedents in which the law laid down in **Umadevi** (supra) has been elucidated to say that **Umadevi** doctrine does not completely prohibit regularization.

5.1 According to the respondents, following observations of the Hon'ble Supreme Court in the case of **Umadevi** (supra) have been at the core of various subsequent judicial pronouncements coming from the Supreme Court and various High Courts including this court:

*“53. One aspect needs to be clarified. There may be cases where **irregular appointments (not illegal appointments)** as explained in **S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan** and referred to in para 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 the courts or of tribunals. The question of regularisation 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 abovereferred to and in the light of this judgment”.*

(emphasis supplied)



5.2 In the case of *State of Karnataka vs M.L. Kesari*, (2010) 9 SCC 247 the Hon'ble Supreme Court interpreted the law laid down in *Umadevi* (supra) as follows:

7. It is evident from the above that there is an **exception to the general principles against "regularisation"** enunciated in *Umadevi*, if the following conditions are fulfilled:

(i) The employee concerned should have **worked for 10 years or more in duly sanctioned post** without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The **appointment of such employee should not be illegal, even if irregular**. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed **possessed the prescribed qualifications** and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. *Umadevi* casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those **irregularly appointed employees** who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. *Umadevi* directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-4-2006).

9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi*, 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*, 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, 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 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, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, 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, are so considered.

11. The object behind the said direction in para 53 of Umadevi 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 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] 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 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 as a one-time measure”.

(emphasis supplied)



5.3 In the case of *Ajaypal Singh vs. Haryana Warehousing Corporation*, (2015) 6 SCC 321, the Hon'ble Supreme Court examined the law laid down in the case of *Umadevi* (supra) in the backdrop of unfair labour practice of keeping the workmen on casual basis over long period of time, and observed thus:

*“16. The effect of the Constitution Bench decision in State of Karnataka v. Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , in case of unfair labour practice was considered by this Court in Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana [(2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] . In the said case, this Court held that **Umadevi case [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not overridden powers of the Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of employer is established.** This Court observed and held as follows: (Casteribe Sanghatana case [(2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] , SCC pp. 573-74 & 579, paras 34-36 & 47)*

*“34. It is true that Dharwad District PWD Literate Daily Wages Employees' Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] , arising out of industrial adjudication has been considered in State of Karnataka v. Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] leaves no manner of doubt that **what this Court was concerned in Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.***

35. Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of



temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. *Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi [State of Karnataka v. Umadevi, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."*

(emphasis supplied)

5.4 In the case of *Sheo Narain Nagar & Ors vs State of Uttar Pradesh & Ors*, (2018) 13 SCC 432, the Hon'ble Supreme Court observed that employment of the appellants in the said case was not a backdoor entry so as to disentitle them benefit of regularization, as envisaged in the case of *Umadevi* (supra) and held thus:

*7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. **This situation was not envisaged by Umadevi. The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the***



observation that Umadevi has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi. Thus, the time has come to stop the situation where Umadevi can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms. Whereas Umadevi laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi”.

(emphasis supplied)

5.5 In the case of *Narendra Kumar Tiwari vs State of Jharkhand*, (2018) 8 SCC 238, the Hon’ble Supreme Court observed that the decision in the case of *Umadevi* (supra) intended to curb the pernicious practice of irregularly and illegally appointed daily wagers and continuing with them indefinitely. The Hon’ble Supreme Court observed thus:

“7. The purpose and intent of the decision in Umadevi was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi is



a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi and Kesari sought to avoid”.

(emphasis supplied)

5.6 In the case of ***Project Dir. Dep. of Rural Development vs Its Workmen***, 2019 SCC OnLine Del 7796, this court dealt with the issue of regularization of workmen in an industry where the resistance to the regularization claim was the law laid down in the case of ***Umadevi*** (supra). This court observed that the case of ***Umadevi*** (supra) stood on different footing insofar as the case before this court was an industrial adjudication while ***Umadevi*** (supra) dealt with service law. This court observed that ***Umadevi*** (supra) was dealing with the order of the High Court of Karnataka whereby some public employees of Karnataka Commercial Tax Department were granted not only regularization but even salary and allowances at par with the regular employees from the date of initial appointment, and it is in this context that the Hon’ble Supreme Court had observed that contractual employees in public departments cannot seek regularization on the grant of length of their service. This court came to a conclusion that in ***Umadevi*** (supra) an exception had been laid down for those employees who had been appointed in an irregular manner (*not illegal manner*) and had completed atleast 10 years of service without any judicial intervention. This court came to the conclusion that resistance to regularize the workmen was an unfair labour practice adopted by the management and the prohibition *qua* regularization laid down in ***Umadevi*** (supra) would not apply to industrial



adjudication insofar as the Industrial Tribunal is empowered to direct regularization of services where through unfair labour practices, the employees have been made to render services for long periods of time on causal basis.

5.7 In the case of *Amrish Kumar & Ors vs Indian Institute of Mass Communications*, 2020 SCC OnLine Del 1915 the challenge before this court was to an order passed by the Labour Court, denying regularization to daily wagers on the basis of *Umadevi* (supra). Placing reliance on the judgment in the case of *Project Dir. Dep. of Rural Development* (supra), this court granted regularization to the employees, holding that denial of relief to them was not sustainable because they had been working for almost 23 years against sanctioned posts.

5.8 In the case of *Basudeb Debnath & Ors vs Union of India, Department of Personnel & Training, Represented by Principal Secretary & Ors*, 2021 SCC OnLine Tri 137, a Division Bench of the High Court of Tripura analyzed the legal position and observed thus:

“17. It was also not be open for the State to continue to pay fixed wages to these workers for decades together when (i) their engagement was against sanctioned posts; (ii) they have been continued for long period of time; (iii) they fulfill the educational qualifications prescribed for the post; (iv) the work is perennial in nature; (v) they have been engaged virtually continuously throughout since their initial engagements and (vi) they are doing the same work which regular staff members are doing. They may not be equated with regular Government servants for the purpose of pay and allowances, nevertheless on the principle of “equal pay for equal work” as elaborately explained in case of State of Punjab v. Jagjit Singh reported in (2017) 1 SCC 148, they must get wages of course on daily basis,



on the minimum of the scales prescribed for the post in question minus other allowances. Relevant portion of the judgment of Supreme Court in case of Jagjit Singh (supra) may be noted:

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

(emphasis supplied)

5.9 In the case of ***Mahanadi Coalfields Ltd. vs. Brajrajnagar Coalmines Workers' Union***, 2024 SCC OnLine SC 270, the circumstances were that 32 workmen who had entered service of the appellant in the year 1984 continued uninterruptedly till the year 1994, when the labour union sought their regularization; and that in the year 1997, a settlement was arrived at in which 19 workmen were regularized while *qua* the remaining 13 workmen, their claim for regularization was rejected under the pretext that they had been engaged in purely casual nature of job. The Industrial Tribunal on the basis of evidence adduced during trial held it proved that the remaining 13 workmen stood on same footing as the 19 regularized workmen and that nature of the duties performed by those 13 workmen were perennial in nature, therefore, denial of regularization to those 13 workmen was not



justified. Those findings of the Tribunal were affirmed by the High Court. The Hon'ble Supreme Court also upheld the said decision, holding it to be a case of wrongful denial of regularization for no fault of the workmen and further holding that there would be no order restricting their wages.

5.10 In the case of ***Vinod Kumar & Ors. vs. Union of India & Ors.***, 2024 SCC OnLine SC 1533, the circumstances were that the appellants, after a selection process involving written test and interview were engaged for what was termed as temporary or scheme based engagement in the year 1992 and they continued to work on those positions for a span exceeding 25 years, but the Central Administrative Tribunal, Allahabad Bench rejected their plea for regularization. The High Court of Allahabad upheld the order of the Tribunal, placing reliance on the judgment in the case of ***Umadevi*** (supra). The Hon'ble Supreme Court set aside the order of the High Court, holding thus:

*“5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. **The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement.** Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.*

*6. **The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have***



continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case.”

(emphasis supplied)

6. Coming to the judicial precedents cited on behalf of appellant, having examined the same, we find the same on distinguishable footing.

6.1 In the case of *University of Delhi* (supra) relied upon by learned counsel for appellant, the circumstances were as follows. By way of communication dated 31.08.1999, the University Grants Commission (UGC) imposed a ban on filling up of non-teaching posts in all institutes/universities and the affiliated colleges except with the approval of UGC. On 12.01.2011, the UGC sanctioned and allowed the Delhi University to fill up 255 posts of Junior Assistants while suggesting changes in the Recruitment Rules. Accordingly, the Recruitment Rules were amended and by way of advertisement dated 06.11.2013, applications for 255 posts of Junior Assistants were invited. However, during the period from 2003 to 2013, various appointments were made by the University on contract basis as a result whereof about 300 Junior Assistants engaged on contract basis (*most of whom were members of the respondent Union*) were in employment at the



time of initiation of the writ proceedings. Soon after the advertisement dated 06.11.2013, the respondent Union filed a writ petition, seeking various reliefs including regularization of its members after relaxation of age limit. The learned Single Judge of the Delhi High Court rejected the writ petition on the basis of law laid down in the case of *Umadevi* (supra). In the recruitment process pursuant to the advertisement dated 06.11.2013, the Junior Assistants employed on contractual basis also participated after grant of age relaxation, but only 120 regular appointments could be made by the University including 10 contractual employees. The Letters Patent Appeal filed by the Union was allowed by a coordinate bench of this court with certain directions including the direction to design and hold an appropriate test for selection. The University, feeling aggrieved, took the matter to the Supreme Court and by way of interim order, the direction to hold special tests was stayed, granting liberty to the contractual employees to participate in the future selection tests. Finally, the Hon'ble Supreme Court held that the learned Single Judge had correctly declined the relief of regularization in view of law laid down in *Umadevi* (supra). However, keeping in mind that the said contractual employees had by then completed more than 10 years of service on contract basis, the Hon'ble Supreme Court granted them a window of opportunity to participate in the ensuing selection process with certain relaxations. It would be significant to note that the said case did not pertain to the unfair labour practice of keeping the workmen on ad hoc/ daily wage basis and that the forum of first adjudication in the said case was the High Court, not an industrial adjudicator. As elucidated through above quoted judicial pronouncements, the scope of industrial adjudication has to be distinct from the scope of writ action. The *Umadevi* doctrine would



operate only on the writ forums and not on the industrial adjudicators. Besides, in the said case the contractual employees had been engaged illegally despite ban imposed by the UGC.

6.2 In the case of ***Daya Lal*** (supra), relied upon by learned counsel for appellant, the Hon'ble Supreme Court held that the High Courts in exercise of power under Article 226 of the Constitution of India will not issue directions for regularization unless the employees claiming regularization had been appointed in pursuance of a regular recruitment under the relevant rules through open competitive process against sanctioned vacant posts; that mere continuation of service by a temporary or daily wager under cover of some judicial orders would not confer upon him right to be regularized; and that part time employees are not entitled to seek regularization as they were not working against sanctioned posts. The said case also, as above, dealt with the writ jurisdiction of the High Courts and not the jurisdiction of the industrial adjudicators. Rather, in the present case, admittedly the present respondents were engaged through selection process by way of interview pursuant to an advertisement and against sanctioned posts, on which they worked for almost 13 years, the job being perennial in nature.

6.3 In the case of ***S. Mariappan vs. The State of Tamil Nadu & Ors.***, WP (MD) No. 23062-23081/2015, decided on 25.06.2019 by the Madurai Bench of the Madras High Court, relied upon by learned counsel for appellant, the issue involved was retrospective regularization of services of the writ petitioners who had been engaged on daily wage basis at the time when there were no sanctioned posts and no vacancy available, which is not the



issue involved in the present case.

6.4 Similarly in the case of *Cyprian Kujur* (supra) also, the circumstances were different from the present case and the issue involved was retrospective regularization of services of the ad-hoc employees and their seniority.

6.5 In the case of *Oil and Natural Gas Corporation* (supra) relied upon by learned counsel for appellant, the propositions culled out by the Hon'ble Supreme Court were that powers of the industrial adjudicators cannot extend to a direction to order regularization where such an order would in context of public employment offend the provisions contained in Article 14 of the Constitution of India. In the present case, as mentioned above, the respondents were engaged originally after being taken through a selection process pursuant to a public advertisement. In the present case, nobody claims that the respondents were arbitrarily taken in through backdoor, keeping the general public in dark. The Hon'ble Supreme Court in the said case further held that where the employer has kept the permanent posts unfilled, thereby indulging in unfair labour practice of keeping the workmen on temporary basis over prolonged period of time, the statutory power of the industrial adjudicator to grant relief to the workmen including the status of permanency continues.

7. In nutshell, the legal position deduced from the above quoted precedents is that the *Umadevi* doctrine has to be understood in its true spirit and not as complete prohibition of regularization, much less an approval of uncertainty of job security for the employees; and that the *Umadevi* doctrine



does not override the scope of industrial adjudication. The scrutiny in such cases has to be as to whether length of casual/contractual/ad hoc service of the workman was 10 years or more; whether engagement of the workman was against sanctioned posts; whether the workman possessed the requisite qualification for the job in question; and whether the nature of job entrusted with the workman is perennial in nature.

8. Falling back to the present case, the learned Industrial Tribunal in the Award delivered the findings that the respondents were engaged on contractual basis through proper selection procedure including interview, police verification and medical examination for performing a permanent and perennial nature of job in the sphere of public health; that the respondents had been doing work on regular and permanent basis for a period of as long as 13 years, despite which they continued as contractual employees while their regularly recruited counterparts were performing the same job and getting higher salary in pay scales according to law; and that the present appellant has been indulging in unfair labour practices by depriving the present respondents status and privileges of regular and permanent employees. The learned Industrial Tribunal placed reliance on the judgments in the cases titled ***Chief Conservative of Forests vs Jagannath Maruti Kondhari & Ors.***, (1996) 2 SCC 293 and ***Project Dir. Dep. of Rural Development vs Its Workmen***, 2019 SCC OnLine Del 7796 and held that non regularization of services of the present respondents amounted to unfair labour practice, so they are entitled to regularization on their respective posts from the dates of their initial joining.



9. In the order impugned before us, the learned Single Judge after elaborate examination of the relevant legal and factual matrix upheld the Award passed by the learned Industrial Tribunal, observing thus:

“61. It is admitted position that the respondents were selected through a proper procedure, had continuously worked on their respective job positions for a long period of time, done similar work as that of the regularised employee and paid wages lesser than the regularised employee.

62. Upon perusal of the aforementioned judicial dicta and taking into account the factual matrix of the instant case, this Court is of the view that the learned Tribunal correctly held that the respondent workmen have been working for a long period against the sanctioned posts for which the recruitment was conducted by following the due procedure, therefore, the respondent workmen are entitled for regularisation of their services.

63. It is observed by this Court that while there is no fundamental right to regularization, employees who have been working for a number of years and whose services are needed must be considered sympathetically for grant of regularization. With regard to the facts of the instant case, the respondent workmen are performing functions for the petitioner which is similar to the functions performed by the regular employees working with the petitioner. In light of the said fact, the continuous nature of the employment of the respondent workmen suggests a de facto regularization.

64. This Court is of the view that the services of the respondent workmen must be regularised in order to prevent their exploitation and unfair labour practices. The premise of the same lies in the fact that regularizing long-term temporary workers not only benefits the employees but also contributes to the overall efficiency and effectiveness of the organization.

65. In view of the foregoing paragraphs, it is stated that the learned Tribunal rightly held that the respondent workman in the instant batch of petitions meet the conditions to be entitled to be regularized as they have been employed for a long period, performing work similar to the regular employees of the petitioner, and their recruitment was not through any irregular or illegal means which is against the constitutional scheme.

66. The petitioner has contended before this Court that by granting regularization to the respondent workmen, the petitioner will suffer from financial hardships. With regard to the same, this Court is of the view that while economic considerations are important, they should not override the fundamental principles of fairness and justice in labour practices. Therefore, the contention of the petitioner with



respect to the financial hardship is legally untenable and thus, rejected.

67. In view of the aforesaid discussions on facts and law, it is held that the respondent workmen in the batch of petition are entitled to be regularised at their respective positions at which they were employed from the date as specified by the learned Tribunal”.

10. Interestingly, on the one hand the appellant seeks protection under the umbrella of ***Umadevi*** doctrine, while on the other hand, they have been flagrantly flouting the same doctrine having taken not even one time measure to regularize services of such contractual employees. Rather, the respondents were engaged on contractual basis in second half of the year 2010, by which time the ***Umadevi*** doctrine of the year 2006 had already come in existence.

11. The argument of the appellant side to the effect that the respondents voluntarily got engaged themselves on contractual basis with full awareness of it not being regular appointment, must fail on anvil of fairness. We cannot ignore that a person in dire need of employment and livelihood would accept whatever lawfully comes his way, as he has no choice.

12. As mentioned above, present is not a case where the employees have approached this court through writ action, seeking regularization of their services. The respondents herein, being workmen, raised industrial dispute on the allegation that the appellant had been indulged in unfair labour practice by keeping the respondents in job on temporary basis since the year 2010 and the industrial adjudicator on the basis of evidence adduced during trial arrived at a finding in that regard against the appellant. There is no



dispute that the engagement of the respondents in the year 2010 was against sanctioned posts. Also admittedly, the respondents were engaged as contractual workers through a selection process pursuant to an advertisement, so it is not a case where the respondents were engaged surreptitiously, thereby depriving the members of general public, willing to compete. It also cannot be denied that the job of Malaria control and public health issues are perennial in nature and requirement to man those posts of Assistant Malaria Inspector continues till date. It is also nobody's case that the respondents do not possess the requisite qualifications for the job in question.

13. The respondents were engaged on contractual basis in the year 2010 and continue to be paid remuneration much lesser than their counterparts performing same function with same working hours. The appellant has brought forth not even a whiff to justify their failure to fill the regular posts in past more than a decade if the respondents had been engaged only for a short time till filling up the regular posts. Admittedly, till date a number of regular posts are lying vacant; and ironically on the other hand, the respondents performing the same job continue on temporary basis for the past more than a decade with sword of uncertainty hanging over their head.

14. We are of the considered view that once the learned Industrial Tribunal arrived at a finding that the appellant was indulging in unfair labour practice, the Tribunal was completely justified in directing the appellant to regularize the respondents and in that regard, the appellant has



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failed to show any reason for us to interfere with the discretion exercised by the learned Tribunal.

15. We are unable to find any infirmity in the impugned order, therefore, the same is upheld and the appeal as well as the pending application are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

AUGUST 14, 2024/as/ry