

A SATYA PRAKASH & ORS.
v.
STATE OF BIHAR & ORS.
(Civil Appeal No. 2440 of 2010)

B MARCH 16, 2010

[R.V. RAVEENDRAN AND K.S. RADHAKRISHNAN, JJ.]

*Labour Law – Daily wage workers – Over 10 years service – Claim for regularization on the basis of judgment in *Uma Devi's case – Held: Since the workers not appointed on any sanctioned post, not entitled to benefit of regularization – *Uma Devi's case explained and distinguished.*

D The appellants, who had worked for more than 10 years on daily rated basis in Bihar Intermediate Education Council, filed writ petition before the High Court seeking regularization of their services. Single Judge of High Court directed the Council to consider the claim for regularization. Since there was no positive direction for regularization, appellants filed writ appeal, which came to E be dismissed *in limine*.

F In appeal to this court appellants contended that in Para 53 of the judgment in **State of Karnataka vs. Uma Devi and Ors. 2006 (4) SCC 1*, the employees who had worked for 10 years or more were directed to be regularized as one time measure and the same relief should be extended to the appellants.

Disposing of the appeal, the Court

G HELD: 1.1. The appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages. In *Umadevi's case* supreme Court held that the courts are not expected to issue any direction for absorption/regularization or

permanent continuance of temporary, contractual, casual, daily-wage or *ad hoc* employees. Such directions issued could not be said to be in consistence with the constitutional scheme of public employment. The Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted. Paragraph 53 of the *Umadevi's* judgment deals with irregular appointments (not illegal appointments). [Paras 6 and 7] [455-G; 455-C-F]

1.2. In *Uma Devi's* case the constitution bench has already drawn a distinction between temporary employees, daily-wagers and those who were appointed irregularly in the sense that there was non-compliance of some procedure in the selection process which did not go to the root of the selection process. Appellants will not fall in the category of the employees mentioned in paragraph 53 read with paras 15 and 16 of the Judgment in *Uma Devi's* case. Appellants' own case is that they were only engaged on daily wages basis and never appointed in service either on a temporary basis or on *ad-hoc* basis. [Paras 9 and 13] [457-D-E; 459-C-D]

State of Karnataka vs. Uma Devi and Ors. 2006 (4) SCC 1, explained and distinguished.

S.V. Narayanappa vs. State of Mysore (1967) 1 SCR 128; *B.N. Nanjudappa vs. T. Thimmiah* (1972) 1 SCC 409, relied on.

Punjab Water Supply and Sewerage Board v. Ranjodh Singh and Ors. (2007) 2 SCC 491; *State of Punjab v.*

A *Bahadur Singh and Ors.* (2008) 15 SCC 737; *C. Balachandran and Ors. v. State of Kerala and Ors.* (2009) 3 SCC 179; *State of Karnataka and Ors. v. G.V. Chandrashekar* (2009) 4 SCC 342, referred to.

B 2. Appellants stated that they had undergone a selection process held fourteen years back, following an advertisement published in the year 1995 but the merit list was neither prepared nor published. Selection process, though undertaken by the Council was not completed and now the Council is no more in existence. However, C if the Board proposes to undertake any regular selection process to fill up the posts, the applications, if any, submitted by the appellants may also be considered after giving them age relaxation. [Para 14] [459-D-F]

D *State of Karnataka vs. Uma Devi and Ors.* 2006 (4) SCC 1, referred to.

Case Law Reference:

	(2007) 2 SCC 491	Referred to.	Para 2
E	(2008) 15 SCC 737	Referred to.	Para 2
	(2009) 3 SCC 179	Referred to.	Para 2
	(2009) 4 SCC 342	Referred to.	Para 2
F	2006 (4) SCC 1	Explained and Distinguished.	Paras 6 and 7
		Referred to.	Para 14
	(1967) 1 SCR 128	Relied on.	Para 7
G	(1972) 1 SCC 409	Relied on.	Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2440 of 2010.

H From the Judgment & Order dated 23.9.2008 of the High

SATYA PRAKASH & ORS. v. STATE OF BIHAR & ORS. 453

Court of Judicature at Patna in LPA No. 563 of 2008.

K.V. Vishwanathan, Manoj Pandey, Gaurav Agrawal for the Appellants.

Gopal Singh, Manish Kumar for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. Appellants who had worked on daily wages for over ten years have approached this Court claiming benefit of paragraph 53 of the Constitution Bench judgment of this Court in *Secretary, State of Karnataka And Others v. Umadevi (3) And Others* (2006) 4 SCC 1. Some doubts were there with regard to the meaning and content of paragraph 53 read with paragraphs 15, 16 and paragraph 8 read with paragraph 55 of the judgment in *Umadevi's* case (supra) which has been subsequently explained by this Court in several judgments. Reference may be made to the judgment of this court in *Punjab Water Supply & Sewerage Board v. Ranjodh Singh And Others* (2007) 2 SCC 491, *State of Punjab v. Bahadur Singh And Others* (2008) 15 SCC 737, *C. Balachandran And Others v. State of Kerala And Others* (2009) 3 SCC 179, *State of Karnataka And Others v. G.V. Chandrashekar*, (2009) 4 SCC 342, etc. Almost identical situation arises for consideration in this case as well.

3. The appellants who had worked for more than 10 years on daily rated basis in the Bihar Intermediate Education Council has approached the Patna High Court for regularization of their services and a learned Single Judge of the Patna High Court directed the Council to consider their request for regularization treating them as a separate class after relaxing their age. Since no positive direction was given to the Council for regularization of their services, an appeal was preferred before the Division Bench of the Patna High Court. The Division Bench held that merely because they had worked as daily waged employees with the Council would not confer any right for regularization as

A no public appointment was permissible *de hors* the recruitment rules. Letters Patent Appeal was, therefore, dismissed *in limine*. Aggrieved by the same this appeal has been preferred with a petition for special leave to appeal.

B 4. Mr. Gaurav Agrawal, learned counsel appearing for the appellants submitted that the appellants belong to the reserved community and that they had worked on daily wage basis in sanctioned posts from February/July, 1995 to February, 2005 and that too not on the strength of any order passed by the Court or Tribunal. Learned counsel submitted that the appellants
 C are entitled to get the benefit of the judgment in *Umadevi's Case(3)* (supra). Reference was made to paragraph 53 of the aforesaid judgment and submitted that this Court had directed the Union of India, the State Governments and their instrumentalities to take steps to regularize as a one-time
 D measure, the services of irregularly appointed persons who had worked for ten years or more in duly sanctioned posts. Learned counsel submitted that the same benefit be extended to persons who had worked on daily wage basis for over 10 years.

E 5. Learned counsel appearing for respondent Nos. 3 to 5 submitted that the Council had engaged the appellants only on daily wage basis and they were never appointed in any sanctioned posts and, therefore, they would not get the benefit of the directions contained in *Umadevi's case* (supra) which
 F are applicable only to those qualified employees who were appointed irregularly in sanctioned posts. Learned counsel submitted that the Council in the year 1995 had decided to fill up the posts of Assistant/Routine Clerk and Peon on regular basis and an advertisement to that effect was published on
 G 25.2.1995. Appellants and several other persons applied but no panel or merit list was prepared by the Council. Accordingly, no appointments were effected. Council, though took a decision on 16.12.1999 to complete the selection process including preparation of merit list by 15.01.2000, it did not materialize
 H due to the creation of new State of Jharkhand by the Bihar Re-

organisation Act, 2000. Further, the Bihar Education Council itself was dissolved by the Bihar Intermediate Education Council (Repeal) Act of 2007 and hence there was no question of regularization of any employee in the Council. The functions of the erstwhile Intermediate Council are now being performed by the Bihar School Examination Board which is following its own recruitment rules. Under such circumstances, it was stated that the directions sought for by the appellants for regularization of their services in the Council cannot be granted.

6. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages in the Bihar Intermediate Education Council. In *Umadevi's case* (supra) this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or *ad hoc* employees. This Court held that such directions issued could not be said to be in consistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

7. Paragraph 53 of *Umadevi's* Judgment, deals with irregular appointments (not illegal appointments). Constitution Bench specifically referred to the judgment in *S.V. Narayanappa vs. State of Mysore* (1967) 1 SCR 128, *B.N. Nanjudappa vs. T. Thimmiah* (1972) 1 SCC 409, in paragraph 15 of *Umadevi's* judgment as well.

8. Let us refer to paragraphs 15 and 16 of *Umadevi's*

A judgment in this context. Necessity of keeping in mind the distinction between regularization and conferment of permanence in service jurisprudence has also been highlighted by this Court by referring to the following passages from *R.N. Nanjundappa's* case, which reads as follows:-

B " If the appointment itself is in infraction of the rules
 or: *if it is in violation of the provisions of the Constitution*
illegality cannot be regularized. Ratification or
 C *regularization is possible of an act which is within the*
power and province of the authority but there has been
 some non-compliance with procedure or manner which
 does not go to the root of the appointment. Regularization
 cannot be said to be a mode of recruitment."

D Further Constitution Bench referred to in *B.N. Nagarajan's*
 case in para 16 of the judgment and stated as follows:-

E " We have, therefore, to keep this distinction in mind and
 proceed on the basis that *only something that is irregular*
for want of compliance with one of the elements in the
 process of selection which does not go to the root of the
 F *process, can be regularized and that it alone can be*
regularized and granting permanence of employment is a
 totally different concept and cannot be equated with
 regularization."

F Then, in *Umadevi's* case in paragraph 53 the Court is
 stated as follows:-

G " 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 yeas or more but without the intervention of
 orders of the courts or of tribunals. The question of
 H 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 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 or orders of the 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." A
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9. Constitution Bench has, therefore, clearly drawn a distinction between temporary employees, daily-wagers and those who were appointed irregularly in the sense that there was non-compliance of some procedure in the selection process which did not go to the root of the selection process. Appellants in our view will not fall in the category of the employees mentioned in paragraph 53 read with paras 15 and 16 of the Constitution Bench Judgment. D
E

10. Above view is further reinforced when we read paragraphs 8 and 55 in Umadevi's case, wherein similar arguments were raised but rejected by the Constitution Bench. Paragraphs 8 of the Constitution Bench judgment refers to CA No.3595-612 of 1999 filed by the Commercial Taxes Department. Respondents therein were engaged on daily wages in some of the districts in the State of Karnataka and they claimed that they had worked in that department for more than 10 years, hence, claimed regularization. They approached the Tribunal without success. They took up the matter before the High Court of Karnataka. The Karnataka High Court ordered that they are entitled to wages and allowances equal to regular employees and also gave a direction to the State Government to consider their case for regularization within four months. F
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A 11. Aggrieved by the judgment of the Karnataka High Court
the Commercial Taxes Department approached this Court.
Allowing the appeal preferred by the Commercial Taxes
Department, this Court set aside the directions given by the
High Court for regularization of services of those daily wage
B employees who had more than 10 years of service. The Court
held as follows:-

C " We are, therefore, of the view that, at best, the Division
Bench of the High Court should have directed that wages
equal to the salary that is being paid to regular employees
be paid to these daily wage employees with effect from
the date of its judgment. Hence, that part of the direction
of the Division Bench is modified and it is directed that
D these daily-wage earners be paid wages equal to the
salary at the lowest grade of employees of their cadre in
the Commercial Taxes Department in Government service,
from the date of the judgment of the Division Bench of the
High Court. Since, they are only daily wage earners, there
would be no question of other allowances being paid to
them. *In view of our conclusion, that the Courts are not*
E *expected to issue directions for making such persons*
permanent in service, we set aside that part of the
direction of the High Court directing the Government to
consider their cases for regularization. We also notice that
the High Court has not adverted to the aspect as to
F *whether it was regularization or it was giving permanency*
that was being directed by the High Court. In such a
situation, the direction in that regard will stand deleted
and the appeals filed by the State would stand allowed
to that extent. If sanctioned posts are vacant(they are said
to be vacant) the State will take immediate steps for filling
G *those posts by a regular process of selection. But when*
regular recruitment is undertaken, the respondents in
Civil Appeal No. 3595-612 and those in Commercial Tax
Departments similarly situated will be allowed to compete,
H *waiving the age restriction imposed for the recruitment*

and giving some weightage for their having been engaged for work in the Department for a significant period of time. A

12. In our view, the appellants herein would fall under the category of persons mentioned in paragraphs 8 and 55 of the judgment and not in paragraph 53 of judgment of Umadevi's. B

13. Appellants in their reply affidavit filed on 14.10.2004 before the High Court has specifically stated in paragraph 5 that they were only engaged as Assistant Routine Clerks and Peons on daily wages. Further in paragraph 20 of the affidavit it was stated that they were discharging their duties on daily wages basis since 1995 and had entertained a legitimate expectation for regularization of their services. Appellants' own case is that they were only engaged on daily wages basis and never appointed in service either on a temporary basis or on ad-hoc basis. C D

14. Appellants stated that they had undergone a selection process held fourteen years back, following an advertisement published in the year 1995 but the merit list was neither prepared nor published. Selection process, though undertaken by the Council was not completed and now the Council is no more in existence. However, if Board proposes to undertake any regular selection process to fill up the posts, the applications, if any, submitted by the appellants may also be considered after giving age relaxation. In Umadevi's case in paragraph 55 of the judgment, the Constitution Bench has also permitted such persons to participate in selection process waiving the age relaxation and giving the weightage for having been engaged or worked in the department for a significant period of time. E F

15. The appeal, therefore, lacks merits and the same is disposed of as above. G

K.K.T.

Appeal disposed of.