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BREM RAM

v.

MANAGING DIRECTOR, UTTARAKHAND PEY JAL &
NIRMAN NIGAM, DEHRADUN AND ORS.

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(Civil Appeal No. 4474 of 2015)

MAY 15, 2015

[T. S. THAKUR AND ADARSH KUMAR GOEL, JJ.]

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Labour Laws:

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Regularization – Claim for – By daily- wager – On the ground that the daily-wagers junior to him had been regularized – Plea of the employer that the workmen regularized being work-charged employees, their case was distinct from daily-wager – Held: There is no difference between the daily-wagers and the work-charged employees because, in essence, the nature of their engagement remains the same – Hence both the categories of employees have to be treated on the same footing – Since the employees (work-charged) were junior to the claimant-employee, regularization of the claimant-employee is directed on the analogy of his juniors w.e.f. the date, his juniors were regularized and for release of all his retiral benefits – However, the direction for regularization would not entitle the claimant-employee to claim arrears of salary based on such regularization.

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Allowing the appeal, the Court

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HELD: 1. If engagement in a work-charged establishment rest on a criterion, no better than the absolute discretion of the authority engaging them or the fortuitous circumstances of a vacancy or need in a work-charged establishment, then, there is indeed no difference between a daily-wager on the one hand and

work-charged employees on the other. No distinction can resultantly be made between these two categories of employees, for in essence, the nature of their engagement remains the same except that in the case of work-charged employees, the wages/emoluments appear to be borne from out of the allocation for the project in which they are employed while in the other case there is no such specific allocation of funds. The classification of work-charged and other employees remains wholly unsatisfactory at least for the purposes of the present case leaving no option for the Court but to treat the case of the daily-wagers and work-charge employees on the same footing when it comes to granting regularization to them. [Para 8] [198-F-H; 199-A-B]

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2. The persons who were junior to the appellant, having been engaged much later than him, steal a march over him in terms of regularization in service while the appellant remained embroiled in litigation over what was eventually found to be an illegal termination of his service. Though the appellant has already superannuated, in view of the facts that the appellant had been appointed as early as in the year 1988 and had by the time the decision of this Court in *Umadevi's* (3) case pronounced, already completed more than 10 years service; that Government had formulated rules for regularization of such daily-wagers; that neither the State Government nor the Jal Nigam has resented the idea of regularization of those who have served for over a decade, there is no impediment in directing regularization of the service of the appellant on the analogy of his juniors with effect from the date his juniors were regularized and for the release of all retiral benefits in his favour on that basis by treating him to be in

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A continuous service till the date of his superannuation. However, this direction will not entitle the appellant to claim any amount towards arrears of salary based on such regularization. [Para 9] [199-C-H]

B *Secretary, State of Karnataka and Ors. v. Umadevi (3) 2006 (3) SCR 953: (2006) 4 SCC 1 – referred to.*

Case Law Reference

C 2006 (3) SCR 953 referred to. Para 5

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4474 of 2015.

D From the Judgment and Order dated 30.06.2011 of the High Court of Uttarakhand at Nainital in Special Appeal No. 128 of 2011.

Deeptakirti Verma, Neha Sharma for the Appellant.

E Rachana Srivasatava, Utkarsh Sharma for the Respondents.

The Judgment of the Court was delivered by

T. S. THAKUR, J. 1. Leave granted.

F 2. This appeal arises out of an order dated 30th June, 2011 passed by the High Court of Uttarakhand at Nanital whereby Special Appeal No. 128 of 2011 filed by the appellant has been dismissed and the order passed by the learned
G Single Judge of that Court in Writ Petition 324(MS) of 2004 affirmed.

H 3. The appellant, it appears, was appointed as a daily-wager in the erstwhile Uttar Pradesh Pey Jal & Nirman Nigam sometime in the year 1988. Nine years later his services were terminated in February 1997. The termination, when assailed

by the appellant before the Labour Court, was set aside with a direction to the respondent to reinstate the appellant with 50% back wages and continuity of service. The writ petition filed by the respondent-Jal Nigam who is the successor-in interest of the erstwhile Uttar Pradesh Pey Jal Nigam against the award made by the Labour Court succeeded only in part and to the extent that the award of back wages was deleted from the award by the Labour Court. It is common ground that pursuant to the award, the appellant was allowed to rejoin as a daily-wager and to serve the respondent-Jal Nigam till the date of his superannuation upon completion of 60 years of age.

4. In the year 2008, the appellant filed Writ Petition No.1116 of 2008 before the High Court for a mandamus directing respondents to regularise his services w.e.f. 1st July, 2003 on the post of Jeep Driver and to release consequential benefits in his favour including arrears due to him. The appellant's case in the writ petition was that other daily-wagers who were junior to him and appointed after the year 1988 having been regularized in service, the appellant could not merely because of an illegal order of termination of his services be deprived of that benefit. The appellant contended that the termination order having been set aside by the Labour Court which order was affirmed by the High Court with continuity of his service, there was no reason for denial of benefits that would have flowed to him but for the order of termination especially when such benefits were extended to other similarly situate contemporaries and juniors of the appellant.

5. The writ petition coming before the Single Judge Bench of the High Court at Uttarakhand was dismissed by an order dated 23rd May, 2011 on the authority of the decision of this Court in **Secretary, State of Karnataka and Ors. v. Umadevi (3) (2006) 4 SCC 1**. The High Court at the same time allowed the appellant to move a representation before

A the concerned authorities in the light of paragraph 53 of the decision in *Umadevi (3)* case (supra). The High Court observed that if there is a scheme of regularization the claim of the appellant should also be considered in accordance therewith.

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6. Dissatisfied with the above order, the appellant preferred Special Appeal No.128 of 2011 which, as noticed earlier, has been dismissed by the Division Bench of the High Court. The High Court held that since there was no scheme for regularization of daily-wagers and those named by the appellant in the writ petition had been regularized by the Uttar Pradesh Jal Nigam at a time when Uttarakhand Pey Jal and Nirman Nigam was not in existence, nothing further could be done in the matter nor any relief granted to the appellant. The present appeal assails the correctness of the said two judgments and orders of the High Court.

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7. When the matter came up for hearing before this Court on 8th July, 2013, learned counsel for the respondent-Corporation was granted time to take instructions whether any scheme within the contemplation of para 53 of *Umadevi (3)* case (supra) had been formulated by the respondent-Corporation and in case no such scheme has been formulated, whether the Corporation is willing to formulate one. The matter again came up for hearing on 18th November, 2013. It was argued by Ms. Rachana Srivastava, counsel appearing for the respondent-Uttarakhand Pey Jal & Nirman Nigam that while the Nigam had passed a resolution adopting the scheme formulated by the State Government in terms of the directions of this Court in *Umadevi (3)* case (supra), the Government's approval for such an adoption had not so far been received. She prayed for and was granted time to place on record a copy of the Government scheme adopted by the Nigam as also the resolution under which the same was adopted

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besides, a copy of the approval, if any, granted by the Government to such adoption. On 27th October, 2014, when the matter came-up once again for hearing, our attention was drawn to additional documents filed by the appellant from which it appeared that the persons who figured at serials no.78 to 82 at page 12 of the said additional documents had been regularized w.e.f. 1st July, 2003, although their entry into service was shown to be 6th of June, 1989 onwards. It was on that basis argued that persons junior to the appellant having been regularized in service, whereas the appellant could not have been deprived of a similar benefit simply because his services were illegally terminated. On behalf of the respondent-Jal Nigam it was, on the other hand, argued that there was a difference between cases of persons appearing at serial nos.78 to 82 and that of the appellant inasmuch as the former were work-charged employees while the appellant was appointed as a daily-wager. At the request of learned counsel for the respondent-Nigam the matter was adjourned by four weeks to enable the Nigam to file an additional affidavit as to whether regularization had been ordered after undertaking any screening/selection process and if so, on what terms and conditions.

8. From the affidavit filed, in compliance with the directions issued by this Court, it appears that the Government of Uttarakhand had framed Regularization Rules 2011 for regularization of daily-wagers and temporary employees who had been appointed on or before 1st November, 2011 and had completed 10 years of continuous service by that date. The said Rules were then adopted by the Board of respondent-Jal Nigam in terms of resolution passed in its 12th Meeting and approval of the State Government for implementation of the said Rules in the Nigam sought under Managing Director's letter dated 3rd March, 2012 addressed to the Principal Secretary, Peyjal Nigam, Government of Uttarakhand. While

A the approval of the Government was still awaited, the Government appears to have framed fresh Regularisation Rules in supersession of the Rules of 2011. These Rules are said to be under challenge before the High Court of Uttarakhand at Nanital in which the High Court appears to have

B passed certain interim orders also. From the affidavits it is further evident that five persons named by the appellant appearing at serials no.78 to 82 of the list of juniors have been regularized in service. It is not in dispute that all these persons were appointed on dates subsequent to the date of

C appointment of the appellant. The respondent, however, has attempted to justify the regularization of juniors mentioned above on the ground that they had been appointed in work-charge establishment whereas the appellant herein was a

D daily-wager. We asked learned counsel for the respondent as to whether daily-wagers on the basis of their seniority or otherwise were brought on to the work-charged establishment and if there was no such practice or procedure followed, what was the basis on which the department would decide whether

E the person has to be engaged on a work-charged establishment or as a daily-wager. We must regretfully say that we did not get a satisfactory answer to that question nor does any of the several affidavits filed in these proceedings by the respondent-Jal Nigam point out a qualitative difference

F between daily-wager on the one hand and a temporary engagement on work-charged establishment on the other. If engagement in a work-charged establishment rest on a criterion, no better than the absolute discretion of the authority engaging them or the fortuitous circumstances of a vacancy or need in a work-charged establishment, then, there is indeed

G no difference between a daily-wager on the one hand and work-charged employees on the other. No distinction can resultantly be made between these two categories of employees for in essence, the nature of their engagement remains the same

H except that in the case of work-charged employees, the wages/

emoluments appear to be borne from out of the allocation for the project in which they are employed while in the other case there is no such specific allocation of funds. The classification of work-charged and other employees to say the least remains wholly unsatisfactory at least for the purposes of the case in hand leaving no option for us but to treat the case of the daily-wagers and work-charge employees on the same footing when it comes to granting regularization to them.

9. If that be so, there is no denying the fact that the persons who were junior to the appellant, having been engaged much later than him, steal a march over him in terms of regularization in service while the appellant remained embroiled in litigation over what was eventually found to be an illegal termination of his service. It is true that the appellant has already superannuated. That does not, however, make any difference. What is important is that the appellant had been appointed as early as in the year 1988 and had by the time the decision of this Court in *Umadevi's (3)* case (supra) pronounced, already completed more than 10 years service. Government has formulated rules for regularization of such daily-wagers, no matter the same are the subject matter of a challenge before the High Court. What is noteworthy is that neither the State Government nor the Jal Nigam has resented the idea of regularization of those who have served for over a decade. The rules providing for regularization are a sufficient enough indication of that fact. We do not, therefore, see any impediment in directing regularization of the service of the appellant on the analogy of his juniors with effect from the date his juniors were regularized and for the release of all retiral benefits in his favour on that basis by treating him to be in continuous service till the date of his superannuation. We make it clear that this direction will not entitle the appellant to claim any amount towards arrears of salary based on such regularization.

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A 10. In the result, this appeal succeeds and is hereby allowed. The orders passed by the High Court are set aside and the writ petition filed by the appellant disposed of in terms of the directions contained hereinabove. The parties are directed to bear their own costs.

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Kalpana K. Tripathy

Appeal allowed.