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SHEO NARAIN NAGAR & ORS.

v.

STATE OF UTTAR PRADESH & ORS.

(Civil Appeal No. 18510 of 2017)

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NOVEMBER 13, 2017

[ARUN MISHRA AND L. NAGESWARA RAO, JJ.]

*Service law – Regularization – Appellant initially engaged on daily wage basis – Later on, appointed on contractual basis – Then respondents chose to give minimum of the pay scale, which was available to the regular employees – After few years, conferred the status of temporary employees – High Court directed to consider them for regularization but their services were not regularized – Ultimately High Court dismissed writ petition of appellants and services of appellants terminated on the finding that their appointment was irregular – Supreme Court while entertaining special leave petition held that there was no back door employment or entry of the appellants in service so as to disentitle them from benefit of regularization as envisaged in *Uma Devi case – Thereafter appellants were taken back in service and continued in service – Claim for regularization – Held: The High Court dismissed the writ petitions relying on Uma Devi case – But the appellants were employed basically in the year 1993; they had 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 Rules 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 Uma Devi – 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, their services are regularized from 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants.*

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Judicial notice – Appointment on contract basis or ad-hoc basis or daily-wage basis in different State departments – Judicial notice taken that widely said practice is being continued – The decision in Uma Devi is not properly understood and rather wrongly applied by various State Governments – 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 Uma Devi – 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 Uma Devi has been ignored and conveniently overlooked by various State Governments authorities – It is being used only as a tool for not regularizing the services of incumbents – They are being continued in service without payment of due salary for which they are entitled on the basis of Arts.14, 16 r/w Art.34 (1)(d) of the Constitution of India as if they have no constitutional protection – 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 – Constitution of India – Arts.14, 16, 34(1)(d) – Service law – Regularization.

**Secretary, State of Karnataka & Ors. v. Umadevi & Ors. (2006) 4 SCC 1 : [2006] 3 SCR 953; D.S. Nakara v. Union of India AIR 1983 SC 130 : [1983] 2 SCR 165 – relied on.*

Case Law Reference

[2006] 3 SCR 953	relied on	Para 4
[1983] 2 SCR 165	relied on	Para 8

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 18510 of 2017.

From the Judgment and Order dated 27.10.2014 of the High Court of Judicature at Allahabad, Lucknow Bench in Special Appeal Defective No. 619 of 2014.

Pradeep Kant, Sr. Adv., Divyanshu Sahay, Rohit Kumar Singh, Sanjay Goel, Advs. for the Appellant.

A Aarohi Bhalla, Ms. Sakshi Kakkar (for Ardhendumauli Prasad),
Lav Kumar Agrawal, Kundan Kumar Lal, Advs. for the Respondents.

The following Order of the Court was delivered:

ORDER

B 1. Leave granted.

2. Heard learned counsel for the parties.

3. The appellants were initially engaged on daily-wage basis in the month of August, 1993. Later on, they were appointed on contractual basis in the year 1996. In the year 2000, Respondent No.3 issued an order appointing them as regular employees on the minimum pay scale. By way of an order dated 25.7.2006, they were conferred the status of temporary employees with retrospective effect from 1.10.2002. There was a direction issued by the High Court to consider them for regularization, but their services were not regularized. Learned Single Judge ultimately dismissed the writ petition seeking regularisation. That order was affirmed by the Division Bench of the High Court.

4. In the year 2014, the services of the appellants were terminated. In view of the findings recorded by the High Court vide order dated 27.10.2014, while dealing with the case of the appellants for regularization, that their appointments were illegal and not irregular one. This Court, while entertaining the special leave petition, on 23.3.2015 passed the following order:

“Issue notice.

It appears *prima facie*, that the petitioners had approached the High Court with a plea for regularization of services. Even this plea has not found favour in the impugned order. However, acting on this order dismissing the writ petition the respondents have decided to terminate the services of the petitioners. There is no casual connection between the two. However, it is the common case that the petitioners are not working for the last four months. We put the respondents to caution that if this Court does not uphold the impugned judgment the natural consequences will be that the petitioners will be entitled to reinstatement with full back wages. Therefore, it would be prudent for the respondents to carry on the services of the petitioners. It also appears that there is no back

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door employment or entry of the petitioners so as to dis-entitle them from what is envisaged in paragraph 53 of *Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors. (2006) 4 SCC 1*.

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If the respondents permit the petitioners to return to their services, this will be without prejudice to the petitioners' rights in the present proceedings."

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It was observed by this Court that there was no back door employment or entry of the appellants in service, so as to disentitle them from the benefit of regularization as envisaged in paragraph 53 of decision of this Court in *Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.*, (2006) 4 SCC 1. Same is extracted hereunder:

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"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore vs. S.V. Narayanappa*, (1967) 1 SCR 128, *R.N. Nanjundappa Vs. T. Thimmiah*, (1972) 1 SCC 409, and *B.N. Nagarajan vs. State of Karnataka*, (1979) 4 SCC 507, and referred to in paragraph 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 courts or of tribunals. The question of 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 the 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 of orders of 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. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

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A 5. Thereafter, the appellants have been taken back in service and are continuing to serve. By now they have rendered services for about 24 years, except for an interregnum period of few months from October, 2014 till March, 2015.

B 6. It was submitted by learned counsel appearing on behalf of the appellants that the services of the appellants ought to have been regularized. It was not a case of back door entry or illegal appointment, but only irregular and they are entitled for regularization. Learned counsel has placed reliance on the observations made in the interim order as well as on the decision of *Uma Devi* (Supra). It was also submitted that when temporary status was granted by Respondent No.3 in the year 2006, the only question that remained was regularization from that very date; the minimum pay in the pay-scale was granted in the year 2000; and thereafter on 25.7.2006, temporary status had also been granted to them *w.e.f.* 1.10.2002; thus, their services could not have been dispensed with and were required to be regularized.

D 7. Learned counsel appearing on behalf of the respondent has relied upon paragraph 44 of the decision in *Uma Devi* (Supra), so as to contend that it was not the case of irregular appointment but of illegal appointment; there was no post available on which the services of the appellants could have been regularized and appointment were in contravention of the reservation policy also; thus, termination order was rightly issued and, in no case, the appellants were entitled for regularization of their services.

F 8. When we consider the prevailing scenario, it is painful to note that the decision in *Uma Devi* (Supra) 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 *Uma Devi* (supra). 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.

H That spirit of the *Uma Devi* (supra) has been ignored and conveniently

over looked by various State Governments/ authorities. We regretfully
make the observation that *Uma Devi* (supra) has not be 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 regularizing the services of incumbents.
They are being continued in service without payment of due salary for
which they are entitled on the basis of Article 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*, AIR 1983
SC 130 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 down trodden 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 *Uma Devi* (supra). Thus, the time
has come to stop the situation where *Uma Devi* (supra) 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 *Uma Devi* (supra) 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/adhoc basis or otherwise. This kind of action is not
permissible, when we consider the pith and substance of true spirit in
Uma Devi (supra).

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 2.10.2002. 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 order was passed. Thus, the submission raised by
learned counsel for the respondent that posts were not available, is belied
by their own action. Obviously, the order was passed considering the

- A 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 had 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 Rules 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 *Uma Devi* (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, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.

11. Impugned judgment and order and also order terminating the services are hereby quashed. The appeal is, accordingly, allowed. Pending application, stands disposed of.

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Devika Gujral

Appeal allowed.