NEELIMA SRIVASTAVA

v.

THE STATE OF UTTAR PRADESH & ORS.

(Civil Appeal No. 4840 of 2021)

AUGUST 17, 2021

[S. ABDUL NAZEER AND KRISHNA MURARI, JJ.]

Service law: Regularisation of service – Entitlement to – Appellant appointed as temporary Music Teacher on a leave vacancy – Appointment was to last till the permanent incumbent re-joined the service – Incumbent employee never returned and the appellant continued in service from 1984 to 2021 – In between, the terms of the appointment order were modified by providing that the appointment was to last till the regular incumbent joined back or 20.05.1986, whichever was earlier and order was issued dispensing with the services of the appellant, however, the High Court stayed the operation of the said order – Appellant then sought regularisation in accordance with the Regularisation Rules but no action taken – Writ petition by the appellant – Single Judge held that the appellant would continue on her post and her case shall be considered for regularization – Said judgment attained finality – Subsequently, appellant's claim for regularization rejected – Appellant filed another writ petition before the High Court, wherein the Single Judge allowed her writ petition holding that since the earlier order of the Single Judge attained finality, refusal to apply Regularisation Rules, 2001 was unlawful – In terms thereof, the State regularised services of the appellant – In appeal, there against, the Division Bench held that since the appellant continued on the post on the basis of the interim order passed by the High Court in earlier round of litigation, her appointment is litigious appointment and thus she had no enforceable right to hold the post legally – On appeal, held: Appointment of the appellant can only be construed as irregular and not illegal – Rejection of her claim for regularization on the ground of her appointment being illegal is patently erroneous – Judgment which attained finality crystallized the right of the appellant for regularization – It is not permissible for the parties to re-open the concluded judgments of the Court as the same tantamounts to an abuse of the process of the Court and

A *has far reaching adverse effect on the administration of justice – Further, the writ Petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of* res-judicata *and doctrine of finality – Thus, the judgment passed by the Division Bench not sustainable and set aside – Appellant entitled to be regularised with all consequential benefits.*

Judgment/Order:

Over-ruling a principle and reversal of the judgment – Explanation of – Held: There is a distinction between the two – Judgment itself has to be assailed and got rid of in a manner known to or recognized by law – Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught – Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

Re-opening of a concluded judgment – Permissibility of – Held: It is not permissible for the parties to re-open a concluded judgment of the Court – It may tantamount to an abuse of the process of the Court and also have far reaching adverse effect on the administration of justice.

Allowing the appeal, the Court

HELD: 1.1 Applying the tests laid down in ****State of Karnataka & Ors. vs. M.L. Kesari & Ors.* **the appointment of the appellant can only be construed as irregular and not illegal. The finding recorded by the Division Bench of the High Court in respect of nature of the appointment of the appellant being illegal is thus not liable to be sustained. Her rejection of the claim for regularization on the ground of her appointment being illegal by the impugned order is patently erroneous. The other condition of having worked for 10 years or more also stands fully satisfied as the appellant at the time of consideration of her regularization had completed almost 23 years of service. [Para 24][178-F-H; 179-A]

State of Karnataka & Ors. v. M.L. Kesari & Ors. **(2010) 9 SCC 247 : [2010] 9 SCR 543 – relied on.**

1.2 Writ Petition No. 3316 (SS) of 1986 filed by the appellant before the High Court challenging the modification in the terms of her appointment was stayed vide order dated 20.05.1986 during the pendency of this Writ Petition before the High Court. She again approached the High Court by filing Writ Petition No. 7890 of 2003 challenging the order passed by the Joint Director of Education rejecting her claim of regularization. The two pending Writ Petitions were clubbed by the High Court and disposed of vide common judgment and order dated 23.01.2006 with the finding that the appellant is having all the requisite qualification and has worked for 21 years and she might have been appointed in a leave arrangement but by virtue of her satisfactory services, she has now acquired a Right to hold the post and continued in the institution and at this stage, it would not be appropriate to treat her as an appointee in a stop-gap arrangement and accordingly directed the State-respondent to consider for regularization under the relevant Regularization Rules. [Para 26][179-B-E]

1.3 This Judgment attained finality *inter-se* between the parties as admittedly the State-respondent did not put the same to challenge before any higher forum. The said judgment which attained finality crystallized the right of the appellant for regularization. When the same was refused by the Joint Director of Education, it was again challenged by filing Writ Petition No. 8597 of 2010. A Single Judge vide order dated 15.05.2014 allowed the Writ Petition with the finding that in the earlier round of litigation, the High Court had held that she was entitled to hold the post and since the said judgment become final and unchallenged, the Regularization Rules, 2001 were applicable and refusal to apply the said Rules was unlawful. [Para 27][179-E-G]

1.4 Admittedly, when the judgment dated 23.01.2006 was passed by the High Court in the earlier two Writ Petitions filed by the appellant, the dictum of *Umadevi (3)* was not even in existence as the said judgment was rendered subsequently on 10.04.2006. The Division Bench of the High Court has erroneously understood the dictum of this Court in *Umadevi (3)*. The Constitution Bench has nowhere directed that service

matters that stand concluded *inter partes*, ought to be re-opened. On the contrary, the Constitution Bench clarified as under that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what has been held herein, will stand denuded of their status as precedents. It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of *Umadevi (3)* will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the decision in *Umadevi (3)* and which has attained finality and is binding *inter se* between the parties need not be implemented. Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between over-ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties. [Para 28-30][179-G-H; 180-A-E]

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

1.5 The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23.01.2006 of the Single Judge which had already attained finality. Appeal filed under the Rules of the Court was filed against the judgment dated 15.05.2014 rendered in Writ Petition No. 8597 of 2010. It is a well settled principle of law that a Letters Patent Appeal which is in continuation of a Writ Petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of res-judicata and doctrine of finality. [Para 32][181-F-H]

1.6 It is very well settled that it is not permissible for the parties to re-open the concluded judgments of the Court as the same may not only tantamount to an abuse of the process of the

Court but would have far reaching adverse effect on the administration of justice. [Para 36][182-F]

Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr. **1967 AIR SC 1 : [1966] 3 SCR 744;** *Rupa Ashok Hurra v. Ashok Hurra & Anr.* **(1999) 2 SCC 10;** *Union of India & Ors. v. Major S.P. Sharma & Ors.* **(2014) 6 SCC 351 : [2014] 4 SCR 327 – relied on.**

1.7 It is undisputed that in compliance of the judgment of the learned Single Judge dated 15.05.2014 vide order dated 31.10.2015 respondents regularized the services of appellant subject to the outcome of the proceedings in the LPA and the appellant now stand superannuated having attained the age of superannuation after about 33 years of continuous service. [Para 37][182-F-G]

1.8 A feeble attempt was made by the counsel for the State-respondent to persuade this Court not to interfere in the matter on the ground that the services of the appellant were terminated vide letter dated 19.05.1986 which was never challenged as such her services stood terminated. Such submission cannot be accepted at this stage for the simple reason that it was open for the State to have advanced this contention before the Single Judge in the two Writ Petitions decided vide judgment and order dated 23.01.2006. Once this argument was never made before the Single Judge in the proceedings which has attained finality, the respondent cannot be permitted to raise this argument in this appeal. [Para 38][183-A-C]

1.9 The impugned judgment passed by the Division Bench of High Court is not liable to be sustained and is hereby set aside. The appellant is held entitled to be regularized with all consequential benefits which may be extended to her within the stipulated period. [Para 39][183-D]

Rudra Kumar Sain and Ors. v. Union of India and Ors. **(2000) 8 SCC 25 : [2000] 2 Suppl. SCR 573;** *Vice Chancellor Anand Agriculture University v. Kanubhai Nanubhai Vaghela and Anr.* **[2021] AIR 3529;** *Gujarat Agricultural University v. Rathod Labhu Bechar & Ors.* **(2001) 3 SCC 574 : [2001] 1 SCR 413 – referred to.**

A **Case Law Reference**

[2000] 2 Suppl. SCR 573	**referred to**	**Para 12**
[2010] 9 SCR 543	**relied on**	**Para 24**
[2006] 3 SCR 953	**referred to**	**Para 28, 29, 30**
B **[2021] AIR 3529**	**referred to**	**Para 31**
[2001] 1 SCR 413	**referred to**	**Para 31**
[1966] 3 SCR 744	**relied on**	**Para 36**
(1999) 2 SCC 103	**relied on**	**Para 36**
C **[2014] 4 SCR 327**	**relied on**	**Para 36**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.4840 of 2021.

From the Judgment and Order dated 07.05.2018 of the High Court
D of Judicature at Allahabad, Lucknow Bench, in Special Appeal No.743 of 2014.

Nikhil Goel, Ms. Preetika Dwivedi, Santosh Krishnan, Advs. for the Appellant.

Harish Pandey, Rajiv Yadav, Advs. for the Respondents.

E

The Judgment of the Court was delivered by

KRISHNA MURARI, J.

1. Leave granted.

F 2. This appeal takes exception to the judgment and order dated 07.05.2018 passed by the Division Bench of Allahabad High Court (hereinafter referred to as 'the High Court') allowing the Special Appeal filed by the State-Respondent and setting aside the judgment and order dated 15.05.2014 passed in Writ Petition filed by the appellant herein.

G 3. The appellant is a Post Graduate from Kanpur University and also holds the certificate of Sangit Prabhakar and Senior Diploma from the Prayag Sangit Samiti, Allahabad. On 23.07.1984, she was appointed as Assistant Music Teacher in Government Inter College, Mahmoodabad, District Sitapur on a leave vacancy as the regular incumbent went on leave without pay. The terms of the appointment order specified that the
H appointment was temporary and meant to last till the permanent incumbent

rejoined the service. The educational qualifications of the appellant satisfied the requirements prescribed under the relevant service rules. Vide letter dated 16.05.1986, the terms of the appointment order dated 23.07.1984 was modified by providing that the appointment was to last till the regular incumbent joined back or 20.05.1986, whichever was earlier.

4. Aggrieved by the said modification in the terms of appointment, the appellant filed a Writ Petition No. 3316 (SS) of 1986 before the High Court challenging the modified terms of the appointment. On 19.05.1986, the management of the College issued another order dispensing with the services of the appellant w.e.f. 20.05.1986.

5. A learned Single Judge vide order dated 20.05.1986 while issuing notice to the respondents stayed the operation of the order dated 16.05.1986 modifying the terms of the appointment order. It was further provided that the interim order shall automatically lapse on return of the permanent incumbent Smt. Safia Khatoon.

6. It so happened that Smt. Safia Khatoon did not rejoin the service, as a result her services were terminated vide order dated 16.01.1988. It is undisputed fact that the respondents never undertook any steps for filling up the post and the appellant was continued on the said post without any interruption till 2020.

7. On 17.08.2001, the State of Uttar Pradesh Promulgated the UP Secondary Education Department Regularization of *Ad hoc* appointments on the Post of Trained Graduate Teachers Rules, 2001 (for short known as 'Regularization Rules, 2001). On 02.11.2001, the appellant made a representation to the authorities seeking regularization in accordance with the said Rules. When no action was taken on a representation for a substantial period of time, she approached the High Court again by filing Writ Petition No. 7890 (SS) of 2003. This Writ Petition came to be clubbed with the earlier Writ Petition No. 3316 (SS) of 1986 filed by the appellant and were heard together and disposed of by a learned Single Judge of the High Court by making following observations :-

> *"After hearing learned counsel for the parties and perusing the record, it is abundantly clear that the petitioner has more than 21 years experience working as Assistant Teacher Music, LT Grade in the Government Inter Collge, Mahmoodabad, Sitapur. As per documents placed on record, she is having all*

requisite educational qualification as required in the Intermediate Education Act. She might have been appointed in a leave arrangement but by virtue of his (sic her) continuous satisfactory services, she has now acquired a right to hold the post and continue in the institution, and at this stage, it would not be appropriate to treat her as an appointee in stop-gap arrangement."

8. The operative portion of the aforesaid judgment reads as under:-

"In view of above, the Writ Petitions are allowed. The consequences shall follow. The petitioner shall be allowed to continue on the post, held by her. Her case shall be considered for regularization under the relevant regularization Rules and appropriate orders shall be passed within three months from the date of presentation of a certified copy of the judgment and order."

9. It is pertinent to point out at this stage that the aforesaid common judgment rendered in the two Writ Petitions filed by the appellant attained finality as it was not put to challenge before any higher forum.

10. Vide order dated 29.01.2007, the Joint Director of Education considered the case of the petitioner (appellant herein) and despite observations contained in the judgment of the learned Single Judge rejected her claim for regularization. Her claim for regularization was mainly rejected on the ground that since her initial appointment was on leave vacancy for which there was no provision under the 2001 Rules, as such she cannot be held to be entitled to the benefit conferred by Regularization Rules, 2001.

11. This order was again put to challenge by the appellant by filing yet another Writ Petition No. 8597 of 2010. After hearing learned counsel for the parties, learned Single Judge vide judgment and order dated 15.05.2014 allowed the same on the following reasonings :-

i. Petitioner has been working since 23.07.1984 and in the earlier round of litigation, the High Court had held her entitled to hold the post. The judgment dated 23.01.2006 had become final and was unchallenged.

ii. Regularization Rules, 2001 were applicable to the petitioner. The earlier judgment had found petitioner to be entitled to

hold the post. Respondents' refusal to apply the Regularization Rules, 2001 was accordingly unlawful.

iii. A quietus needs to be given to long drawn litigation and the petitioner is entitled for regularization.

12. The learned Single Judge placed reliance upon the Constitution Bench Judgment of this Court in the case of ***Rudra Kumar Sain and Ors. vs. Union of India and Ors.***[1] and in particular the following observations made in paragraph 20 of the said Constitution Bench Judgment :-

> "In the service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be 'stopgap or fortuitous or purely ad hoc'."

13. The learned Single Judge found that the appellant has been teaching since 23.07.1984 and in an earlier judgment, the High Court has already held her appointment not being a stopgap arrangement and further she has a right to the post which has attained finality having not been challenged the Regularization Rules, 2001 are applicable to such cases and refusal to give benefit of the said Rules is not lawful exercise of the power by Joint Director and since no regular appointment has been made, she is fully eligible and qualified to be appointed as such.

14. Vide order dated 31.10.2015, in terms of the judgment of the learned Single Judge dated 15.05.2014, the respondent regularized the services of the appellant and simultaneously also filed a Special Appeal before a Division Bench.

15. Vide order dated 07.05.2018, impugned in this appeal the Division Bench allowed the Special Appeal preferred by the respondents herein and set aside the judgment of the learned Single Judge. The Division Bench was of the view that since the appellant herein was appointed in leave vacancy on 23.07.1984 and her services came to an end on 20.05.1986 and she continued on the post on the basis of the interim order passed by the High Court in earlier round of litigation and her appointment is litigious appointment and thus she has no enforceable right to hold this post legally in her favour.

[1] (2000) 8 SCC 25

16. Heard Shri Nikhil Goel, learned counsel for the appellant and Shri Harish Pandey, learned counsel for the State-Respondent. We have also gone through the impugned judgment as also the record of the case with the assistance of the learned counsel for the parties.

17. The Special Appeal filed by the State was allowed by the Division Bench of the High Court mainly on the reasoning that the petitioner (appellant herein) was employed on a temporary basis against the leave vacancy and since the Service Rules, 1983 did not permit any appointment on leave vacancy, the appointment of the petitioner (appellant herein) was illegal appointment of 'stop-gap nature'. Analyzing the Regularization Rules, 2001 the Division Bench found that there was no provision for regularization of an appointment made against the leave vacancy.

18. Relying upon the observations made by this Court in the case of ***Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.***[2] wherein it was held that since the initial appointment of the petitioner (appellant herein) was dehors the Rules and thus was illegal and her appointment was litigious appointment and she continued on the strength of an interim order passed by the High Court on 20.05.1986, she was not entitled for regularization.

19. The Constitution Bench of this Court in the case of ***Umadevi (3)*** has held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless the appointment has been made in accordance with the terms of the relevant service rules governing the said appointment and in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above by observing in paragraph 53 of the reports as under :-

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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.

[2] (2006) 4 SCC 1

> 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."

20. The above quoted paragraph 53 from the pronouncement in the case of ***Umadevi(3)*** has carved out an exception to the general principles against 'regularization' in case, the following conditions are fulfilled :

i. The incumbent should have worked for 10 years or more on a duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal.

ii. The appointment of such employee should not be illegal, even if irregular.

21. Applying the above tests laid down in the judgment of ***Umadevi (3),*** carving an exception to the general principles against 'regularization', the Division Bench of the High Court has held that since the appointment of the appellant was dehors the rules and without undergoing the process of open competitive selection, as such the same is illegal and since she continued in service under the cover of the order passed by the learned Single Judge of the High Court, her appointment is litigious and thus is not covered by exception carved out in the case of ***Umadevi(3).***

22. Referring to the observations made in the case of ***Umadevi (3)*** paragraph 53 quoted herein above, this Court in the case of ***State of***

A ***Karnataka & Ors. vs. M.L. Kesari & Ors.***[3] has laid down the conditions to test when the appointment will be considered illegal and when it shall be considered to be irregular. It may be relevant to extract paragraph 7 from the said report, which reads as under:-

> "It is evident from the above that there is an exception to the
B general principles against `regularization' 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
C 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
D 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
E considered to be irregular."

23. In the case of the appellant, it is undisputed that she was appointed by the Regional Inspectress of Girls Schools, who is the prescribed appointing authority under the Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service Rules, 1983. Equally
F undisputed is the fact that she was appointed on a sanctioned post and possessed all the necessary prescribed qualifications under 1983, Rules.

24. Applying the tests laid down in ***State of Karnataka & Ors. Vs. M.L. Kesari & Ors. (Supra)*** the appointment of the appellant can only be construed as irregular and not illegal. The finding recorded by
G the Division Bench of the High Court in respect of nature of the appointment of the appellant being illegal is thus not liable to be sustained. Her rejection of the claim for regularization on the ground of her appointment being illegal by the impugned order is patently erroneous. The other condition of having worked for 10 years or more also stands

H [3] (2010) 9 SCC 247

fully satisfied as the appellant at the time of consideration of her regularization had completed almost 23 years of service.

25. The only question which now requires consideration is whether her continuation on the post on the strength of the interim order passed by the High Court would dis-entitle her from regularization in view of the dictum in the case of ***Umadevi(3).***

26. Writ Petition No. 3316 (SS) of 1986 filed by the appellant before the High Court challenging the modification in the terms of her appointment was stayed vide order dated 20.05.1986 during the pendency of this Writ Petition before the High Court. She again approached the High Court by filing Writ Petition No. 7890 of 2003 challenging the order passed by the Joint Director of Education rejecting her claim of regularization. The two pending Writ Petitions were clubbed by the High Court and disposed of vide common judgment and order dated 23.01.2006 with the finding that the appellant is having all the requisite qualification and has worked for 21 years and she might have been appointed in a leave arrangement but by virtue of her satisfactory services, she has now acquired a Right to hold the post and continued in the institution and at this stage, it would not be appropriate to treat her as an appointee in a stop-gap arrangement and accordingly directed the State-respondent to consider for regularization under the relevant Regularization Rules.

27. This Judgment attained finality *inter-se* between the parties as admittedly the State-respondent did not put the same to challenge before any higher forum. The aforesaid judgment which attained finality crystallized the right of the appellant for regularization. When the same was refused by the Joint Director of Education, it was again challenged by filing Writ Petition No. 8597 of 2010. A learned Single Judge vide order dated 15.05.2014 allowed the Writ Petition with the finding that in the earlier round of litigation, the High Court had held that she was entitled to hold the post and since the said judgment become final and unchallenged, the Regularization Rules, 2001 were applicable and refusal to apply the said Rules was unlawful.

28. Admittedly, when the judgment dated 23.01.2006 was passed by the High Court in the earlier two Writ Petitions filed by the appellant, the dictum of ***Umadevi (3)*** was not even in existence as the said judgment was rendered subsequently on 10.04.2006.

29. The Division Bench of the High Court has erroneously understood the dictum of this Court in ***Umadevi (3)***. The Constitution Bench has nowhere directed that service matters that stand concluded *inter partes*, ought to be re-opened. On the contrary, in paragraph 54 of the said decision, the Constitution Bench clarified as under:-

> "It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

30. It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of ***Umadevi (3)*** will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the decision in ***Umadevi (3)*** and which has attained finality and is binding *inter se* between the parties need not be implemented. Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between over-ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

31. In an identical situation, this Court in Civil Appeal No. 4443 of 2021 with Civil Appeal Nos. 4444 & 4445 of 2021 decided on 26.07.2021 (***Vice Chancellor Anand Agriculture University vs. Kanubhai Nanubhai Vaghela and Anr.***) has rejected the argument advanced by the appellant in the said case that the judgment of this Court dated 18.01.2001 in ***Gujarat Agricultural University vs. Rathod Labhu Bechar & Ors.***[4] does not survive after the judgment of this Court in ***Umadevi(3).*** It was held in paragraph 11 as under:-

> "11. We have heard Mr. P.S. Patwalia, learned senior counsel for the university and Mr. Nachiketa Joshi, learned counsel for the respondents. The main contention of the university is that after the judgment of this Court in Secretary, State of Karnataka and Ors. vs. Umadevi and Ors. 2, the respondents are not entitled for

[4] (2001) 3 SCC 574

regularization as there are no sanctioned posts available. Another submission made on behalf of the appellant is that the judgment of this Court dated 18.01.2001 in Gujarat Agricultural University (supra) does not survive after the judgment of this Court in Umadevi. It is no doubt true that in Umadevi's case, it has been held that regularization as a one-time measure can only be in respect of those who were irregularly appointed and have worked for 10 years or more in duly sanctioned posts. However, in the instant case the respondents are covered by the judgment of this Court in Gujarat Agricultural University (supra). This Court approved the proposed scheme of the State of Gujarat and directed regularization of all those daily wagers who were eligible in accordance with the scheme phase-wise. The right to be regularized in accordance with the scheme continues till all the eligible daily-wagers are absorbed. Creation of additional posts for absorption was staggered by this Court permitting the appellant and the State of Gujarat to implement the scheme phase-wise. We are not impressed with the submissions made on behalf of the university that the judgment of this Court in Umadevi's case overruled the judgment in Gujarat Agricultural University (supra). The judgment of this Court in Gujarat Agricultural University (supra) inter partes has become final and is binding on the university. Even according to Para 54 of Umadevi's case, any judgment which is contrary to the principles settled in Umadevi shall be denuded of status as precedent. This observation at Para 54 in Uma Devi's case does not absolve the university of its duty to comply with the directions of this Court in Gujarat Agricultural University (Supra)."

32. The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23.01.2006 of the learned Single Judge which had already attained finality. Appeal filed under the Rules of the Court was filed against the judgment dated 15.05.2014 rendered in Writ Petition No. 8597 of 2010. It is a well settled principle of law that a Letters Patent Appeal which is in continuation of a Writ Petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of res-judicata and doctrine of finality.

A 33.By a majority decision in ***Naresh Shridhar Mirajkar & Ors. vs. State of Maharashtra & Anr.***[5] has laid down the law in this regard as under:-

> "When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties
B are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court."
C

34. In ***Rupa Ashok Hurra vs. Ashok Hurra & Anr.***[6]**,** while dealing with an identical issue this Court held that reconsideration of the judgment of this Court which has attained finality is not normally permissible. The decision upon a question of law rendered by this Court was conclusive and would bind the Court in subsequent cases. The Court
D cannot sit in appeal against its own judgment.

35. In ***Union of India & Ors. vs. Major S.P. Sharma & Ors.***[7]**,** a three-judge bench of this Court has held as under:-

> "A decision rendered by a competent court cannot be challenged
E in collateral proceedings for the reason that if it is permitted to do so there would be "confusion and chaos and the finality of proceedings would cease to have any meaning."

36. Thus, it is very well settled that it is not permissible for the parties to re-open the concluded judgments of the Court as the same
F may not only tantamount to an abuse of the process of the Court but would have far reaching adverse effect on the administration of justice.

37. It is undisputed that in compliance of the judgment of the learned Single Judge dated 15.05.2014 vide order dated 31.10.2015 respondents regularized the services of appellant subject to the outcome
G of the proceedings in the LPA and the appellant now stand superannuated having attained the age of superannuation after about 33 years of continuous service.

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[5] 1967 AIR SC 1
[6] (1999) 2 SCC 103
H [7] (2014) 6 SCC 351

38. In the end, a feeble attempt was made by the learned counsel for the State-respondent to persuade us not to interfere in the matter on the ground that the services of the appellant were terminated vide letter dated 19.05.1986 which was never challenged as such her services stood terminated. We are not ready to accept the proposition canvased by learned counsel for the respondent at this stage for the simple reason that it was open for the State to have advanced this contention before the learned Single Judge in the two Writ Petitions decided vide judgment and order dated 23.01.2006. Once this argument was never made before the learned Single Judge in the proceedings which has attained finality, the respondent cannot be permitted to raise this argument in this appeal.

39. Analyzing the entire facts of the case and upon consideration of the matter and settled legal position, we are of the considered view that the impugned judgment passed by the Division Bench of High Court is not liable to be sustained and is hereby set aside. The appeal, accordingly, stands allowed. The appellant is held entitled to be regularized with all consequential benefits which may be extended to her within a period of three months from today.

40. In the facts and circumstances, we, however, do not make any order as to costs.

Nidhi Jain Appeal allowed.