

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 33802 of 2015

ORDER:

Heard Sri B.G.Ravindera Reddy, learned counsel for the petitioner, Sri Raj Kumar Rudra, learned Standing Counsel for the respondents' co-operative society and learned G.P for Irrigation and Command Area Development.

2. The petitioner filed this writ petition to issue a writ, particularly one in the nature of Writ of Mandamus declaring that the action of the respondents in not regularizing the services of the petitioner is illegal and consequently direct the respondents to regularize the services of the petitioner on par with his Juniors, with all consequential benefits from the date of their regularization.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner was appointed as Assistant Salesman in the respondent society on daily wages w.e.f. 31.12.1983. Since then the petitioner worked continuously in the respondent society, subject to artificial breaks given now and then.

b) The petitioner was terminated from service w.e.f. 20.05.1988. Questioning the said termination order, the petitioner raised I.D.no.472 of 1989 before the Industrial Tribunal-cum-Labour Court, Godavarikhani. The Industrial Tribunal passed award on 28.10.1991 directing the 1st respondent to reinstate the petitioner into service with continuous service and all other attendant benefits, except the back wages.

c) Accordingly, the petitioner was reinstated into service on 01.06.1992 as a salesman, which is equivalent to the post of Junior Assistant and completed 31 years of continuous service.

d) The petitioner is entitled for regularization in service in terms of G.O.Ms.No.212, dated 22.04.1994, as he completed more than five years of service by the cut off date and that several juniors to him, who were appointed much later has already been regularized in service.

e) The service particulars of the petitioner juniors are as under:

S.No.	Name	Date of appointment	Date of regularization
01)	M.Kalavathi	13.05.1992	12.03.2009

02)	G.S.Anna Rao	12.09.1990	12.03.2009
03)	K.Nageswar Rao	01.06.1989	01.08.2015
04)	M.V.S.Kusuma	01.06.1989	01.08.2015
05)	N.Venkatasubbaiah	01.06.1989	-do-
06)	P.Kavitha	01.06.1989	-do-

e) Therefore, the action of the respondents in not regularizing the petitioner's services is highly arbitrary, illegal and discriminatory. As such, the present writ petition is filed.

4. The counter affidavit filed on behalf of the respondents is as follows:

a) The respondents admitted the appointment of the petitioner as Daily Wager at Jagtial Sales Emporium, Karimnagar Division on 13.12.1983. The petitioner was removed on 25.05.1986 and after lapse of some days, he was again provided employment from 25.03.1987. the petitioner was again removed from service on 20.05.1988.

b) The respondents did not dispute that the petitioner filed I.D.No.472 of 1989 before the Industrial Tribunal, which was disposed of on 28.10.1991, directing the Management to reinstate the petitioner into service. The petitioner was

reinstated into service on 01.06.1992 with continuity of service and with attendant benefits, but without any arrears thereof duly setting aside the order of removal dated 20.05.1988 as per the orders of the Industrial Tribunal. Therefore, the contention of the petitioner that his post is equivalent to the post of Junior Assistant is not correct, since he was engaged to work in the Commercial side.

c) The petitioner cannot claim regularization of services on par with one Kum M.Kalavathi and Sri G.S.Anna Rao, K.Nageswar Rao, M.V.S.Kusuma, N.Venkata Subbaiah and P.Kavitha are appointed on consolidated wages and hence, they had been absorbed as Junior Assistants. As the appointment orders were not in concurrence with the provisions laid down under Section 116(c) Rule 28 and 36(b) of APCS Act, 1964 and also not fulfilled the terms and conditions contained in G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22.04.1994 and in view of such their services were terminated on 20.08.2011. Aggrieved by the same, the said Junior Assistants approached the High Court by way of writ petition and obtained interim orders. As per the said orders, their service were regularised in the year

2009 and thereafter, two increments were also allowed to them. However, the orders of regularization were cancelled after issuing notice. The High Court was also of the view that the petitioners can be continued as regular employees with minimum time scale and their cases shall not be treated as a precedent for regularization of other employees.

d) On the request of the petitioner, the issue of regularization of service, was placed before the Managing Committee in its meeting held on 18.12.2006, wherein it was resolved to request the Government to accord permission for regularization of the services of the Daily Wagers and also the Registrar/Director of Handlooms & Textiles and Development Commissioner for Apparel Export Park's on 05.02.2009 and in turn, the said Registrar informed vide letter dated 22.05.2010 that the said permission cannot be accorded for regularization of daily wagers, who are continuing in Court orders. As such, the claim of the petitioner is untenable.

e) The contention that the petitioner completed five years of service by cut of date in terms of G.O.Ms.No.212, dated 22.04.1994 is not correct since he was reinstated into service as Daily Wager on 01.06.1992 and terminated on 20.05.1988,

as such the petitioner has not completed five years of service and the petitioner is also having break-up in earlier periods prior to termination. Hence, the petitioner is not entitled for any relief and the writ petition is liable to be dismissed.

5. **Perused the record.**

A) The petitioner herein had filed APSE case No.1 of 1998 before the A.P. Shops and Establishments Act, 1988 and Labour Officer, Jagtial under Section 50 to direct APCO to grant regular scale of pay and to pay arrears arising out of fixation of pay in the scale of Rs.1665/- to Rs.3200 amounting to Rs.38,779/- for the period from 01/01.1995 to 31.08.1998 on par with regular employees and the said case was allowed on 07.08.2002 and the respondent was directed to deposit the amount of Rs.38,779/- with the authority within thirty days after receipt of the order. The appeal preferred by the respondent herein against the said order dated 07.08.2002 was dismissed vide order dated 08.04.2005 of the Appellate Authority.

B) A bare perusal of the order dated dated 08.04.2005 of the Appellate Authority passed under Section 53(1)(A) of the A.P.Shops and Establishments Act, 1988 and Assistant

Commissioner of Labour, Karimnagar in case No.APSE 3/2004 clearly disclose that the Divisional Marketing Officer, A.P. State Handloom Weavers Co-operative Society Ltd., Industrial Estate, Padmanagar, Karimnagar i.e. the 1st respondent herein at Karimnagar in his appeal in Case No.APSE3/2004 preferred under Section 53(1)(a) of the A.P.Shops and Establishments Act, 1988 preferred against the order dated 07.08.2002 in case No.APSE Case No.1 of 1998 of the Authority under Section 50 of the Act and Labour Officer, Jagtial had stated in the appeal that the proposal for regularization of the service of the petitioner herein for fixation of pay in regular time scale in accordance with the Act 2 of 1994 was forwarded and the proposal was pending.

C) The second para and last para of the order dated 08.04.2005 passed in case No.APSE3/2004 reads as under:

"The grounds of appeal stated by the appellant are that the respondent No.1 herein was a contingent employee working since 1978 that his employment was temporary and contingent and his employment was terminated by the appellant by paying four weeks salary that the aggrieved respondent No.1 had approached the Industrial Tribunal-cum-Labour Court, Godavarikhani in I.D.472/1989 questioning his termination and in accordance with direction of the Industrial Tribunal-cum-Labour Court, Godavarikhani he was reinstated in service and was posted at Jagtial on consolidated pay at the minimum of time scale and he was getting his salary regularly that the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani in I.D.472 of 1989 was complied with in toto and no wages were due to him on account of either delayed payment or deduction. The appellant also submitted

that the State Government passed an Act called A.P. Regularisation of Appointment to Public Services and Rationalization of Staff pattern and Pay Structure Act, 1994 (hereinafter called 'Act-2 of 1994') which was effective from 22.04.1994 and the proposal in respect of the respondent No.1 for regularization of his services and fixation of pay in regular time scale were pending that the Authority under Section 50 allowing fixation of pay in time scale exceeded his limits and therefore, the orders of the Authority under Section 50 is liable to be set aside. "

"It is not disputed that the respondent No.1 has been discharging the duties of Assistant Salesman and it was stated by the appellant in the appeal that the proposal for regularization of services of the respondent No.1 and for fixation of pay in regular time scale in accordance with the Act 2 of 1994 was forwarded and the proposal was pending. Admittedly, the respondent No.1 i.e. Mr D.Rajender has been continuing as on 25.11.1993 as Asst.Salesman and he is entitled to pay and allowance in the time scale of Asst. Salesman for the period from the date of reinstatement on the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani (Dated 28.10.1991 vide G.O.Rt.No.2508, dated 25.11.1991 published on 23.12.1991) and he is entitled to pay (including the annual grade increment in the time scale of Asst. Salesman) and allowances in the said time scale for the claim period from 01.01.1997 to 25.05.1998 and the difference of amount between such pay and allowances and the minimum wage paid, which is deemed to be illegal deduction in accordance with Section 51(1) of the A.P. Shops & Establishments Act, 1988 is now payable by the appellant. The appellant is directed to calculate and pay the said amount to the respondent No.1 and report compliance with details within (30) days of receipt of this order. The order of the Authority under Section 50 of the Act is modified accordingly. The appeal is dismissed as having no merits."

D) Taking into consideration the above referred observations and also the fact of very clear admission of the 1st respondent herein at Karimnagar Division that the proposal for regularization of services of the petitioner herein and for fixation of pay in regular time scale in accordance with the Act 2 of 1994 was forwarded and the proposal is pending the plea of the respondents herein in the counter affidavit

filed in the present writ petition that the petitioner has not completed five years of service is not sustainable.

10. The Apex Court in **State of Karnataka v M.L.Kesari and others**¹observed as under:

“Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize 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).

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, regularize their services.

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 regularization process. On the other hand, some Government departments or

¹ (2010) 9 SCC 247

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 regularization, 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/adhoc/those 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.

In terms of the ratio laid down in **State of Karnataka v Umadevi**² the petitioner is eligible to be considered for regularization of his service.

11. Under identical circumstances, A Division Bench of this Court in W.A.No.108 of 2015 was pleased to pass orders as below:

“This Writ Appeal is directed against the order dated 10.11.2014 passed in W.P.No.22287 of 2012 whereby, while allowing the Writ Petition filed by the respondents, the appellants were directed to

² 2006(4) SCC 1

regularize their services in terms of the judgment of the Supreme Court in State of Karnataka v. Uma Devi (2006) 4 SCC 1).

It appears that respondent Nos.1 and 2 were appointed as Clerks and respondent No.3 as Salesman on 01.06.1989, and respondent No.4 was appointed as Typist on 01.12.1984. They claim that they completed more than 25 years of service and are eligible for regularization. It is relevant to mention the background facts, to the extent they are relevant for disposal of the Writ Appeal. Respondents services were terminated sometime in 1995. The termination was challenged by them before the concerned authority under Section 48 (1) of the Andhra Pradesh Shops and Establishments Act, 1988 (for short, 'the Act'). Their challenge was upheld vide order dated 03.11.1997, with direction to reinstate them into service with full back wages and all attendant benefits. This order dated 03.11.1997 was carried in appeal by the appellants. Their appeal was dismissed vide order dated 12.10.1998. Then they approached this Court by way of Writ Petition and then Writ Appeal. The order of the authority under Section 48 (1) of the Act was however confirmed by this Court. Thereafter, the appellants approached the Supreme Court by way of S.L.P. The S.L.P. also came to be dismissed vide order dated 28.04.2000. In this backdrop, the learned Judge has given benefit of the observations made by the Supreme Court in Uma Devi (supra) and issued direction to regularize the services of the respondents.

Learned counsel for the appellants submits that the case of the respondents is not covered by the judgment of the Supreme Court in Uma Devi (supra), since at no point of time, they completed ten years of continuous service as on 10.04.2006. He did not urge any other contentions.

We are unable to agree with the submission made by the learned counsel for the appellants for more than one reason. It is clear from the facts, as stated above, that the termination was ultimately held to be illegal and they were given all attendant

benefits including back wages from the date of their termination, which clearly demonstrate that they completed ten years of continuous service as on 10.04.2006. In other words, after the termination in 1995, in view of the order of this Court and of the Supreme Court, they deemed to have continued in service. We find no merit in the appeal.

Hence, the Writ Appeal is dismissed.”

It is clear as from the facts of the present case referred to above that the termination of the petitioner was ultimately held to be illegal and the petitioner was reinstated into service on 01.06.1992 with continuity of service and with attendant benefits duly setting aside the order of removal dated 20.05.1988 as per the order of the Industrial Tribunal. There is also a clear admission at paras 11 and 12 in the counter affidavit filed by the respondents that the services of Kumari M.Kalavathi and Sri G.S.Anna Rao are regularized in the year 2009 as per Court orders. Hence, there is no denial to the fact that the services of juniors of the petitioner have been considered for regularization. In such an event, the respondents are under obligation to consider the case of the petitioner for regularization because the law laid down by the Apex court in **Umadevi's case** refers to regularization of services of daily wage/ad hoc/casual employee's as well.

12. In view of the law laid down in the judgments referred to and discussed above i.e. **M.L.Kesari and others's case** referred 1st supra, **Umadevi's case** referred 2nd supra and the order dated 23.02.2015 passed in W.A.No.108 of 2015, the writ petition is allowed and the respondents are directed to regularize the services of the petitioner in terms of the ratio laid down in the aforesaid decision within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 08.08.2022

Note: L.R.copy to be marked

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