

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P. No. 40999 OF 2018**

Between:

S.Bixam and others

... Petitioners

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : yes

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**SUREPALLI NANDA, J**

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... Respondents

**< Gist:**

**> Head Note:**

**! Counsel for the Petitioner : Mr P.Raghavender Reddy**

**^Counsel for the Respondents: G.P. for Municipal admn.  
G.P. for Finance & Planning**

**? Cases Referred:**

1. 2017 (1) SCC 148
2. 2010 (9) SCC 247
3. 2013 (14) SCC 65
4. 2015 SCC online 1797
5. 2015 (8) SCC 265
6. 2014 (7) SCC 223

**HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 40999 OF 2018**

**ORDER:**

**Heard the Learned Counsel for the Petitioners,  
learned Government Pleader for Finance and Planning  
and Learned Government Pleader for Municipal  
Administration.**

2. This Writ Petition is filed praying to issue a Writ of mandamus, declaring the action of the respondents in not regularizing the services of the petitioners in terms of G.O.Ms.No 1320, MA, dated 15.12.1981, G.O.Ms.No.300, MA, dated 24.06.1985 and GO.Rt.No.1211, MA dated 18.10.1989 as it was done in the case of NMRs who are working along with the petitioners in Miryalaguda municipality vide G.O.Rt.No108, MA and UD Dept., dated 21.02.2018 which was issued by implementing the orders passed in O.A.No. 542 of 2001 and batch dated 18.04.2002, which were confirmed by this Court in Writ Petition No. 14909 of 2002, dated 10.11.2013 and also confirmed by the Hon'ble Supreme Court in Civil Appeal No.3567 of 2006 dated 26.04.2011 from the date of completion of 5 years.

**3. The Case of the Petitioners in brief, is as follows:**

a) Petitioners were initially appointed as NMR's on 01.04.1998 in the 4<sup>th</sup> Respondent Corporation and the G.O.Ms.No 1320, MA, dated 15.12.1981, G.O.Ms.No.300, MA, dated 24.06.1985 were issued by the 1<sup>st</sup> Respondent for regularizing of NMRs who have completed 5 years of service in the municipalities as NMRs from their date of appointment.

b) As per G.O.Ms.No 1320, MA, dated 15.12.1981, the services of the NMRs who have completed 5 years of service on 13.11.1980 or from such subsequent date as and when they complete 5 years of total services shall be regularised. The Government thereafter issued G.O.Ms.No.300 MA dated 24.06.1985 for absorption of NMRs in term of G.O.Ms.No.1320 MA dated 15.12.1981.

c) Thereafter, the Government issued G.O.Rt.No.1211 MA, dated 18.10.1989 for creation of supernumerary posts those who fulfilled the conditions laid down in G.O.Ms.No.1320 MA dated 15.12.1981 and G.O.Ms.No.300 MA, dated 24.06.1985 and approached Tribunals/Courts and as per the above GO's the petitioners were fully eligible for regularization of

petitioners services prior to issue of G.O.Ms.No.212, F&P, dated 22.04.1994.

d) As per condition no. 5, there should be clear vacancies for regularization of NMRs who had completed 5 years of total service as per the terms of G.O.Ms.No.212 dated 22.04.1994. The petitioners are fully eligible and qualified for regularization of petitioners service in terms of G.O.Ms.No.1320 MA dated 15.12.1981 and G.O.Ms.No.300 MA, dated 24.06.1985 read with G.O.Rt.No.1211 MA dated 18.10.1989 for regularization of NMRs who are working in Municipalities in the entire state.

e) The services of NMRs working with the Petitioners in the Miryalguda Municipality were regularized by the Government vide G.O.Rt.No.108 MA dated 21.02.2018, as such the petitioners are also entitled for the similar relief by way of regularizing the services of the petitioners in terms of G.O.Ms.1320 MA dated 15.12.1981, G.O.Ms.No.300, MA dated 24.06.1985 read with G.O.Rt.No,1211 MA dated 18.10.1989 and that the petitioners are also entitled for regularization prior to G.O.Ms.No.212 dated 22.04.1994 as

they have completed 5 years of service prior to issuance of the above said circular.

f) Vide its order dated 01.03.1996, the A.P. Administrative Tribunal had directed the respondents to consider the claim of regularization. But the respondents had rejected the claim of petitioners on the ground that there were no vacancies and only extended minimum time scale vide proc.No.A1/319/MM/95, dated 30.03.1996

g) The A.P. Administrative Tribunal vide another order dated 18.04.2002 directed the respondents to consider the claim of regularization and the same had not only been confirmed by this court vide orders in W.P. No. 14909 of 2002 dated 10.11.2002 but also by the Supreme Court in SLP (Civil) Appeal No.3567 of 2006 dated 26.04.2011.

h) Petitioners, then sent a notice dated 25.09.2018 to the respondents to regularize petitioners service as per G.O.Ms.1320 MA dated 15.12.1981, G.O.Ms.No.300, MA dated 24.06.1985 read with G.O.Rt.No,1211 MA dated 18.10.1989 but no action has been taken by the respondents.

i) In spite of the orders of this Court, the Respondent Authorities are not regularizing the petitioners services as there are no pending vacancies to regularize the petitioners services even when the Municipal Council is competent to create the posts.

**4. The case of the Respondents, in brief, is as follows:**

a) One of the conditions for regularization of services is that there should be a clear vacancy of sanctioned post in the Municipality and there are no vacancies in the municipalities as submitted before the Tribunal in O.A.No.1332 of 1996 and the said requirement is a preliminary requirement.

b) The Petitioners herein were neither appointed nor completed 5 years of service as on 13.11.1980 and as such they are not eligible for regularization of service in terms of G.O.Ms.No.1320 MA dated 15.12.1981 and the claim of the petitioners to consider their claim in terms of G.O.Ms.No.1320 on par with the petitioner is O.A. 2867 OF 2002 cannot be considered and moreover, the petitioners were engaged in the

Respondent Corporation/Municipality in the year 1988 and hence the G.O.Ms.No.1320 is not applicable.

c) The Petitioners have filed O.A.No.1332 of 1996 which was dismissed by the Tribunal through its order dated 01.03.1996 directing the respondents therein to verify the service particulars of the petitioners herein and consider the cases for regularization of services, provided they satisfy the requirement laid down in G.O.Ms.No.212, Finance dated 22.04.1994 and other G.O' and as per Section 7 of Andhra Pradesh Acts, Ordinances and Regulations) 1994, the services of the petitioners cannot be regularized and even though the petitioners have completed 5 years of service, unless there is a clear vacancy, the service of the regularization cannot be considered, as per condition no. 5 of G.O.Ms.No.212, Finance dated 22.04.1994.

d) Petitioner despite having knowledge that there are no clear vacancies as per G.O.Ms.No.212 dated 22.04.1994, the petitioners have filed this writ petition claiming the same relief under G.O.Ms.No.1320 MA dated 15.12.1981 and the same is devoid of merits and is liable to be dismissed.



**4. PERUSED THE RECORD :**

**i) The operative portion of the order dated 18.04.2002 in O.A.No.2876/2002, OA No.5421/2001 and OA No.8193/2001 reads as under:**

"13. Counter is filed on behalf of the respective municipalities. From the counter, it is seen that all the facts stated above are admitted. Only it is their trump card contention that on issuance of GOMs.No.212, F&P, dt.22.4.1994, all previous orders on the subject including GOMs.No.193 GAD, dt.14.3.1990 were superseded and keeping in view of the Supreme Court Judgment in CA 2979/1998 and batch the Government have formulated a scheme for regularization of services of the persons appointed on daily wage/NMR or on consolidated pay. Thus, it is their contention that in view of the issuance of GO.212, F&P, dt.22.4.1994, it is deemed that the instructions issued in GOMS.no.1320 MA, dt.15.12.1981 have been superseded. As already stated the services of the applicants ought to have been regularized in terms of GOMs.No.1320, MA, dt.15.12.1981, GOMs.No.300, MA, dt.24.6.1985 and GOMs.No.1211 MA, dt.18.10.1989. GOMs.No.212 F&P, dt.22.4.1994 mandates about the existence of a clear vacancy for regularization of service of NMR but, such contention is not a prerequisite for regularization of the services of the applicants whose cases are squarely covered by the GOMs.No.1320, MA, dt.15.12.1981, GOMs.No.300, MA, dt.24.6.1985 and GOMs.No.1211 MA, dt.18.10.1989. The existence of clear vacancy is not at all the criteria, as the criteria is one should complete 5 years of continuous service. By the time GO.212 had come into force, all the applicants in these 3 OAS, Infact, did complete 5 years of continuous service. If that is so, the aforesaid GOS., alone are applicable to the applicants and their services have to be regularized in accordance with the GO.Ms.no.1320, MA, dt.15.12.1981, GOMs.No.300, MA,

dt.24.6.1985 and GOMS.1211 MA, dt.18.10.1989 and not in accordance with GO.212, F&P, dt.22.4.1994.

14. In this view of the matter, all the OAS are allowed. The respondents are directed to regularize the services of the applicants in terms of GO.Ms.no.1320, MA, dt.15.12.1981, GOMs.No.300, MA, dt.24.6.1985 and GO.Ms.no.1211 MA, dt.18.10.1989, within 3 months from the date of receipt of a copy of this order."

**ii) The order dated 10.11.2013 passed in W.P.No.14909/2002 and batch reads as under :**

"Para 4. After perusing the orders of the Tribunal we find that this contention was considered by the Tribunal with reference to the G.O.Ms No.1320, Municipal Administration dated 15.12.1981 wherein the Government has clarified that the regular post of N.M.RS deemed to have been created to the extent of N M Rs who have completed five years of service as on 13.11.1980 e.. the date of meeting or from such subsequent date as and when they complete five years of total service from the dates of their first appointment excluding the breaks in service. Under those circumstances, the question of availability of vacancies would not arise and in fact it is now stated by the respondents-employees that they are getting all the benefits as if they are regular employees except the regularization of services, which would be only taken into consideration at the time of their retirement for assessing the pension. Thus, we do not find any ground to interfere with the order passed by the Tribunal."

**iii) Order of the Apex Court dated 26.04.2011 in Civil Appeal No.3567/2006 reads as under :**

"Having regard to Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act 2 of 1994 (for

short '1994 Act') and the amendment carried out therein by Act 27 of 1998 in light of G.O, dated April 22, 1994, we are of the view that ultimate order passed by the Andhra Pradesh High Court on November 10, 2003 affirming the order dated April 18, 2002 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad does not call for any interference. The Amendment in the 1994 Act by Act 27 of 1998 leaves no manner of doubt that the legislature has provided regularization of those who were engaged on daily wage/NMR etc. on fulltime basis and they continuously worked for five years as such as on November 25, 1993.

In A.Manjula Bhashini & others vs. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited and Another, (2009) 8 SCC 431, this court held in paragraph 89 of the judgment that the Policy of regularization contained in the first proviso to section 7 inserted by section 27 of 1998 is a one-time measure intended to benefit those daily wage employees, etc. who have completed five years continuous service on or before November 25, 1993.

The respondents were engaged as NMR in 1986; they continuously worked and had completed five years of service on November 25, 1993. It is for the above reasons that the direction by the Andhra Pradesh Administrative Tribunal to the appellants (respondents therein) to regularize the services of the present respondents (applicant therein) cannot be faulted.

The Civil Appeal has no force and is dismissed with no order as to costs."

**iv) Para 3 of G.O.Ms.No.1320 ,M.A, dated 15.12.1981**

**reads as under :**

"Para 3. The Government have examined the matter further and clarify to the Director of Municipal Administration that posts for regular employment of NMR workers be created for all these NMR workers who

have completed five years of service as on 13.11.1980 i.e., the date of the meeting or from such subsequent date as and when they complete five years of total service from the dates of their first appointment excluding the breaks in service, in any spell should not six months in which case the services after break only will be taken into account."

**v) Counter Affidavit filed by the 4<sup>th</sup> Respondent in March 2019, in particular, paras 2, 7 and 8 read as under:**

**"Para 2.** It is submitted that in reply to para No.3, it is submitted that as per the records available with Miryalguda Municipality, the petitioners have been working since the year 1988 and completed 5 years of minimum service as on 25.11.1993 as per G.O.MS.No.212 (Fin&Plg Dept), dated 22.04.1994.

**Para 7.** It is submitted that in reply to para No.8, it is submitted that in view of the orders issued by the Government, in GO Rt No.108 MA & UD (TP & E-2) Dept, dt:21-02-2018, and the Director of Municipal Administration, T.S., Hyderabad in Proc.Roc.No.4332/2017/M2, dt: 23- 02-2018, the Municipal Commissioner, Miryalguda has regularized the services of (26) NMR's working in Municipality in the post of PH worker in terms of G.O.Ms.No.1320 MA & UD Dept., dt:15-12-1981, G.O.Ms.No.300 MA & UD, dt 24-06-1985 and G.O, Rt No.1211 MA & UD (G.2) Deptt. dt:18-10-1989.

**Para 8.**It is submitted that in reply to para No.9, it is submitted that no vacancies are available in Miryalguda Municipality as of now. Further, the contention of the petitioners is not correct and moreover, the Municipal Council is not competent authority to create posts. Only Government is competent authority to create posts."

**vi) Counter affidavit filed by the 3<sup>rd</sup> and 4<sup>th</sup> Respondent in June 2022 – para 5 and 10 read as under :**

“Para 5. It is humbly submitted that, it is true that for regularization of NMR services who have completed 5 years of service as on the cut of date i.e 25.11.1993 can be considered for regularization provided if they satisfy 6 conditions as stipulated in G.O.Ms.No.212, Dt. 22.04.1994, one of the main condition is that there should be a clear vacancy of sanctioned post in the Municipality. In the writ petition the petitioners admitted and accepted the fact that there were no vacancies in the Municipality, as per the submissions of the respondent municipality before the Hon'ble Tribunal in O.A.No.1332/1996, whereas, to qualify for service regularization, the vacancy of post is preliminary requirement.

Para 10. Having accepted the fact that, clear vacancy is not available as per G.O.Ms.No.212 dt 22-04-1994, to consider them for service regularization, now the Petitioners filed the present Writ Petition, claiming the same relief of Service Regularization in terms of G.O.Ms.No.1320, MA, Dt. 15.12.1981, for which the individuals need to put in the service of 5 years, as on the cut of date of i.e. 13.11.1980, further the individuals raised irrelevant plea that they should be treated on par with those individuals who got engaged and completed 5 years of service as on 13-11-1980. The claim of Writ Petitioners for service regularization is against principles of service rules and Jurisprudence, in the circumstances the Writ Petition is devoid of merits and liable for dismissal.”

5. **DISCUSSION AND CONCLUSION :**

a) **A bare perusal of the counter affidavit filed by the 4<sup>th</sup> Respondent in March 2018 clearly indicates that as**

**per the records available with the 4<sup>th</sup> Respondent Municipality i.e., Miryalguda Municipality, the petitioners have been working since the year 1988 and the petitioners completed 5 years of minimum service as on 25.11.1993 as per G.O.Ms.No.212 (Finance & Planning Department), dt. 22.04.1994 and further that the services of 26 NMRs working in the Municipality in the post of PH worker had been regularized vide Proceedings dt. 23.02.2018 in terms of G.O.Ms.No.1320 MA & UD Dept., dt. 15.12.1981, G.O.Ms.No.300, MA & UD Dept., dt. 24.06.1985 and G.O.Rt.No.1211, MA & UD (G2) Dept., dt. 18.10.1989 and that no vacancies are available in the 4<sup>th</sup> Respondent Municipality and the 4<sup>th</sup> Respondent Municipality is not competent to create posts.**

b) **A bare perusal of the counter affidavit filed by the 3<sup>rd</sup> and 4<sup>th</sup> Respondent in June 2022 and a bare perusal of para 5 of the said counter affidavit clearly indicates a clear admission of the fact that for regularization of NMR services an employee should complete 5 years of service as on cutoff date i.e., 25.11.1993 as per G.O.Ms.No.212, dt. 22.04.1994, but the main condition however is that**

**there should be a clear vacancy of sanctioned post in the municipality.**

**6. The Apex Court in a judgment reported in (2017) 1 Supreme Court Cases 148, in State of Punjab and others vs Jagjit Singh and others at Para 54 and its sub-paras (1)(2)(3), of the said judgment observed as under:**

"54 "The Full Bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale, merely for the reason, that the activities carried on by daily-wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder: -

"(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

**(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.**

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months."

**7. The judgment of the Apex Court reported in 2010(9) SCC 247 between: State of Karnataka and others v M.L.Kesari and others, in particular, paras 4, 5, 8 and 9 reads as under:**



4. The decision in *State of Karnataka v. Umadevi* was rendered on 10.4.2006 (reported in 2006 (4) SCC (1)). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or reengagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :

"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], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] 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 years or more but without the intervention of orders of the 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 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. ....**

**"5. It is evident from the above that there is an exception to the 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 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 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 considered to be irregular.

**(iii) 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).

8. 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.

9. 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 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 onetime 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 onetime 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.

10. In the judgement of the Apex Court in Nihal Singh and others v. State of Punjab reported in (2013) 14 SCC 65, the Supreme Court considered the case of absorption of Special Police Officers appointed by the State, whose wages were paid by Banks at whose disposal their services were made available. It held that the mere fact that wages were paid by the Bank did not render the appellants 'employees' of those Banks since the appointment was made by the State and disciplinary control vested with the State. It held that the creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State, but if the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship, its action is arbitrary. It also refused to accept the defence that there were no sanctioned posts and so there was justification for the State to utilise services of large number of people like the appellants for decades. It held that "sanctioned posts do not fall from

heaven" and that the State has to create them by a conscious choice on the basis of some rational assessment of need. Referring to Umadevi, it held that the appellants before them were not arbitrarily chosen, their initial appointment was not an 'irregular' appointment as it had been made in accordance with the statutory procedure prescribed under the Police Act, 1861, and the State cannot be heard to say that they are not entitled to be absorbed into the services of the State on permanent basis as, according to it, their appointments were purely temporary and not against any sanctioned posts created by the State. It was held that the judgment in Umadevi cannot become a licence for exploitation by the State and its instrumentalities and neither the Government of Punjab nor those public sector Banks can continue such a practice inconsistent with their obligation to function in accordance with the Constitution.

11. The judgment of the Apex Court reported in 2015 SCC Online SC 1797 between B. Srinivasulu and others v Nellore Municipal Corporation Rep.by its

Commissioner, Nellore District, Andhra Pradesh and others, in particular paras 7 and 8 reads as under:

(7) We find it difficult to accept the reasoning adopted by the High Court. The right of the appellants to seek regularization flows from the G.O. No.212 dated 22.4.1994. The appellant have been in service of the first respondent not only prior to the issuance of the said G.O. but even subsequent to the issue of G.O. till today. The respondent Municipality being a statutory body is obliged by the G.O. 212(supra). In spite of the above mentioned G.O. the respondents kept quite for almost 20 years without regularising the service of the appellants and continued to extract work from the appellants.

(8) In the circumstances, refusing the benefit of the above mentioned G.O. on the ground that the appellants approached the Tribunal belatedly, in our opinion, is not justified. In the circumstances, the appeal is allowed modifying the order under appeal by directing that the appellants' services be regularised with effect from the date of their completing their five year continuous service as was laid down by this Court in District Collector/Chairperson & Others vs. M.L. Singh &Ors. 2009 (8) SCC 480.



12. In Amarkant Rai v State of Bihar reported (2015) 8 SCC 265, the Supreme Court held that 'The objective behind the exception carved out in this case was to permit regularisation of such appointment, which are irregular but not illegal, and to ensure appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years". In that case, employee was working for 29 years. This decision approves earlier view expressed in M.L.Kesari extracted above.

13. In State of Jarkhand v Kamal Prasad reported in (2014) 7 SCC 223, similar view was taken by the Supreme Court and it was held as follows :

"41.... In view of the categorical finding of fact on the relevant contentious issue that the respondent employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in Umadevi case (State of Karnataka v Umadevi (2006) 4 SCC 1 : 2006 SCC (L&S) 73) at

para 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent employees are entitled for the relief, the same cannot be interfered with by this Court."

14. A bare perusal of the observations of the Apex Court in various judgments referred to and extracted above clearly indicate that the claim of the petitioners for regularization has to be necessarily considered in view of the fact that the concept of one time measure as explained at paras 6 to 10 of the Judgment of the Apex Court in State of Karnataka v M.L.Kesari which in clear explicit terms said that one time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Uma Devi are so considered and the mandate and object in Uma Devi's case as explained in para 53 of the said judgment, to do periodic regular recruitment of qualified personnel for vacant posts and regularise the services of those engaged for more than 10 years, as a one time measure and the clarification of Uma Devi's case and the observation as held at para '5' of the

decision of the Supreme Court in State of Karnataka and Others vs. M.L.Kesari and others that Uma Devi casts a duty upon the concerned Government and 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 has not been diluted and the observations in para 54(2) of the Judgement of the Apex Court in State of Punjab and Others v. Jagjit Singh still hold good, which has clearly said that a legally permissible scheme has to be framed in respect of daily wagers, adhoc or contractual appointees who are not appointed against sanctioned posts, but their services are availed continuously with notional breaks by the State Government or its instrumentality for a sufficient long period i.e., for ten years.

15. This Court is of the firm opinion that the plea of the Respondent Municipality though it clearly admitted at para 2 of the counter affidavit that the Petitioners completed 5 years of minimum service as on

25.11.1993 as per G.O.Ms.No.212 (Finance & Planning Department) dt. 22.04.1994, but however, contended that no vacancies are available in Miryalguda Municipality and further that the Municipal Council is not competent authority to create posts is not tenable in view of the view taken by the Apex Court in the judgement reported in (2015) SCC Online 1797 between B.Srinivasulu& Others Vs. Nellore Municipal Corporation, rep. by its Commissioner, Nellore District, Andhra Pradesh referred to and extracted above and also the view taken by the Apex Court in the various judgements referred to and extracted above. The 4<sup>th</sup> Respondent herein cannot deny the relief of regularization to the petitioners as per para 53 of the decision in Umadevi's case, which permits one time exercise of regularization to be done for personal employed on temporary basis/daily wages etc, who have rendered continuous service for more than 10 years. The 4<sup>th</sup> Respondent cannot take the services of the petitioners for years together without regularizing their services and indulge in such a practice

inconsistent with their obligation to function in accordance with the constitution as observed by the Apex Court in Nihal Singh and others v State of Punjab which clearly held that "sanctioned posts do not fall from heaven" and the State has to create them by a conscious choice on the basis of some rational assessment of the need.

16. Taking into consideration, the above referred facts and circumstances and in the light of the observations of the Apex Court in various judgments referred to and discussed above, the writ petition is allowed directing the Respondents to consider the claim of the Petitioners for regularization of their services from the date of completion of 5 years in service duly taking into consideration the orders of the Apex Court dt. 26.04.2011 in Civil Appeal No.3567/2006 and the law laid down by the Apex Court in various judgments referred to and extracted above within a period of 3 weeks from the date of receipt of the copy of the order and communicate the decision to the Petitioners. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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SUREPALLI NANDA, J

Date: 05.06.2023  
Note: L.R. copy to be marked  
b/o  
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