

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION No.46393 OF 2018

Between:

P. Sharadamma, W/o. Late Samaiah,
Age: 57 years, Occ: Sweeper (Masalchi),
Address:16-11-20/4/23/F, Sripuram Colony,
Baladanamma Basthi, Hyderabad
.. Petitioner

And

The State of Telangana, represented by
Secretary to the Government, Legal Affairs,
Legislative Affairs & Justice Law Department,
Secretariat Buildings, Hyderabad and others

.. Respondents

Date of Order Pronounced: **01.12.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? (Yes/No)
2. Whether the copies of judgment may be marked to Law Reports/Journals? (Yes/No)
3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.46393 OF 2018

% Dated 01.12.2023

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.. Respondents

! Counsel for petitioner : Mr. D. Prakash Reddy, learned
Senior Counsel representing
Mr. Sriram Polali, learned
Counsel for the petitioner

^ Counsel for respondents : Mr. M.V. Rama Rao,
learned Special Government
Pleader for the respondents

<GIST:

> HEAD NOTE:

? Cases referred

1. (2006) 4 SCC 1
2. (2018) 8 SCC 238
3. AIR 1960 Supreme Court 321 (FB)
4. AIR 1987 Supreme Court 537 (A Three Judges Bench)
5. AIR 2020 Supreme Court 3969

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**WRIT PETITION No.46393 OF 2018****ORDER:**

This Writ Petition is filed seeking the following relief:

“...to pass a writ, order or direction, more particularly one in the nature of the mandamus declaring the inaction of the respondents in not regularizing/absorbing the service of the Petitioner in the post of whole-time sweeper in the 4th Respondent's establishment as also the inaction of the respondents in not paying the Petitioner salary in the timescale as applicable to the post of whole-time sweeper in the Last Grade service as being illegal, arbitrary, *mala fide*, unconstitutional and in violation of Articles 14, 19 and 21 of the Constitution of India and consequently to direct the respondents to regularize/absorb the Petitioner in the post of whole-time sweeper in the 4th Respondent's establishment with effect from 8.8.1997 along with all consequential benefits including salary in the applicable time-scale, allowances, emoluments and postretirement benefits as applicable to the post and arrears thereof and pass any other order or orders...”

2. Heard Shri D. Prakash Reddy, learned Senior Counsel representing Mr. Sriram Polali, counsel on record for the petitioner and Shri M.V. Rama Rao, Special Government Pleader appearing on behalf of the respondents.

3. The brief facts of the case are as follows:

The petitioner was appointed as part-time Masalchi in 4th respondent's establishment (Advocate General's office) in the erstwhile High Court for the State of Andhra Pradesh on 27.02.1986 on temporary basis. The petitioner made a representation dated 09.09.1991 in the office of respondent No.4 seeking absorption as Sweeper. The petitioner was paid enhanced wages as granted to the contingent employees of high court on par with the regular employees. A proposal was sent on 11.07.1996 to upgrade one of the posts of part-time sweeper in the office of Advocate General to a whole-time sweeper post in the time scale of Rs.1375 – 2375 and to permit the 4th respondent to absorb the petitioner in the upgraded post. A specific request was made that there was a need for whole-time sweeper. The proposal of the office of the Advocate General to upgrade one part-time post of sweeper to that of whole-time sweeper in the time scale of Rs.1375-2375 and to absorb the existing incumbent Smt. Saradamma was accepted in Finance and Law Department and was placed to obtain the orders of the Council of Ministers. The 2nd respondent sought information

from the office of the learned Advocate General and to send regularization proposal to the 3rd respondent. On 04.11.1996, the proposal was accepted in full by the Chief Secretary and the same was forwarded to the Chief Minister for approval.

4. The office of the Chief Minister accepted the proposal for the petitioner's regularization and also up-gradation. Later, the 2nd respondent issued a Memo, dated 26.04.1997, stating that the proposal stood deferred. A letter, dated 04.06.1997, was addressed to the Chief Secretary about necessity and need for an attender. By Memo, dated 08.08.1997, the post of part-time sweeper was upgraded to that of whole-time sweeper, subject to the post being filled up from the surplus staff. By letter dated 17.12.1997, the office of Advocate General brought to the notice of Secretary to Government (Legal Affairs), Law Department, that the words, "...to absorb the existing incumbent in the upgraded post was omitted by the Law Department" by oversight and a request was made for placing the matter again before the Council of Ministers for absorption of incumbent

Smt. Saradamma by relaxing the orders in G.O.Ms.No.275, dated 14.12.1995.

5. Though by letter dated 17.12.1997, it was informed that an error had crept in and a rectification was sought, the same was not considered. By letter dated 29.12.1998, the 2nd respondent sought service particulars of the petitioner, whether the petitioner had completed 10 years of minimum service by the cut-off date as on 25.11.1993 as required in G.O.Ms.No.112, dated 23.07.1997. In response, the office of Advocate General communicated that the petitioner completed 10 years of service by 26.02.1996. By letter, dated 14.05.1999, Secretary to Government (Legal Affairs) sought information about the details of posts paid from contingencies sanctioned by the High Court and their last continuation accorded by the Government and the persons working in the posts.

6. By a letter to the 2nd respondent, the request made earlier was reiterated and the file pertaining to the issue of incumbent with note was sought. Secretary to Government (Legal Affairs), informed the office of Advocate General by

letter, dated 09.06.2000, that regularization of part-time persons can be done only in terms of G.O.Ms.No.112, dated 23.07.1997, and that the petitioner is not eligible and the condition cannot be relaxed. By letter dated 08.12.2000, the office of Advocate General reiterated the request of up-gradation of part-time sweeper to whole-time sweeper for which, the office of Secretary to Government (Legal Affairs) had conveyed that the incumbent Smt. Saradamma was not eligible. By another letter dated 19.09.2008, request for up-gradation was reiterated, a reminder was also sent by letter dated 22.12.2008. In response to the said letter, a G.O.Rt.No.1323, dated 01.08.2009, was issued rejecting the proposal of the office of learned Advocate General, as per the instructions issued by the Finance Department.

7. It is pertinent to cull out certain important facts, which are crucial. Three Chief Law Officers of the State had assumed duties from 1996 to 2008 and all the three Chief Law Officers of the State have unequivocally reiterated the request for up-gradation of the post of part-time sweeper to whole-time sweeper and the name of the petitioner was requested and reiterated a number of times. It is trite to

take note of the fact that the proposal for the up-gradation of the said post and regularization as whole-time sweeper was accepted by the Cabinet and the same was approved by the Chief Minister on a note being put up by the Chief Secretary. These facts are in the knowledge of the office of the Advocate General and the offices of 2nd and 3rd respondents.

8. It is submitted by the learned Senior Counsel appearing on behalf of the petitioner that a post of part-time Masalchi (sweeper) in the 4th respondent's establishment was created in the year 1984 by the proceedings of the Hon'ble High Court and the petitioner was appointed as a part-time Masalchi (sweeper) in the 4th respondent establishment against the said post in the year 1986. The appointment was temporary and on contingency basis and that she belongs to Scheduled Caste community. It is contended that the office of Advocate General requested to enhance the remuneration on par with that of the contingency employees, whose remuneration stood enhanced. It was also further requested to up-grade one post of part-time sweeper to that of whole-time sweeper in

the applicable time scale and to absorb the petitioner in the up-graded post.

9. It is submitted that the proposal of the office of Advocate General was accepted in full by the Chief Secretary and the same was forwarded to the Chief Minister for approval and the Chief Minister endorsed the Chief Secretary's view. It is further submitted that to the utter surprise, the 2nd respondent had informed that, the request of the office of Advocate General was deferred by the Government. It is further submitted that the Cabinet passed the resolution for up-gradation of part-time post to that of whole-time post, subject to the post being filled up from the "surplus staff".

10. The learned Senior Counsel has submitted that the specific request was for that of the petitioner. The learned Senior Counsel submitted that the note file circulated was defective and it omitted the crucial portion seeking absorption of the petitioner. It is contended by the learned Senior Counsel that the petitioner was being penalized for a defective note put up by the offices of the respondents. The

petitioner cannot be made to suffer for a mistake of the office of the 2nd and 3rd respondents. It is also contended that a perusal of the series of communications would only indicate that it was the specific case of the petitioner that was being recommended by the office of the Advocate General as she was working for a long time (till date more than 36 years) and the same was rejected.

11. It is submitted that the petitioner was employed from the year 1986 and continues to render service. The petitioner is being denied regularization to the post of whole-time sweeper, in spite of approval being granted by the Chief Minister of the State Government and that the Cabinet had approved the said recommendation. The learned counsel had submitted that in spite of a request to rectify the defective note put up, the same was not done. It is further contended that the respondents rejected on a new ground that the petitioner was not eligible as per G.O.Ms.No.112, dated 23.07.1997.

12. Learned Senior Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in **Secretary,**

State of Karnataka vs. Umadevi¹. The Senior Counsel has invited the attention of this Court to paragraph No.53 of the judgment, which reads 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 (AIR 1967 sc 1071), R.N. NANJUNDAPPA [(1972) 1 SCC 409], and B.N. NAGARAJAN [(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 onetime 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

¹ (2006) 4 SCC 1

permanent, those not duly appointed as per the constitutional scheme.”

13. Attention is further drawn to a judgment of the Division Bench of this Court in W.P.Nos.38283 of 2022 and batch, 13.07.2023, contending that the issue in the batch of writ petitions is similar, and the ratio laid down is squarely applicable to the facts of the present case. The learned Senior Counsel has invited the Court to peruse paragraph Nos.8 to 14, which are extracted herein.

“8. The Hon’ble Supreme Court rendered judgment in the **Secretary, State of Karnataka and Others Vs Umadevi and Others**². The Hon’ble Supreme Court directed consideration for regularization of services of employees who are not regularly appointed and have completed more than ten years of service. This judgment is subsequent to formulation of scheme vide G.O.Ms.No.212. From what is noted in Sub-Para (2) of Paragraph No.6 of U.O. Note, the Government is also in agreement with the directions issued in **Umadevi’s** case. But the condition imposed in this paragraph would disentitle major chunk of Masalchis even though they have rendered considerable service by now. Therefore, per se, in accordance with the judgment of the Hon’ble Supreme Court in **Umadevi** there is imminent need to formulate another scheme to consider regularization of service. Though they are called as part-time, the Masalchi is a person who attends to work of Class-IV employee in the

² (2006) 4 SCC 1

Court premises and in the residence of the Judicial Officer. They are expected to be available 24 hours and minimum amount of work extracted from them will be atleast 12 hours on any given day.

9. In Paragraph No.53 of **Umadevi's** case, the Hon'ble Supreme Court issued the following directions:

“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 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. We also clarify that regularization, if any already made, but not

sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

10. The scope of judgment of Hon’ble Supreme Court in **Umadevi** was considered by the Hon’ble Supreme Court in several subsequent decisions. It is useful to consider the judgment rendered by the Hon’ble Supreme Court in **Narendra Kumar 6 Tiwari and others Vs State of Jharkhand and others**³, and held as under:

“7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularization and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and Kesari [State of Karnataka v.

³ (2018) 8 SCC 238

M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularized since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise — the interest of the employees is also required to be kept 2 (2018) 8 Supreme Court Cases 238 7 in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularization Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularization Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularized unless there

is some valid objection to their regularization like misconduct, etc.”

11. In several decisions the Hon'ble Supreme Court frowned upon continuous engagement of the employees on daily wage basis/contract basis/contingent basis without making regular recruitment and without sanctioning the posts required to any Organization/ Department.

12. Thus, it is clear that the cut off date of 10.04.2006 as understood by the Government is not correct. In the given circumstances, it is permissible to consider formulating the scheme for regularization of services of temporary employees as and when they complete ten years of service.

13. Thus, the conditions imposed in Paragraph No.6.2 is not valid and we make it clear and direct consideration of the claims of Masalchis in terms of the directions issued by this Court in W.P.No.6266 of 2011 by considering all the Masalchis working as on today who have rendered more than ten years of service.

14. Therefore, the Registrar General, High Court for the State of Telangana is directed to send proposals including the names of all the Masalchis working as on today, within a period of six (6) weeks from the date of receipt of copy of this order, duly taking note of Paragraph No.6 of U.O.Note dated 11.07.2023, in the light of what we have observed above. On receiving such proposals, the Government is directed to examine the same and take suitable decision sympathetically, as observed by this Court in W.P.No.6266 of 2011 within six (6) weeks thereafter. We make it clear that this direction is not confined to petitioners in these writ petitions but to all Masalchis working as on today.”

14. Learned Senior Counsel appearing for the petitioner submitted that the petitioner would retire from the services on 31.12.2023 on attaining the age of superannuation and sought a direction for the relief as prayed for in the writ petition.

15. The learned Special Government Pleader appearing on behalf of the respondents fairly submitted that the facts are not in dispute and the correspondence between the office of the Advocate General and the 2nd and 3rd respondents offices is not denied.

16. Learned Government Pleader appearing for the respondents further submitted that the 2nd respondent has issued G.O.Rt.No.75, dated 30.01.2020 and pursuant to it, this Court in I.A.No.2 of 2018 in the present W.P.No.46393 of 2018 directed the 4th respondent to pay minimum of the time scale of pay assigned to the post of sweeper/last grade service i.e., Rs.13,000/- in the time scale of Rs.13,000-40270. The Government vide G.O.Ms.No.64, dated 15.06.2021, had revised the above time scale of pay and that the petitioner is being paid Rs.19,000/- per month,

which is the minimum of the time scale of pay assigned to the post of last grade service.

17. It is also contended by the learned Government Pleader appearing for the respondents that the regularization of part-time persons can be done only in terms of G.O.Ms.No.112, dated 23.07.1997, which stipulates 10 years of minimum service and the Government has considered the case of the petitioner and found that the petitioner is not eligible and that the conditions cannot be relaxed.

18. Heard the rival contentions, perused the entire record. This Court is mindful of the fact that ordinarily under Article 226 directions cannot be issued for absorption, regularization or permanent continuance. It is not in dispute that the petitioner has been working for 36 years in the post of part-time Masalchi (Sweeper). Sanction was accorded to the 4th respondent establishment by the Hon'ble High Court and the same is evidenced by the proceedings of the High Court of Andhra Pradesh at Hyderabad, which reads as under:

“ORDER: R.O.C.No.1886/84-D6 dt/16-5-1984.

The High Court is pleased to pass the following Order:-

In the circumstances stated by the Advocate-General, Andhra Pradesh, Hyderabad in his letter read above, sanction is hereby accorded to him for the appointment of one part-time Masalchi on a monthly wage of Rs.75/- (Consolidated) for his office use.”

19. It is also not out of place to note the fact that the Cabinet had passed a resolution approving the request of the office of Advocate General with an observation that the said post is to be filled up from surplus staff. The petitioner’s case should have been considered, but was not. This Court is constrained to observe that when an employee has been in continuous service from 1986 in a post where the High Court had accorded permission vide Order: R.O.C.No.1886/84-D6, dt.16.05.1984, the authorities seem to have craftily avoided regularization and up-gradation of the said post.

20. This Court is of the view that this is a fit and deserving case, where directions can be issued to the respondents for the relief as sought for by the petitioner in the writ petition. By a catena of decisions, the Hon’ble Supreme Court held

that the High Court can issue a writ of mandamus and also direct the authorities.

21. In ***Y.Mahaboob Sheriff and Sons V. Mysore State Transport Authority, Bangalore and Others***⁴, a Constitution Bench of the Hon'ble Supreme Court held in Para-11 as follows:

“11. The next question is what order should be passed in the circumstances. This depends on the exigencies of each case, for this Court is not confined by the technical rules relating to issue of writs by the English Courts. In *T.C. Basappa v. T. Nagappa* [(1955) 1 SCR 250: (AIR 1954 SC 440), this Court observed as follows at p.256 (of SCR): (at p. 443 of AIR):

“The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges.

⁴ AIR 1960 Supreme Court 321 (FB)

We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.”

22. In ***The Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another V. K.S.Jagannathan and Another***⁵, the Hon’ble Supreme Court in Para-20 held as follows:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public

⁵ AIR 1987 Supreme Court 537 (A Three Judges Bench)

authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

23. In ***Hari Krishna Mandir Trust V. State of Maharashtra and Others***⁶, the Hon’ble Supreme Court in Paras-100 and 101 held as follows:

“**100.** The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.”

24. In view of the law declared by the Hon’ble Apex Court in the decisions stated supra and in the facts and circumstances of the instant case, this Court is of the considered opinion that the case of the petitioner deserves

⁶ AIR 2020 Supreme Court 3969

to be considered and it is directed to the respondents that the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Umadevi** and the judgment rendered by the Division Bench of this Court in W.P.No.38283 of 2022 and batch, dated 13.07.2023, be taken into account for issuing appropriate proceedings for regularization/absorption within a period of two weeks from the date of receipt of a copy of this order. Further, all consequential benefits, allowances and post retirement benefits, as applicable to the post, and arrears, if any, shall be paid to the petitioner, after her retirement.

25. With the above observations, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE ANIL KUMAR JUKANTI

Date:01.12.2023

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