

**\*THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO****+W.P. No.19927 OF 2019**

% 20-01-2023

# B. Karunakar Reddy & others

....petitioners

Vs.

\$ State of Telangana, rep. by its Principal Secretary, Tourism Department,  
Telangana Secretariat , Hyderabad and another

.... Respondents

!Counsel for the petitioner : J. Sudheer

Counsel for the Respondents : K. Udaya Sri, G.P for Services-I

<Gist :

>Head Note:

? Cases referred:

1. (2006) 4 SCC 1
2. Civil Appeal No. 105 of 2005 decided on 07.08.2013

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

\* \* \* \*

WP. No.19927 OF 2019

Between:

B. Karunakar Reddy & others

....petitioners

Vs.

State of Telangana, rep. by its Principal Secretary, Tourism Department,  
Telangana Secretariat , Hyderabad and another

.... Respondents

**ORDER PRONOUNCED ON: 20.01.2023**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : Yes

---

**NAMAVARAPU RAJESHWAR RAO, J**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO****WRIT PETITION No. 19927 OF 2019****ORDER:**

This Writ Petition is filed for the following relief:

*“...to (a) call for the records pertaining to the proceedings dt.07.01.2018 issued by the 2<sup>nd</sup> respondent Corporation and set aside as unjust and illegal,*

*(b) Consequently, direct the respondents to regularize the services of the petitioners as HMV drivers from the date of their eligibility / appointment with all consequential benefits i.e. fixation of salary and all other service benefits; by issuance of Writ of Mandamus and pass ...”*

2. It has been contended by the petitioners that the present Writ Petition is the second round of litigation between the parties and the same is preferred aggrieved by the proceedings dated 07.01.2018 issued by the 2<sup>nd</sup> respondent Corporation through which their claim for regularization of services as Heavy Motor Vehicle Drivers was rejected under compliance of the

orders of this Court dt.15.11.2018 in Writ Petition 24198 of 2010 (earlier round of litigation).

2.1 It is further contended by the petitioners that pursuant to the notification issued by the 2<sup>nd</sup> respondent Corporation in December 2004 to fill up various posts on a contract basis, one of such vacancies in the post of the heavy motor vehicle driver, was also notified and 70 vacancies were available. The qualification prescribed in the notification was that one must possess a driving license to drive a heavy passenger motor vehicle or heavy goods vehicle and must have 5 years of experience. The petitioners have applied for the same and were employed on 02.04.2005 on a contract basis by the 2<sup>nd</sup> respondent Corporation with a consolidated salary of Rs.7,060/-per month.

2.2 It is further contended by the petitioners that before the disposal of the earlier Writ Petition, neither the Government nor the Corporation took any steps in increasing the cadre strength despite the 2<sup>nd</sup> respondent issuing a letter to the 1<sup>st</sup> respondent with a proposal to approve cadre strength vide Lr.No; APTDC/Admn/P1/61/2008 dt.21.12.2008 and therefore, petitioners were allowed to function on contract basis.

2.3. It is further contended by the petitioners that the 1<sup>st</sup> respondent vide G.O. Rt.No.723 dt.05.08.2011 constituted a three-member committee to formulate a scheme for the benefit of contract employees, especially for regularization. On 05.04.2012, an Implementation report was submitted vide Assurance No.328 that the decision of the Committee is under process. However, no action was taken in any manner. Subsequently, in the year 2013, the 1<sup>st</sup> respondent vide G.O.Rt.No.971 dt.10.12.2013 constituted another committee with five members with regard to regularization of the petitioners and similarly placed persons and sought a detailed report with recommendations to be given to the Government within a period of three months. Unfortunately, nothing was done in a positive direction.

2.4. It is further contended by the petitioners that the petitioners earlier filed W.P.No. 24198 of 2010 before this Court seeking directions to be given to the 2<sup>nd</sup> respondent Corporation to consider the petitioners' representations in regularising their services as they have put in more than 5 years of service for the Corporation. This Court vide its Order dt.15.11.2018 directed the 2<sup>nd</sup> respondent Corporation to consider the case of the petitioners for regularization of their services in view of the decision of the

Apex Court in ***State of Karnataka vs Uma Devi***<sup>1</sup> and the same was complied with by the 2<sup>nd</sup> respondent Corporation vide proceedings dt.07.01.2018 by rejecting the request of the petitioners by not regularising their services. Hence, the present Writ Petition.

3. Respondents filed a counter by contending that the reasons assigned in the impugned proceedings dt.07.01.2018 are justified in the circumstances of the case. The decision of the Hon'ble Supreme Court in *Uma Devi's* case relates to directives to take steps for the regularisation of eligible employees as a one-time measure i.e the services of irregularly appointed who have worked for 10 years or more in duly sanctioned posts but not under the cover of orders of the Courts or Tribunals, and that admittedly the petitioners have not put in 10 years of service as on the date of the above judgment, as such, the judgment would not be applicable in favour of the petitioners.

3.1 It is further contended by the respondents that the petitioners have no right to seek the formulation of a scheme for absorption and not framing a scheme for absorption cannot be a ground to invoke the jurisdiction of this Court under Art. 226 of

---

<sup>1</sup> (2006) 4 SCC 1

the Constitution of India. Further, in the absence of any sanctioned posts, no steps could be taken for the regularisation of services of contract/outsourcing employees and that the creation of posts is a prerogative of the employer. Also, merely that the petitioners are working, they are not entitled to seek relief as sought. Accordingly, prayed to dismiss the Writ Petition.

4. Heard Sri J. Sudheer, learned counsel for petitioners, and learned Government Pleader for Services-I appearing for the 1<sup>st</sup> respondent, and Smt. K. Udaya Sri, learned counsel appearing for 2<sup>nd</sup> respondent. Perused the record.

5. Learned counsel for the petitioners submitted that the 2<sup>nd</sup> respondent Corporation rejection of the representation of the petitioners with reasons that the petitioners were not employed against any sanctioned posts of the Corporation and that the case of the petitioners does not fall under the decision rendered by the Hon'ble Apex Court in Uma Devi's case is unjust and illegal.

5.1. Learned counsel for the petitioners further submitted that the 2<sup>nd</sup> respondent Corporation has disobeyed the orders of this Court in the earlier Writ Petition even though the learned

Judge's intention and interpretation of the facts of the case was ultimately to see that the petitioners' service is regularised. He also contended that when there is work/workload and when the persons have been recruited through notification and after taking work from the contract employees for several years, they cannot be thrown out and their services have to be regularized.

5.2. It is vehemently argued by the learned counsel for petitioners that failure on the part of the Authorities to create the posts, cannot be the reason to say that there are no posts when there are about 25 regular cadre strength and all the posts are vacant in as much as the regular drivers were already promoted to higher posts and more so, there is enough work load and having regard to the continuity of work, by no stretch of the imagination, it can be held to be a case of no requirement/ no post.

5.3 It has further been contended by the learned counsel for the petitioners that ever since the petitioners were taken into service, they had been continuously working as drivers without any break for the past 15 years or more, but the 2<sup>nd</sup> respondent stated in the impugned order that the petitioners were taken only on need-basis to meet the exigencies at the relevant point of time

against 70 vacancies. Despite there being promises to formulate a scheme, the 2<sup>nd</sup> respondent Corporation has not cared to bring forth any such scheme and has not given any reasons in the impugned order about such inaction. He further contended that even though committees were formed through the passing of Government Orders and proposals also being sent to the government way back in the year 2008 to review and increase cadre strength, no decision either in the positives or in the negatives was taken and the matter was kept aside which cannot be justified under any explanation.

6. Learned counsel for the petitioners brought to the notice of this Court the judgment of the Hon'ble Apex Court *in Nihal Singh Vs State of Punjab*<sup>2</sup>, and reiterated the views given by this Court in the earlier round of litigation relying on the judgment delivered by the Apex Court in *Uma Devi's case* (supra).

7. On the other hand, learned counsel for respondents vehemently argued that the reasons assigned in the impugned proceedings dt.07.01.2018 are justified in the circumstances of the case, and that the decision of the Hon'ble Supreme Court in

---

<sup>2</sup> Civil Appeal No. 105 of 2005 decided on 07.08.2013

*Uma Devi's* case relates to directives to take steps for regularisation of eligible employees as a onetime measure i.e the services of irregularly appointed who have worked for 10 years or more in duly sanctioned posts but not under the cover of orders of the Courts or Tribunals, and that admittedly the petitioners have not put in 10 years of service as on the date of the above judgment, as such, the judgment would not be applicable in favour of the petitioners. Further, in the absence of any sanctioned posts, no steps could be taken for the regularisation of services of contract employees and the creation of posts is a prerogative of the employer and merely the petitioners are working, they are not entitled to seek relief as sought for. Accordingly, prayed to dismiss the Writ Petition.

8. This case involves a question whether the services of the petitioners employed by the 2<sup>nd</sup> respondent Corporation on a contract basis are entitled to be regularised in light of the decisions of the Hon'ble Apex Court and the stand of the respondents in the impugned proceedings rejecting such regularization on the ground that the petitioners were employed only on a temporary basis and not against any sanctioned posts.

9. A perusal of the record would reveal that the petitioners were appointed by the 2<sup>nd</sup> respondent Corporation in the year 2005 on a contract basis when there were 70 vacancies, and a panel of 136 drivers was prepared for the purpose of employment on a contract basis. It is also an undisputed fact that petitioners have worked by shedding sweat without break and the petitioners have been working with the 2<sup>nd</sup> respondent Corporation for the past 17 years.

10. It is worthwhile to mention that upon perusing the material on record and contents of the petition and the order in the W.P.No. 24198 of 2010 of this Court being the earlier round of litigation between these parties, it is clear that the A.P.Tourism Development Corporation Contract Employees Union, AITUC, went on strike for a period of 5 days with demands that the 2<sup>nd</sup> respondent corporation regularises their services against the vacancies, equal pay for equal work, other benefits etc., and the 2<sup>nd</sup> respondent Corporation made promises to the employees working on a contract basis that they would act on the demands and with respect to the regularisation, proposals were already sent to the Government and it is under process.

11. The 2<sup>nd</sup> respondent Corporation on 21.12.2008 submitted proposals to the 1<sup>st</sup> respondent to review and act on the cadre strength of the 2<sup>nd</sup> Corporation but it is very clear that the 1<sup>st</sup> respondent failed to take any decision despite constituting committees twice in the years 2011 and 2013.

12. At this juncture, it is necessary to look into G.O.Rt.No.723, Youth Advancement, Tourism & Culture (T) Department dt.05.08.2011. The same is reproduced hereunder:

**GOVERNMENT OF ANDHRA PRADESH**  
**ABSTRACT**

**DEPARTMENT OF TOURISM** – Andhra Pradesh Tourism Development Corporation Ltd.- Regularization of employees working in the Corporation on contract / outsourcing basis – Constitution of Committee of Officers to workout a scheme for the benefit of contract employees – Orders – Issued.

**YOUTH ADVANCEMENT, TOURISM & CULTURE (T) DEPARTMENT**

**G.O.Rt.No.723**

**Dated: 05.08.2011.**

**ORDER:**

Pursuant to the discussions held in the Chambers of the Chief Secretary to Government on 13.07.2011 on the issue of finalization of cadre strength and staff pattern for Andhra Pradesh Tourism Development Corporation Ltd. and regularization of employees working in the Corporation on contract / outsourcing basis, Government have decided that ways to provide financial benefits and services tenure needs to be explored as there is no specific Act or Government Order which can permit regularization of the service of these employees.

2. Government after careful examination of the matter, therefore, hereby constitutes a Committee with the following Officers for the purpose:

1. Principal Secretary to Government, Public Enterprises Department
2. Secretary to Government (R&E), Finance Department
3. Managing Director, Andhra Pradesh Warehousing Corporation

3. The Committee shall work out a scheme for the benefit of contract employees which will comply with the existing Government Orders regarding rule of reservations, implementation of presidential order, G.O.No.610, selection procedure for Government service, etc. and submit its recommendations to Government completing the entire exercise, within a period of three months.

4. The Committee shall take the performance of the Corporation and its financial position into consideration while working out the scheme.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**JAYESH RANJAN**  
**SECRETARY TO GOVERNMENT (T)**

To  
The Officers concerned.  
Copy to  
The Secretary to Chief Minister  
P.S. to Minister for Tourism  
P.S. to Chief Secretary to Government  
The Vice Chairman & Managing Director, A.P. Tourism Devmt Corpn.Ltd., Hyd.

**//FORWARDED::BY ORDER//**

**SECTION OFFICER**

As seen from the above, the Government constituted a three-member Committee to resolve the issue of the employees vis-à-vis regularisation. It is unfortunate that the Committee failed to give any report to the benefit of the employees.

13. We would now peruse G.O.Rt.No.971, Youth Advancement, Tourism & Culture (T) Department dt.10.12.2013. The Government Order is reproduced hereunder:

**GOVERNMENT OF ANDHRA PRADESH  
ABSTRACT**

Establishment – Constitution of Committee to study the issues of employees in Andhra Pradesh Tourism Development Corporation – Orders – Issued.

-----  
**YOUTH ADVANCEMENT TOURISM AND CULTURE (T) DEPARTMENT**

**G.O.Rt.No.971**

**Date: 10.12.2013**

**Read the following:**

1. Representation of Andhra Pradesh Tourism Development Corporation Contract Employees Union A.I.T.U.C. dtd. 15.7.2013.
2. Note from CM dated 29.11.2013

\* \* \*

**ORDER :**

In the reference 1<sup>st</sup> read above, the Andhra Pradesh Tourism Development Corporation (APTDC) Contract Employees Union AITUC has represented to regularize the contract, outsourcing and daily wage employees working in APTDC for the last 12 years. They have raised certain issues pertaining to permanent / contract / outsourcing and daily wage employees and requested to resolve the issue.

2. Government have examined the matter in detail and hereby constitutes a Committee to look into this matter in detail and to submit its recommendations to the Government for further action.

1. Spl. Chief Secretary to Government (Tourism),
2. Commissioner of Tourism, Hyderabad.
3. General Manager (Finance) APTDC, Hyderabad
4. General Manager ( Administration) APTDC, Hyderabad
5. Legal Officer, APTDC, Hyderabad.

3. The Committee is requested to make a comprehensive study of all the issues of the employees of APTDC in all categories and submit a detailed report with appropriate recommendations to the Government within a period of three months.

4. The General Manager (Admn) should act as convenor for the meetings of the Committee.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**CHANDANA KHAN  
SPECIAL CHIEF SECRETARY TO GOVERNMENT (T)**

To  
The Special Chief Secretary to Government (Tourism), YAT & C (T) Department  
The Commissioner of Tourism, Hyderabad.  
The Managing Director, Andhra Pradesh Tourism Development Corporation, Hyderabad.  
The General Manager (Finance), APTDC  
The General Manager (Administration), APTDC  
The Legal Officer, APTDC

Copy to:

Secy to CM

// Forwarded : : By Order //

**SECTION OFFICER**

As seen from the above, upon the failure of the 1<sup>st</sup> Committee in coming to any decision regarding the issue of the contractual employees, the Government constituted another Committee with five members to resolve the issue of the

employees vis-à-vis regularisation. The second Committee has also miserably failed to finalise the issue and do justice to the contractual employees who shed their blood and sweat continuously working for the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent ought to have acted regarding increase of the cadre strength and the proposals made by the 2<sup>nd</sup> respondent Corporation to the 1<sup>st</sup> respondent pursuant to the promises given by the 2<sup>nd</sup> respondent to the Contract Employees Union.

14. It is pertinent to mention here that this Court in the earlier round of litigation discussed the case of *Uma Devi (supra)* and the relevant portion is extracted 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 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 regularisation 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 aboveresferred 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 regularise 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 regularisation, 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 regularising or making permanent, those not duly appointed as per the constitutional scheme.”*

15. The counsel for the respondents in disagreement with the above observation, submitted that the petitioners herein have not completed a term of 10 years of service as on the date of the decision in *Uma Devi's case (supra)*. Such submission made by the respondents is not appealing to this Court. On one hand, the respondents claim that the appointments made are not against sanctioned posts and on the other hand, contend that the petitioners have not put in 10 years of service. However, the 2<sup>nd</sup> respondent has nowhere in the impugned rejection order stated how the decision of ***Uma Devi*** would not apply to the case of the petitioners.

16. The petitioners have put in about 13 years of service when the earlier Writ Petition was disposed of i.e on 15.11.2018 and as on today, they have put in about 18 years of service.

However, this is not a case of irregular appointment nor is there any absence of master and servant relation between the 2<sup>nd</sup> respondent Corporation and the petitioners as the petitioners were duly appointed by the 2<sup>nd</sup> respondent Corporation after publishing a notification, inviting applications, conducting medical tests, collecting security deposit and all such incidental procedural formalities and the contentions of the respondents are completely contrary to the reasons stated in the impugned proceedings that the said panel is prepared without any sanction of the posts by the competent authority without following the rule of reservation and the method of recruitment, which is untenable.

17. Learned counsel for the petitioner has relied upon the decision rendered by the Hon'ble Supreme Court in ***Nihal Singh vs. State of Punjab***<sup>3</sup> and the relevant paras are extracted as under:

*“20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of a large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create them by a conscious*

---

<sup>3</sup> (2013) 14 SCC 65

*choice on the basis of some rational assessment of the need.”*

**23.** Even going by the principles laid down in *Umadevi (3) case* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

**“35.** *Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.”*

18. On a collective reading of the reasons set forth in the impugned proceedings and the decision of the Hon’ble Apex Court in *Nihal Singh’s case (supra)*, it is clear that the respondents ought to have absorbed the services of the petitioners and every action contrary to it is deemed to be illegal, arbitrary and against the law laid down by the Hon’ble Supreme Court. This is also not a case where at the time of employment

there were no sanctioned posts, let alone vacancies. The 1<sup>st</sup> respondents are duty bound to create posts/increase cadre strength when the workload is, admittedly, immense and as the posts do not fall from the sky. In the above set of circumstances, the present Writ Petition is liable to be allowed.

19. Accordingly, the Writ Petition is allowed by setting aside the impugned proceedings dt.07.01.2018 issued by the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent is directed to regularise the services of the petitioners as HMV Drivers from the date of their eligibility with all consequential benefits i.e fixation of salary and all other service benefits in accordance with law within a period of three (04) months from the date of receipt of the copy of this Order. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this writ petition, shall stand closed.

---

**NAMAVARAPU RAJESHWAR RAO, J**

***20<sup>th</sup> day of January, 2023***

BDR