

STATE OF PUNJAB
v.
BAHADUR SINGH & ORS.
(Civil Appeal No. 7347 of 2008)

DECEMBER 17, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Service Law -- Regularisation -- Of irregular appointees (not illegal appointees), working for more than ten years in duly sanctioned vacant posts without intervention of orders of courts or of tribunals -- Clarifications/directions given by Constitution Bench of Supreme Court in Uma Devi (3) case -- Respondents working in work-charge establishment for decades as work-charge employees -- Filed writ petition seeking regularisation -- Order passed by High Court -- Challenge to -- Matter remitted to High Court for consideration afresh in view of directions passed in Uma Devi (3) case keeping in view the statement made by respondents that their appointment was permissible and not illegal.

Respondent No.1 was appointed in 1982 on work charge basis. He continued to be employed in the said capacity without being regularized.

In 2004, Respondent No.1 filed writ petition seeking regularization of his service. High Court disposed of the petition in terms of its earlier judgment in a similar writ petition filed in 2003 by some work-charge employees like respondent no.1 wherein the High Court had directed regularization of services of all the petitioners before it with consequential reliefs.

A Constitution Bench of this Court in *Umadevi* (3)* case, had inter alia, held that any appointment made in violation of the constitutional scheme of equality would be wholly illegal and, thus a nullity. However, the Court clarified that in cases where irregular appointments (not illegal appointments) of duly qualified persons in duly

- A 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 and passed consequential directions.

B In appeal to this Court, a question arose as to whether in view of the directions passed by this Court in *Uma Devi*(3)* case, the present matter should be remitted to the High Court.

- C Allowing the appeal and remitting the matter to High court, the Court

- HELD: The Constitution Bench decision of this Court in *Uma Devi* (3) had been read differently by different Benches. In that case the Constitution Bench deprecated appointment through side door/back door being contrary to the constitutional scheme of equality. Whereas any irregularity can be regularized but an illegality cannot be. The matter is remitted to the High Court for consideration of the matter afresh keeping in view the statement made by the respondents that appointment in the work charge establishment was permissible in law and the recruitments had been made in accordance with law. [Paras 8, 9 and 11] [1009-G-H; 1012-D-E]

- F *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1; State of Mysore & Anr. v. S.V. Narayanappa (1967) 1 SCR 128; B.N. Nagarajan & Ors. v. State of Karnataka & Ors. (1979) 4 SCC 507; State of M.P. & Ors. v. Lalit Kumar Verma (2007) 1 SCC 575 and Post Master General, Kolkata & Ors. v. Tutu Das (Dutta) (2007) 5 SCC 317, referred to.

- G Case Law Reference:

- | | | |
|--------------------|-------------|--------|
| (2006) 4 SCC 1 | referred to | Para 6 |
| (1967) 1 SCR 128 | referred to | Para 8 |
| (1979) 4 SCC 507 | referred to | Para 8 |
| H (2007) 1 SCC 575 | referred to | Para 9 |

(2007) 5 SCC 317 referred to **Para 10** A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7347 of 2008.

From the Judgment and final Order dated 2.8.2005 of the High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 7389 of 2004. B

Ajay Pal for the Appellant.

Neeraj Kumar Jain, Bharat Singh, Sandeep Chaturvedi and Ugra Shankar Prasad for the Respondent.

The Judgment of the Court was delivered by C

S.B. SINHA, J. 1. Leave granted.

2. This appeal is directed against a judgment and order dated 2.8.2005 passed by the Division Bench of the High Court of Punjab and Haryana disposing of the writ petition in terms of its earlier judgment dated 12.8.2003 in Civil Writ Petition No.1287 of 2003. D

3. The basic fact of the matter is not in dispute.

The First Respondent was appointed on 9.5.1982 in the post of a Driver on a work charge basis. He continued to be employed in the said capacity without being regularized. Respondent No.1 filed C.W.A. No.7389 of 2004 in the Punjab & Haryana High Court seeking regularization of his service. As per the impugned order, the said writ petition was disposed of in terms of judgment dated 12.8.2003 in C.W.P. No.1287 of 2003. E F

4. Some Work charged employees like Respondent No.1 filed C.W.A. No.1287 of 2003 in the High Court of Punjab & Haryana seeking regularization of their service. By an order dated 12.8.2003 (Annexure P-3), a Division Bench of the High Court in Writ Petition No.1287 of 2003 directed as under : G

"In the case in hand, the petitioners have rendered more than 16 years of regular service with the SYL Canal Project. They are drawing running pay scale. Their service books have been maintained by the Department and their provident fund is being deducted. They all fulfill the requisite H

A qualifications for the post held by them. Thus, present one
is not even a case of relaxation of qualification for the
absorption of the petitioners. The Government has issued
instructions for absorption of the petitioners. The
Government has issued instructions for absorption of the
B workers who have rendered three years of regular service.
In spite of all this, the petitioners have not been regularized
in the service. The action of the concerned authorities in
not regularizing the services of the petitioners is contrary
to the letter and spirit of the instructions issued by the
C Government, which also runs counter to the dictum of their
Lordships of the Supreme Court in the aforementioned
Authorities. In Civil Writ Petition No.16959 of 2000
(*Girdhari Lal Vs. P.R.T.C. etc.*), it was held by this Court
that even a part time employee, working for a few hours
every day, is entitled to regularization under the instructions
D issued by the State Government.

To sum up, it is the admitted position that the
authorities have adopted a pick and choose policy while
regularizing the services of the work-charge employees of
the SYL Canal Project. Even as per the instructions dated
E January 23, 2001(Annexure P-11) the regularization is to
be made on the basis of seniority. However, the principle
of seniority has been given goodbye. Keeping in view the
aforementioned decisions of Hon'ble the Supreme Court
as well as of this Court, we find lease justification in the
F conduct of the authorities in not regularizing the services
of the petitioners despite their having rendered more than
16 years of service.

For the reasons recorded above, the petition is
allowed. The respondents are directed to regularize the
G services of the petitioners with all consequential reliefs
within two months from the date of receipt of a certified
copy of this order."

5. A Special Leave Petition was preferred thereagainst
which was marked as SLP (C) No.24325 of 2003. By an order
H dated 27.2.2004 notices were issued. It appears that similar

matters came up before this Court and a Division Bench in its order dated 26.3.2007 directed as under : A

"Leave granted.

Counsel on both the sides submit that the case in hand is squarely covered by a decision of this Court in State of Punjab & Ors. v. Lakhwinder Singh & Ors., (2007) 2 SCC 502. In view thereof, the appeals are allowed and the judgment and orders under challenge are set aside. The matters are remanded back to the High Court for fresh consideration of the writ petitions. It is made clear that this court is not expressing any opinion on the merits of the claim made by the concerned employees." B C

6. Indisputably, a Constitution Bench of this Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* [(2006) 4 SCC 1], inter alia, held that any appointment made in violation of the constitutional scheme of equality would be wholly illegal and, thus a nullity, stating : D

"Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker E F G H

A is continued for a time beyond the term of his appointment,
he would not be entitled to be absorbed in regular service
or made permanent, merely on the strength of such
continuance, if the original appointment was not made by
following a due process of selection as envisaged by the
B relevant rules. It is not open to the court to prevent regular
recruitment at the instance of temporary employees whose
period of employment has come to an end or of ad hoc
employees who by the very nature of their appointment, do
not acquire any right. High Courts acting under Article 226
C of the Constitution of India, should not ordinarily issue
directions for absorption, regularization, or permanent
continuance unless the recruitment itself was made
regularly and in terms of the constitutional scheme. Merely
because, an employee had continued under cover of an
order of Court, which we have described as 'litigious
D employment' in the earlier part of the judgment, he would
not be entitled to any right to be absorbed or made
permanent in the service. In fact, in such cases, the High
Court may not be justified in issuing interim directions,
since, after all, if ultimately the employee approaching it
E is Page 1945 found entitled to relief, it may be possible
for it to mould the relief in such a manner that ultimately
no prejudice will be caused to him, whereas an interim
direction to continue his employment would hold up the
regular procedure for selection or impose on the State the
burden of paying an employee who is really not required.
F 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 or lend
themselves the instruments to facilitate the bypassing of
the constitutional and statutory mandates."

G However, it was furthermore opined :

"One aspect needs to be clarified. There may be cases
where irregular appointments (not illegal appointments) as
explained in *S.V. Narayanappa* (supra), *R.N.
H Nanjundappa* (supra), and *B.N. Nagarajan* (supra), 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 one time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

7. Learned counsel appearing on behalf of the respondent would submit that in view of the aforementioned directions of this Court in *Uma Devi* (3) (supra), the matter should be remitted to the High Court. It was furthermore contended that appointment of the respondents on a work charge basis being permissible in law, the decision of the Constitution Bench of this Court would not be applicable.

8. We are aware of the fact that paragraph 53 of *Uma Devi* (3) (supra) had been read differently by different Benches. We have, however, no doubt in our mind that the Constitution Bench deprecated appointment through side door/back door being contrary to the constitutional scheme of equality. Paragraph 53 of the said decision by way of one time scheme

- A refers to those cases, inter alia, where orders of regularization had attained finality. The very fact that this Court therein referred to the decisions of this Court in *State of Mysore & Anr. v. S.V. Narayanappa* [(1967) 1 SCR 128 and *B.N. Nagarajan & Ors. v. State of Karnataka & Ors.* [(1979) 4 SCC 507] clearly goes to show that the same has to be read in the context thereof and not de hors the same.
- B

- This Court in *B.N. Nagarajan* clearly stated that whereas any irregularity can be regularized but an illegality cannot be. It was furthermore stated that regularization would not mean permanency. This aspect of the matter has been highlighted in a number of decisions.
- C

9. In *State of M.P. & Ors. v. Lalit Kumar Verma* [(2007) 1 SCC 575], this Court stated :

- "12. The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is 'State' within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to."
- D
- E
- F

10. In relation to almost similar orders, it was noticed in *Post Master General, Kolkata & Ors. v. Tutu Das (Dutta)* [(2007) 5 SCC 317], it was noticed :

- "20. The statement of law contained in para 53 of *Uma Devi* (supra) cannot also be invoked in this case. The question has been considered by this Court in a large number of decisions. We would, however, refer to only a few of them.
- G

21. In *Punjab Water Supply and Sewerage Board v.*
- H

Ranjodh Singh and Ors. [(2007) 2 SCC 491] referring to paragraphs 15, 16 and 53 of *Uma Devi* (supra), this Court

'A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularization was in relation to such appointments, which were irregular in nature and not illegal ones.'

Distinction between irregularity and illegality is explicit. It has been so pointed out in *National Fertilizers Ltd. and Ors. v. Somvir Singh* [(2006) 5 SCC 493] in the following terms:

'The contention of the learned Counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the Page 2419 ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.'

The Constitution Bench thought of directing regularization of the services only of those employees whose appointments were irregular as explained in *State of Mysore v. S.V. Narayanappa*, *R.N. Nanjundappa v. T. Thimmiah* and *B.N. Nagarajan v. State of Karnataka* wherein this Court observed:

'16. In *B.N. Nagarajan v. State of Karnataka* this Court clearly held that the words 'regular' or 'regularization' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are

A attributable to methodology followed in making the appointments.'

Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service.

B {See also *State of Madhya Pradesh and Ors. v. Yogesh Chandra Dubey and Ors.* [(2006) 8 SCC 67] and *State of M.P. and Ors. v. Lalit Kumar Verma*[(2007) 1 SCC 575]}

C 22. The same principle has been reiterated recently in *Punjab State Warehousing Corp., Chandigarh v. Manmohan Singh and Anr.* [2007 (3) SCALE 401]."

D 11. In this view of the matter, we are of the opinion that the impugned judgment of the High Court cannot be sustained. It is set aside accordingly and the matter is remitted to the High Court for consideration of the matter afresh in the light of the observations made hereinbefore keeping in view the statement made by Mr. Jain that the appointment in the work charge establishment was permissible in law and the recruitments had been made in accordance with law.

E 12. The appeal is allowed with the aforementioned direction. In the facts and circumstance of the case, there shall be no order as to costs.

B.B.B.

Appeal allowed.