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Reserved on 22.9.2021

Delivered on 28.9.2021

Court No. - 6

Case :- WRIT - A No. - 3151 of 2021

Petitioner :- Smt. Harvati And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Chandranshu Gour

Counsel for Respondent :- C.S.C.,Suresh Singh

Hon'ble Pankaj Bhatia,J.

1. The present petition has been filed alleging that the husband of all the three petitioners were working as Work Charged Employee with the respondent-Corporation from 1990 to 1994 and continued to work for more than 10 years. Unfortunately, the husband of all the three petitioners died on 30.06.2004, 28.01.2005 and 04.11.2005 respectively during their employment. After the death of the husband of the petitioners, on an application moved by the petitioners, they were granted appointment as is indicated in Annexure No. 2, 4 and 6 of various dates from the year 2004 onwards. The petitioners were subsequently directed to be paid consolidated salary at the rate of Rs. 18,000/- per month and the Petitioners No. 1 & 2 continued to work since 2004 onwards and since 2005 in respect of third petitioner. The payments made to the petitioners are exhibited to the document subjected as Annexure Nos. 2, 3 and 5 to the writ petition.

2. The grievance of the petitioners is that after more than 10 years of the service by the husbands of the petitioners and more

than 15 years of service by the petitioners, all of sudden, an order dated 9.11.2020 has been passed to the effect that there is no need for the service of the petitioners and, thus, the petitioners were not allowed to continue to work from the said date i.e. 9.11.2020.

3. Learned counsel for the petitioner argues that the State being model employer cannot exploit persons like the petitioners in the manner in which they have been exploited. Petitioners' poor financial condition never permitted them to protest their exploitation at the hands of the respondents and they continued to discharge their duties. He further argues that the petitioners' husbands were work charged employees and would fall within the definition of government servant, as defined under Section 2(a) of Dying-in-Harness Rules, 1974 and thus, appointment of the petitioner has to be treated as compassionate appointment. He further argues that compassionate appointments are never temporary in nature. He further argues that the husband of the petitioners were entitled for regularization as is clear from the note dated 11.6.2019 (Annexure No. 9, Page 41 of the Writ Petition). However, all these rights, whichever accrued in favour of the petitioners, were not agitated by the petitioners looking into their poor financial condition. Petitioners, admittedly, are a Class-IV employee and are uneducated.

4. This Court had called for a counter affidavit.

5. Counsel for the respondent, placing reliance upon the averment made in the counter affidavit, argues that the petitioners were never appointed on compassionate ground, as is

clear from the appointment orders, which are written in hand. He further argues that the husbands of the petitioners were also on work charged basis and, thus, no right accrued in favour of the petitioners for being granted appointment under the Dying-in-Harness Rules. He argues that the petitioners were given the work only looking to the poor financial status and only on the ground of mercy and they were paid for years together, only on the ground of their working in the department, no right accrued in favour of the petitioners. He further argues that the petitioners' husbands were working as worked charged employee, they were not covered within the definition of government servant as defined under Section 2(a) of the Dying-in-Harness Rules and, thus, the appointment of the petitioners cannot be said to be under the said rules.

6. At this stage, counsel for the petitioners has relied upon the judgments of this Court in the cases of **Union of India and others Vs. K.P. Tiwari, (2003) 9 SCC 129, Rajya Krishi Utpadan Mandi Parishad, U.P. Lucknow and others Vs. Smt. Suman Singh and another, 2011 (2), AWC 2043, Ravi Karan Singh Vs. State of U.P. and others, 1999 (2) AWC 976** as well as **Saroj Kumar Vs. State of U.P., LAWS (ALL) 2019, 11 267** and the counsel for the respondents have relied upon the Full Bench Judgments of this Court in the case of **Pawan Kumar Yadav vs. State of U.P. and others, 2010 (8) ADJ 664 (FB)** and **State of U.P. vs. Munni Devi.**

7. From the facts, as pleaded and argued by the parties, this Court has to decide whether the dismissal of the petitioners vide order dated 9.11.2020 is justified or not.

8. The facts that are admitted to the parties are that the husband of the petitioners had worked continuously for more than 10 years before they, unfortunately, passed away in the year 2004-2005 and on the request so made by the petitioners, the petitioners were employed and kept on an ad hoc basis, and continued to serve on a fixed salary for more than 15 years and now, have been removed on the ground that there is no requirement.

9. Before the law can be discussed, it is essential to note that in the note dated 11.6.2019 (Annexure No. 9), it was clearly stated that if the husbands of the petitioners, who were enrolled with the respondents from 1990 to 1994 were alive, they would have been entitled for regularization and thus, it was recommended that the petitioners be continued to be paid in terms of the earlier decisions taken for payment of the wages to the petitioners. The question of employing on casual, temporary, contractual, daily wages or ad hoc basis and their status came up for consideration before the Supreme Court in the case of **Secretary, State of Karnataka Vs. Umadevi (3), (2006) 4 SCC 1** wherein the Constitutional Bench discussed the nature of their employment; discussed the difference between irregular appointments and illegal appointments, and as a one time measure, directed the State Governments and their instrumentalities to take steps to regularise the services of such irregularly appointed workers,

who had worked for more than 10 years. It appears that after the judgment of the Constitution Bench in the case of **Uma Devi (3) (supra),** the Governments and its instrumentalities have interpreted the same to mean that only the employees, who were given the benefit of regularization, would be enough for the States and the States can continue to place under employment persons on ad hoc, contractual, temporary, casual or daily wage basis. In the present case, it is clearly demonstrated that the petitioners were permitted to continue for, as long as, 15 years and have now been thrown out of employment.

10. The Supreme Court in the case of **Narendra Kumar Tiwari and others Vs. State of Jharkhand and others, (2018) 8 Supreme Court Cases 238,** had the the occasion to interpret the judgment of the Supreme Court in the case of Uma Devi (3) and deprecated the practice of irregular appointment of daily wage workers and continuing with them indefinitely, it noticed that the rule of law requires that the appointments should be made in a constitutional manner and the State or its instrumentalities should not be permitted to perpetuate irregularity in the matter of public employment. The observations made by the Supreme Court are recorded as under:

> **"5. The decision in Umadevi (3) was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional**

scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

6. The concept of a one-time measure was further explained in Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 in paras 9, 10 and 11 of the Report which read as follows: (SCC pp. 250-51, paras 9-11)

> **"*9*. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), 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, regularise their services.**
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> ***10*. At the end of six months from the date of decision in Umadevi (3), 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 regularisation 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 (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi (3) has expired. The one-time exercise should consider all daily-wage/ad hoc/casual 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 (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

***11*. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure."**

11. After discussion the intent and mandate of the Constitution of India, the judgment in the case of Uma Devi (3) case, the Supreme Court observed as under:

> **"10. Under the circumstances, we are of the view that the Regularisation 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 Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc."**

12. The Supreme Court in another judgment in the case of **Nihal Singh and others Vs. State of Punjab and others, (2013) 14 Supreme Court Cases 65** considering the entitlement of regularization observed as under:

> **"34. This Court in S.S. Dhanoa v. Union of India , (1991) 3 SCC 567 did examine the correctness of the assessment made by the executive government. It was a case where the Union of India appointed two Election Commissioners in addition to the Chief Election Commissioner just before the general elections to the Lok Sabha. Subsequent to the elections, the new Government abolished those posts. While examining the legality of such abolition, this Court had to deal with an argument whether the need to have additional Commissioners ceased subsequent to the election. It was the case of the Union of India that on the date posts were created there was a need to have additional Commissioners in view of certain factors such as the reduction of the lower age-limit of the voters, etc. This Court categorically held that: (SCC p. 585, para 27)**
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> **"*27.* … The truth of the matter as is apparent from the record is that … there was no need for the said appointments…."**
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> **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.

37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi (3) judgment cannot become a licence for exploitation by the State and its instrumentalities.

38. For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

39. We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs 10,000 to be paid to each of the appellants.

13. In another case of **Sheo Narain Nagar and others Vs. State of Uttar Pradesh and another, (2018) 13 Supreme Court Cases 432,** while considering the claim of regularization which was rejected by the High Court placing reliance on Umadevi (3) case, the Supreme Coourt observed as under:

"7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take

judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi (3). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (3) has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(*d*) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India (1983) 1 SCC 305, from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3). Thus, the time has come to stop the situation where Umadevi (3) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3).

9. The High Court dismissed the writ application relying on the decision in Umadevi (3). But the appellants were employed basically in the year 1993; they had rendered

service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2-10-2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in para 53 of Umadevi (3). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect from 2-10-2002, we direct that the services of the appellants be regularised from the said date i.e. 2-10-2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."

14. In the light of the law as laid down, it is clear that the State Government or State instrumentalities do not have any license to continue to irregularly employ for years together without granting them any benefits and security as has been done in the present case by the respondents. Needless to add that it is well settled that the State Government in discharge of its constitutional obligations is bound to act as a model employer whereas the actions of the respondents in the present case are outrightly exploitative in nature and militate against the constitutional philosophy of fairness in public actions.

15. The counsel for the respondents has argued that the husbands of the petitioners were on work charge basis. Thus, they would not fall within the definition of Government employee and thus, the petitioners could not have been given appointment on compassionate grounds and in support of the said contention, has placed reliance on the Full Bench judgment of this Court in the case of **Pawan Kumar Yadav Vs. State of UP and others passed in Civil Misc. Writ Petition No. 15505 of 2005** where

the Full Bench while interpreting the provisions of Dying-in-Harness Rules, 1974, (the said rules have been adopted by the Corporations and are applicable to the Corporations including the respondent-Corporation herein). It is no doubt true that husbands of the petitioners were on work charge basis, however, it is equally important to note that even as per the own resolution of the respondent-Corporation, the said employees having worked for more than 12 to 15 years, if alive, would have been entitled for regularization. Without going into the said question, in the present case, there is no dispute that the petitioners have continued for more than 15 years after their appointments and have been paid consolidated wages, as such, on their own right also, they cannot be treated in the manner, in which their services have been dismissed with, and would be entitled for regularization having served for more than 10 years as in terms of the directions issued by the Supreme Court in the case of **Nihal Singh and others Vs. State of Punjab and others (supra) Sheo Narain Nagar and others Vs. State of Uttar Pradesh and another (supra).**

16. In the light of the law, as discussed above, I am of the firm view that the dismissal of the petitioners vide order dated 9.11.2020 on the ground that their services are no more required is wholly arbitrary and illegal, and is liable to be set aside and is accordingly quashed. A mandamus is issued to the Respondent No. 2 to absorb the petitioners in the services on which they were working and to take steps to consider the case of the petitioners for regularisation in terms of the prevalent policies

for regularization. It is, however, provided that the Respondent No. 2 shall have all the authority to take work from the petitioners in any other department, which are to be performed by the Class-IV employees.

17. The writ petition stands allowed in terms of the said order.

18. Copy of the order downloaded from the official website of this Court shall be treated as certified copy of the order.

Order Date :-28.9.2021

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