
(2021) 11 JH CK 0025
In the Jharkhand High Court
Case No : Writ Petition (S) No.3710 Of 2018

Lily Kujur And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 34(1)(d)

Citation : (2021) 11 JH CK 0025

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Advocate : Shadab Bin Haque, Dr. Ashok Kumar Singh, Akash Deep

Final Decision : Allowed

Judgement

Dr. S.N.Pathak, J

1. Heard the parties.

2. Petitioners have approached this Court with a prayer for direction upon the respondents to regularize the services of the petitioners w.e.f. 21.10.2014 on their respective posts in RIMS, Ranchi along with all consequential benefits. Petitioners have further prayed for direction upon the respondents to deduct & deposit amount towards Provident Fund & Gratuity contribution for petitioners, since the date of their appointment on 08.09.2003.

3. The facts of the case lies in a narrow compass. In the year 2002, applications were invited for appointment of Staff Nurse (Grade 'A') on contractual basis at a consolidated remuneration of Rs.7200/- per month in RIMS, Ranchi under the provisions of Indian Nursing Council Act, 1947 and Indian Nursing Council Rule, 1947. The petitioners having the requisite qualifications, applied for the same and on being found suitable, they were issued appointment letters on 08.09.2003 in pursuant to which, they gave their joining. Since their appointments, all the petitioners have worked with full honesty and devotion and never any complaint have been made against their working efficiency and

discharge of duties. In the year 2014, applications were invited from interested candidates vide memo dated 06.09.2014, published in Local Newspaper for filling-up 190 posts of Staff Nurse (Grade-A) on regular basis in Pay-Band-II - Rs.3900-34800, G.P. Rs.4200 at RIMS, Ranchi. Thereafter, again vide Notification No.201(II)A, dt. 11.10.2014 applications were invited for appointment of 367 posts of Grade 'A' Nurse in pay-scale of Rs.9300-34800/- having G.P. Rs.4600 in P.B.-II at RIMS, Ranchi, who have qualified from Govt./ Private/ Non-Govt. Institute recognized by Nursing Council & State Govt. and registered under Jharkhand Nurses Registration Council. The petitioners having the requisite qualifications, submitted application forms in the requisite format and on being called, appeared in interview but erroneously and illegally, they were not considered for appointment. Thereafter, petitioners preferred several representations before the respondent-authorities for regularization of their services, in light of notification dated 11.10.2014 but all went into vain.

4. Left with no alternative, petitioners moved before this Court by filing writ application being W.P.(S). No. 3593 of 2015 for redressal of their grievances and this Court by its order dated 06.09.2017 disposed of the said writ application directing the respondents to consider the cases of the petitioners for regularization of their services in accordance with the service conditions and in accordance with the scheme of regularization. In light of the order dated 06.09.2017, these petitioners submitted representations before the Director, RIMS Ranchi on 15.09.2017 and 09.11.2017 for regularization of their services w.e.f. 21.10.2014. Thereafter, by office order dated 04.04.2018, issued by the Director, RIMS, Ranchi, petitioners' services were regularized w.e.f. 08.02.2018 and not from 21.10.2014 the date on which the services of similarly qualified and even less qualified persons have been regularized to the post of Grade 'A' Nurse.

5. Aggrieved by non-consideration of their cases for regularization w.e.f. 21.10.2014, the petitioners have knocked the door of this Court.

6. Mr. Shadab Bin Haque, learned counsel appearing for the petitioners assiduously argues that the petitioners have continuously worked on sanctioned and vacant post since 2003 without any break and discharged their duties honestly and have completed more than 10 years of service on 08.09.2013 but surprisingly, their services have been regularized after 4½ years and not even from 21.10.2014 when cases of similarly situated persons were considered and provided regular appointment. To buttress his arguments, learned counsel for the petitioners places heavy reliance on the judgment rendered by the Hon'ble Apex Court in case of State of Karnataka & Ors. Vs. Uma Devi & Ors., reported in (2006) 4 SCC 1 and also in case of State of Jharkhand Vs. Kamal Prasad, reported in (2014) 7 SCC 223. Learned counsel further argues that even after specific direction of this Court issued in W.P.(S). No. 3593 of 2015, the respondents have not considered the cases of petitioners as per the guidelines enshrined in the case of State of Karnataka & Ors. Vs. Uma Devi & Ors. (supra) and as such, order of regularization dated 04.04.2018, passed by respondent No.

3 needs to be modified to the extent that the services of the present petitioners be considered for regularization w.e.f. 21.10.2014 and not from 04.04.2018. Learned counsel further argues that the respondents have committed illegality by not deducting and depositing contribution towards Provident Fund Scheme from the date the petitioners joined the services.

7. Per contra, counter-affidavit has been filed. Dr. A.K. Singh, learned counsel appearing for the respondent-RIMS vehemently opposes the contention of learned counsel for the petitioners and argues that petitioners were first engaged as Nurse Grade A vide office order dated 08.09.2003 on contractual basis and thereafter, their contract was regularly extended till 03.04.2018 on yearly basis. Learned counsel further argues that vide memo dated 11.10.2014, an advertisement was floated for appointment of Nurse Grade 'A' on regular basis in pursuant to which the petitioners applied for the same but as the age of the petitioners was found to be more than maximum permissible age limit on the cut-off date i.e. 01.01.2014, hence, their candidatures were rejected. Thereafter, in compliance with the direction of this Court passed in W.P.(S). No. 3593 of 2015, the matter of regularization of the petitioners was placed in the 44th meeting of the Governing Body of RIMS held on 08.02.2018 and the Governing Body took a decision to grant age relaxation for appointment of such candidates who could not be appointed earlier on account of being overaged. Thereafter, their joining have been accepted vide memo dated 17.04.2018 w.e.f. 04.04.2018. Learned counsel submits that since the regularization of the petitioners have been done under special circumstances by giving relaxation in age by the Governing Body of RIMS, they cannot be treated at par with other appointees who were appointed within the age limit prescribed under the relevant rules for such an appointment. Learned counsel accordingly submits that in view of the facts and circumstances stated above, the instant writ application is devoid of any merit and the same is fit to be dismissed.

8. Be that as it may, having heard the rival submissions of the parties across the bar and upon perusal of the documents brought on record, this Court is of the considered view that the cases of the present petitioners need consideration for the following facts and reasons:

(I) Admittedly, the writ petitioners were working in RIMS, Ranchi since 2003 that too on sanctioned and vacant post.

(II) The appointment of the writ petitioners were made pursuant to the advertisement floated in the year 2002 following the principles of Article 14 and 16 which cannot be faulted with.

(III) Petitioners are still working on sanctioned and vacant post.

(IV) Earlier the petitioners had approached this Court in W.P.(S). No.3593 of 2015 along with W.P.(S). No.5260 of 2015 and this Court vide order dated 06.09.2017, issued a direction for consideration of their cases following the mandate of law laid down in case of State of Karnataka & Ors. Vs. Uma Devi &

Ors. (supra). This Court while issuing direction for consideration of the cases of present writ petitioners for regularization, clearly directed to frame scheme for regularization of services of the petitioners, if not framed till date, in view of judgment cited in that case.

(V) While considering the cases of the writ petitioners, the respondents have lost sight of the fact that their appointments were legal appointment and as such, right accrued to them for consideration of their cases for regularization of their services at par with the similarly situated persons.

(VI) Since the appointments of the present writ petitioners were done in accordance with the constitutional provisions following the mandate of law, they cannot be treated differently rather, they are entitled for the same benefits which similarly situated persons have been granted.

9. The Hon'ble Apex Court in case of State of Karnataka & Ors. Vs. Uma Devi & Ors. (supra) has held that:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa¹¹, R.N. Nanjundappa¹² and B.N. Nagarajan⁸ 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 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 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."

10. The Hon'ble Apex Court in case of Raj Balam Prasad & Ors. Vs. State of Bihar & Ors., reported in 2018 (1) Supreme 12 was of the view that regularization can be claimed while in service, not after termination. Appointment for a temporary period comes to an end at the end of that period. Grant of extension to work for some more period cannot make an employee permanent. Such employee cannot claim regularization.

Relevant paras of the judgment passed in case of Raj Balam Prasad (supra) is reproduced herein below:-

"17) This is what the Division Bench held for allowing the appeal and dismissing the appellants' writ petition:

"We have heard learned counsel for the parties and find that the order passed by the learned Single Judge is not sustainable in law. The order passed in LPA No.434 of 2001 dated 28th of July, 2008 was not brought to the notice of the learned Single Judge. It is further contended that even if the order dated 10.10.2006 was not set aside, the fact remains that such order of regularization could not have been passed since the services of the Muharrir have come to an end in 1991 itself. The permanent status could be conferred to those who were in service and not to those whose service had come to an end many years ago. Such an order could not be made basis of permanent status through the writ court. Such order dated 10.10.2006 is not enforceable in law. The representation having been declined in the light of the circular dated 16.04.2008, we do not find that the writ petitioners were entitled to any direction to treat them as regular employees."

20) One cannot dispute that the State has the power to appoint persons for a temporary period under the Act and Rules framed thereunder and once such power was exercised by the State, the status of such appointee continued to be that of temporary employee notwithstanding grant of some extensions to them for some more period.

21) In other words, the grant of extension to work for some more period to the writ petitioners could never result in conferring on them the status of a permanent employee or/and nor could enable them to seek regularization in the services unless some Rule had recognized any such right in their favour.

24) As mentioned above, so far as the cases of these appellants are concerned, their representations were examined by the State but were rejected finding no merit therein. One of the reasons for rejection of the representation was that the services of the appellants had already come to an end in 1991 and, therefore, no orders to regularize their services could now be passed after such a long lapse of time."

Further, in case of Sheo Narain Nagar & Ors. Vs. State of Uttar Pradesh & Ors., reported in AIR 2018 SC 233, the Hon'ble Apex Court has held that:-

"8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) 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 Uma Devi (supra). 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 Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) 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 regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 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, AIR 1983 SC 130 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 down trodden 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 Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) 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 Uma Devi (supra) 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/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). 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 paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized 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."

The Hon'ble Apex Court in case of State of Tamil Nadu Vs. A. Singamuthu, reported in (2017) 4 SCC 113, reiterating the view expressed in case of Uma Devi (supra) and further taking into consideration the judgment passed in case of Union of India Vs. A.S. Pillai [(2010) 13 SCC 448] and that of State of Rajasthan

Vs. Daya Lal [(2011) 2 SCC 429], dismissed the writ petition. Para-19 of the said judgment reads as under:-

"It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A. 2)Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No. 22 P &AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside."

The same view was reiterated in case of Upendra Singh Vs. State of Bihar, reported in (2018) 1 Supreme 746, taking into consideration the judgment delivered in case of Uma Devi (supra).

The views expressed by the Hon'ble Supreme Court in all the aforesaid cases were taken into consideration by the Hon'ble Apex Court in Narendra Kumar Tiwari & Ors. Vs. State of Jharkhand & Ors., reported in (2018) 8 SCC 238. The Hon'ble Apex Court was of the considered opinion that the consideration of the State Govt. to notification/ resolution dated 13.02.2015, denying the benefits of regularization in view of the provisions of Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015 (for short "Regularization Rules") was completely impractical in view of the directions rendered in case of Uma Devi (supra) as well as State of Karnataka & Ors. Vs. M.L. Kesri & Ors., (2010) 9 SCC 247. Relevant paras of the judgment passed in case of Narendra Kumar Tiwari (supra) is reproduced herein below:-

"6. The decision in Uma Devi (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 paragraph 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.

7. The concept of a one-time measure was further explained in Kesari in paragraphs 9, 10 and 11 of the Report which read as follows:

"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, regularize their services.

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 regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularization, 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/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (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 two- fold. 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 regularization 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 for long periods and then periodically regularize 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 regularization. The fact that the employer has not undertaken such exercise of regularization 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 regularization in terms of the above directions in Umadevi (3) as a one-time measure."

8. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, 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) 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 regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10th April, 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.

10. 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 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.

11. 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 impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants."

11. Similar issue fell for consideration before this Court in W.P.(S). No. 1513 of 2016 (Suresh Walter & Ors. Vs. the State of Jharkhand & Ors.) disposed of on 21.08.2018, this Court after hearing the parties and upon perusal of the documents, issued direction to the respondents to consider the case of the

petitioners of that case for regularization of their services.

12. The stand of the respondents that since the regularization of the petitioners has been done under a special circumstance by giving relaxation in age by the Governing Body of RIMS, they cannot be treated at par with the other appointees who were appointed within the age limit prescribed under the relevant rules for such an appointment, is not acceptable to this Court on the ground that petitioners were appointed in pursuant to the advertisement and following procedure of law. The similarly situated persons, whose appointments were considered w.e.f. 21.10.2014 cannot be treated to be different from the present petitioners. Treating them different will amount to discrimination and considering them to be a distinct class, the classification done by the respondents cannot be said to be Constitutional since every appointment was in pursuant to the advertisement floated by the RIMS and in accordance with the prevailing rules, on sanctioned and vacant post. Earlier the services of the petitioners could not be regularized because of the fault on the part of the respondent-RIMS.

13. Since the regularization has been done as per the directions of this Court, the same has to be followed in its true letter and spirit and as per the rules, guidelines, judicial pronouncements and observations made in the aforesaid cases.

14. As a sequitur to the aforesaid observations, rules, guidelines and legal propositions, this Court is of the considered view that present petitioners are also entitled for regularization w.e.f. 21.10.2014. As such, the office order dated 17.04.2018 is modified to the extent that the services of the petitioner be treated to be regularized w.e.f. 21.10.2014. The respondents are further directed to deduct and deposit amount towards PF Scheme and Gratuity Contribution of the petitioners since the date of their initial appointment i.e. 08.09.2003. The respondent No. 5 is directed to act accordingly as per the rules and guidelines.

15. With the aforesaid observations and directions, the writ petition stands allowed.