

**(2015) 04 KAR CK 0141**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 2560 of 2011 (S-PRO)**

M. Byrappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 25-04-2015

**Acts Referred:**

**Citation :** (2015) 4 KarLJ 121

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** J.G. Chandra Mohan, for the Appellant; Bhanu Prakash, HCGP,  
Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ram Mohan Reddy, J.—Petitioner when appointed as a Kannada and English typist by the Chief Officer, Town Municipal Council, Hoskote was issued with an appointment order dated 24.12.1985, Annexure-A, without being preceded by issue of notification inviting applications for filling up of vacant posts of Kannada and English typist, in terms of the Karnataka Municipalities (Recruitment of Officers and Servants) Rules, 1971, for short "Rules", framed under the Karnataka Municipalities Act, 1964 (Karnataka Act 22/64).

2. According to the petitioner, he has been discharging duties of Kannada and English Typist ever since such an appointment on temporary basis, but, paid salary on par with that attached to the said post. Petitioner claiming to have discharged duties for almost 30 years, on the verge of attaining age of superannuation has presented this petition for the following reliefs:

"a) DECLARE that the Petitioner is deemed to be a permanent employee of the Respondents as Second Division Clerk w.e.f. 1.8.1986 the day on which the Petitioner has been paid with the salary attached to the post of Second Division Assistant, under the facts and circumstances of this case;

b) ISSUE a writ in the nature of mandamus directing the Respondents 1, 2 and 4

to place the petitioner in an appropriate place in the gradation list of Second Division Assistants and thereafter consider the case of the Petitioner for promotion with retrospective effect from the date of which his immediate juniors have been promoted with all other consequential benefits, under the facts and circumstances of the case;

c) ISSUE any other appropriate writ, order or orders or direction as this Hon'ble court may deems fit to grant by considering the facts and circumstances of the case, in the interests of justice and equity."

3. It is an admitted fact that in the first place, petitioner was not recruited in the regular process of recruitment under the "Rules" supra and therefore, cannot claim any benefit muchless a declaration that he is deemed to have been appointed on regular basis. That relief must stand rejected and as a consequence is disentitled to the other reliefs.

4. The submission of Sri. J.G. Chandra Mohan, learned counsel for the petitioner that in the light of paragraph 53 of the Constitution Bench Judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 petitioner is entitled to regularisation is noticed only to be rejected. Para 53 reads thus:

"53. 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.NANJUNDAPPA (SUPRA) and B.N.NAGARAJAN (SUPRA) 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 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 required 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 subjudice, 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."

5. It is useful to notice that cases to be considered for regularization are of

irregular appointment (not illegal appointment) as explained in paragraph 15 of the Judgment.

The Constitution Bench having reviewed its earlier Judgments, at paragraph 16 observed thus:

"16. xxxx. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization."

6. In the light of the aforesaid observation and applying the same to the facts of this case, petitioner's appointment, on temporary basis, not in a regular recruitment process, affects the root of the appointment and therefore, is not and cannot be characterized as "irregular appointment" so as to qualify a consideration for regularization in terms of paragraph 53 of the Constitution Bench Judgment.

In the result, this petition devoid of merit is rejected.