

---

**(2010) 08 AHC CK 0016**

**In the Allahabad High Court**

**Case No : Special Appeal Defectice No. 171 of 2010**

Nazim Ali and Others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

---

**Date of Decision : 19-08-2010**

**Acts Referred:**

**Citation : (2010) 127 FLR 778**

**Hon'ble Judges : FI. Rebello, C.J;A.P. Sahi, J**

**Bench : Division Bench**

**Advocate : Siddarth Khare and Ashok Khare, for the Appellant;**

---

## **Judgement**

F.I. Rebello, C.J. and A.P. Sahi, J.—The appellants Nazim Ali and others aggrieved by the orders of their termination dated 18th July, 1992 while working on the post of Class IV employee in the Ayurvedik and Unani Services Uttar Pradesh filed the writ petition giving rise to the present appeal and the petition has been dismissed holding that the termination orders do not suffer from any Infirmary it has further been held that the Appellants are not entitled to any benefits keeping in view the law laid down in the case of Secretary, State of karnataka and others v. Umadevi and others 2006 (109) FLR 826 (SC) : 2006 (42) AIC 935 (SC).

2. Sri Ashok Khare learned Senior Counsel contends that even applying the law as laid down in the case of Umadevi (supra) the appellants are still entitled for being considered to be engaged on regular basis in view of their long standing services and also in view of the following decision in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, , decided on 3.8.2010 which is to the following effect:

State of Karnataka and others v. M.L. Kesari and others

Civil Appeal No. 6208 of 2010 (Arising out of SLP (C) No. 15774/2006)

[From the judgment and Order dated 22.7.2004 of the High Court of Karnataka at Bangalore in W.A. Nos. 1641 to 1643 of 2003]

Dt. 3.8.2010

".....It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employees should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of Courts or Tribunals, as a onetime measure. Umadevi, directed that such one time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, 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.

At the end of six months from the date of decision in Umadevi, 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, will not lose their right to be considered for regularization, merely 1 because the one-time exercise was completed without considering their cases, or 1 because the six month period mentioned in para 53 of Umadevi has expired. The 1 one-time exercises should consider all daily wage/ad-hoc/those employees

who I 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 1 the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, 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 1 employees who are entitled to be considered in terms of para 53 of Umadevi, are so considered.

The object behind the said direction in para 53 of Umadevi 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 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) 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 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 as a one-time measure."

3. He submits that there was no interim order operating in favour of the petitioners between 18.9.1992 and 8.10.2007 and as such the continuance of the Appellants cannot be said to be a litigious appointment. The contention is that the respondents on their own allowed the Appellants to continue for 15 long years with payment of salary and therefore in view of the cut-off date as provided under the regularization rules namely 30th June, 1998 the claim of the Appellants deserves to be considered.

4. For the State learned Standing Counsel contends that the decision in the case of State of Bihar Vs. Upendra Narayan Singh and Others, holds that such appointments if permitted would be adding to the "spoils system". He accordingly contends that the appeal deserves to be dismissed. Reliance has been placed on two other judgments which have been filed along with the counter Affidavit.

5. Having considered the submissions raised, we are of the opinion that the judgment of the learned Single Judge cannot be faulted with on the issue relating to the applicability of the rules and the termination order passed against the appellants- Having said so, we further find that there was an interim order in the writ petition when it was filed in the year 1992. However, the petition was

dismissed in default on 18th September, 1992. In spite of this the Appellants continued to be engaged by the respondents.

6. Learned Standing Counsel contends that the Appellants were under a duty to inform the department that the petition has been dismissed in default.

7. Sri Khare submits that as a matter of fact the order passed dismissing the petition in default was recalled and the petition was restored, when it came to the knowledge of the Appellants. Accordingly the said process was undertaken in the year 2007. He submits that as a matter of fact neither the Appellants nor the respondents appear to be aware about the petition having been dismissed in default. There is no communication from the Standing Counsel to the authorities about the same. In such a situation the Court entertained the restoration application in the year 2007 and orders were passed restoring the matter on 8th October, 2007.

8. It is after the restoration of the writ petition that the matter was ultimately heard and the writ petition was dismissed on 1st December, 2009. It is this period of almost 15 years during which the Appellants allege to have been continued in service has to be taken into account for the purposes of the present controversy. Learned Counsel for the parties agree that the writ petition had been dismissed in default. In this view of the matter the only issue that survives to be determined is the status of such engagement of the Appellants.

9. Having held that the termination orders do not suffer from any infirmity, the authorities will have to consider the continuance of the Appellants which was for a substantially long period of 15 years with payment of salary. This peculiar fact coupled with the ratio of the decision in the case of M.L. Kesari (supra), we are of the opinion that the respondent No. 2 may consider the claim of the Appellants independently in view of their long standing engagement aforesaid and also in view of the fact that all the Appellants would now be overage for any other employment. The respondents will also take into consideration the fact that the continuance of the Appellants also indicates that they are surplus employees and that their services as Class IV employees are still required by the respondent department.

10. Accordingly we dispose of this appeal subject to the observations made herein above with liberty to the Appellants to approach the respondent No. 2 who shall consider their request sympathetically in the light of what has been stated above and pass an appropriate order within three months of the date of presentation of a certified copy of this order before the said authority.

The special appeal is disposed of accordingly.