
(2019) 04 UK CK 0089

In the Uttarakhand High Court

Case No : Writ Petition No. 2950 (S/S) Of 2017

Pawan Kumar & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

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

Citation : (2019) 04 UK CK 0089

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : M.C. Pant, N.P. Sah

Final Decision : Disposed Off

Judgement

Manoj K. Tiwari, J

1. Petitioners are serving on contract in different capacities, namely, Coach, Trainer, Ground Staff & Assistant Teacher in Maharana Pratap Sports College, Dehradun. According to them, they were appointed after due selection in the year 2010-2011 against sanctioned posts, which were created vide Government Order dated 06.07.2006.

2. By means of this writ petition, petitioners have sought the following reliefs:-

"I. Issue writ, rule or direction in the nature of mandamus commanding and directing to the respondents to allow the benefit of regular pay scale and other consequential benefits of the posts held by them keeping in view of the facts highlighted in the body of the petition and in view of the doctrine of equal pay for equal work.

II. Issue writ rule or direction in the nature of declaration to treat the appointment of the petitioners as substantive and regular and declare the terms used as contractual in their appointment order as sham and misnomer along with all consequential benefits and also to restrain the respondents to fill up the posts

occupied by the petitioners by way of direct recruitment till the disposal of the writ petition in view of the facts and circumstances of the case stated in body of the writ petition."

3. According to learned counsel for the petitioners, petitioners were initially appointed on consolidated salary, but subsequently, vide Government Order dated 10.12.2014 sanction was granted to pay salary in the minimum of pay scale with the condition that 50% of the grade pay would be payable to the petitioners. Petitioners are aggrieved by the condition imposed by the said Government Order.

4. Learned counsel for the petitioner has placed reliance upon the judgments rendered by Hon'ble Supreme Court in the case of Sheo Narain Nagar and others v. State of Uttar Pradesh and another reported in (2018) 13 SCC 432. Paragraph nos. 7 & 8 of the said judgment are extracted below:-

"7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi 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. 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 has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi 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, 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. Thus, the time has come to stop the situation where Umadevi 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

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.

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularisation of the appellants. However, regularisation was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2-10-2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by the learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms."

5. Learned counsel for the petitioners has placed reliance upon another judgment rendered by Hon'ble Supreme Court in the case of Narendra Kumar Tiwari and others v. State of Jharkhand and others reported in (2018) 8 SCC 238. Paragraph Nos. 7 & 8 of the said judgment are extracted below:-

"7. The purpose and intent of the decision in Umadevi was therefore twofold, 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 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 and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi, 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 15-11-2000 and the cut-off date was fixed as 10-4-2006. 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."

6. Learned counsel for the petitioners has placed reliance upon a judgment rendered by Hon'ble Supreme Court in the case of Arjun Singh and others v. State of Himachal Pradesh reported in (2015) 15 SCC 713. Paragraph Nos. 16 &

17 of the said judgment are extracted below:-

"16. The action on the part of the respondent State authorities including the Public Service Commission prescribing 50% of the regular pay of Rs 7750+DP on contract basis initially for one year, extendable on year-to-year basis is against the requisition and the decision taken by the Electricity Board. Such action on the part of the authorities not only amounts to unfair employment practice but also arbitrary and violative of Article 14 of the Constitution of India.

17. It is clear that the terms of conditions of payment @ 50% of regular pay and nature of appointment on contract basis was inserted in the advertisement by the State authorities and the H.P. Public Service Commission at a later stage just to deprive the candidates from their regular pay and their right to continue in the service. The High Court failed to notice the aforesaid fact and erred in holding that the regularisation of service is not permissible. In fact it was not a case of regularisation of service of the appellants but is a case wherein direction ought to have been issued on the respondents to provide the appellants with orders of regular appointment from the date of their initial appointment and to treat the initial period of two years as probation and to provide them with other consequential benefits."

7. Learned counsel for the petitioners has further relied upon the law laid down by Hon'ble Supreme Court in the case of State of Punjab and others Vs. Jagjit Singh and others, reported in (2017) 1 SCC 148.

8. Learned counsel for the petitioners further submits that many persons, who were appointed on contract alongwith the petitioners, their services have been regularized while petitioners are still continuing on contract. This, according to the petitioners, is unjust and illegal.

9. Having regard to the aforesaid facts and circumstances of the case, this Court thinks that ends of justice would be met, if the petitioners are permitted to make representation to the competent authority, which shall be decided by the competent authority within some specified time.

10. Accordingly, the writ petition is disposed of with liberty to petitioners to make fresh representations to the Secretary, Sports, State of Uttarakhand within a period of three weeks from today. In case such representations are made within the stipulated time, the Secretary, Sports, State of Uttarakhand shall look into the grievance of the petitioners and take appropriate decision by passing speaking order in accordance with law within eight weeks from the date of receipt of the representation, alongwith certified copy of this order.

11. It is made clear that, no displeasure shall be shown against the petitioners only on account of the fact that they approached this Court.

12. Pending application(s), if any, also stands disposed of.