
(2018) 12 JH CK 0106
In the Jharkhand High Court
Case No : Writ Petition (S).No. 4618 Of 2018

Prakash Mahto

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Citation : (2018) 12 JH CK 0106

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

Bench : Single Bench

Advocate : Diwakar Upadhyay, Chandra Prabha, Vishal Kr. Roy, Prashant Kr. Singh

Final Decision : Disposed Off

Judgement

1. Heard the parties.
2. In the instant writ petition, the petitioner has approached this Court for a direction upon the respondents to consider the case of the petitioner for regularization of the services to the post of Generator Operator.
3. The factual exposition as has been delineated in the writ petition is that petitioner is working as a Generator Operator on daily wage since 1993 in the office of respondents and discharging his duties sincerely and to the satisfaction of the respondent-authorities. It is the specific case of the petitioner that he has made several representations before the respondents for regularization of his services, but till date no decision has been taken by the respondents for his regularization/ absorption inspite of the fact that he has been discharging his duties since 1993 i.e. for more than 23 years without any complain from any corner. Hence, the petitioner has been constrained to knock the door of this Hon'ble Court for redressal of his grievances.
4. It appears that similar issue fell for consideration before this Court in W.P.(S). No. 1513 of 2016 and this Court, after hearing the Counsel for the parties at length and upon consideration of several judgments of this Court and that of

Hon'ble Apex Court, has disposed of the said writ petition on 21.08.2018, with the following observations:-

"6. Be that as it may having gone through the rival submissions of the parties and on perusal of the records and upon consideration of several judgments passed by this Court as well as by the Hon'ble Apex Court, I am of the considered opinion that it is a fit case which needs consideration for regularization. Though earlier, the Hon'ble Apex Court, while considering the cases of regularization, had given a guideline in view of the Constitutional Bench Judgment in case of Secretary, State of Karnataka & Ors. Vs. Uma Devi and other, reported in (2006) 4 SCC 1, another Bench of the Hon'ble Apex Court, taking in view the several aspects of regularization, came out with a judgment in case of State of Karnataka & Ors. Vs. M.L. Kesri & Ors., reported in (2010) 9 SCC 247.

7. 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 be 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 view expressed by the Hon'ble Supreme Court in all the aforesaid cases were taken into consideration by the Hon'ble Apex Court in its latest judgment delivered on 01.08.2018 in Civil Appeal Nos. 7423-7429 of 2018 (Narendra Kumar Tiwari & Ors. Vs. State of Jharkhand & Ors.). 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 M.L. Keshri (supra). 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."

8. Admittedly, the services of the employees cannot be regularized if their appointments itself are illegal and de hors the rules, that does not mean that employees who had rendered their services for long decades, even though appointed on daily wage basis or on contractual basis and subsequently, rendered their services on sanctioned and vacant post, cannot be considered for regularization in view of the decision of Uma Devi's case that they have not rendered 10 years services before the date of judgment in Uma Devi's case i.e. 2006. The validity of resolution regarding scheme of regularization of the State Govt. was only for a year and the same is not in existence, as on date. As such, for regularizing the services in the State of Jharkhand and fixing the cut-off date from 2006, taking into consideration the view expressed by the Hon'ble Apex Court in case of Uma Devi (supra) is not at all tenable in the eyes of law in the context of State of Jharkhand. It has been held by the Hon'ble Apex Court that State of Jharkhand came into existence on 15th November, 2000 and the cut-off date was fixed as 10th April, 2006, as in this manner, the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench."

5. As a cumulative effect of the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, I hereby direct respondent-authorities to examine the status of the petitioner in accordance with law and thereafter, pass a speaking order assigning concrete and valid reason for consideration/ non-consideration of the case of petitioner for regularization of his services. The entire exercise by the respondent-authorities must be completed within a period of twelve weeks from the date of receipt/ production of a copy of

this order.

6. Resultantly, this writ petition stands disposed of.