

(2013) 12 KAR CK 0181

In the Karnataka High Court

Case No : Writ Petition No. 10260 of 2013 (S-KAT)

State of Karnataka

APPELLANT

Vs

Sri A.N. Subramanya and Others

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0181

Hon'ble Judges : Mohan. M. Shantanagoudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Ravivarma Kumar, General and Sri Pavan Kumar B. Bajentri, AGA, for the Appellant; G.K. Bhat for C/R1 in Writ Petition No. 10260/2013 (S-KAT) and for R1-3, 5 and 7 in Writ Petition Nos. 11203/2013 and 13182-13187/2013 (S-KAT), Sri. M.N. Prasanna, for R-6, 8, 12 and 18. R. 3-5, 7, 9, 10, 11, 13-17, 19-25 in Writ Petition No. 10260/2013 (S-KAT) and for R-12, 14, 18 and 24, R-4, 6, 9 to 11, 13, 15 to 17, 19-23, 25-31 in Writ Petition Nos. 11203/2013 and 13182-13187/2013 (S-KAT), for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—The above Writ Petitions are filed challenging the Order passed by the Karnataka Administrative Tribunal directing the petitioner to extend the benefit of absorption as per The Karnataka Civil Services (Absorption of Contract Group "C" and "D" Employees in the Karnataka Government Secretariat Services) (Special) Rules, 2005 and also to give all consequential benefits. The brief facts that emanate from the records are as follows:

The respondents in all the Writ Petitions were appointed as Group "C" and "D" employees on contract basis to work in the Office of the Ministry in Karnataka Government Secretariat. In fact, the respondents claim that they were working on contract basis since 1991 being appointed on different dates. There was a proposal in the Government for their absorption into the Government services. In fact the draft Rules were framed in the year 1996 and those were challenged before this Court in Writ Petition Nos. 25521-25525/1997 with other connected

Writ Petitions. The said Writ Petitions came to be dismissed, however with an observation that the Government will consider the feasibility of framing special Rules to absorb such persons who have served not less than 10 years. The Government in pursuance of the same framed fresh draft Rules on 22.2.2005 and thereafter, the said Rules were brought into force in the name and style "The Karnataka Civil Services (Absorption of Contract Group "C" and "D" Employees in the Karnataka Government Secretariat Services) (Special) Rules, 2005" (herein after referred as rules). Annexed to the said rules, a list of persons who were to be absorbed was also notified with the rules. Aggrieved by the said Rules and notification containing the list of the employees who were to be absorbed, some of the respondents whose names does not find a place in the list filed Applications before the Karnataka Administrative Tribunal on 2.8.2005. On 15.2.2012, the Karnataka Administrative Tribunal allowed the Applications and passed the impugned order as noted above.

2. We have heard the arguments of the learned Advocate General for the petitioner and also the learned Advocate for the respondents.

3. It is seen from the Order of the Karnataka. Administrative Tribunal in Application No. 7027/2005, respondent No. 1 A.N. Subramanya challenged the list prepared along with "2005 Rules" and on the other hand in Application Nos. 7031, 7033, 7034, 7035, 7036, 7039 and 7042 of 2005 some of the respondents herein have challenged the said Rules and the list separately. Clubbing all the matters, the Karnataka Administrative Tribunal has passed the impugned order.

4. The learned Advocate General contended that the subject matter of the petition is fully covered by the decision of the apex court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, (hereinafter referred to as "Umadevi for short). It is contended that some of the applicants/ respondents have challenged the list annexed to the said 2005 Rules, naming the persons to be absorbed as per the said Rules. The said Rules are passed prior to Umadevi's case. Therefore, list of the persons who were eligible for absorption under the said Rules has been prepared accordingly Some of the respondents who have actually challenged the said Rules and the list are the persons who were not eligible under the Rules as they have not fulfilled the criteria, were left out. It is argued that the KAT has committed a serious error in directing the Government once again to consider the names of some of the respondents whose names do not find a place in the said list annexed to "2005 Rules".

5. The learned Advocate General further contended that in view of the subsequent decisions passed by the apex court, it is explicitly made clear that the judgments which are passed prior to and after Umadevi case, which run contrary to the principles laid down in the said case are virtually nullified, and he further contended that the Hon''ble apex court also clarified that unless and until the judgment of Umadevi's case is set aside by the larger bench, till that point of time, it should hold the field. He further contended that contrary to Umadevi's case, no direction ought to have been issued to the petitioner by the Karnataka

Administrative Tribunal. The said direction is quite contrary to Umadevi's case.

6. Per contra, the learned counsel for the respondents who actually challenged "2005 Rules" and the list" annexed thereto before the Karnataka Administrative Tribunal has strenuously argued before us stating that subsequent rulings of the Hon"ble Supreme Court after the judgment in Umadevi's case does not run counter to the principles laid down in Umadevi's case, particularly referring to the case reported in State of Karnataka and Others Vs. M.L. Kesari and Others, , it is argued that the Apex Court by of clarification directed the concerned Union Government and as well the State Governments to take further measures within six months to absorb the persons who have fulfilled all the conditions as per Umadevi's case but left out for various reasons or by oversight at the time of taking one time measures to regularize the employees in accordance Umadevi's case. He also relied upon some of the decisions of the Supreme Court, which we are going to discuss little later. Further, it is contended by the learned counsel for the respondents that some of the respondents who have challenged the said list and Rules before the Karnataka Administrative Tribunal were actually though not working in the Secretariat, but they have complied with the requirement of "2005 Rules". Some of the respondents, whose names find a place in the said list have hanged on to their posts for various reasons best known to them and those persons succeeded in persuading the Government to get a place in the list. Therefore, he contended that, some of the respondents whose names does not find a place there in the list though have fulfilled the criteria under the "2005 Rules" their names ought to have been mentioned in the said list. Therefore, the Tribunal has not committed any error in directing re-consideration of the absorption of some of the respondents who are petitioners before the Karnataka Administrative Tribunal in accordance with "2005 Rules". Therefore, it does not violate the principles laid down in Umadevi's case in view of the subsequent clarification by the apex court in other rulings.

8. Having heard the detailed arguments of the learned counsels, it is just and necessary to look into the rulings cited by the learned counsels and ascertain whether the Karnataka Administrative Tribunal has committed any serious error in passing such an Order or not.

9. First we would like to peruse the ruling of the Hon"ble Supreme Court in Umadevi's case and what exactly it says. At paragraphs 53 and 54, which 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, R.N. Najundappa and B.N. Nagarajan 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 regularize 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 regularizing or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

(Emphasis supplied)

10. The above said paragraphs amply makes clear that regularisation, if any already made, but not sub-judice need not be re-opened based on this judgment, but there should not be any further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

Concentrating on paragraph 53 and 54, the Orders of the Karnataka Administrative Tribunal has been strenuously attacked by the learned Advocate General, he submitted that it is only one time measurement, and no further decision can dilute the decision of Umadevi by extending any further time for absorption or regularization. Therefore, he contended that those decisions which run counter to the principles settled in this decision will stand denuded of their status as precedents.

11. In support of his contention, he also relied upon the ruling of the Supreme Court in the case of Official Liquidator Vs. Dayanand and Others, . On perusal of the said decision, it reveals that the Hon''ble apex court after citing innumerable rulings as illustrative cases of non-adherence to the Judicial precedents and ultimately referring to Umadev''s case observed that:

By virtue of Article 141 of the Constitution of India, the judgment of the Constitution Bench in the State of Karnataka v. Umadevi is binding on all the courts including the apex court till the same is over ruled by a larger bench.

Relying upon the above said ruling, the learned Advocate General submits that, the subsequent rulings of the apex court which run contrary to Umadevi''s case lose their binding nature and those rulings cannot be pressed in service for any purpose.

In the above backdrop, it is just and necessary for this court to look into the

decision relied upon by the tribunal and as well as cited before this court by the learned counsel for the respondents.

In the decision reported in *State of Karnataka and Others Vs. M.L. Kesari and Others*, , the Hon''ble Supreme Court clarified that:

The employer not taking exercise of regularization within six months in accordance with the direction in Umadevi's case, the right of the employee to be considered for regularization is not lost.

The Hon''ble Supreme Court at paragraph 10 further clarifies that the cases of persons entitled to be considered in accordance with Umadevi's case as one time measure but ignored or omitted from consideration due to pendency of any case though they have fulfilled all the requirements as per Umadevi's case, a direction was issued to the respective employers to consider those employees for one time absorption or regularization measure within three months. It is needless to say that if the employees who do not fulfill the requirements of paragraph 53 of Umadevi's case, their services need not be regularized.

In another context it is also clarified, If the employees who have completed ten years'' of service who do not possess the educational qualifications, prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts.

(Emphasis supplied)

The above said ruling clearly discloses that extension of time appears to have been given to take steps to consider regularization process of the employees who have actually left out at the time of taking onetime measure as per the direction in Umadevi's case due to pendency of any case, and further six months time has been granted to take up that task of regularizing their posts. The second principle laid down in this case is that even on the date of Umadevi's case if the employees fulfill the other conditions, but if they had short of required qualification to that post, they may be accommodated in any other lower posts according to their qualifications.

15. Looking to the above said rulings, it is clear that in *M.L. Kesari's* case, the Hon''ble Supreme Court has not passed any judgment contrary to Umadevi's case nor deviated from the principles laid down in the said case, but clarified and reiterated the said principles and extended the time for regularization, extending the benefit of Umadevi's case to those employees who were really entitled to but whose regularization was left out for various reasons while taking one time measure. Perhaps that may be a reason; the tribunal has directed the Government to consider the case of the applicants before it to regularize them in accordance with "2005 Rules".

16. Though the order of the Tribunal was passed on the basis of *M.L. Kesari's* case, but the learned Advocate General brought to our notice that when the matter is pending before the Hon''ble Supreme Court in Umadevi's case, during

that time "2005 Rules" have been framed further Challenging the said Rules, some of the persons approached the Tribunal in Application Nos. 4128-4132/2005 in the case of Ranganath and Others v. State of Karnataka which are still pending before the Tribunal. Therefore, the tribunal, ought to have discussed the matter with reference to Umadevi's case and M.L. Kesari's case and find out whether the rules framed in the year 2005 are valid and correct, whether principles of sub-judice is applicable when the cases of the applicants are pending before the Tribunal as on the date of delivery of judgment in Umadevi's case and what is impact of the case in Umadevi on pending cases.

17. We have once again bestowed our attention to Umadevi's case at paragraph 53 noted above. In the above said case, it is clarified by the apex court that regularization if any already made, was not sub-judice need not be re-opened based on the judgment. The Latin word sub-judice provides a meaning that the subject matter is under consideration before a Court of law which has a direct bearing on other pending matters. In our opinion pendency of a subject matter need not be necessarily in any other Court of law, it may be pending before the same Court or Tribunal. Therefore, the Tribunal ought to have looked into as to whether "2005 Rules" was sub-judice during Umadevi's case, and as well the applications challenging the Rules pending before the Tribunal. When the validity and correctness of the "2005 Rules" are challenged, unless the Tribunal holds that the "2005 Rules" are valid and correct, it should not have disposed off these Applications, wherein under these Applications, the said rules are neither specifically challenged nor dealt by the Tribunal. On careful consideration of the Tribunal's Order impugned in these Writ Petitions, the aspect of validity of "2005 Rules" not at all gone in to in detail and a specific finding with regard to the validity and correctness of the said 2005 Rules is given. Therefore the Tribunal has to re-look into the matter consolidating all the Applications with the Application Nos. 4128-4132/2005, the Tribunal has to first give its finding with regard to the validity and correctness of "2005 Rules" and then consider all the applications in the light of Umadevi's case and also other rulings cited by the learned Advocate General and the learned Counsel for the respondents herein, which are referred to above. Therefore, we are of the opinion, that these cases are fit to be remitted to the Tribunal for fresh disposal in accordance with law in the light of the above said observations. Hence, we proceed to pass the following

Order:

(1) The Writ Petitions are allowed. The impugned order passed by the Tribunal is hereby quashed. The Applications of the respondents herein are restored to the file of Karnataka Administrative Tribunal.

(2) The: Karnataka Administrative Tribunal is hereby directed to consolidate all the Applications before it filed by the respondents herein with the Application Nos. 4128-4132/2005 and pass appropriate orders in accordance with law in the light of the observations made above in the body of this judgment.