



Petitioner was appointed as Assistant Statistical Officer on 15.11.1989 in the District Rural Development Agency (hereinafter referred to as the DRDA). A resolution was passed in the year 1991 for regularization of employees. Although some other persons were regularized, petitioner was not regularized. Subsequently, it is the case of the petitioner that he was offered appointment as a Typist Clerk-cum-Project Officer on daily wages with the mutual understanding that he should accept the offer given and work on the said post as usual, till his appointment on the vacant post of Assistant Statistical Officer be made after taking approval from the Government. Petitioner, after joining and working on the post of Typist / Clerk, submitted a number of representations before the Authority concerned requesting therein that he be appointed as Assistant Statistical officer in the vacant post in DRDA on the basis of the resolution of the year 1991. It is stated that the matter was referred to the District Magistrate / Chairman, DRDA, Pithoragrah for his comment. The District Magistrate / Chairman, DRDA, Pithoragarh explained in detail all issues by his letter dated 19.04.1993 and he recommended the claim of the petitioner for the post of Assistant Statistical Officer. When no action was taken on the side of the Commissioner, Village Development, the petitioner again approached the District Magistrate, Pithoragarh and the District Magistrate again requested to accord approval to regularize the petitioner. Petitioner relies on Annexure -5 letter dated 24.03.1994 of the Secretary, in pursuance to which, a report was submitted to the District Magistrate (Annexure-6). Petitioner sent another representation (Annexure-8). The Secretary of the Village Development again wrote letter to the District Magistrate, Pithoragarh seeking explanation regarding the delay caused in the matter. Thereafter, the petitioner filed Writ Petition No. 27745 of 1995 before the Allahabad High Court seeking to regularize/ to appoint him on the post of Assistant Statistical Officer in DRDA on the basis of the resolution dated 13.02.1991. An interim order was passed by the Allahabad High Court on 27.09.1995 (Annexure-11) directing to keep one post of Assistant Statistical Officer vacant. The writ petition was made over to this Court after reorganization. It is the specific averment in Paragraph 21 of the writ petition that in the light of the judgment of the Honorable Apex Court in the case of State of Karnataka vs. Umadevi reported in (2006) 4 SCC 1, petitioner withdrew the writ petition with liberty to seek appropriate remedy

before the appropriate forum.Â Petitioner again raised the matter before the District Magistrate, who referred the case to the Commissioner by

Annexure 13 letter dated 19.1.2009.Â Several representations followed.Â On 09.04.2012 vide Annexure-14, realizing the difficulty of the petitioner,

the District Magistrate sent a recommendation to the Secretary, Village Development to regularize the services of the petitioner on the vacant post of

Assistant Statistical Officer.Â The claim of the petitioner on the post of Assistant Statistical Officer in District Rural Development Authority was

kept pending for last more than 20 years.Â Â On the other hand, the persons, who were not having the required qualifications, were appointed.Â

Petitioner has also a case that those persons have no right to be appointed on the vacant posts of Computer Operator / Computer Programmer in

different District Rural Development Agencies.Â Petitioner has produced Annexure-16 dated 16.01.2014 passed by the Secretary, Government of

Uttarakhand and it is necessary to refer to the following allegations in this regard made in Paragraph 26:

â??26. That it is unfortunate that the petitioner who has worked on the post of Assistant Statistical Officer in the D.R.D.A. Pithoragarh for about

three years and in whose favour a resolution was also passed by the Prashasak Mandal on 13.02.1991 failed to get any order of appointment or

regularization, on the contrary 12 persons working in the other department on contract having no required qualification were adjusted against the post

of Assistant Statistical Officer vacant in the different D.R.D.A. working in the State of Uttarakhand,Â vide an order dated 16-01-2014 passed by

Secretary, Government of Uttarakhand.Â A photocopy / true copy of the order dated 16.01.2014 issued by Secretary, Government of Uttarakhand is

being filed herewith and marked as Annexure No. 16 to this writ petition.â??

3. In the writ petition, Annexure 17 is the order dated 25.01.2014 produced to show that in compliance with the order dated 16.01.2014, all 12 persons

working in D.R.D.A. on the post of Computer Programmer were given appointment on the vacant post of Assistant Statistical Officer for which they

had no required qualification or experience, but only due to manipulation and the political pressure, they were adjusted in the said post; whereas the

petitioner, who had sufficient experience of working on the post of Assistant Statistical Officer in D.R.D.A., Pithoragrah and whose case was also

pursued by the Department could not be appointed / regularized on the said post.Â There is reference to certain correspondence, representations and favourable report by the Commissioner of Village Development.Â Petitioner is before us seeking the relief as we have seen.Â Â

4. A counter affidavit was filed.Â Therein, it was stated, inter alia, as follows:

5. That the contents of paras 4, 5 and 6 of the writ petition stated in the manner, are not admitted, hence, denied. It is submitted that the petitioner, had initially been appointed on the daily rated basis on the post of Assistant Statistical Officer at the rate of Rs. 35 per day. It is submitted that such engagement of the petitioner continued from 15.11.1989 to 1st May, 1990.

7. That the contents of para 8 of the writ petition are not admitted, hence denied. It is submitted that in pursuance of the resolution dated 13th

February, 1991, the fact is that only one person has been regularized on the post of Junior Clerk. It is submitted that the appointing authority for the

post of Statistical Officer at the said point of time, was Commissioner, Rural Development Department, U.P. and now the Commissioner, Rural

Development Department, Pauri is the appropriate appointing authority.

8. That the contents of para 9 of the writ petition are not admitted, hence denied. It is submitted that the petitioner has been engaged on the post of

Typist Clerk/Project Assistant on daily rated basis purely on the temporary basis vide the order passed by the District Rural Development Authority,

Pithoragarh vide order dated 4.7.1992. Copy of the order dated 4.7.1992 is being filed herewith and marked as ANNEXURE NO. C.A. 2 to this

counter affidavit.Â

15. That the contents of para 17 of the writ petition stated in the manner are misconceived and denied. It is submitted that since, the appointing

authority of the post of Assistant Statistical Officer is Commissioner and, hence, no steps could have been taken at the level of District Rural

Development Authority, however, as already stated hereinabove that as per the government order dated 17.3.1994, the post of Assistant Statistical

Officer was required to be filled through deputation only and even earlier, the said post was filled through deputation. Since, the directions have been

issued vide government order dated 17.3.1994, that the post of Assistant Statistical Officer be filled through deputation and for this reason at the said

point of time, the then District Magistrate, who was the Chairman of District

Rural Development Authority on 29th April, 1993 and 30th April, 1993

had recommended the appointment of Jeewan Singh Bisht on the said post.

17. That in reply to the contents of para 25 of the writ petition, it is submitted that vide government order no. 1471/1/13/53(6)/2000/06 16/2014, the

computer operators were absorbed on the post of Assistant Statistical Officer and the same being a policy decision taken at the level of State

Government and no further comments are required from the answering respondent.

19. That the contents of para 28 of the writ petition stated in the manner are not admitted, hence denied. It is submitted that the Commissioner,

Rural Development Department, Uttarakhand vide its communication dated 29.01.2014 has been pleased to recommend the Secretary, Rural

Development Department that the services of the petitioner be regularized on the post of Assistant Statistical Officer considering the length of

services of the petitioner and it has further been relevant to mention here that the Commissioner, Rural Development Department has mentioned that

the three posts of Assistant Statistical Officers are vacant. However, as per the prevailing circumstances, vide communication dated 26th May,

2013, the persons who were appointed/engaged in the District Rural Development Authority, has been engaged in Poverty Eradication Capacity

Development and Employment Cell and during such arrangement, the computer operators are absorbed on the post of Assistant Statistical

Officer, as such, presently the post of Assistant Statistical Officer is not vacant.

5. Petitioner also filed a rejoinder to the same.

6. The learned Single Judge proceeded to allow the writ petition and directed as follows:

Accordingly, the writ petition is allowed. The respondents are directed to regularize the services of the petitioner to the post of Assistant Statistical

Officer within a period of four weeks from today.

It is made clear that if any person has been deployed as Assistant Statistical Officer in DRDA, he shall be reverted back to his parent department.

Pending application, if any, stands disposed of accordingly.

7. In doing so, we notice that the learned Single Judge has proceeded on the footing that the writ petitioner was working as Assistant Statistical

Officer in D.R.D.A., Pithoragarh since 1989.Â Despite repeated recommendations, services of the petitioner were not regularized, was noted to be

his complaint.Â Thereafter, the learned Single Judge reasons that the appellants ought to have taken all steps to regularize the petitioner taking into

consideration his length of service since 1989.Â It has been further noted that instead of regularizing the services of the petitioner, respondents

(appellants herein) have deployed persons from outside D.R.D.A.Â Â Three posts noted as vacant as on 29.01.2014 at the instance of the Secretary

vide Annexure-18 is relied upon. The action of the respondents (appellants herein) of not regularizing the petitioner is noted to be arbitrary, besides

unfair labour practice.Â It is stated that the State must act like a model employer and the DRDA cannot be permitted to exploit the petitioner and

other similarly situate persons who are working for more than two decades but till date have not been regularized.Â Thereafter, as we have already

noted, the relief granted in the form of peremptory direction to regularize the petitioner and that too on the post of Assistant Statistical Officer, was

issued.Â Feeling aggrieved, the appellants are before us.

8. We heard Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand / appellants.Â We also heard Mr. J.C. Pandey, learned

counsel appearing on behalf of the writ petitioner.Â

9. Learned counsel for the appellants would contend that there is no vacant post of Assistant Statistical Officer.Â The petitioner was appointed and

worked as Assistant Statistical Officer only for a period of one year, four months and 16 days and thereafter admittedly he has worked as a Clerk,

and the learned Single Judge has erred in giving the judgment in favour of the petitioner.Â

10. Per contra, Mr. J.C. Pandey, learned counsel for the writ petitioner would submit that it is true that the petitioner was initially appointed in the year

1989 and he continued for a short period as Assistant Statistical Officer, but thereafter, he accepted the appointment as a Clerk-cum-Project

Assistant.Â Thereafter, he points out that as far as the post of Assistant Statistical Officer is concerned, there are many material to show that there

were two vacancies of Assistant Statistical Officer in the year 2014 and even after providing for one Mr. R.S. Bohra, there is even now at least one

vacancy, against which, the petitioner can be considered.Â As far as the post of

Clerk is concerned, he would submit that though there is sanctioned post, the same is not vacant.Â He would also submit that 12 persons have been appointed who were working as Computer Operators and they have been absorbed.Â He was to be so regularized or absorbed.Â He would submit that be it regularization or absorption, the petitioner is entitled to get the benefit of either regularization or absorption.Â 11.Â The relief, which has been granted by the learned Single Judge, as we have noted, was a direction to regularize the petitioner in the post of Assistant Statistical Officer.Â The question relating to regularization on the basis of the direction issued by the High Court is not a matter, which is res integra any longer.Â The issue is now necessarily to be viewed in the light of the Constitution Bench decision in the case of State of Karnataka vs. Umadevi reported in (2006) 4 SCC 1.Â It is not necessary to refer to the said judgment as it has been considered and followed in the subsequent judgments of the Honâble Apex Court.Â It is sufficient that we notice only a few of them.Â In the case of State of Rajasthan and others vs. Daya Lal and others reported in (2011) 2 SCC 429, Honâble Apex Court has laid down the following principles:

Â 12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While 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, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage

employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.â??

12. We may further notice the judgment of the Honâ??ble Apex Court in the case of Amarendra Kumar Mohapatra vs. State of Orissa reported in

(2014) 4 SCC 583.â?? Therein, the Honâ??ble Apex Court, after referring to the decision in the case of State of Karnataka vs. Umadevi reported in

(2006) 4 SCC 1, held inter alia as follows:

â??35. A Constitution Bench of this Court inâ?? State of Karnatakaâ?? v. Umadevi (3) and Ors. (2006) 4 SCC 1 ruled that regularisation of illegal or

irregularly appointed persons could never be an alternative mode of recruitment to public service. Such recruitments were, in the opinion of this Court,

in complete negation of the guarantees contained in Articles 14 and 16 of the Constitution. Having said so, this Court did not upset the regularisations

that had already taken place, regardless of whether such regularisations related to illegal or irregular appointments. The ratio of the decision in that

sense was prospective in its application, leaving untouched that which had already happened before the pronouncement of that decision. This is

evident from the following passage appearing in the decision: (SCC p.42, para 53)

“53. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

The above is a significant feature of the pronouncement of this Court in *Umadevi's case* (supra).

13. Thereafter, the Court proceeded to hold as follows:

“38. Equally important is the fact that even after declaring the true legal position on the subject and even after deprecating the practice of

appointing people by means other than legitimate, this Court felt that those who had served for ten years or so may be put to extreme hardship if they

were to be discharged from service and, therefore, directed the formulation of a scheme for their regularisation. This was no doubt a one- time

measure, but so long as the appointment sought to be regularised was not illegal, the scheme envisaged by para 53 of the decision (supra) extracted

above permitted the State to regularise such employees. Dr. Dhawan argued that the appellants- Stipendiary Engineers had, by the time the decision in

*Umadevi's case* (supra) was pronounced, qualified for the benefit of a scheme of regularisation having put in ten years as ad hoc Assistant

Engineers and fifteen years if their tenure was to be counted from the date of their employment as Stipendiary Engineers. He contended that even in

the absence of a Validation Act, Stipendiary Engineers appointed on ad hoc basis as Assistant Engineers, who had worked for nearly ten years to the

full satisfaction of the State Government would have been entitled to regularisation of their services in terms of any such scheme.”

14. More important it is that we refer to Paragraph 43 of the judgment, wherein the Hon'ble Apex Court also referred to the decision in the case

of *State of Karnataka vs. M.L. Kesari* reported in (2010) 9 SCC 247:

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in *State of Karnataka v. M.L. Kesari*

and Ors. (2010) 9 SCC 247, has examined that question and explained the principle regarding regularisation as enunciated in *Umadevi's* case

(supra). The decision in that case summed up the following three essentials for regularization: (1) the employees worked for ten years or more, (2)

that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal and (3) they should

have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment

process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation.

Para 7 in this regard is apposite and may be extracted at this stage: (*M.L. Kesari* case, SCC p.250)

7. It is evident from the above that there is an exception to the general principles against regularisation 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 employee 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.

15. We notice that the judgment in the case of *State of Karnataka vs. M.L. Kesari* reported in (2010) 9 SCC 247 has also been adverted to in

*Amarkant Rai vs. State of Bihar* reported in (2015) 8 SCC 265. It is, therefore, necessary to cull out the principles, which would govern such

cases. In order to be entitled to the benefit of regularization, the employee

should have worked for more than ten years or more in a duly sanctioned post.Â This continuance must not be on the basis of the benefit of an order of a Court or of a Tribunal.Â The appointment of the candidate should not be illegal.Â It may be irregular.Â If the appointment is not made or continued against a sanctioned post, it will be treated as illegal.Â Likewise, if a person appointed does not possess the prescribed minimum qualification, again the appointment will be illegal.Â In the light of these principles, we will have to examine the facts of this case.Â The petitioner has worked in the post of Assistant Statistical Officer only for a period of one year, four months and 16 days.Â Therefore, the basis on which the learned Single Judge has proceeded to hold that the petitioner has been working as an Assistant Statistical Officer for a long period of ten years would not be justified. Admittedly, the petitioner after his appointment as an Assistant Statistical Officer was appointed as a Clerk-cum-Project Assistant.Â The question arises, what is the nature of the said appointment.Â He was appointed on daily wages.Â He has been continuing on the said basis.Â This is not in dispute that the writ petitioner accepted the appointment of the Clerk-cum-Project Assistant without any protest and he has been continuing in this capacity.Â He, no doubt, has a case that he is performing duties of an Assistant Statistical Officer.Â Question would be, whether in the facts, which are so admitted, petitioner can claim reliefs. In this regard, we must also notice the further developments, which took place.Â There was a correspondence between the petitioner and the Authorities.Â Recommendations were apparently made by the District Magistrate.Â The Appointing Authority is not the District Magistrate, but the Commissioner.Â There was a resolution of the year 1991 to regularize the employees.Â Two facts are noticed in this regard going by the counter affidavit.Â No person was regularized as an Assistant Statistical Officer, but only one person was regularized in the category of Clerk.Â Still furthermore petitioner filed a writ petition claiming regularization and an interim order was passed to keep one post vacant.Â The writ petition, however, came to be dealt with by this Court on creation of the High Court of Uttarakhand.Â The result of the litigation is crucial.Â Petitioner was not granted any relief on the basis of the cause of action, namely, the resolution of the year 1991.Â The petitioner, apparently, confronted with the

judgment of the Honâ??ble Apex Court in the case of Umadevi and under the impression that the resolution of the year 1991, which fell foul of the requirement of ten yearsâ?? service may not advance his case, would have thought it better to withdraw the writ petition without prejudice to seek remedy.Â Therefore, the writ petition came to be withdrawn. There was no permission as such to approach the Court again on the same cause of action.Â This is a case based on the resolution of the year 1991.Â It may not be possible for the petitioner to resuscitate the cause of action based on the resolution of the year 1991, which, in fact, is not consistent with the declaration of law in Umadeviâ??s case (supra). It is, thereafter, that the petitioner continued to work as a Clerk (It is submitted that it is on daily wages and it is admitted that there is no vacancy in the post of Clerk).Â This we say because we did toy with the idea of directing the case of the petitioner to be considered for regularization in the post of Clerk, but it is not possible as admittedly there is no vacancy of Clerk.Â Â

16. The resultant position is that the learned Single Judge has given a direction for regularization against the post of Assistant Statistical Officer even though the petitioner has worked for less than two years in the said post.Â Petitioner has not completed ten years after having been appointed irregularly in the post of Assistant Statistical Officer.Â The basic requirement for regularization thus stands unfulfilled.Â Even proceeding on the basis that the petitioner was given work, which was that of an Assistant Statistical Officer, even when he was working as a Clerk, the same certainly cannot be a basis for direction to regularize him on the post of Assistant Statistical Officer. For claiming regularization, petitioner must have worked as an Assistant Statistical Officer.Â Admittedly, the petitioner has not worked as an Assistant Statistical Officer.Â The complaint of the learned counsel for the petitioner that twelve persons, who were working as Computer Operators have been absorbed in the post of Assistant Statistical Officer also does not deserve acceptance.Â A perusal of the counter affidavit in Paragraph 17 would show that it has been done on the basis of the Government Order dated 16.01.2014.Â The consequential order is also placed before us. Though these Government Orders have been produced before us, the same have not been called in question.Â In fact, what the petitioner wants is that he may also be absorbed.Â We do not know the

exact circumstances, in which the said orders were passed.Â

17. As far as the petitioner is concerned, petitioner cannot be said to be working in his capacity as a Clerk as against any post.Â He is working as a

daily wager.Â Therefore, he cannot claim the benefit even of being appointed by way of deputation as there is a case that this post of Assistant

Statistical Officer is to be filled up by deputation. Â The persons, who were appointed by Annexure -16, are persons, who were working on contract

basis in the same department. The claim for relief of regularization cannot be granted in this case.Â This is for the reason as we have noted that the

petitioner has not served for a period of ten years as Assistant Statistical officer.Â In fact, there is a dispute also relating to the availability of the

vacancy.Â On the one hand, Mr. Anil Kumar Bisht, learned Standing Counsel would submit that there is no vacancy; whereas the learned counsel

for the writ petitioner would point out that there is vacancy of Assistant Statistical Officer, but this aspect will not advance the case of the petitioner as

he does not fulfill the requirement for a direction to be given by this Court under Article 226 of the Constitution of India to regularize the service.Â

We are of the view that neither the claim for being considered for regularization, nor to be treated on the basis of the employees, who are covered as

the Computer Operators should be accepted.Â Â

18. In the circumstances, the Appeal is only to be allowed.Â Â

19. Learned counsel for the writ petitioner has a case that the petitioner is paid only Rs. 10,000/- and that he is entitled to get minimum of salary of the

Clerk.Â

20. We allow the Appeal, set aside the judgment of the learned Single Judge, and dismiss the writ petition.Â This will be without prejudice to the right

of the petitioner to seek benefits due to a person on the basis of the principle of equal pay for equal work.Â No order as to costs.Â Â