
(2015) 01 RAJ CK 0119

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 7924, 8333, 8341, 9245, 9319, 9494, 9495
and 9739/2014

UOI

APPELLANT

Vs

Nathu Lal Charpota

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0119

Hon'ble Judges : Jaishree Thakur, J.;Gopal Krishan Vyas, J.

Bench : Division Bench

Advocate : M.S. Godara, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the petitioner.
2. In all above writ petitions the Union of India through the Secretary, Government of India, Ministry of Communication and other officers are challenging the validity of the common judgment dated 28.3.2014 rendered by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as the CAT for short) whereby the CAT issued certain directions to consider the cases of each of the applicants for regularization independently on its own facts as per the ratio decided by the Hon"ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and in case of State of Karnataka and Others Vs. M.L. Kesari and Others, .
3. The learned counsel for the petitioner-department submitted that the judgment impugned is erroneous because all the applicants were engaged purely on temporary basis without following the process of law of recruitment on the post of GDS BPM in the newly opened branch post office. The learned counsel for the petitioner further argued that the efforts were made by the petitioner department on number of occasions for conducting the due process of selection for appointing the GDS BPM but due to one and another reason, the selection

process could not be completed, therefore, the respondents continued for good long time. The main argument of the learned counsel for the petitioner is that appointments were made on the post of GDS BPM without following the process of law, therefore, there was no question of claiming regularization by the respondent-employees. In the grounds, it is specifically pleaded by the petitioner Union of India that in cases of Uma Devi and M.L. Kesari (supra) directions were issued for regularization of those employees who were daily wagers, appointed on part time, full time basis and ad hoc employees only whereas all the respondents are working on the post of ED agent and the services of ED agents are governed by a separate rules which is ED Agent Rules, 1964, which were repealed by the GDS Rules, 2001 and the Rules of 2001 are also recently repealed and services of GDS BPM are now governed by the GDS (Conduct and Engagement) Rules, 2011, therefore, in view of the above facts, directions issued by the CAT to consider the case of the respondents employees for regularization are not sustainable in law. Therefore, these writ petitions may be allowed the impugned order dated 28.2.2014 may kindly be quashed.

4. After hearing the learned counsel for the petitioners, we have perused the para No. 53 of the judgment rendered by the Constitution Bench of the Hon"ble Apex Court in Uma Devi's case, which reads as under:--

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 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 regularization, if any already made, but not sub judice, 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." 5. Similarly, we have perused the judgment of the Hon"ble Apex Court delivered in the case of M.L. Kesari (supra), in which following directions were issued:

"8. 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 one-time 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).

9. 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.

10. 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 because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi 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 onetime 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 employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. 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 onetime measure."

6. After perusing the aforesaid judgments and upon the fact that Union of India is not disputing appointment of the respondent workmen on the post of GDS BPM and their working from last more than 10 to 15 years, we are of the opinion that adjudication made by the Constitution Bench of the Hon''ble Apex Court in the case of Uma Devi (supra) and in the case of M.L. Kesari (supra) are having binding force upon all the subordinate authorities, courts and tribunals and in above cases the CAT issued directions in the impugned judgment to consider the case of applicants for regularization independently on its own facts as per the ratio decided by the Hon''ble Apex Court in Uma Devi and M.L. Kesari's case (supra) within a period of four months. Therefore, obviously, no error has been committed by the CAT to issue such directions to consider the case of the respondent employees for regularization.

7. In view of the above, there is no infirmity or illegality in the common order dated 28.3.2014 passed by the CAT, Jodhpur, therefore, all the writ petitions filed by the UOI are hereby dismissed. However, upon request made by the counsel for the UOI, the petitioner department is hereby granted 3 months time from today to comply the directions given by the CAT, Jodhpur in the judgment dated 28.3.2014 strictly in accordance with the parameters laid down by the Hon''ble Apex Court in the case of Uma Devi and M.L. Kesari (supra).