
(2017) 09 AP CK 0025
In the Andhra Pradesh High Court
Case No : 27217 of 2017

U.V.S.R.Prasad and others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-09-2017

Acts Referred:

Constitution of India, Article 141 - Law declared by Supreme Court to be binding on all courts

Citation : (2017) 09 AP CK 0025

Hon'ble Judges : C.V.Nagarjuna Reddy, Gudiseva Shyam Prasad

Bench : DIVISON BENCH

Final Decision : Disposed Off

Judgement

1. This Writ Petition is filed feeling aggrieved by order dt.27.06.2017 in O.A. No.1442 of 2014 on the file of the Andhra Pradesh Administrative Tribunal (for short, the Tribunal).

2. The background summary of the case is briefly stated as under: The petitioners hold qualifications, such as, B.E. (Civil), L.C.E., I.T.I., L.M.E. B.E., L.C.E., B.A. etc. It is their pleaded case with respect to which there is not much dispute that they have been working as Nominal Muster Roll (NMR) Technical Work Inspectors, having joined respondent No.2 between 1990 1992. It is also not in dispute that they have been working in clear vacancies of Work Inspectors. While petitioner Nos.1 to 4 were conferred with the powers of Assistant Executive Engineers, petitioner Nos.5 to 9 were conferred with the powers of Assistant Engineers. Respondent No.2 has issued proceedings vide Rc. No.1696/78/A3, dt.18.2.2003, whereunder a proposal was submitted to respondent No.1 for regularization of services of 39 NMRs as Technical Work Inspectors in pursuance of G.O. Ms. No.212, dt.22.4.1994. It is also stated therein that respondent No.2 is in dire necessity of Technical Work Inspectors to be engaged on various projects so as to maintain quality of works and to complete the same as per schedule. Thereafter, respondent No.2 has passed Resolution No.137,

dt.28.09.2003, to regularize the services of 66 NMRs, and sent the same to the Government for ratification. Another letter was addressed by respondent No.2 to respondent No.1, vide Rc. No.1696/93/A3, dt. .06.2004, wherein it is inter alia stated as under:

It is pertinent to further add that the VUDA has taken up as many as 25 housing projects, Tourism Development Projects, Development of parks and other infrastructure projects in a big way. Hence, the services of these N.M.Rs are highly essential to cope up with the present work load of the organization and to maintain the quality in the proposed works and to complete the schemes as per schedule. As these employees are continuing as N.M.Rs, entrusting them with technical and financial powers to discharge regular duties is posing administrative inconvenience. The increase in financial commitment in view of regularisation of services of the N.M.Rs is also nominal as these category employees are already being paid wages as fixed by the Collector under Minimum Wages Act and VUDA is having sufficient resources to meet the expenditure on its own without burden to the public exchequer.

The aforesaid letter was followed by another letter vide Rc. No.1696/98/A3, dt.25.11.2004. In the details furnished by respondent No.2 to respondent No.1 along with the said letter, 19 sanctioned posts and 10 temporary posts of A.Es and A.E.Es respectively and 11 posts of Work Inspectors were shown to be vacant. Respondent No.2 also reiterated in the said letter that the increase in financial commitment in view of regularisation of services of the NMRs is also nominal as these categories of employees are already being paid wages, as fixed by the Collector under the Minimum Wages Act, and that respondent No.2 is having sufficient resources to meet the expenditure on its own without burden to the public exchequer. Accordingly, respondent No.2 has requested respondent No.1 to consider the matter and issue orders to regularize the services of the 66 NMRs duly treating them as Last Grade Servants (LGSs) as against the existing vacancies and extend the benefit on par with its regular employees so that the qualified and eligible candidates among the 66 individuals as per their qualification etc., can be absorbed against the vacant posts available with it. A list of 66 NMRs, including that of the petitioners, was enclosed to the said letter. This request was reiterated by respondent No.2 vide its letters dt.13.05.2005, 15.4.2008, 19.11.2008, 25.03.2013, 18.08.2013 and 04.01.2014. In the letter dt.18.08.2013, the details of a batch of 30 NMRs and 1 contingent employee, who have not completed five years of service as on the cut off date i.e., on 25.11.1993, were mentioned and it was requested as under:

In the light of the above facts, the Government is requested to regularise the services of 30 NMRs & 1 contingent employee on humanitarian grounds keeping in view of their long experience in the activities of VUDA and also their age as a Special Case. VUDA is ready to bear the additional financial burden from its own resources, in view of their long services rendered to VUDA (for more than 22 years) and their requirement in VUDA.

3. As respondent No.1 was unmoved on the repeated requests made by respondent No.2 and the requests of the petitioners for their absorption/regularization against regular vacancies remained a far cry, they were constrained to approach the Tribunal by filing O.A. No.1442 of 2014. The Tribunal, by the impugned order, has dismissed the O.A. for the reason that as per G.O. Ms. No.212, dt.22.04.1994, unless a person has put in five years of service by 25.11.1993 and was continuing as temporary employee/NMR, he is not entitled to be regularised and that admittedly, the petitioners have not satisfied this criterion. As regards the judgment in *State of Karnataka v. Umadevi*, on which the petitioners have placed heavy reliance, the Tribunal observed that the petitioners have not filed any material to show that they were appointed as NMRs in any sanctioned post or worked for ten years or more in duly sanctioned posts and that in the absence of such material, the petitioners are not entitled for regularization even on the basis of the judgment in *Umadevi* (1 supra). Aggrieved by this order, the petitioners filed this writ petition.

4. On behalf of the respondents, separate counter affidavits have been filed by the Deputy Secretary to the Government, Municipal Administration and Urban Development Department and the Vice-Chairman of respondent No.2. In the first mentioned counter affidavit it is inter alia stated that the Government has formulated a scheme for Regularisation under the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (Act No.2 of 1994) and issued instructions to all the authorities in G.O. Ms. No.212, dt.22.04.1994, for regularization of services of the eligible NMRs subject to fulfilment of certain conditions stipulated therein. That one of the conditions to be fulfilled is that the NMRs should have completed five years of continuous service as on 25.11.1993 before being considered for regularization with the prior concurrence from the Government; that none of the petitioners have fulfilled the eligibility criteria prescribed therein; that their services were taken on a temporary basis to meet the exigencies of works at that point of time; and that they are merely occupying the positions meant for direct recruits/promotees as the case may be, without getting recruited through the prescribed procedure. It is, however, admitted in the counter affidavit that respondent No.2 has requested vide its letter dt.18.02.2003 to approve the proposals for regularization of 39 Technical NMRs as Technical Work Inspectors, but the Government has rejected the proposal on the ground that they have not completed five years of service as on 25.11.1993. It is also admitted that respondent No.2 in its letter dt.25.11.2004 requested respondent No.1 to reconsider the matter and issue orders to regularize the services of 66 NMRs duly treating them as LGSs and to extend the benefit on par with the regular employees of respondent No.2 and that the said request was also not considered by the Government as they did not fulfil the eligibility criteria laid down in G.O. Ms. No.212, dt.22.04.1994. The counter affidavit relied upon the judgment in *A. Manjula Bashini v. The Managing Director, A.P. Womens Cooperative Finance Ltd.*, wherein the validity of G.O. Ms. No.212, dt.22.4.1994, was upheld. It is,

accordingly, pleaded that for the aforementioned reasons, the petitioners are not entitled for regularization.

5. In the counter affidavit filed by the Vice-Chairman of respondent No.2, he has admitted that the petitioners have been working as NMR Work Inspectors/ Technical Work Inspectors/ Electricians in respondent No.2 from 1990 - 1992 as the case may be; and that among the 17 petitioners, 4 of them possessed Degree in Engineering, 4 possessed Diploma in Civil Engineering, 8 possessed ITI qualification and 1 possessed B.A. Degree qualification. The counter affidavit has referred to G.O. Ms. No.212, dt.22.4.1994, stipulating the requirements to be satisfied for regularisation. It has also referred to the repeated requests of respondent No.2 made to respondent No.1 for according permission for regularization of 66 NMRs as LGSs. Respondent No.2 has also pursued the same lines as respondent No.1 in its counter affidavit as regards G.O.Ms.No.212, dt.22.4.1994, the petitioners not satisfying the criteria laid down in G.O. Ms. No.212, dt.22.4.1994 and non- applicability of the judgment of the Supreme Court in Umadevi (1 supra).

6. Mr.C.Raghu, learned Counsel for the petitioners, submitted that the respondents have been denying regularisation/absorption to the petitioners on a totally erroneous premise that the latter have not satisfied the requirements of G.O.Ms.No.212, dated 22-04-1994, by ignoring the fact that their claim is based on Para 53 of the Judgment in Umadevi (1 supra) as clarified by the Supreme Court in State of Karnataka and others vs. M.L.Kesari and others .

7. Opposing the above submissions, the learned Government Pleader for Services (AP) submitted that the Supreme Court upheld the validity of the Andhra Pradesh (Regularisation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994, as amended by the Andhra Pradesh Acts 3 and 27 of 1998 and that in the said judgment, it has not made any exception in favour of persons, who do not satisfy the criteria laid down by the said amendments to the principal Act stipulating that for claiming regularisation, one must have completed five years of service as on 25-11-1993 i.e., the date on which Act 2 of 1993 came into force. She has further submitted that as the petitioners did not satisfy the criteria prescribed by the aforementioned two amended Acts, they are not entitled to regularisation.

8. Mr.P.Jagadishchandra Prasad, learned Standing Counsel for respondent No.2, supported the submissions of the learned Government Pleader for Services.

9. We have carefully considered the respective submissions of the learned Counsel for the parties.

10. From the material discussed above and the admissions made in the counter-affidavit of respondent No.2, it is not in dispute that the petitioners have been working as Work Inspectors from the years 1990 1992. It is also not in dispute that by the time the judgment in Uma Devi (1 supra) was rendered in the year 1996, they have completed more than 10 years of service. Para 53 of the

Judgment in Uma Devi (1 supra) reads as under: One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (1967 (1) SCR 128), R.N.Nanjundappa (1972 (1) SCC 409) and B.N.Nagarajan (1979 (4) SCC 507) 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 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 abovereferred 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.

11. The respondents have not disputed the fact that the petitioners fully satisfied the criteria laid down in the above reproduced Para in Uma Devi (1 supra). But, as noted herein before, they have taken the stand that as Act 2 of 1994 governs the services of the petitioners, unless the latter satisfy the requirement of completing 5 years of service as on 25-11-1993, they are not entitled to be considered for regularisation.

12. In State of Karnataka vs. M.L.Kesari (3 supra), a two- Judge Bench of the Supreme Court has explained the true purport of the directions contained in Para 53 of the judgment in Uma Devi (1 supra) in the below reproduced part of the judgment: 5. It is evident from the above that there is an exception to the general principles against "regularization" 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.

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).

6. 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.

7. 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 one-time 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.

8. 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 one-time measure. (Emphasis is ours)

13. If we consider the judgment in Uma Devi (1 supra) as clarified in M.L.Kesari (3 supra) in juxtaposition to Act 2 of 1994 along with its amendments and the judgment in A.Manjulabhashini (2 supra), the following position emerges. Act 2 of 1994 prohibits regularisation and regulates recruitments in public employment. However, in order to consider the claims for regularisation of the employees as one- time measure, the State Government has issued G.O.Ms.No.212 dated 22-04-1994, wherein it has decided that the services of the persons, who have completed a continuous and minimum period of 5 years of service on or before 25-11-1993 and been continuing as on that date, shall be regularised in substantive vacancies, if they satisfy conditions 1 to 6 stipulated therein. Several orders of the Courts were made placing different interpretations on G.O.Ms.212, dated 22-04- 1994, mainly with respect to the requirement of completion of five years of service. In order to allay the confusion, Section 7 of the Principal Act was amended by 1998 amendment Act by insertion of the proviso, which reads as under: Provided that the services of a person, who worked on daily wage/NMR/Consolidated pay/Contingent worker on full time basis continuously for a minimum period of five years and is continuing as such on the date of the commencement of the Act shall be regularised in accordance with the scheme formulated in G.O.Ms. No. 212, Finance & Planning (FW.PC. III) Department, dated the 22nd April, 1994.

14. While some orders were passed holding that a person is entitled to regularisation even if he has not completed five years of service as on 25-11-1993, such orders were reversed by a Division Bench of this Court, which was confirmed by a two- Judge Bench of the Supreme Court in A.Manjula Bhashini (2 supra), holding that in order to be entitled for regularisation, a person must have completed 5 years of continuous service as on 25-11-1993.

15. Concededly, the Supreme Court in A.Manjula Bhashini (2 supra) has not referred to the judgment in Uma Devi (1 supra). Thus, in our opinion, the directions given in Para 53 of the judgment in Uma Devi (1 supra) and the provisions of Act 2 of 1994 along with its amendments and the judgment in A.Manjula Bhashini (2 supra) operate in different situations.

16. It is trite that the law declared by the Supreme Court is binding throughout the country under Article 141 of the Constitution of India. It is noteworthy that by the time the judgment in Uma Devi (1 supra) was rendered, the provisions of Act 2 of 1994 and G.O.Ms.No. 212, dated 22-04-1994, were in existence. The

Supreme Court, while denouncing the practice of regularization and absorption of persons, who entered service through backdoors by giving a go-bye to the due procedure prescribed for appointments to public posts, consciously ordered for onetime absorption/ regularization of those, who were working for a period of not less than 10 years. It has given directions in this regard to all the State Governments and also Union of India. The Supreme Court is presumed to be conscious of various State enactments such as Act 2 of 1994 and executive orders such as G.O.Ms.No. 212, dated 22-04-1994, while giving directions in Para No. 53 of the judgment in Uma Devi (1 supra). But still, it has not made any exception in favour of the States where State enactments banning regularization/ absorption exist. Therefore, Act 2 of 1994 and G.O.Ms.No. 212, dated 22.04.1994, do not whittle down the width and the judgment in Manjula Bashini (2 supra) does not lower the trajectory of the directions issued by the Supreme Court in Para 53 of its judgment in Uma Devi (1 supra). It is, therefore, not permissible for the respondents to take shelter under Act 2 of 1994 and G.O.Ms.No.212, dated 22- 04-1994, to deny regularization to the petitioners, who have, admittedly, satisfied the criteria laid down in Para No. 53 of the judgment in Uma Devi (1 supra).

17. We have already noted the repeated requests of respondent No. 2 made to respondent No. 1 for regularization of the petitioners and other similarly situated persons by emphasizing on the need for such absorption/regularization. Unfortunately, respondent No. 1 has not accepted the request of respondent No. 2 in this regard. It is brought to the notice of this Court that respondent No. 2 has undertaken a selection process for filling up 13 vacancies of Work Inspectors and that though the same is completed, in view of the interim order granted by this Court, the posts were not filled up. Since appointment orders have not been issued to the selected candidates, they cannot claim indefeasible right. As the petitioners cannot be overlooked for regularization, the selection process initiated by respondent No. 2 cannot be sustained. The Tribunal has not examined the case from proper perspective and misdirected itself in holding that the petitioners are not entitled for regularization/absorption as they do not satisfy the criteria laid down in G.O.Ms.No.212, dated 22-04-1994.

18. For the aforementioned reasons, order, dated 27-06- 2017, in OA.No.1442 of 2014, on the file of the Tribunal is set aside and the Writ Petition is allowed with the direction to the respondents to consider regularisation of the services of the petitioners against the existing vacancies of Work Inspectors and appoint them subject to their satisfying the criteria laid down in Para No. 53 of the judgment in Uma Devi (1 supra). This process must be completed within two months from the date of receipt of a copy of this order.

19. As a sequel to disposal of the Writ Petition, W.P.M.P.No.33808 of 2017, filed by the petitioners for interim relief, is disposed of as infructuous.