

Kameshwar Prasad and Ors Vs. Labour

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Court : Jharkhand

Decided On : Nov-08-2016

Appellant : Kameshwar Prasad and Ors

Respondent : Labour

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.4019 of 2015 With W.P.(S) No.4021 of 2015 With W.P.(S) No.4126 of 2015 With W.P.(S) No.4127 of 2015 With W.P.(S) No.1512 of 2016 With W.P.(S) No.1530 of 2016 With W.P.(S) No.1932 of 2016 With W.P.(S) No.2030 of 2016 ----- (W.P.S No.4019 Of 2015) Anil Kumar Sinha Petitioner Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand, Ranchi. 3 .The Deputy Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand, Ranchi.

4. The Secretary, Panchyati Raj and NREP (Special Division), Directorate of Panchyati Raj, Ranchi.

5. The Director, Panchyati Raj and NREP (Special Division), Directorate of Panchyati Raj, Ranchi.

6. The Deputy Secretary, Panchyati Raj and NREP (Special Division), Directorate of Panchyati Raj, Ranchi. .. Respondents (W.P.S No.4021 of 2015) Anjay Ram .
Petitioner Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand, Ranchi.

3. The Deputy Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand, Ranchi.

4. The Secretary, Panchyati Raj and NREP (Special Division), Directorate of Panchyati Raj, Ranchi.

5. The Director, Panchyati Raj and NREP (Special Division), Directorate of Panchyati Raj, Ranchi. 2 6. The Deputy Secretary, Panchyati Raj and NREP (Special Division), Directorate of Panchyati Raj, Ranchi. ..Respondents (W.P.S No.4126 of 2015) Chhatrabali Sahu . Petitioner Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

3. The Deputy Secretary, , Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

4. The Transport Commissioner, Government of Jharkhand, Ranchi.

5. The Under Secretary, Transport Department, Government of Jharkhand, Ranchi. Respondents (W.P.S No.4127 of 2015) Narendra Kumar Tiwari Petitioner Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

3. The Deputy Secretary, , Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

4. The Transport Commissioner, Government of Jharkhand, Ranchi.

5. The Under Secretary, Transport Department, Government of Jharkhand, Ranchi. Respondents (W.P.S No.1512 of 2016) 1. Sanjay Kumar Srivastava 2. Arjun Kumar 3. Manoj Kumar Petitioners Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

3. The Principal Secretary, Transport Department, Government of Jharkhand, Ranchi.

4. The Commissioner of Transport, Transport Deptt., Government of Jharkhand, Ranchi.

5. District Transport Officer, Palamau.

6. District Transport Officer, Bokaro. 3 7. Managing Director, National Information Centre Services Incorporated, Ranchi. .. Respondents (W.P.S No.1530 of 2016) 1. Prabhat Arvind Kumar 2. Md. Aslam Ansari . Petitioners Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

3. The Principal Secretary, Transport Department, Government of Jharkhand, Ranchi.

4. The Commissioner of Transport, Transport Deptt., Government of Jharkhand, Ranchi.

5. District Transport Officer, Bokaro.

6. Managing Director, National Information Centre Services Incorporated, Ranchi.
Respondents (W.P.S No.1932 of 2016) 1. Md. Anwar Hussain 2.Pankaj Kumar Mishra Petitioners Vs.

1. The State of Jharkhand.

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Deptt., Government of Jharkhand, Ranchi.

3. The Principal Secretary, Transport Department, Government of Jharkhand, Ranchi.

4. The Commissioner of Transport, Transport Deptt., Government of Jharkhand, Ranchi.

5. District Transport Officer, Chaibasa.

6. Managing Director, National Information Centre Services Incorporated, Ranchi.
Respondents (W.P.S No.2030 of 2016) 1. Kameshwar Prasad Yadav 2. Bechu Ram 3. Sanjay Kumar Kushwaha 4. Awadh kumar Gupta 5. Rita Devi 6. Jagdish Ram 7. Giriwar Ram 8. Surendra Ram 9. Nitu Pandey 10. Ravindra Pal 11. Premchand Ram 12. Shiv Kumar Ram 13. Mahendra Ram 14. Mustaq Khan 4 15. Saryu Ram 16. Jai Kumar Pal 17. Kameshwar Ram 18. Bhardul Paswan 19. Ramesh Sah 20. Somaru Ram 21. Lalmuni Ram 22. Tauhid Ansari 23. Irshad Ansari 24. Mahendra Kumar Singh 25. Vijay Ram 26. Reema Devi 27. Shyamnandan Ram 28. Yamuna Ram 29. Vijay Kumar Singh 30. Ajay Kumar Ravi 31. Ramawatar Singh 32. Manoj Ram 33. Umesh Sah 34. Rupwanti Devi 35. Umashankar Ram 36. Ramji Ram 37. Ramnath Ram 38. Maheshwar Baitha 39. Muneshwar Ram 40. Aarti Devi & Aarti Kumari 41. Sanjay Paswan 42. Lakhni Devi 43. Virendra Ram 44. Fuleshwari Kunwar 45. Subachiya Devi 46. Kusumari Kunwar 47. Vidapati Devi 48. Gango Devi 49. Kawalpatiya Devi 50. Binda Kunwar 51. Chinta Devi 52. Thakurmani Devi 53. Manmati Devi 54. Sona Devi 55. Sumati Devi 56. Geeta Devi 57. Deventi Devi 58. Ravindra Ram @ Ravindra Kumar Ram 59. Pyare Hasan Ansari 60. Vinod Ram 61. Tetari Devi 62. Savita Devi Petitioners Vs.

1. The State of Jharkhand.
2. The Chief Secretary, Government of Jharkhand, Ranchi.
3. The Secretary, Labour Employment & Training Deptt. Government of Jharkhand, Ranchi.
4. The Joint Commissioner, Labour Employment & Training Deptt. Government of Jharkhand, Ranchi.
5. The Commissioner, Palamau Division, Palamau.
6. The Deputy Commissioner, Palamau.
7. The Deputy Commissioner-cum-Chairman, 5 Child Development Project Samiti, Garhwa.
8. The Union of India, through the Secretary, Ministry of Labour & Employment, New Delhi. .Respondents ----- CORAM : Honble Mr. Justice H.C .Mishra
Honble Mr. Justice DR.S.N.PATHAK ----- For the Petitioners: - Mr. Anil Kumar Sinha, Sr. Advocate M/s Saurav Arun, Abhishek Sinha, Deepak Kr.Dubey, Advocates. For the Respondents: M/s. Dhananjay Kr. Dubey, Advocate Mrs. Neelam Tiwary, J.C to Sr.S.C I. Mr. Amit Kumar, J.C to G.P.II Mrs. C.Prabha, S.C IV Mr. Vishal Kr. Rai, J.C to S.C IV ----- CAV On :- 08/11/2016 Pronounced On :- 17/11/2016 H.C. Mishra, J.

As common question is involved in all these writ applications, they have been heard together and are being disposed of by this common order.

2. Heard the learned senior counsel for the petitioners in all these writ applications and the learned counsel for the State.
3. The petitioners in all these writ applications were appointed on daily wages / contract basis on different posts and they are aggrieved by the non-consideration of regularization of their services, as a cutoff date has been prescribed in the notification issued by the State of Jharkhand in its Personnel, Administrative Reforms and Rajbhasa Department, notifying the Rules, namely, Jharkhand

Sarkar Ke Adhinasth Aniyamit Rup Se Niyukt Ewam Karyarat Karmiyo Ki Sewa Niyamitikaran Niyamawali, 2015 (hereinafter referred to the "Regularization Rules, 2015").

4. As the nomenclature of the above Rules suggests, these Rules have been framed by the State Government for regularisation of the services of irregularly appointed employees of the State Government. These Rules have been framed as one time measure for regularization of services of the irregularly appointed Government employees in the State of Jharkhand.

5. The aforesaid Regularization Rules, 2015, have been framed by the State Government under the proviso to Article 309 of the Constitution of India, in view of the decision of the Supreme Court of India in Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors., as reported in (2006) 4 SCC1. In that case, the Honble Apex Court, held that the persons appointed / engaged on the public posts, as temporary, contractual, casual, daily wage or ad-hoc basis, when their appointment / engagement is not based on a proper selection as recognized by the relevant rules or procedures, they cannot invoke the theory of legitimate expectation for being confirmed in the post. Such engagements cannot be used to defeat the very scheme of public employment and there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

6. However, the Honble Apex Court made an exception to the above position in paragraph 53 of the Judgment, which reads as follows:-

"3. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa 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 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 aboveresferred 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 regularise 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 regularization, 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." (Emphasis supplied.) 7 7. In view of the aforesaid direction of the Honble Apex Court, the Regularization Rules, 2015 have been framed by the State Government of Jharkhand, as one time measure, to regularize the services of irregularly appointed employees. However, Rule 3(ka)(i) of the said Rules prescribes a cutoff date of 10.4.2006, which is the date of Judgment of the Apex Court in Umadevi (3) case (supra), and it provides that those irregularly appointed employees, who have completed ten years of regular service as on 10.4.2006 and still continuing in service against duly sanctioned posts, but not under cover of orders of the Courts or of Tribunals, can only be considered for such one time measure, for regularization of their services.

8. Admittedly, the petitioners had not completed the period of ten years of the regular service prior to 10.4.2006, i.e., the cutoff date prescribed in the Regularization Rules, 2015, though they are still continuing in service.

9. The petitioners are aggrieved by the cutoff date prescribed in the Regularization Rules, 2015, and according to them since the Rules have been framed only as one time measure for giving an opportunity for consideration of regularization of service of irregularly appointed employees, there should not have been any cutoff date, rather all those employees who have completed the period of ten years should be considered for regularization of their appointments.

10. It is the case of the petitioners that if the cutoff date is to remain, it shall benefit only those who were appointed in the erstwhile State of Bihar and no person appointed after the creation of the State of Jharkhand on 15th November 2000, by virtue of Bihar Reorganization Act, 2000, shall be benefited by this Regularization Rules, 2015.

11. Learned senior counsel for the petitioners has vehemently argued that the cutoff date 10.4.2006, i.e., the date of Judgment in Umadevi (3) case (supra), is absolutely arbitrary and has no nexus to the objective to be attained by the Regularization Rules, 2015. Learned counsel submitted that the cutoff date being the date of Judgment in Uma Devi (3) case, has only been casually put up in the Rules, without showing any nexus with the objective to be achieved. It is further submitted that in any event, the Apex Court had directed to take the steps to regularize the services of those 8 irregularly appointed employees who had served for more than ten years without the protection of any interim orders of the Court or Tribunal, as one time measure, and had directed that such one time measure must be set in motion within six months from the date of its decision. It is submitted that since the State Government slept over the matter for more than eight years, and thereafter has framed the Rules only in the month of February, 2015, which ought to have been framed in any event within the six months from the date of decision, i.e., latest by 9.10.2016, the employees who have been allowed to continue in ad hoc, casual, contractual, or daily wages basis, they should also be considered for regularization of their service, if they completed the period of ten years of service without the protection of any interim orders by any Court or Tribunal, as no cutoff date has been prescribed by the Apex Court in Umadevi (3) case (supra).

12. Learned senior counsel for the petitioners has also submitted that the State Government, at the one hand has denied the consideration of regularization of service by prescribing an arbitrary cutoff date in the Regularization Rules, 2015, but on the other hand has regularized the services of the other employees similarly appointed / engaged, even by framing separate Rules, without prescribing any cutoff date. In this connection learned senior counsel for the petitioners has drawn our attention towards the resolution of the State Government in its department of Cabinet Secretariat and Co-ordination, bearing No. 881 dated 18th July 2009,

which is also a scheme for regularization of irregularly appointed employees of the State Government, framed pursuant to the direction of the State Government in Uma Devi (3) (supra), but in the said scheme, there is no cutoff date of 10.4.2006 and pursuant to this resolution, the services of such irregularly appointed employees in different departments in the State Secretariat, who had completed ten years of service even after 10.4.2006, have been regularized. Our attention has been drawn towards yet another Office Order issued by the Governors Secretariat, contained in memo No.1892 dated 19.7.2009, whereby also, the services of such employees have been regularized without consideration of any cutoff date. Our attention has also been drawn towards the notifications issued by the State Government in its Medical, Education and Family Welfare Department, framing Rules for regularization of the services of the Medical Officers and Para Medical Employees appointed on contract basis without consideration of any cutoff date.

13. Learned senior counsel has further submitted that even after the decision in Umadevi (3) case by the Honble Apex Court, this High Court had occasion to consider the matter of regularization of the services of Assistant Engineers, who were appointed in Rural Development Department in the erstwhile State of Bihar and they were continuously working for 30 years. Their writ application was dismissed by the Hon'ble Single Judge and thereafter, they preferred L.P.A No.256 of 2011 (Kamla Prasad & Ors. Vs. State of Jharkhand and Ors). During the pendency of the Letters Patent Appeal, their services were also terminated by the State Government, but the Division Bench of this Court allowed the Letters Patent Appeal, setting aside their termination order, by the Judgment as reported in 2012 (1) JCR477Jhr). It is pointed out that the State of Jharkhand preferred S.L.P and Civil Appeals against the said order, but the order of this Court was affirmed and the Civil Appeals were dismissed by the Apex Court by the Judgment, as reported in (2014) 7 SCC223 It is submitted by the learned senior counsel that in these decisions also, there is no mention about any cutoff date as 10.4.2006, i.e., the date of Judgment in Uma Devi (3) case (supra). The fact however, remains that those Assistant Engineers had already completed much more than ten years of the regular service by 10.4.2006.

14. Learned senior counsel challenging the fixation of the cutoff date, without having any nexus to the objective to be achieved, has placed reliance on other decisions of the Apex Court also, which need not be discussed in detail, as the same is going to be only an academic discussion, in view of the decision which is being passed in this case.

15. Learned counsel for the State, on the other hand, has submitted that in view of the specific direction in paragraph 53 in the Umadevi (3) case (supra), the State Government has framed the Regularization Rules, 2015 and the cutoff date 10.4.2006, being the date of Judgment in the said case, has rightly been prescribed as the date on which the employees must complete ten years of regular service in order to be entitled for consideration of regularization of their service. 10

16. Having heard the learned counsels for both the sides, we find that even after the decision of the Hon'ble Apex Court in Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors., (supra), the matter has been reconsidered by the Apex Court in yet another case, i.e., State of Karnataka & Ors. Vs. M.L. Kesari & Ors., reported in (2010) 9 SCC247 wherein the Honble Apex Court while considering the decision in Umadevi (3), has stated as follows :-

"0. 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/ad hoc/casual 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 twofold. 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 basis for long periods and then periodically regularise 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." (Emphasis supplied.) 17. In view of the specific direction of the Honble Apex Court as quoted above, laying down that true effect of the direction is that only those persons who have worked for more than ten years as on 10-4-2006, 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, nothing else remains to be decided by us in these writ applications.

18. We thus find that the validity of prescription of cutoff date in the Regularization Rules, 2015, is no more res-integra, as the cutoff date has already been prescribed by the Apex Court itself, in the case of State of Karnataka & Ors. Vs. M.L. Kesari & Ors., (supra). As such, it is no more open to the High Courts

exercising the jurisdiction under Article 226 of the Constitution of India, to enter into the question of rationale for fixation of that cutoff date.

19. The decision of the Hon'ble Apex Court is binding on one and all and since the cutoff date has been prescribed by the Apex Court itself, there is no scope for this Court to consider the validity or otherwise of the cutoff date 10.4.2006, as prescribed in the Regularization Rules, 2015.

20. In view of the aforesaid discussions, we find no merit in all these writ applications, which are accordingly, dismissed. (H.C. Mishra, J.) Dr. S.N. Pathak, J.

(Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi The 17th of November 2016
N.A.F.R/B.S

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