STATE OF KARNATAKA & ORS. A

*v.*

M.L. KESARI & ORS.

(Civil Appeal No. 6208 of 2010)

AUGUST 3, 2010 B

**[R.V. RAVEENDRAN AND H.L. GOKHALE, JJ.]**

*Labour Laws – Regularization – Daily wage workers – Continuance in service for 15 years, without intervention of court/tribunal – Writ petition seeking regularization – Allowed by single Judge as well as Division Bench of High Court – In *Uma Devi's case, constitution Bench of Supreme Court gave exception to the general rule against regularization holding that irregular appointments of the employees having 10 years service or more without intervention for the Court/tribunal to be regularized on one time measure within six months from the date of the judgment – Instant case was not considered within six months from the date of judgment in Uma Devi's case – Held: Employer not undertaking exercise of regularization within six months of Umadevi's case, does not disentitle the employees, the right to be considered for regularization in terms of the directions in Umadevi's case – Direction to the employer to consider the cases of the appellant-employees within six months as a one time regularization exercise.* C D E F

**Respondents 1 to 3 were appointed on daily wage basis by the appellant-Zila Panchayat. They were continued as daily wagers for more than 15 years and such continuance was without any intervention of a court and without the protection of any interim orders of any court or tribunal. Thereafter, they filed writ petitions seeking regularization of their services. Single Judge of High Court allowed the petition directing to consider their** G

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A representation. The writ appeals thereagainst, were dismissed by the Division Bench of High Court, holding that the respondent would be entitled to regularization, depending upon the terms and conditions of appointment, availability of existing substantive B vacancies, eligibility, qualifications, continuity of service, seniority and the prevailing rules. Therefore, the instant appeal was filed. The appeal was adjourned to await the decision of the Constitution Bench in *Umadevi's* case.

C Disposing of the appeal, the Court

HELD: 1.1 It has been held in *Uma Devi's* case that appointments made without due process or the rules relating to appointment did not confer any right upon appointees for regularization. However, in Para 53 of the D judgment, the Court made an exception to the general rule against regularization, holding that irregular (not illegal) appointments, where employees have continued in service for ten years or more without the intervention of courts or tribunals, have to be considered on merits, E as a one time measure within six months from the date of the decision i.e. 10.4.2006. [Paras 4 and 5] [548-G-H; 550-B-G]

1.2 The object behind the direction in Para 53 of *Umadevi's* case, is two-fold. First is to ensure that those F 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 G 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

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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's* case or that such exercise was undertaken only with 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's* case as a one-time measure. [Para 8] [551-H; 552-A-E]

1.3 At the end of six months from the date of decision in *Umadevi's* case, 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's* case 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

A *Umadevi's* case, but did not consider the cases of some employees who were entitled to the benefit of Para 53 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
B who are entitled to be considered in terms of Para 53 are so considered. [Para 7] [551-C-G]

2.1 *Umadevi's* case casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees
C 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's* case, directed that such one-time measure must be set in motion within six months from the date of its decision
D (rendered on 10.4.2006). [Para 5] [550-F-G]

2.2 The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi,* each
E 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
F as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services. [Para 6] [550-H; 551-A-B]

2.3 In the instant appeals, the appellant (Zila Panchayat) has not considered the cases of respondents
G of regularization within six months of the decision in *Umadevi* or thereafter. The High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that

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**needs be given, in view of *Umadevi's* case, is that the appellant should now undertake an exercise within six months, a general one-time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the appellant and if so whether such employees (including the respondents) fulfill the requirements mentioned in Para 53 of *Umadevi's* case. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. [Paras 9 and 10] [552-E-H; 553-A-C]**

***State of Karnataka vs. Uma Devi* (2006) 4 SCC 1 – explained and followed.**

**Case Law Reference:**

**(2006) 4 SCC 1explained and followed. Paras 5-10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6208 of 2010.

From the Judgment & Order dated 22.07.2004 of the High Court of Karnataka at Bangalore in W.A. Nos. 1641 to 1643 of 2003.

Sanjay R. Hegde, Ramesh Kr. Mishra, Krutin Joshi, Ramesh S. Jadhav, Vikrant Yadav for the Appellants.

K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by

**R.V.RAVEENDRAN, J.** 1. Delay condoned. Leave granted.

2. Respondents 1 to 3 were appointed on daily wage

A basis by the Zila Panchayat, Gadag, between 1985 and 1987. Their services were utilized as Typist, Literate Assistant and Watchman respectively in the office of the Executive Engineer, Zila Panchayat Engineering Sub-Division, Ron, Gadag District. They were continued as daily wagers for more than 15 years
B without the intervention of any court and without the protection of any interim orders of any court or tribunal. In the year 2002 they filed Writ Petitions (Nos.31687-31689/2002) seeking regularization. The said writ petitions were allowed by a learned Single Judge of Karnataka High Court by order dated
C 27.9.2002 with a direction to consider their representations in accordance with the judgment dated 24.1.2001 in W.A. Nos.5697/2000 and 6677-7351/2000. The writ appeals filed by the appellants against the said order were dismissed by a Division Bench by the impugned order dated 28.7.2004 holding
D that the respondents will be entitled to regularization, depending upon the terms and conditions of appointment, availability of existing substantive vacancies, eligibility, qualifications, continuity of service, seniority and the prevailing rules. The Division Bench directed that the case of each of the appellants shall be considered independently on its own facts, within four
E months. The said judgment is challenged in this appeal by special leave.

3. When the matter came up for hearing on 10.3.2006, the matter was adjourned to await the decision of the Constitution
F Bench in CA Nos. 3595-3612/1999 – *State of Karnataka v. Umadevi*. However, subsequently notice was directed to be issued both on the application for condonation of delay for 361 days' in filing the SLP as also on the special leave petition.

G 4. The decision in *State of Karnataka v. Umadevi* was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-
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engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :

> "53. 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

A 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. ...."

B 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 C 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.

D (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. E 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.

F *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,* G 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 H 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. A B

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. C D E F G

8. The object behind the said direction in para 53 of H

A *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 B 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 C 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 D 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.

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9. These appeals have been pending for more than four years after the decision in *Umadevi*. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision F in *Umadevi* or thereafter.

10. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of *Umadevi,* is that the Zila Panchayat, Gadag should now G undertake an exercise within six months, as a general one-time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of *Umadevi*. If they fulfill

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them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of *Umadevi*, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts. This appeal is disposed of accordingly.

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K.K.T Appeal disposed of.