

Narendra Kumar Tiwari vs The State Of Jharkhand on 1 August, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3589, 2018 (8) SCC 238, 2018 LAB IC 3802, 2018 (4) AJR 651, (2018) 159 FACLR 112, (2018) 3 CURLR 331, (2018) 3 JLJR 351, (2018) 3 PAT LJR 372, (2018) 3 SCT 730, (2018) 4 JCR 132 (SC), 2018 (4) KCCR SN 416 (SC), (2018) 5 ALL WC 4717, (2018) 5 SERVLR 770, (2018) 9 SCALE 384, (2019) 1 LAB LN 310, AIR 2018 SC (CIV) 3068, AIRONLINE 2018 SC 88

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Bench: Deepak Gupta, Madan B. Lokur

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7423-7429 OF 2018
(Arising out of S.L.P. (Civil) Nos. 19832-19838 OF

Narendra Kumar Tiwari & Ors. Etc.

versus

The State of Jharkhand & Ors. Etc.

JUDGMENT

Madan B. Lokur, J.

1. Leave granted.

2. These appeals arise out of the common judgment and order dated 17th November, 2016 passed by a Division Bench of the High Court of Jharkhand in a batch of writ petitions relating to the regularisation of daily wage or contract workers on different posts. The writ petitioners (now appellants) were denied the benefit of regularisation in view of the provisions of the Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015 (hereinafter referred to as the Regularisation Rules).

3. The admitted position is that the appellants are irregularly appointed employees of the State Government. They sought regularisation of their status on the ground that they had put in more than 10 years of service and were therefore entitled to be regularised. The High Court took the view that the decision of the Constitution Bench of this Court in *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.*¹ did not permit their regularisation since they had not worked for 10 years on the cut-off date of 10th April, 2006 when the Constitution Bench rendered its decision. According to the High Court, the Regularisation Rules provided a one-time measure of regularisation of the services of irregularly appointed employees based on the cut-off date of 10th April, 2006 in terms of the judgment of the Constitution Bench. Therefore, since the appellants had not put in 10 years of service they could not be regularised.

4. The appellants had contended before the High Court that the State of Jharkhand was created only on 15th November, 2000 and therefore no one could have completed 10 years of service with the State of Jharkhand on the cut-off date of 10th April, 2006. Therefore, no one could get the benefit of the Regularisation Rules which made the entire legislative exercise totally meaningless. The appellants had pointed out in the High Court that the State had issued Resolutions on 18th July, 2009 and 19th July, 2009 permitting the regularisation of some employees of the State, who had obviously not put in 10 years of service with the State. ¹(2006) 4 SCC 1 Consequently, it was submitted that the appellants were discriminated against for no fault of theirs and in an irrational manner.

5. Having heard learned counsel for the parties and having considered the decision of the Constitution Bench in *Umadevi (3)* as well as the subsequent decision of this Court explaining *Umadevi (3)* in *State of Karnataka and Ors. v. M.L. Kesari and Ors.*², we are of the view that the High Court has erred in taking an impractical view of the directions in *Umadevi (3)* as well as its consideration in *Kesari*.

6. The decision in *Umadevi (3)* was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily wage workers and continuing with them indefinitely. In fact, in paragraph 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

7. The concept of a one-time measure was further explained in *Kesari* in paragraphs 9, 10 and 11 of the Report which read as follows:

2 (2010) 9 SCC 247 “9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi (3)*, 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, regularise their services.

10. 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 regularisation 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 regularisation, 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 regularisation 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 regularisation. The fact that the employer has not undertaken such exercise of regularisation 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 regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

8. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were

irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants.

13. The appeals are accordingly disposed of.

14. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.

.....J.
(Madan B. Lokur)

New Delhi;
August 01, 2018

.....J.
(Deepak Gupta)