Govt. Of A.P. & Ors vs K. Brahmanandam & Ors on 29 April, 2008

Equivalent citations: AIR 2008 SUPREME COURT 3170, 2008 (5) SCC 241, 2008 AIR SCW 5352, 2009 (2) SERVLJ 323 SC, 2008 (7) SCALE 685, (2009) 2 SERVLJ 323, 2008 (6) SRJ 516, (2008) 117 FACLR 1086, (2008) 3 SCT 103, (2008) 5 SERVLR 247, (2008) 7 SCALE 685, (2008) 2 ESC 313

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Bench: S.B. Sinha, Lokeshwar Singh Panta

CASE NO.:
Appeal (civil) 3043 of 2008

PETITIONER:
Govt. of A.P. & Ors.

RESPONDENT:
K. Brahmanandam & Ors.

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:

J U D G M E N T REPORTABLE CIVIL APPEAL NO. 3043 OF 2008 [Arising out of SLP (Civil) No. 20561 of 2006] S.B. SINHA, J :

1. Leave granted.

2. Whether the State or the Educational Institution is liable to bear the financial burden for payment of wages to the concerned respondents herein is the question involved in this appeal which arises out of a judgment and order dated 25.08.2005 passed by the High Court of Andhra Pradesh in Writ Appeal No. 1321 of 2001.

3. Respondents, seven in number, were appointed as Secondary Grade Teachers in Church of South India, UP Elementary School. Allegedly, the provisions of the rules had not been followed in recruiting the teachers. Indisputably, such rules of recruitment had been laid down by G.O.Ms. No. 1 dated 1.01.1994. The said rules were framed by the State in exercise of its power conferred upon it under Section 99 read with Sections 20, 21, 79, 80 and 83 of the Andhra Pradesh Education Act, 1982 known as the Andhra Pradesh Educational Institutions (Establishment, Recognition,

Administration and Control Of Schools Under Private Managements) Rules, 1993 (for short "the Rules").

4. The Rules categorized several schools; Upper Primary Schools being one of them. The Rules defines the "Educational Agency" in Rule 2(1)(b) to mean "the Society/ Trust/ Association including Endowment, Board/ Wakf Board and Christian Mission (Church/ Diocese or Congregation) and the like, sponsoring/ managing/ running the schools". "Minority Educational Institution" has been defined in Rule 2(f) of the Rules to mean "any educational agency of which at least 2/3rd members belong to a religious / linguistic minority".

5. Rule 7 of the Rules provides for scrutiny and grant of permission on an application filed therefor by the institution in question. Rule 9 provides for the manner in which recognition can be granted. Rule 10 provides for the conditions for grant of permission and recognition. Rule 12 provides for the appointment of staff. Sub-Rule (3) of Rule 12 mandates that advertisement for recruitment shall be made at least in two newspapers having large circulation. The Employment Exchange is also required to be notified in regard to the vacancies. A Staff Selection Committee constituted for undertaking the recruitment process is to consist of a nominee of the District Educational Officer not below the rank of Deputy Educational Officer. Sub-Rule (8) of Rule 12 provides that all appointments should be subject to the approval of the competent authority.

6. It is stated that the management of the institution, before the recruitment of the respondents, neither obtained any prior permission from the District Educational Officer nor made advertisement in two newspapers nor notified the vacancies to the Employment Exchange. Even no order of approval as regards the said appointments was obtained from the District Education Officer.

The State contends that the selection process had been undergone hurriedly, which created a lot of suspicion.

Respondents, however, contend that they were appointed as Secondary Grade Teachers at different places through due selection process and they had been performing their duties to the utmost satisfaction of the authorities of the concerned schools. Indisputably, their salaries had not been paid. They made representations therefor. Their representations were rejected by the District Education Officer by an order dated 10.12.1999.

7. Respondents thereafter filed writ petitions before the High Court. The State filed a counter affidavit wherein it was inter alia contended that the writ petitioners respondents had been appointed through side door(s) by the then Correspondent Rev. Prasad Rao in collusion with the teachers concerned as also the then Education Officer.

A learned Single Judge of the High Court relying on the principles laid down by this Court in Ashok Kumar Yadav v. State of Haryana [AIR 1987 SC 454] as also on the premise that the said respondents have been working for several years and as furthermore they possessed minimum qualification held that only because the procedural aspects had not been followed as per the said GOMs No. 1 dated 1.01.1994 and other directions from time to time, the same would not be a bar for grant of relief in their favour, stating:

> "In my considered view, the same principle will also apply to the facts of this case. Admittedly, the petitioners are continuing in service for more than

8 years and it would be inequitable to disturb them at this distance of time."

8. On an intra court appeal having been filed, a Division Bench of the said Court dismissed the appeal, stating :

> "The main grievance of the respondents is that though they were appointed as Secondary Grade Teachers, through due selection process, neither their appointments were approved nor they were paid any salary till date. In earlier round of litigation, in W.P. No. 9616 of 1995, this court directed the authorities concerned to consider the proposals sent by the Management on 1.4.1996 and take appropriate decision. In pursuance thereof, the fourth appellant passed orders on 10.12.1999 rejecting the cases for approval. The case of the respondents is that they have put up sufficient length of service. The learned Single Judge placed reliance on the Judgment cited supra and held that it would be unjust to disturb the respondents after eight years of service and accordingly set aside the impugned order passed by the fourth appellant. In the above background of the case, we are of the opinion that the learned Single Judge has arrived at a just conclusion and the same, in our considered opinion, deserves no interference."

9. Mr. R. Sundraravardhan, learned senior counsel appearing on behalf of the appellants, would submit that the State has no liability to pay the salary of the concerned teachers keeping in view the fact that their services had not been approved. The learned counsel would further contend that it is not even a case where paragraph 53 of the Constitution Bench decision of this Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1] would apply.

10. Mr. G. Ramakrishna Prasad, learned counsel appearing on behalf of the respondents, on the other hand, would contend that in view of passage of time and particularly in view of the fact that the respondents had been continuing to work for a long time, this Court should not interfere with the impugned judgment.

11. The liability of the State to pay salary to a teacher appointed in the recognized schools would arise provided the provisions of the statutory rules are complied with, subject to just exception. The right to claim salary must arise under a contract or under a statute. If such a right arises under a contract between the appointee and the institution, only the latter would be liable therefor. Its right

in certain situation to claim reimbursement of such salary from the State would only arise in terms of the law as was prevailing at the relevant time. If the State in terms of the statute is not liable to pay the salary to the teachers, no legal right accrues in favour of those who had been appointed in violation of mandatory provisions of the statute or statutory rules.

12. The equality clause contained in Articles 14 and 16 of the Constitution of India, it is trite, must be scrupulously followed. The court ordinarily would not issue a writ of or in the nature of mandamus for regularization of the service of the employee which would be violative of the constitutional scheme.

13. Appointments made in violation of the mandatory provisions of a statute would be illegal and, thus, void. Illegality cannot be ratified. Illegality cannot be regularized, only an irregularity can be. The said legal principle has been enunciated by a Constitution Bench of this Court in Umadevi (3) (supra), para 53 whereof 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, 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 regularisation 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 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 regularisation, 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 regularising or making permanent, those not duly appointed as per the constitutional scheme."

[Emphasis supplied]

14. We are not unmindful of the fact that the said paragraph has been interpreted differently by different Benches. Some benches have remitted the matter back to the tribunal/authorities for consideration of the matter afresh in the light of the said observations, e.g., in Mineral Exploration Corporation Employees' Union v. Mineral Exploration Corporation. Ltd. and Anr. [(2006) 6 SCC 310], it was directed :

> "We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi (3) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal."

15. On the other hand, in some of the cases, the said paragraph, for example, in the decision of this Court in Municipal Corporation, Jabalpur v. Om Prakash Dubey [(2007) 1 SCC 373] had been applied to the following effect:

> "The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to."

[See also Punjab Water Supply & Sewerage Board v. Ranjodh Singh and Others etc. (2007) 2 SCC 491, Punjab State Warehousing Corp., Chandigarh v. Manmohan Singh and Anr., 2007 (3) SCALE 401 and Post Master General, Kolkata & Others v. Tutu Das (Dutta) 2007 (6) SCALE 453]

16. In the light of the decision of this Court in Umadevi (3) (supra), para 53 thereof would be applicable subject to the condition that the matter had not been pending before any court or tribunal. Indisputably, the litigation between the parties was pending since January, 2000. The institution's application for approval of the said appointments had been rejected. Therefore, para 53 of Umadevi (3) (supra) has no application.

17. Even in relation to application of the concept of equal pay for equal work, the Constitution Bench held:

> "44. The concept of "equal pay for equal work"

is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has

in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."

18. In view of the decision in Umadevi (3) (supra), we are of the opinion that the question of regularizing the services of the respondents does not arise. Respondents writ petitioners (teachers), however, are entitled to salary from the school authorities as they have worked even if no valid contract had come into being. The salary amount would be payable in terms of Section 70 of the Indian Contract Act. The principles of quasi-contract, however, must apply keeping in view the relationship between the parties. The doctrine of quasi-contract cannot be applied in a situation of this nature as against the State.

19. For the reasons aforementioned, the appeal is allowed to the aforementioned extent. It would, however, be open to the school authorities to take such action, as it may deem fit and proper, in the light of the decision of this Court in Umadevi (3) (supra). No costs.