State Of Jharkhand & Ors vs Kamal Prasad & Ors on 23 April, 2014

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Author: V. Gopala Gowda

Bench: V. Gopala Gowda, Gyan Sudha Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4809 OF 2014
(ARISING OUT OF SLP(C) 266 OF 2012)

STATE OF JHARKHAND & ORS. ……APPELLANTS

VS.

KAMAL PRASAD & ORS. ……RESPONDENTS

With

CIVIL APPEAL NO.4837 OF 2014
(ARISING OUT OF SLP(C) NO. 21936 of 2013)

CIVIL APPEAL NO.4810 OF 2014
(ARISING OUT OF SLP(C) NO. 34437 of 2012)

CIVIL APPEAL NO.4811 OF 2014
(ARISING OUT OF SLP(C) NO. 36515 of 2012)

CIVIL APPEAL NO.4812 OF 2014

(ARISING OUT OF SLP(C) NO. 37628 of 2012)

CIVIL APPEAL NO.4813 OF 2014
(ARISING OUT OF SLP(C) NO. 37701 of 2012)

CIVIL APPEAL NO.4814 OF 2014
(ARISING OUT OF SLP(C) NO. 37702 of 2012)

CIVIL APPEAL NO.4815 OF 2014
(ARISING OUT OF SLP(C) NO. 37740 of 2012)

CIVIL APPEAL NO.4816 OF 2014
(ARISING OUT OF SLP(C) NO. 37819 of 2012)

CIVIL APPEAL NO.4817 OF 2014
(ARISING OUT OF SLP(C) NO. 37834 of 2012)

CIVIL APPEAL NO.4818 OF 2014
(ARISING OUT OF SLP(C) NO. 37850 of 2012)

CIVIL APPEAL NO.4819 OF 2014
(ARISING OUT OF SLP(C) NO. 37864 of 2012)

CIVIL APPEAL NO.4820 OF 2014
(ARISING OUT OF SLP(C) NO. 37930 of 2012)

CIVIL APPEAL NO.4821 OF 2014
(ARISING OUT OF SLP(C) NO. 37952 of 2012)

CIVIL APPEAL NO.4822 OF 2014
(ARISING OUT OF SLP(C) NO. 37981 of 2012)

CIVIL APPEAL NO.4823 OF 2014
(ARISING OUT OF SLP(C) NO. 38012 of 2012)

CIVIL APPEAL NO.4824 OF 2014
(ARISING OUT OF SLP(C) NO. 38039 of 2012)

CIVIL APPEAL NO.4825 OF 2014
(ARISING OUT OF SLP(C) NO. 38044 of 2012)

CIVIL APPEAL NO.4826 OF 2014
(ARISING OUT OF SLP(C) NO. 38053 of 2012)

CIVIL APPEAL NO.4827 OF 2014
(ARISING OUT OF SLP(C) NO. 38224 of 2012)

CIVIL APPEAL NO.4828 OF 2014
(ARISING OUT OF SLP(C) NO. 38237 of 2012)

CIVIL APPEAL NO.4829 OF 2014
(ARISING OUT OF SLP(C) NO. 38242 of 2012)

CIVIL APPEAL NO.4830 OF 2014
(ARISING OUT OF SLP(C) NO. 38267 of 2012)

CIVIL APPEAL NO.4831 OF 2014
(ARISING OUT OF SLP(C) NO. 38323 of 2012)

CIVIL APPEAL NO.4832 OF 2014
(ARISING OUT OF SLP(C) NO. 38341 of 2012)

CIVIL APPEAL NO.4833 OF 2014
(ARISING OUT OF SLP(C) NO. 38404 of 2012)

CIVIL APPEAL NO.4834 OF 2014
(ARISING OUT OF SLP(C) NO. 38408 of 2012)

CIVIL APPEAL NO.4835 OF 2014
(ARISING OUT OF SLP(C) NO. 39206 of 2012)

AND

CIVIL APPEAL NO.4836 OF 2014
(ARISING OUT OF SLP(C) NO. 93 of 2013)

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted in all the Special Leave Petitions.

2. These Civil Appeals are filed by the appellant-State of Jharkhand questioning the legality of the impugned judgment and order dated 08.11.2011 passed by the High Court of Jharkhand in Letters Patent Appeal No. 256 of 2011 and connected cases which allowed the appeals of the respondent-writ petitioners by setting aside the judgment dated 25.07.2011 passed by the learned single Judge whereby the writ petitions of the respondent-employees were dismissed and the Interlocutory Application No. 3223 of 2011 was allowed after quashing the show cause notices issued and orders of termination of services of the respondent-employees. The Division Bench of the High Court by framing certain substantial questions of law has held that the respondents herein shall be entitled to all the consequential benefits. The appellants being aggrieved of the impugned judgment and orders have filed these Civil Appeals by urging various facts and legal grounds in support of the same and prayed to set aside the impugned judgment and orders by allowing the Civil Appeals.

3. Certain relevant facts are stated for the purpose of appreciating the rival legal contentions urged on behalf of the parties with a view to examine the correctness of the findings and reasons recorded by the Division Bench of the High Court in the impugned judgment and further to find out as to

whether the impugned judgment and orders warrant interference by this Court in exercise of its appellate jurisdiction in these Civil Appeals.

4. The respondent-employees (the writ petitioners before the High Court), were initially appointed in the year 1981 in the posts of Junior Engineers in the Rural Development Department in the erstwhile State of Bihar in respect of which the recommendation of the Bihar Public Service Commission (for short "the BPSC") was not required. It is the case of the respondent-employees that they have continuously discharged their duties in the above posts honestly and diligently to the satisfaction of their employer. They were subsequently appointed on ad-hoc temporary basis as Assistant Engineers in the pay-scales of [pic]1000-50-1700 P.Ro-10-1820/-, with certain conditions on the basis of recommendation made by the BPSC against temporary posts from the date of notification. Their services as Assistant Engineers on ad-hoc basis were entrusted to work in the Road Construction Department where they were required to contribute their work within the stipulated period. The relevant condition No. 2 in the said notification No. Work/G/1-402/87,248/(S) Patna dated 27.6.1987 is extracted hereunder:-

"1. XXX XXX XXX

2. This ad-hoc appointment shall be dependent on approval of Bihar Public Service Commission.

3. XXX XXX XXX ....." It is their further case that they have been working in the said posts for more than 29 years from the date of first appointment as Junior Engineers and 23 years from the appointment in the posts of Assistant Engineers on ad- hoc basis. Neither the BPSC nor Bihar State Government nor Jharkhand State Government had intention to dispense with the services of these employees. Therefore, they did not take steps to dispense with their services from their posts. The employees approached the High Court when they were issued the show cause notices dated 20.4.2010 by the appellant No.3. After taking substantial work from the respondent-employees they have been harassed by issuing show cause notices asking them to show cause as to why their services should not be terminated on the ground of their appointment to the posts as illegal/invalid. Their appointments were, however, not held to be invalid either by the orders of the High Court or Supreme Court in spite of the fact that 199 posts filled up by advertisement No.128/1996 issued by the BPSC dated 2.9.1996 as the same would not affect the respondent- employees who otherwise have been in continuous service for more than 23 years in the substantial posts of Road Construction Department and not of Rural Engineering/Rural Works Department. Therefore, it was pleaded by them that the impugned notices issued to them was an empty formality with preconceived decision and the same is also not only discriminatory but also suffers from legal malafides, arbitrariness, unreasonableness and is in utter transgression of the interim order dated 22.3.2010 passed in W.P. (S) No. 1001 of 2010 amounting to overreaching the majesty of the High Court.

5. They further sought for declaration that since the services of the respondent-employees fortuitously fall in the territory of Jharkhand State with effect from 15.11.2000 and no final cadre division of their services has been made till date after tentative allocations were made vide order dated 20.12.2006 by the Central Advisory Committee within the meaning of Section 72 read with

Section 73 of the Bihar Re-organization Act, 2000, it is pleaded that the appellant-State of Jharkhand and its instrumentalities have no unilateral power and jurisdiction to take any such decision to their disadvantage as they were appointed before the date of establishment of Jharkhand State. Therefore, the impugned notices issued unilaterally by the appellant-State to the respondent-employees declaring their services as illegal is not only a colourable exercise of its power but also whimsical, discriminatory and thereby its action is in violation of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

6. Further, direction was sought by the respondent-employees from the High Court in the Writ Petitions to treat them equally at par with similarly situated 120 persons appointed along with them who fortuitously remained working in the territory of successor State of Bihar namely, after the Jharkhand State was formed w.e.f. 15.11.2000 without any disturbance and consider their claim for regularization along with them in terms with the conscious Policy decision taken by it vide notification No. 10113(s) dated 11.09.2009 by the Cadre Controlling State of Bihar and in pursuance thereof the respondent-employees have also applied for the same and which is in active consideration of the State of Jharkhand and further they sought for issuance of a writ of prohibition restraining the appellants from termination of their services from their posts in pursuance of the impugned show cause notices as they had seriously apprehended in the light of pre-decisive and prejudicial findings and reasons recorded in the impugned notices in the garb of order dated 22.3.2010 passed in W.P.(S) No. 1001 of 2010, that their services might be terminated. However, the fact remains that they are discharging their regular service to the appellants (although their posts are termed as ad-hoc in nomenclature) for more than 29 years from the initial appointment as Junior Engineers since the year 1981 after following due procedure of Advertisement etc. and their services have been upgraded to the posts of Assistant Engineer again on temporary basis in 1987 pursuant to Cabinet decision of the erstwhile State of Bihar Government with the permission of BPSC who had recognized their qualification of degree and experience. Therefore, their appointment to the posts is legal and valid from their date of inception of their original appointment as Junior Engineers in the erstwhile State Government of Bihar.

7. The said writ petitions were opposed by the appellants herein urging various facts and legal contentions in justification of their claim and the reasons assigned in the show cause notices and opposed the prayers of the respondent-employees, which case of them is not accepted by the learned single Judge and consequently dismissed their writ petitions by judgment dated 25.7.2011. Aggrieved by the said judgment and orders, they filed Letters Patent Appeals before the Division Bench of the High Court urging various grounds.

8. The correctness of the same was challenged by the appellants before the Division Bench in the Letter Patent Appeal No. 256 of 2011 and other connected LPAs. The learned senior counsel for the parties were heard at length. After considering the rival legal contentions and noticing the relevant facts of these cases it was held by the Division Bench of the High Court that 200 posts have been created by the erstwhile State Government of Bihar in Rural Engineering Organization of the Road Construction Department and the said posts have been advertised by the department in Advertisement No. 13 of 1985 and against those posts the respondent-employees and other similarly placed employees were appointed after selection to the posts of Assistant Engineers on ad hoc basis

with permission of the BPSC and they continued as such in the said posts. On 15.11.2000, the State of Jharkhand was created by bifurcation of the State of Bihar by the Act of Bihar Reorganisation Act, 2000. It is the case of the respondent-employees that as per Section 72 of the Act of 2000, the persons who were working in the posts falling in the territory of the State of Bihar were to continue in the posts in the State of Jharkhand. It is not in dispute that the said employees continued in the employment in the State of Jharkhand after creation of new State. Thereafter, an order was passed by the High Court on 22.3.2010, in the Writ Petition No. 1001 of 2010 filed by Kamal Prasad & Ors. which is produced on record as Annexure-15 in the L.P.As. On the basis of the said order, the State Government of Jharkhand unilaterally decided that the appointment of the respondent-employees were not valid and accordingly it had directed that they should go back to the State of Bihar. The said action of the State of Jharkhand was found fault with by the High Court. The High Court, in the case of Ram Swarath Prasad v. State of Jharkhand & Ors.[1] has held that the said power was not available with the State Government of Jharkhand i.e. to pass unilateral order directing the respondent-employees to go back to the State of Bihar, which action of it is not in consonance with Section 72 of the Bihar Reorganisation Act, 2000. This aspect was also observed by the learned single Judge in his judgment impugned in the LPAs filed by the respondent employees. However, it was observed that it is open to the appropriate authorities having power to take reasonable decision after issuing show-cause notices to the employees with regard to the final allocation of the cadre to the State of Jharkhand in accordance with law. The State Government of Jharkhand had interpreted the order dated 22.3.2010 as a direction to it and it had proceeded to terminate the services of these employees. The State Government took a decision to terminate the services of all such engineers including the respondent- employees in these appeals and notices were issued to them and the same were stayed in the interlocutory application filed by the respondent- employees and status-quo order dated 9.9.2010 was passed as per Ann.-18 in the Writ Petition(S)No.2087 of 2010. Finding the said situation, the State Government submitted that they are keeping the order of termination of services of the respondent-employees and similarly situated employees in abeyance. The State Government rejected the representations of the respondent-employees and terminated their services vide separate but similar orders dated 24.8.2011. The orders of termination were questioned by the respondent–employees by filing interlocutory application in the Letters Patent Appeals questioning their propriety, correctness and legality of the orders of termination passed against them and action taken by the State Government of Jharkhand against them. In the Letters Patent Appeals, the Division Bench of High Court on 13.9.2011 passed an interim order directing the appellants to maintain status-quo and the respondent- employees were allowed to work in the posts. The Division Bench accepted the factual and legal submissions urged on behalf of the employees that they were appointed as back as in the year 1981 in the posts of Junior Engineers which were not illegal or even irregular and they are qualified persons and eligible to hold the posts. They rendered their services satisfactorily and therefore, the State Government of Bihar has appointed them in the posts of Assistant Engineers by the order of the Government dated 27.6.1987 and continued them in their services as such till the orders of termination passed against them on 24.08.2011, that too during pendency of the Letters Patent Appeals before the Division Bench of the High Court. It is observed by the Division Bench that the respondent- employees have been in service independent of any interim order passed by the court. The State Government was in need of Junior Engineers, therefore, the State Government of Bihar allowed the services of the respondent-employees in the posts. Thereafter, the State Government of Bihar has decided to appoint them in the posts of

Assistant Engineers and it was under the impression that their names will be recommended by the BPSC. After accepting the case of the respondent-employees that since 1987 till 2011 when the orders of termination of service were passed, they continued in service and their salaries were paid with other service benefits including increments and they were duly transferred from the State of Bihar to the State of Jharkhand when it was formed and they were treated as regular appointees for which the Jharkhand State Government did not object their continuance in their services. The Order dated 22.3.2010 passed by the High Court in the writ petitions referred to supra seems to have been interpreted by the officers of the Jharkhand State Government as a direction to it to proceed with to terminate the services of the respondent-employees. The Division Bench of the High Court after referring to the case of Secretary, State of Karnataka & Ors. v. Umadevi & Ors.[2], has clearly held that if a person has served for 10 years or more, then it is the duty of the State Government to consider his case for regularization in the post. The said conclusion came to be reached by relying on Articles 309, 14, 16 of the Constitution of India. Relying upon Umadevi & Ors. (supra), the High Court has further referred to the judgment in the State of Karnataka & Ors. v. M.L. Kesari & Ors.[3] which is considered by this Court and this Court has clearly held that the case of Umadevi & Ors. (supra) cast a duty upon the State Government to take steps to regularize the services of those irregularly appointed appointees, who had served for more than 10 years without the benefit or protection of any interim order. Further in the said case, this Court has declared that it has been clearly ordered that one time settlement/measure should be taken within six months i.e. from 10.04.2006. With reference to the aforesaid decision the learned senior counsel appearing on behalf of the respondent-employees placed reliance upon Article 142 of the Constitution in support of the submission that order of the Supreme Court be respected and implemented by its true meaning and spirit. Therefore, the Division Bench of the High Court accepted the same and came to the conclusion that the claims of the respondent-employees for regularization in their posts are fit cases and they became unfortunate only because of the creation of the State of Jharkhand over which the employees had no control and could not have prevented creation of the State of Jharkhand and because of that reason only, one State cannot take a different stand with respect to the employees appointed by same process. The State Government cannot throw the employees jobless after 30 years of their continuous service in public employment guaranteed under Article 16 of the Constitution, which would result in great injustice since their source of income will be taken away and thereby the employees and their families will suffer due to the arbitrary action of the State Government of Jharkhand which deprived a person of life and liberty guaranteed under Articles 19 and 21 of the Constitution of India.

9. The said legal contention urged on behalf of the respondent-employees has been vehemently opposed by the learned Advocate General appearing on behalf of the appellant-State before the High Court who sought to distinguish the ratio laid down in the aforesaid case to the facts situation in the present case and he further contended that the said decision has no application to the cases on hand which contention is rejected by the Division Bench of the High Court.

10. It is contended by the learned Advocate General that jurisdiction of the High Court in the Letters Patent Appeal is limited to the extent of the scope of writ petitions. Therefore, the same cannot be enlarged by the Division Bench of the High Court. It is further submitted by him that the respondent-employees in the writ petitions have not prayed for regularization of their services, and

therefore, they are not entitled to any relief in the Letters Patent Appeals.

11. With reference to the aforesaid rival contentions, the Division Bench, by recording its finding at paras 21, 22 and 31 of the impugned judgment, has accepted the case of the respondent-employees and allowed their letters patent appeals by setting aside the judgment and order dated 25.7.2011 of the learned single Judge.

12. During pendency of the Letters Patent Appeals, the State Government rejected their representations and terminated the services of the respondent-employees vide separate but similar orders dated 24.8.2011 against each one of them. Therefore, they have submitted interlocutory application in the letters patent appeals before the Division Bench of the High Court HHigHquestioning the propriety and legality of their orders of termination passed by the State Government. In the Letters Patent Appeals on 13.9.2011, an interim order was passed directing the State Government of Jharkhand to maintain status quo that is, to allow the respondent-employees to work in the posts by it. The court also set aside the orders of termination by allowing the interlocutory application and also quashed the show cause notices and further held that the respondent-employees are entitled to the consequential benefits.

13. The correctness of the judgment and orders is challenged by the appellants in these Civil Appeals by framing various questions of law and urging grounds in support of the same and praying to set aside the same. The learned senior counsel, Mr. P.P. Rao appearing on behalf of the appellants submitted that the order of termination of services of the respondent-employees - ad hoc Assistant Engineers in the instant case, is the necessary consequence of implementation of the judgment and order dated 8.4.1996 of this Court in C.A. No. 7516-20 of 1996 – Bihar State Unemployed Civil Engineers Association & Ors. v. State of Bihar & Ors. Etc.[4] as the respondents have failed to get selected by BPSC. Therefore, they have no legal right to challenge implementation of the said judgment dated 8.4.1996 as modified by subsequent order dated 23.10.1996 in IA No. 327/1996 permitting the State Government to relax the age of the respondent- employees. In support of the first submission, he contends that the cut-off date for consideration of case of ad-hoc employees who have worked for 10 years or more in the duly sanctioned posts, but under the cover of orders of the court, is not covered by the case of Uma Devi & Ors. (supra) which was decided on 10.4.2006 and the time granted to the State Government for setting in motion the process of regularisation of ad hoc employees is “within six months from the date” i.e. till 9.10.2006.

It is further contended by the learned senior counsel on behalf of the appellants Mr. P.P. Rao that regularisation were allowed by the High Court in those cases where appointments could not have been made without recommendation of the BPSC and in view of the Articles 309 and 16 of the Constitution of India, no appointment could have been made by the State Government to any post much less the respondent-employees in violation of the Recruitment Rules. Therefore, the illegal appointments of the respondent-employees cannot be regularized by the State Government and the High Court can not give direction in this regard.

14. In view of the said decisions, according to the learned senior counsel, two questions would arise for consideration of this Court :-

i) Whether the respondent-employees worked till 10.4.2006 without any interim order of any court?

ii) Were they appointed in duly sanctioned posts?

However, the Division Bench of the High Court instead of addressing these two questions, posed the question as to whether ad hoc employees who have served for more than 10 years stand disqualified from regularisation on the ground that they did not participate in any other appointment process. It is the contention of the learned senior counsel for the appellants that the repeated finding of the High Court that the respondent-Assistant Engineers were continuing in service uninterruptedly with the employer for more than 10 years, is factually incorrect statement of fact. Therefore, the finding recorded in the impugned judgment by the Division Bench of the High Court at paragraphs 23, 25 and 26 is erroneous and the same cannot be allowed to sustain by this Court for the reason that they continued in their service at least following six interim orders passed by the High Court all of which were prior to 10.4.2006, the cut-off date mentioned in Uma Devi (supra) for considering the question of regularisation of ad hoc employees and therefore the said decision does not apply to the present cases. According to him, the dates on which the interim orders passed in different writ petitions are mentioned hereunder :-

|S. No. |Date of Order |Case No. |Cause Title |Vol./Pages | |1. |15.12.1996 |CWJC No. 9420 of |Paras Kumar v. State|Vol. II pp. | | | |1996 |of Bihar |20-21 | |2. |20.6.1997 |CWJC No. 11761 of|Sardar Pradeep Singh|Vol.II p.22 | | | |1996 |v. State of Bihar | | |3. |4.4.2002 |CWJC No.2606 of |Jawahar Prasad |Vol.1 pp 84 | | | |2002 |Bhagat v. State of |and 86 | | | | |Bihar | | |4. |4.4.2002 |CWJC No.4327 of |Akhilesh Prasad v. | | | | |2002 |State of Bihar | | |5. |4.4.2002 |CWJC No.4365 of |Vijay Kumar Sharma | | | | |2002 |v. State of Bihar | | |6. |8.1.2003 |CWJC No.2087 of | |Vol.I p.147 | | | |2010 as noticed | |at | | | |in the present | |pp.163-164 | | | |case i.e. W.P No.| | | | |2087 of 2010 | | |

15. In support of second legal submission formulated above, the learned senior counsel has submitted that neither the judgment in Umadevi's case (supra) nor in U.P. State Electricity Board v. Pooran Chandra Pandey & Ors.[5] is applicable to the cases in hand in favour of the respondent-

employees. It is further submitted that the Division Bench of the High Court has erroneously applied to the cases of respondent-employees and the directions contained at para 53 of Umadevi's case since the respondents continued in service with the appellants at the instance of court's interim orders passed in writ petitions referred to supra which has been established by the appellants. He has also placed reliance upon the judgment of this Court in the case of Amrit Lal Berry v. Collector of Central Excise, New Delhi & Ors.[6] In support of his legal contention that respondent-employees continued in service with the State Governments of Bihar and Jharkhand, the learned counsel stated that similarly placed employees had approached the High Court seeking certain reliefs and they had obtained interim orders. Hence, the benefit of said interim order passed by the High Courts of Patna and Jharkhand has been extended to the respondent-employees and therefore they were continued

in services by applying the law laid down by this Court in the aforesaid case. Therefore, the finding recorded by the Division Bench accepting the submission on behalf of the respondent-employees in these appeals that the respondent- employees continued in service uninterruptedly without the interim orders, is factually not correct. Therefore, the learned senior counsel for appellants contends that the said finding is not only erroneous but also suffers from error in law. Hence, the impugned judgment and orders are liable to be set aside. He further contends that in view of the above contentions, the respondent-employees are not entitled for the reliefs granted by the Division Bench of the High Court in the impugned judgment and orders and therefore, he has prayed for setting aside the same by allowing these Civil Appeals.

16. The aforesaid submissions made by the learned senior counsel on behalf of the appellants were rebutted by the learned senior counsel, Mr. J.P. Cama appearing on behalf of the respondent-employees justifying the reasons recorded in the impugned judgment contending that the respondent- employees were appointed as Junior Engineers in the year 1981 in the Rural Department of the State of Bihar and in the year 1985 when regular appointments were to be made to the Posts of Assistant Engineers in pursuant to an advertisement made in the year 1985 itself, the respondents applied for the same but did not succeed and therefore, they were put in the waiting list. However, their services were not terminated even after regular appointments were made to the posts in the year 1985 as contended by the appellants. Their services were not dispensed with because their work was good and they were appointed as Assistant Engineers by order of the Bihar State Government dated 27.6.1987 and thereafter they continued in service without break in their service till the orders of termination dated 24.8.2011 passed against them. It is further contended that even after bifurcation of the appellant-State of Jharkhand from State of Bihar on 15.11.2002, the respondent-employees continued in employment without any break. It is contended that the existence of vacancies of Assistant Engineers in the Rural Development Department in the erstwhile State of Bihar is not in dispute. The existence of vacancies in the said posts is not denied by the appellant-State as there were 207 vacancies as on 2010. Therefore, they continued in service though they were appointed by order of the State Government on 27.6.1987 on ad hoc basis but continued as such till the termination orders were passed against them. They were being paid regular salary and other service benefits were given to them thereby treating them as permanent employees by the appellants. He further contended that the Division Bench in its judgment has held that the State Public Service Commission merely examined suitability of eligible candidates for the posts and recommended the names of such suitable candidates for appointment to the posts. In the case on hand, it is not the position of the State Government that these employees holding the posts of Assistant Engineers and rendering their services are not suitable persons to hold the posts. It is further contended that interim stay was granted by the High Court in the cases of the respondent-employees for the first time on 9.9.2010. Therefore, it is not correct to state that they continued in the service with the intervention of interim orders of the High Courts as urged by the appellants' senior counsel and therefore, they are not entitled to the benefit of the decision of Umadevi's case (supra). Further, the learned senior counsel contends the core questions involved in the case in hand are:-

> (1) Whether the services of the respondent-employees should have been considered for regularization by the State Government even though in the first instance they did

not obtain selection through the Public Service Commission and on the 2nd occasion they did not participate in the selection process?

(2) Whether, they were entitled to claim regularization based only on the fact they had worked for more than 10 years of service continuously with the appellants?

He further submits that the High Court, considering the law declared in Umadevi's case (supra) at para 53 and also keeping in view the justice and good conscious, has granted the relief to the respondent-employees. The same cannot be termed either as erroneous or error in law. Further, it is contended that the Division Bench of the High Court of Jharkhand has rightly rejected the contentions urged by the Advocate General to the effect that the persons who are appointed on ad hoc/temporary basis had an opportunity to get another appointment in regular selection and they failed to participate in the selection process, therefore the same would not be a ground for the appellants to refuse regularization of service of the respondent-employees, even after they have not availed such opportunity. The employer State Government did not choose to dispense with their services though there is no restraint order from the court. In the cases in hand, both the Government of State of Bihar and Jharkhand have continued the service of all the respondent-employees for 10 or more years even after they failed to get appointed to the posts on a regular basis. Therefore, the principle laid down in Umadevi's case (supra) would squarely apply in the case in hand in support of the respondent-employees. The submission made by the learned senior counsel on behalf of the appellants that the regularization of the respondent-employees in their service would deprive the other eligible persons from employment is wholly untenable in law as the same would constitute not only discrimination but also deprivation of their livelihood, which is not legally permissible in law. The question is whether the appellants can terminate the services of the present employees who have served for more than 10 to 30 years, thereby rendering injustice to the eligible people. Therefore, in any event, it is doubtful whether the employer, more particularly the State can raise such a plea to deny employment to the employees and whether the law can be interpreted in a manner so as to give all benefits to the wrongdoers. The appointments were given to a large number of engineers by the State Government of Bihar consciously and there is no allegation of unfairness in their appointment which can be said to be tainted or as a result of any nepotism. The error of the State Government of either Bihar or Jharkhand would not justify to throw away the respondent-employees by making them unemployed who have been well-settled in their life since the same would amount to a clear case of discrimination and deprivation of their livelihood. Further, the Division Bench of High Court has rightly held that there is duty cast upon the State Government of Jharkhand to consider the claim of the respondent-employees as one-time regularization of ad-hoc/ temporary employees in their posts. Further, it is contended by the learned senior counsel that similarly situated employees are continuing in service in the State Government of Bihar. Therefore, the relief sought by the respondent-employees' continuation in service, clearly takes care of all the hurdles coming in their way. The Division Bench of the High Court is of the considered opinion that the employees services should have been regularized, but on the other hand, the appellant-State Government, during pendency of the Letters Patent Appeals, has terminated their services. The same cannot be an hurdle for it and it would not come in the way of the appellant-State Government for grant of relief in favour of the respondent- employees. Lastly, it is submitted that there is material distinction between filling up a vacant post by direct recruitment on

the one hand and "regularization" of existing employees in their posts by applying the decision of Umadevi's case (supra) who have served for more than 10 years in the posts with the appellants without the interventions of any interim orders granted by any court. Further, he urges that the principle which flows from the mandate of Articles 14 and 21 of the Constitution of India is supported at paragraph 53 of Umadevi's case (supra). It is further contended that it is not a case of "appointment" as mentioned hereinbefore but it is a case of "regularization". The only qualification for the latter is continuous service of the employees without intervention of the court order for a period of 10 years. Once this takes place, the citizen's right to livelihood as guaranteed under Article 21 as also his/her right to fair treatment and against arbitrary action of the appellants is protected by Article 14 of the Constitution of India. That is the ratio of the impugned judgment of Division Bench of the High Court. The conclusion and the finding and reasons recorded by the Division Bench of the High Court on this aspect of the matter in the impugned judgment is squarely covered by the Constitution Bench decision of this Court in the case of Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.[7] The relevant para's of the same will be extracted in the reasoning portion of the judgment. Therefore, the learned senior counsel has prayed for dismissal of the appeals.

17. All the other learned counsel appearing for the respondent-employees in the connected Civil Appeals have adopted the submission made by the learned senior counsel on behalf of the respondent-employees in the Civil Appeal @ SLP (C) No. 266 of 2012. In view of the above submissions, the learned counsel for the respondent-employees requested this Court for dismissal of the Civil Appeals.

18. With reference to the above said rival legal contentions, urged on behalf of the parties the following points would arise for consideration in these Civil Appeals :-

1) Whether the impugned judgment is correct in holding that the respondents-employees are entitled for the benefit of Umadevi's case (supra) as they rendered more than 10 years of service in the State Government of Jharkhand without intervention of the court?

2) Whether the impugned judgment passed by the Division Bench of High Court is vitiated on account of erroneous finding or suffers from error in law?

3) Whether the impugned judgment warrants interference by this Court in exercise of power under Article 136 of the Constitution of India on the grounds urged in these appeals?

4) What orders?

Answer to Point Nos. 1 & 2:

These points are answered together as they are inter related with each other.

19. The learned senior counsel appearing on behalf of the appellants argued that there have been repeated findings of the High Court that the respondents have been continued in service voluntarily by the employer for more than 10 years. Correctness of the same is disputed by the learned senior counsel for the appellants by placing reliance upon at least six interim orders passed by the High Court all of which are prior to 10-4- 2006, the dates of these Orders are as follows:

i) Order dated 15-12-1996 in CWJC NO. 9420 of 1996- Param Kumar v.

State of Bihar.

ii) Order dated 20-6-1997 in CWJC No. 11761 of 1996- Sardar Pradeep Singh v. State of Bihar.

iii) Order dated 4-4-2002 in CWJC No. 2606 of 2002- Jawahar Prasad Bhagat v. State of Bihar.

iv) Order dated 4-4-2002 in CWJC No. 4327 of 2002- Akhilesh Prasad v. State of Bihar.

v) Order dated 4-4-2002 in CWJC No. 4365 of 2002- Vijay Kumar Sharma v. State of Bihar.

vi) Order dated 8-1-2003 in CWJC No. 2087 of 2010.

Further, two stay orders have also been passed by the High Court subsequent to 10-4-2006, which are (1) Order dated 9-9-2007 of the learned single Judge and (2) Order dated 13-9-2011.

Further, in the case of Uma Devi (supra) it has been held by the Constitution Bench of this Court that:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (supra), R.N.Nanjundappa (supra),and B.N.Nagarajan (supra),and referred to in paragraph 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 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 above referred 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 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 subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making

> permanent, those not duly appointed as per the constitutional scheme." (Emphasis laid by this Court) The learned senior counsel for the appellants placing reliance upon the aforesaid paragraph of the decision submits that the respondents do not fulfil the requirement of 10 years of uninterrupted service which is sine qua non for regularization of the services of the employees in their posts.

Hence, the legal principle laid down by this Court in the aforesaid case cannot apply in the present case, therefore, the respondents are not entitled for regularization.

20. We have heard the factual and legal contentions urged by the learned senior counsel for both the parties and carefully examined the findings and reasons recorded in the impugned judgment with reference to the evidence produced on behalf of the respondent-employees. The evidence on record produced by the respondent-employees would clearly go to show that they have been rendering services in the posts as ad-hoc Engineers since 1987 and have been discharging their services as permanent employees with the appellants. Additional 200 posts were created thereafter by the State Government of Bihar. However, the respondents continued in their services as ad hoc employees without any disciplinary proceedings against them which prove that they have been discharging services to their employers to their satisfaction.

The learned senior counsel on behalf of the appellants have failed to show as to how the interim orders upon which he placed strong reliance are extended to the respondents which is not forthcoming except placing reliance upon the decision of this Court in the case of Amrit Lal Berry (supra), without producing any record on behalf of both the State Governments of Bihar and Jharkhand to substantiate the contention that the interim orders obtained by the similarly placed employees in the writ petitions referred to supra were extended to the respondent-employees to maintain parity though they have not obtained such interim orders from the High Court. Therefore, the learned senior counsel has failed to prove that the respondents have failed to render continuous services to the appellants at least for ten years without intervention of orders of the court, the findings of fact recorded by the Division Bench of the High Court is based on record, hence the same cannot be termed as erroneous in law. In view of the categorical finding of fact on the relevant contentious issue that the respondent-employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in Uma Devi's case (supra) at paragraph 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent- employees are entitled for the relief, the same cannot be interfered with by this Court.

21. In fact, the Division Bench of the High Court by regularizing the respondent-employees vide its impugned order has upheld the constitutional principle laid down by this Court in the case of Olga Tellis (supra), the relevant para of which reads as under :-

> "32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to

deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in Baksey that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. “Life”, as observed by Field, J. in Munn v. Illinois means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P.” (Emphasis laid by this Court) In view of the foregoing reasons which we have assigned in this judgment and in upholding the findings and reasons recorded by the Division Bench of the High Court in the impugned judgment, it cannot be said that the findings and reasons recorded by the High Court in arriving at the conclusions on the contentious issues that arose for its consideration can be termed either as erroneous or error in law.

22. In view of the foregoing reasons, we are inclined to conclude that the High Court was legally correct in extending the benefits of Uma Devi’s case to the respondent-employees. Therefore, we answer point nos. 1 and 2 in favour of the respondent-employees.

23. Though, point Nos. 1 and 2 have been answered in favour of the respondents, the question raised regarding the requirement of interference by this Court under Article 136 of the Constitution of India requires separate and independent consideration by us. In the case of Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Anr.[8], this Court observed as under:

> "33.The discretionary power of the Supreme Court is plenary in the sense that there are no words in Article 136 itself qualifying that power. The very conferment of the discretionary power defies any attempt at exhaustive definition of such power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as when a question of law of general public importance arises or a decision sought to be impugned before the Supreme Court shocks the conscience. This overriding and exceptional power has been vested in the Supreme Court to be exercised sparingly and only in furtherance of the cause of justice in the Supreme Court in exceptional cases only when special circumstances are shown to exist." (Emphasis laid by this Court) This position was reaffirmed and further elucidated in the case of Mathai @ Joby v. George & Anr.[9], wherein the two judge Bench of this Court held as follows:
>
> "21. Mr. Venugopal has suggested the following categories of cases which alone should be entertained under Article 136 of the Constitution.
>
> (i) All matters involving substantial questions of law relating to the interpretation of the Constitution of India;
>
> (ii) All matters of National or public importance;
>
> (iii) Validity of laws, Central and State;
>
> (iv) After Kesavananda Bharati, (1973) 4 SCC 217, the judicial review of Constitutional Amendments; and
>
> (v) To settle differences of opinion of important issues of law between High Courts.

22. We are of the opinion that two additional categories of cases can be added to the above list, namely (i) where the Court is satisfied that there has been a grave miscarriage of justice and (ii) where a fundamental right of a person has prima facie been violated. However, it is for the Constitution Bench to which we are referring this matter to decide what are the kinds of cases in which discretion under Article 136 should be exercised.

23. In our opinion, the time has now come when an authoritative decision by a Constitution Bench should lay down some broad guidelines as to when the discretion under Article 136 of the Constitution should be exercised, i.e., in what kind of cases a petition under Article 136 should be entertained. If special leave petitions are entertained against all and sundry kinds of orders passed by any court or tribunal, then this Court after some time will collapse under its own burden.

24. It may be mentioned that in Pritam Singh v. The State AIR 1950 S.C. 169 a Constitution Bench of this Court observed (vide para 9) that "a more or less uniform standard should be adopted in granting Special Leave". Unfortunately, despite this observation no such uniform standard has been laid down by this Court, with the result that grant of Special Leave has become, as Mr. Setalvad pointed out in his book ` My Life', a gamble. This is not a desirable state of affairs as there should be some uniformity in the approach of the different benches of this Court. Though Article 136 no doubt confers a discretion on the Court, judicial discretion, as Lord Mansfield stated in classic terms in the case of John Wilkes, (1770) 4 Burr 2528 "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful"

In view of the legal principles laid down in the aforesaid decisions, we are of the opinion that the decision of the High Court does not fall in either of the categories mentioned above which calls for our interference. The Division Bench of the High Court having regard to the glaring facts that the respondent-employees have continuously worked in their posts for more than 29 years discharging permanent nature of duties and they have been paid their salaries and other service benefits out of the budget allocation, no objection was raised by the CAG in this regard and therefore, it is not open for the appellants to contend that the law laid down in Uma Devi's case (supra) has no application to the fact situation. The action of the appellants in terminating the services of the respondent- employees who have rendered continuous service in their posts during pendency of the Letters Patent Appeals was quashed by the High Court after it has felt that the action is not only arbitrary but shocks its conscious and therefore it has rightly exercised its discretionary power and granted the reliefs to the respondent-employees which do not call for our interference. Therefore, we are of the opinion that this Court will not interfere with the opinion of the High Court and on the contrary, we will uphold the decision of the High Court both on factual and legal aspects as the same is legally correct and it has done justice to the respondent- employees.

24. As already mentioned above, we are of the opinion that the High Court was correct in reinstating the respondent-employees into their services under the appellants by relying on the legal principles laid down by this Court in the Constitution Bench decision in Uma Devi's case (supra). We accordingly direct the appellants to implement the orders of the Division Bench of the High Court thereby continuing the respondents in their services and extend all benefits as have been granted by it in the impugned judgment.

25. The Civil Appeals are dismissed accordingly.

……J. [GYAN SUDHA MISRA]
……J. [V. GOPALA GOWDA] New Delhi, April 23, 2014.

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[1] 2002 (1) J.C.R. 106

[2] (2006) 4 SCC 1
[3] (2010) 9 SCC 247
[4] (1996) 8 SCC 615
[5] (2007) 11 SCC 92

[6] (1975) 4 SCC 714

[7] (1985) 3 SCC 545

[8] (2004) 3 SCC 214

[9] (2010) 4 SCC 358
