

Malathi Das(Retd)Now P.B.Mahish And ... vs Suresh & Ors on 7 March, 2014

Equivalent citations: 2014 AIR SCW 1653, 2014 (13) SCC 249, 2014 CRI. L. J. 1753, 2014 (2) AJR 446, 2014 (2) AIR KANT HCR 315, AIR 2014 SC (SUPP) 1702, (2014) 103 ALL LR 666, (2014) 4 CAL HN 204, (2014) 2 JLJR 294, (2014) 3 JCR 322 (SC), (2014) 3 SCALE 476, (2014) 141 FACLR 605, (2014) 4 KCCR 2777, (2014) 117 CUT LT 705, (2014) 4 SCT 205, (2014) 2 CURLR 168, (2014) 136 ALLINDCAS 269 (SC), (2015) 3 SERVLR 34, (2014) 2 PAT LJR 412, (2015) 2 ALLMR 453 (SC), 2014 (136) ALLINDCAS 269

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Bench: Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3338 OF 2014
(Arising out of Special Leave Petition (C) No. 9573 OF 2007)

Malathi Das (Retd.) Now P.B. Mahishy & Ors. ... APPELLANT (S)

VERSUS

Suresh & Ors. ... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. This appeal is against the order dated 26.03.2007 passed by the High Court of Karnataka in a contempt proceeding registered as CCC No. 669 of 2006. By the aforesaid order, the High Court, after holding the appellants, prima facie, guilty of commission of contempt has granted them two weeks time to comply with the order in respect of which disobedience has been alleged failing which the matter was directed to be posted for framing of charge. Aggrieved, the appellants have filed the present appeal.

3. It may be necessary to briefly outline the relevant facts on the basis of which the allegations of commission of contempt have been made and the conclusions, indicated above, have been reached by the High Court.

445 daily rated employees of the State serving in different departments, including the 74 respondents herein, had instituted W.P. Nos. 39117-176/1999 claiming regularization of service. By order dated 15.12.1999, the High Court following an earlier order dated 10.9.1999 passed in similar writ petitions i.e. W.P. Nos. 33541-571/98 etc. had granted the relief(s) claimed by the writ petitioners-respondents. The aforesaid order dated 15.12.1999 of the learned Single Judge was affirmed by order dated 24.01.2001 passed in the writ appeals filed by the State. The petitions filed by the State seeking special leave to appeal against the order dated 24.01.2001 were dismissed by this Court on 22.07.2005. Two significant facts need to be noted at this stage. Firstly, that the order dated 10.09.1999 passed in writ petition Nos. 33541-571/1998 which was followed by the High Court while deciding the writ petitions (Writ Petition Nos. 39117-176/1999) filed by the respondents had been implemented by the State Government by granting regularization to the petitioners therein. The second significant fact that would require to be noticed is that following the dismissal of the special leave petitions filed by the State by order dated 22.07.2005, a Scheme dated 29.12.2005 was framed by the State Government to implement the order dated 15.12.1999 passed in the writ petitions (W.P. Nos. 39117-176/1999). 161 persons who had filed contempt proceedings for non-compliance of the order dated 15.12.1999 were regularized on 29.12.2005. Thereafter, on 8.3.2006, 64 other persons, who were similarly placed to the aforesaid 161 persons as well as to the present 74 respondents, were also regularized. Such regularization was made without the concerned persons having to initiate any contempt proceeding. The cases of the other petitioners in W.P. Nos.39117-76/1999 were, however, not considered.

4. Consequently, 129 employees, including the 74 respondents herein whose case were not being considered by the State instituted another contempt proceeding being CCC No.67/2006. By Government Order dated 18.04.2006, 55 out of the aforesaid 129 employees were regularized while the claim of the remaining 74 employees (respondents herein) were not responded to. Accordingly, the Contempt Petition (CCC No. 67/2006) was heard and closed by the High Court by its order dated 20.06.2006 granting the respondents "eight weeks' time to pass appropriate orders in accordance with law on the claim made by the complainants for regularization of their services in the office of the respondent authorities" As no action was initiated pursuant to the aforesaid order of the High Court, the present contempt petition i.e. CCC No. 669/2006 was lodged by the 74 respondents. During the pendency of the aforesaid contempt petition the claim of regularization of respondents was rejected by specific orders passed on the ground that the claimants do not fulfill the conditions for regularization as laid down by this Court in Secretary, State of Karnataka and Others vs. Umadevi (3) and Others[1]. Some of the said orders/endorsements were illustratively brought on record which demonstrate that the stand of the authorities with regard to the 74 respondents herein is that none of them fulfill/satisfy the conditions enumerated in paragraph 53 of the judgment in Umadevi (supra) as essential for the purpose of regularization. On a detailed consideration of the facts of the case, particularly, the fact that the writ petitions as well as the writ appeals arising therefrom as also the order of this Court dated 22.07.2005 dismissing the special leave petitions filed by the State were prior in point of time to the decision of this Court in Umadevi

(supra) [decided on 10.04.2006], the High Court took the view, as already noted, in its order dated 26.03.2007 which has given rise to the present appeal.

5. We have heard Shri K.N. Bhat, learned senior counsel for the appellants and Shri Guru Krishna Kumar, learned senior counsel for the respondents.

6. Shri Bhat, learned senior counsel for the appellants has drawn the attention of the Court to the fact that regularization in terms of the initial order of the High Court dated 10.09.1999 passed in W.P. Nos. 33541- 571/1999 as well as regularization in part i.e. 161, 64 and 55 number of employees out of the 445 petitioners who had instituted writ petition Nos. 39117-176/1999, were prior to the judgment of this Court in Umadevi (supra). Shri Bhat has submitted that in terms of the directions in Umadevi (supra) while regularizations already made are not to be re-opened, matters subjudice are to be governed by the conditions mentioned in Umadevi (supra) and only on existence thereof regularization could be made. According to the learned counsel as none of the respondents herein satisfy the said conditions the impugned refusals to regularize the service of the respondents have been made by the authorities of the State.

7. On the other hand, Shri Guru Krishna Kumar, learned senior counsel for the respondents, has submitted that the writ petitions as well as the writ appeals and the special leave petitions filed in connection with the regularization of the respondents stood concluded on 15.12.1999, 24.01.2001 and 22.07.2005 respectively, all of which dates are prior to the decision in Umadevi (supra). It is contended that as all the proceedings concerning the regularization of the respondents had attained finality prior to the decision of this Court in Umadevi (supra) the regularization of the respondents cannot be understood to be sub-judice. Learned counsel has further urged that 161, 64 and 55 number of persons from the batch of 445 writ petitioners who are identically placed as the respondents have been regularized. In fact, according to learned counsel, the batch of 55 employees have been regularized on 18.04.2006 i.e. after 10.04.2006 (the date of decision in Umadevi (supra)). Learned counsel has also submitted that during the pendency of the present proceeding as many as 7 other persons, out of the batch of 445 writ petitioners, have also been regularized. It is accordingly submitted that in such circumstances on the principle of parity itself the entitlement of the respondents to be regularized cannot be doubted or disputed. The appellants, therefore, are clearly guilty of contempt and the impugned order of the High Court does not warrant any interference.

8. It is not in dispute that the original batch of employees who had filed writ petition Nos. 33541-571/1998 on the basis of which the writ petitions filed by the respondents herein (W.P. Nos. 39117-176/1999) were allowed by the order dated 15.12.1999 have been regularized. It is also not in dispute that out of the 445 employees who had filed writ petition Nos.39117-176/1999, by separate government orders, the service of 161, 64 and 55 employees have been regularized in three batches. The records placed before the Court would indicate that 7 other persons have been regularized during the pendency of the present appeal. In a situation where a Scheme had been framed on 29.12.2005 to give effect to the order of the High Court dated 15.12.1999 passed in the writ petitions filed by the respondents herein and many of the similarly situated persons have been regularized pursuant thereto the action of the appellants in not granting regularization to the present respondents cannot appear to be sound or justified. The fact that the regularization of 55 employees,

similarly situated to the present respondents, was made on 18.04.2006 i.e. after the decision of this Court in Umadevi (supra) is also not in serious dispute though Shri Bhat, learned senior counsel for the appellants, has tried to contend that the said regularizations were made prior to the decision in Umadevi (supra). The date of the order of regularization of the 55 persons i.e. 18.4.2006 will leave no doubt or ambiguity in the matter. In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in Umadevi (supra) is required to be dealt with in accordance with the conditions stipulated in para 53 of Umadevi (supra) inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in Umadevi (supra) we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in Umadevi (supra) we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.

9. The appeal shall stand disposed of in the above terms.

.....CJI.

[P. SATHASIVAM]J. [RANJAN GOGOI] NEW DELHI, MARCH 7, 2014.

[1] (2006) 4 SCC 1
