

[2019] 15 S.C.R. 68

A RAJNISH KUMAR MISHRA & ORS. ETC.

v.

STATE OF UTTAR PRADESH & ORS. ETC.

(Civil Appeal Nos. 9413-9414 of 2019)

B DECEMBER 13, 2019

[S.A. BOBDE, CJI, B.R. GAVAI AND SURYA KANT, JJ.]

Service Law – Regularisation – On creation of the Ambedkar Nagar Judgeship, the appellants were appointed on ad-hoc basis –

- C *In 2001, advertisement issued for direct recruitment of Class-III employees – Appellants filed writ petitions – Order passed on 01.08.06 providing that appellants may also apply and their cases shall be considered along with other candidates – However, the said selection process was canceled and the appellants were continued on the ad-hoc basis as per interim order dtd. 01.08.06 –*
- D *In the mean-time, the appellants represented to the District Judge, Ambedkar Nagar for regularisation – District Judge constituted Committee – It recommended regularization by report dtd. 12.07.12 – District Judge regularised the services of the appellants – However, the successor in the office of the District Judge inter alia declared*
- E *that the orders of regularization were non-est – Writ petitions dismissed by the Single Judge – Appellants' services terminated – Appellants filed writ petition – Dismissed – Held: Report of the Committee is on the basis of the Circular dtd. 05.11.09 issued by the Registrar General of the High Court – Circular shows that all the District Judges were directed that in order to restore the procedure for appointment of Class III & Class IV employees, all such ad-hoc daily wage appointees appointed subsequent to 31.12.01 without following any procedure of law, must cease to work immediately – During the pendency of the petitions, the Rules with regard to regularization were amended which provided cut-off date of*
- F *31.12.01 – Appellants were appointed prior to 31.12.01 – Change in position of law ought to have been taken into consideration by the High Court – Appellants continued in services from 01.08.06 on account of interim orders passed in writ petitions – As such, when the appellants' case was considered for regularization by the*

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*Committee, the appellants had put in service almost for 12 years – A
Further, in view of the exception carved out in Umadevi case
providing for one-time regularization of employees who completed
10 years or above; the parity of similarly circumstanced employees
who were granted benefit in the Sheo Narain Nagar case and the
Rules amended in 2016 which provide cut-off date of 31.12.01, the
appellants are also entitled for regularization – Appellants be
reinstated with continuity in service for all the purposes including
terminal benefits, however, not entitled to back wages for the period
they are out of employment –Uttar Pradesh Regularization of Daily
Wages Appointments on Group ‘D’ Posts Rules, 2001.*

Allowing the appeals, the Court

HELD: 1.1 The Circular addressed by the Registrar General of the High Court of Allahabad dated 05.11.09 would show, that all the District Judges have been directed that in order to restore the procedure for appointment of Class III and Class IV employees, all such ad-hoc daily wage appointees, who are appointed subsequent to 31.12.01 without following any procedure of law, must cease to work immediately. The said cut-off date is provided in the said circular inasmuch as the provisions of Uttar Pradesh Regularization of daily wages Appointments on Group ‘D’ Posts Rules, 2001 were notified on 31.12.01. The Committee also found that all the appellants were appointed prior to 31.12.01; they were in continuous service thereafter and their services were satisfactory. In pursuance of the said report the District Judge vide order dated 09.11.12 regularized the services of appellants from 01.06.12. The report of the Committee under the chairmanship of the Additional District Judge is mainly on the basis of the Circular issued by the Registrar General of the High Court dated 05.11.09. By the time when the cases of the appellants for regularization had come up for consideration before the Committee the Judgment of the Constitution Bench of this Court in the case of *Umadevi* had already been pronounced. In the said Judgment itself, the Constitution Bench had provided that as a one-time measure the State should take up steps for regularization of the employees, who had rendered the services for a period of more than 10 years. [Paras 14-15][75-A-D, F-H]

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- A **1.2 During the pendency of the petitions, the Rules with regard to regularization were amended which provided cut-off date of 31.12.01. Undisputedly, all the appellants were appointed prior to 31.12.01. The change in position of law ought to have been taken into consideration by the High Court. Undisputedly,**
- B **the appellants were continued in services from 01.08.06 on account of interim orders passed in writ petitions. However, the selection process in which the appellants were permitted to participate, could not see the light of the day, as it was subsequently cancelled in 2008. As such, as a matter of fact, when the appellants' case was considered for regularization by a**
- C **Committee under the chairmanship of Additional District Judge, the appellants had, in fact, put in service almost for a period of 12 years. The Committee under the chairmanship of the Additional District Judge had rightly submitted its report dated 12.07.12 and the then District Judge had rightly passed the order of regularization on 09.11.12 granting regularization from 01.06.12.**
- D **While considering the representation of some of the employees for promotion, the successor in the office of the District Judge could not have annulled the order of the regularization of the appellants which was done after following the proper procedure. The least that was required to be done was to follow the principles**
- E **of natural justice by giving an opportunity of being heard to the appellants. The three orders passed by the District Judge dated 16.08.2014 also suffer from violation of the principles of natural justice. In view of the exception carved out in the case of *Umadevi* providing for one-time regularization of employees who have completed 10 years or above; the parity of similarly circumstanced employees who have been granted benefit in the case of *Sheo Narain Nagar* and the Rules amended in 2016 which provide a cut-off date of 31.12.2001, the appellants are also entitled for regularization of their services. [Paras 17-19][76-E-H; 77-A-D]**
- G **1.3 In the result: (1) the appeals are allowed; (2) the Judgement and order dated 14.09.2017 passed by the Single Judge of the High Court of Allahabad in Writ Petition No.4813(S/S) of 2014 and Writ Petition No.5530(S/S) of 2014 as well as Division Bench of the said High Court dated 09.07.2018 in Special Appeal No.440 of 2017 and in Special Appeal No.444 of 2017 are**
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quashed and set aside; and (3) the orders dated 16.08.2014 passed by the District Judge, Ambedkar Nagar are quashed and set aside and the consequential order of termination dated 23.9.2017 is also quashed and set aside; (4) the order dated 9.11.2012 passed by the District Judge, Ambedkar Nagar regularizing the services of appellants with effect from 01.06.2012 is upheld; (5) Consequentially, the termination of the appellants from their services is quashed and set aside and the appellants are directed to be reinstated forthwith with continuity in service for all the purposes including terminal benefits. However, in the facts and circumstance of the case, the appellants would not be entitled for back wages for the period during which they are out of employment. [Para 20][77-D-H; 78-A]

State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1 : [2006] 3 SCR 953 – followed.

Sheo Narain Nagar & Ors. v. State of Uttar Pradesh & Ors. (2018) 13 SCC 432 : [2017] 11 SCR 138 – relied on.

Case Law Reference

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| [2017] 11 SCR 138 | relied on | Para 12 | |
| [2006] 3 SCR 953 | followed | Para 12 | E |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9413-9414 of 2019.

From the Judgment and Order dated 09.07.2018 by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Special Appeal No. 440 of 2017.

S.R. Singh, Sr. Adv., Ms. Kamini Jaiswal, Akhilesh Kalra, Rohit Kumar Singh, Ms. Rani Mishra, Jatinderpal Singh, Prasanjit Singh Rathore, Adarsh Upadhyay, Ms. Preetika Dwivedi, Ms. Sukriti Bhatnagar, Advs. for the appearing parties.

The following Judgment of the Court was delivered:

JUDGMENT

1. Leave granted.
2. Heard the learned counsel for the parties.

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- A 3. The appeals challenge the judgment and order passed by the Division Bench of the Allahabad High Court dated 09.07.2018, which has dismissed the appeals filed by the present appellants and confirmed the order passed by the learned single judge of the said High Court dated 14.9.2017 with some modifications.
- B 4. The facts, in brief, giving rise to the present appeals are as under.
5. On creation of the Ambedkar Nagar Judgeship, the appellants were appointed on ad-hoc basis. The appellants were appointed in the year 1999-2001. The initial appointment of the appellants was made for C a period of three months, which term was extended from time to time.
6. In the year 2001, an advertisement was issued for direct recruitment of Class-III employees, which led the appellants to file several writ petitions before the High Court which were clubbed together, the lead Writ Petition being W.P. No.7544(S/S) of 2003. In the said bunch D of writ petitions, an order was passed on 01.08.2006 providing therein, that appellants may apply in response to the advertisement and their cases shall be considered along with other candidates. It was also directed that the District Judge may send their names to High Court on administrative side for considering, if they could be granted relaxation in age. It was further observed, that it was open for the District Judge and E Selection Committee to take into account the length of service and experience etc. of the appellants. It was further directed that till the selection process was over, appellants would be allowed to continue in service in the same capacity.
7. It appears from the record that subsequently the said selection F process came to be cancelled and the appellants were continued in the employment on the *ad hoc* basis as per the interim order passed on 01.08.2006. It further appears, that in the mean-time the appellants, since they were continued for a long period, made representations to the District Judge, Ambedkar Nagar for their regularisation. The District Judge by G an order dated 28.5.2012 constituted a Committee under the chairmanship of an Additional District Judge, comprising of two other members who were also Judicial Officers. The said Committee submitted its report on 12.07.2012, recommending regularization of the appellants. Pursuant to the said recommendation made by the Committee, the District Judge passed orders regularising the services of the appellants on 09.11.2012.
- H However, the successor in the office of the District Judge passed an

order dated 16.08.2014 thereby, declaring that the orders of regularization were non-est. By a second order passed on the same day i.e. 16.08.2014, the District Judge also withdrew the earlier order by which, the appellants were granted the benefits of increments with certain other benefits. The District Judge passed a third order on 16.08.2014 thereby, directing recovery of emoluments paid to the appellants. It is further to be noted that after the writ petitions were dismissed by the learned single judge of the High Court on 14.9.2017, the appellants' services came to be terminated immediately on 23.9.2017.

8. Aggrieved by the aforesaid three orders, the appellants filed Writ Petition No.4813 (S/S) of 2014 and Writ Petition No.5530 (S/S) of 2014. The single Judge of High Court by an order dated 14.09.2017, dismissed the writ petitions and also imposed cost of Rs.50,000/- on each of the appellants (petitioners therein).

9. Being aggrieved thereby, the appellants preferred appeals before the Division Bench of the High Court. The Division Bench while dismissing the appeals, however, set aside the order insofar as saddling the costs is concerned. The Division Bench further directed, that since one Manish Kumar Malviya, who was also one of the appellants before the Division Bench of the High Court, was appointed on 06.04.1998, he was eligible to be considered for regularization in terms of the Uttar Pradesh Regularization of Ad-hoc Appointment (On Post within the purview of the Public Service Commission) Rules, 1979 as amended in the year 2001. It was further directed, that till the outcome of consideration of his case for regularization he should be continued on ad-hoc basis. The Division Bench further directed that in case any recruitment process for Class III posts takes place in future, the appellants would be permitted to participate in the same and the Court would consider grant of relaxation in age and grant of preference to them by giving some benefit of length of service rendered by them in *ad-hoc* capacity. Being aggrieved thereby, the appellants have approached this Court.

10. Ms. Kamini Jaiswal, learned counsel for the appellants submits, that the Single Judge as well as the Division Bench of the High Court have erred in dismissing the petitions and appeals of the appellants. She submits, that the Committee under the chairmanship of the Additional District Judge had given report on 12.07.2012 on the basis of Circular dated 05.11.2009, issued by the High Court. She further submits, that the then incumbent of the office of the District Judge had rightly, after

- A considering the report, issued the order of regularisation on 9.11.2012. She submits, that as a matter of fact, there was no occasion for the successor in the office of the District Judge to have passed order dated 16.08.2014, cancelling the order of regularization granted vide order dated 9.11.2012.
- B 11. The learned counsel for the appellants further submits, that during the pendency of the writ petitions the UP Regularization of Persons Working on daily wages or on work charge or on contract in government department on group ‘C’ and group ‘D’ posts (outside the purview of the UP Public Service Commission) Rules, 2016 were framed. Rule 6 thereof provided cut-off date as 31.12.2001. She further submits, that the High Court has failed to take into consideration the import of said Rules.
- C 12. The learned counsel further submits, that this Court in the case of *Sheo Narain Nagar & Ors. vs. State of Uttar Pradesh & Ors.*¹, after considering the judgment of this Court in *Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.*² wherein it was observed that as a one-time measure the employer should take steps for regularization of the services of the employees who had put in service of 10 years or more and had directed regularization of the appellants therein.
- E The learned counsel further submits, that the appeals deserve to be allowed and the impugned order deserves to be quashed and set aside.
- F 13. Shri S.R. Singh, learned Senior Counsel appearing on behalf of the respondents would submit, that the appellants continued in service by virtue of interim order passed by the High Court dated 01.08.2006 and, as such, the benefit of one-time regularization as provided by the judgment of the Constitution Bench of this Court in the case of *Umadevi* (supra), cannot be granted to the appellants. It is further submitted, that the report of the Committee set up by the District Judge dated 12.07.2012 was collusive and, as such, the successor in the office of District Judge had rightly passed an order dated 16.08.2014 thereby, cancelling the
- G order of regularization dated 09.11.2012 passed on the basis of the Report dated 12.07.2012. He further submits, that the appellants are not entitled to the equitable relief and, as such, the appeals deserve to be dismissed.

¹ (2018) 13 SCC 432 {Civil Appeal No.18510 of 2017 [@ SLP(C) No.6183/2015]}

H ² (2006) 4 SCC 1

14. We have perused the material placed on record. The Circular addressed by the Registrar General of the High Court of Allahabad dated 05.11.2009 would show, that all the District Judges have been directed that in order to restore the procedure for appointment of Class III and Class IV employees, all such ad-hoc daily wage appointees, who are appointed subsequent to 31.12.2001 without following any procedure of law, must cease to work immediately. It appears, that the said cut-off date is provided in the said circular inasmuch as the provisions of Uttar Pradesh Regularization of daily wages Appointments on Group 'D' Posts Rules, 2001 were notified on 31.12.2001. The Committee under the chairmanship of the Additional District Judge after basically considering the Circular dated 05.11.2009 and the cut-off date of 31.12.2001 mentioned therein had submitted the report thereby, recommending regularization of the appellants. While considering the same, the Committee also found that all the appellants were appointed prior to 31.12.2001; they were in continuous service thereafter and their services were satisfactory. In pursuance of the said report the District Judge vide order dated 09.11.2012 regularized the services of appellants from 01.06.2012. It appears that subsequently in the year 2014 certain employees made representation(s) to the successor in the office of the District Judge for promotion. While examining the same, the District Judge found that regularization of the appellants was not proper and, therefore, vide order dated 16.08.2014 annulled the regularization of the appellants and also ordered for recovery of the amount, which the appellants had received on the basis of the order dated 09.11.2012.

15. The Single Judge as well as the Division Bench have primarily non-suited the appellants on the ground, that the regularization of the appellants was on account of collusion between the appellants and the members of the Committee. However, at the cost of repetition, we may state that the report of the Committee under the chairmanship of the Additional District Judge is mainly on the basis of the Circular issued by the Registrar General of the High Court dated 05.11.2009. It is further to be noted, that by the time when the cases of the appellants for regularization had come up for consideration before the Committee the Judgment of the Constitution Bench of this Court in the case of *Umadevi* (*supra*) had already been pronounced. In the said Judgment itself, the Constitution Bench had provided that as a one-time measure the State should take up steps for regularization of the employees, who had rendered the services for a period of more than 10 years.

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- A 16. It is further to be noted that similarly circumstanced employees in the employment of the State of Uttar Pradesh, who were appointed on daily wages/contractual basis had approached the Allahabad High Court praying for regularization of their services. The Single Judge had dismissed the writ petitions which orders were affirmed by the Division Bench. The said employees therein had approached this Court by way of Civil Appeal No.18510 of 2017 (arising out of Special Leave Petition (Civil) No.6183 of 2015) in the case of *Sheo Narain Nagar* cited supra. It will be relevant to refer to the following observations of this Court in the case of *Sheo Narain Nagar* (*supra*):
- C “The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of *Umadevi* (*supra*). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 02.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 02.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.”
- B 17. Another aspect that needs consideration is that during the pendency of the petitions, the Rules with regard to regularization were amended which provided cut-off date of 31.12.2001. Undisputedly, all the appellants were appointed prior to 31.12.2001. The change in position of law ought to have been taken into consideration by the High Court. It is not in dispute that all the appellants were appointed prior to 31.12.2001. Undisputedly, the appellants were continued in services from 01.08.2006 on account of interim orders passed in writ petitions. However, the selection process in which the appellants were permitted to participate, could not see the light of the day, as it was subsequently cancelled in 2008. As such, as a matter of fact, when the appellants’ case was considered for regularization by a Committee under the chairmanship of Additional District Judge, the appellants had, in fact, put in service almost for a period of 12 years.
- E G 18. As such, apart from the circular issued by the Registrar General of the High Court dated 05.11.2009, the appellants’ cases were also required to be taken into consideration in view of the exception carved out in the case of *Umadevi* (*supra*). We find that the Committee under the chairmanship of the Additional District Judge had rightly submitted its report dated 12.07.2012 and the then District Judge had rightly passed
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the order of regularization on 09.11.2012 granting regularization from 01.06.2012. We find, that while considering the representation of some of the employees for promotion, the successor in the office of the District Judge could not have annulled the order of the regularization of the appellants which was done after following the proper procedure. The least that was required to be done was to follow the principles of natural justice by giving an opportunity of being heard to the appellants. We find, that the three orders passed by the District Judge dated 16.08.2014 also suffer from violation of the principles of natural justice.

19. In any case, we find that in view of the exception carved out in the case of *Umadevi (supra)* providing for one-time regularization of employees who have completed 10 years or above; the parity of similarly circumstanced employees who have been granted benefit in the case of *Sheo Narain Nagar (supra)* and the Rules amended in 2016 which provide a cut-off date of 31.12.2001, the appellants are also entitled for regularization of their services.

20. In the result:

- (1) the appeals are allowed;
- (2) the Judgement and order dated 14.09.2017 passed by the Single Judge of the High Court of Allahabad in Writ Petition No.4813(S/S) of 2014 and Writ Petition No.5530(S/S) of 2014 as well as Division Bench of the said High Court dated 09.07.2018 in Special Appeal No.440 of 2017 and in Special Appeal No.444 of 2017 are quashed and set aside; and
- (3) the orders dated 16.08.2014 passed by the District Judge, Ambedkar Nagar are quashed and set aside and the consequential order of termination dated 23.9.2017 is also quashed and set aside.
- (4) the order dated 9.11.2012 passed by the District Judge, Ambedkar Nagar regularizing the services of appellants with effect from 01.06.2012 is upheld.
- (5) Consequentially, the termination of the appellants from their services is quashed and set aside and the appellants are directed to be reinstated forthwith with continuity in service for all the purposes including terminal benefits. However,

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in the facts and circumstance of the case, the appellants would not be entitled for back wages for the period during which they are out of employment.

21. In the facts and circumstances, there shall be no order as to cost. All pending applications shall stand disposed of.

Divya Pandey

Appeals allowed.