

2022 LiveLaw (SC) 313

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; B.V. NAGARATHNA, JJ.

CIVIL APPEAL NO. 1951 OF 2022; MARCH 24, 2022

The State of Gujarat and others *Versus* R.J. Pathan and others

Constitution of India, 1950; Article 226 -Regularization - High Court directed the State to consider the cases of some temporary employees for regularisation sympathetically and if necessary, by creating supernumerary posts - Such a direction is wholly without jurisdiction - No such order of absorption and/or regularisation even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India. (Para 6, 10)

Service Law - Regularization - State of Karnataka v. Umadevi (2006) 4 SCC 1 - The purpose and intent of the decision in Umadevi (supra) was, (1) to prevent irregular or illegal appointments in the future, and (2) to confer a benefit on those who had been irregularly appointed in the past and who have continued for a very long time. The decision of Umadevi (supra) may be applicable in a case where the appointments are irregular on the sanctioned posts in regular establishment. The same does not apply to temporary appointments made in a project/programme. (Para 8)

For Appellant(s) Ms. Deepanwita Priyanka, AOR

For Respondent(s) Ms. Jesal Wahi, AOR

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.02.2021 passed by the High Court of Gujarat at Ahmedabad in Letters Patent Appeal (for short, 'LPA') No. 2082/2011, by which the Division Bench of the High Court has allowed the said LPA and directed the State to consider the cases of the respondents for regularisation sympathetically and if necessary, by creating supernumerary posts, the State has preferred the present appeal.

2. The facts leading to the present appeal in a nut-shell are as under: That the respondents herein were appointed on contractual basis for a period of eleven months on a fixed salary and on a particular project, namely, "Post-Earthquake Redevelopment Programme" of the Government of Gujarat. That the respondents herein were initially appointed for a period of eleven months in the year 2004 to the post of drivers. On closure of the project in which the respondents were appointed,

instead of terminating the services of the respondents herein, the State Government took a decision to place them in the services of Indian Red Cross Society. Instead of joining the duties in the Indian Red Cross Society, the respondents approached the High Court by filing Writ Petition No. 17328/2011 for regularisation of their services and absorption in Government service. The original writ petitioners also challenged their placement with the Indian Red Cross Society.

2.1 The learned Single Judge vide order dated 25.11.2011 dismissed the said writ petition by observing that the appointment of the original writ petitioners was only for eleven months on a fixed salary, which has been continued from time to time, and the unit in which they were appointed temporarily was a “Project Implementation Unit” only for the purpose of rehabilitation pursuant to the earthquake for the “Post-Earthquake Redevelopment Programme” and they were not regularly appointed on any permanent sanctioned posts in any establishment of the Government where the writ petitioners have any lien.

2.2 Feeling aggrieved and dissatisfied with the order passed by the learned Single Judge dismissing the writ petition, the respondents herein – original writ petitioners preferred LPA No. 2082/2011 before the Division Bench of the High Court. By an interim order dated 20.12.2011, respondents herein were continued in service with the State Government and they were not even transferred to the Indian Red Cross Society. The said LPA came up for hearing before the Division Bench in the year 2021. Before the Division Bench, it was submitted on behalf of the respondents herein – original writ petitioners that as they have been continuously working in the Government Departments and they have not been transferred to Indian Red Cross Society and since they have by now working for seventeen years, the Government may be directed to consider the case for regularisation in the service as long period has passed.

2.3 By the impugned judgment and order, the Division Bench of the High Court has directed the State/Department to consider the cases of the respondents herein for absorption and regularisation sympathetically and if necessary, by creating supernumerary posts, solely on the ground that the respondents herein – original writ petitions by now have worked for seventeen years.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the State has preferred the present appeal.

3. Ms. Deepanwita Priyanka, learned counsel appearing on behalf of the State has vehemently submitted that the Division Bench of the High Court has committed a grave error in directing the State to consider the cases of the respondents for absorption/regularisation sympathetically and if necessary, by creating supernumerary posts.

3.1 It is submitted that the Division Bench of the High Court has not properly appreciated the fact that the respondents were initially appointed for a fixed period of eleven months on the posts of drivers and in the temporary project, only for the purpose of rehabilitation, pursuant to the earthquake, namely, “Post-Earthquake Redevelopment Programme” and they were never appointed in any regular establishment and/or in any sanctioned post in any regular establishment. It is submitted that therefore they have no right to claim absorption/regularisation.

3.2 It is contended by the learned counsel appearing on behalf of the State of Gujarat that the Division Bench of the High Court has not properly appreciated and/or considered the fact that after 2011, the respondents were continued pursuant to the interim order passed by the High Court. Therefore, when the respondents were continued in service pursuant to the interim order passed by the High Court and the department continued them in compliance of the interim order passed by the High Court, thereafter it would not be open for the respondents to contend that as they have worked for more than seventeen years (under the interim order) and hence they are to be absorbed and/or regularised in service.

3.3 Making the above submissions, it is prayed to allow the present appeal.

4. The present appeal is opposed by Shri Kabir Hathi, learned counsel appearing on behalf of the respondents – original writ petitioners before the High Court.

4.1 Learned counsel appearing on behalf of the respondents has heavily relied upon on the decision of this Court in the case of *State of Karnataka v. Umadevi (3), reported in (2006) 4 SCC 1*, as well as, the subsequent decision of this Court in the case of *Narendra Kumar Tiwari v. State of Jharkhand, reported in (2018) 8 SCC 238 (para 7)*. Relying upon the above decisions, it is submitted that as the respondents have worked for more than seventeen years as drivers with the State Government, the Division Bench of the High Court has rightly directed the State to consider their cases for absorption/regularisation sympathetically and if required, by creating supernumerary posts.

4.2 It is submitted that as the respondents are working as drivers with the State Government for seventeen years, they may be absorbed with the State Government and their services may be regularised.

5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the respondents herein – original writ petitioners were, as such, appointed in a temporary project, which was created only for the purpose of rehabilitation pursuant to the earthquake for “Post-Earthquake Redevelopment Programme”. All of them were initially appointed for a period of eleven months on a fixed salary, which came to be continued from time to time till the requirement in a particular project/unit – “Project Implementation Unit”. However, as

the said unit was required to be closed which, as such, was a temporary unit, instead of putting an end to the services of the respondents, the State Government thought it fit to transfer and place them with the Indian Red Cross Society. At this stage, the respondents approached the High Court and challenged their placement with the Indian Red Cross Society. The learned Single Judge dismissed the said writ petition by observing as under:

“It is not in dispute that the petitioners, who are serving on a fixed term and salary as per the terms of the contract of service with respondent Nos. 1 & 2, are now transferred to respondent No.4 in view of administrative exigencies. Appointment of the petitioners is only for 11 months on a fixed salary which is continued from time to time and even the Unit on which the petitioners are appointed temporarily is a ‘Project Implementation Unit’ created only for the purpose of rehabilitation pursuant to the earth-quake for ‘post earth-quake redevelopment programme’. Thus, the Unit itself has temporary status and tenure to which the petitioners are appointed on a fixed term and salary. If the decision is taken by the Authority to place their services with the Indian Red Cross Society continued with salary, it cannot be said that any service condition under the Rule is violated inasmuch as none of the petitioners is regularly appointed employee on any permanent sanctioned post on any establishment of the Government where the petitioners have any lien. Placement of the petitioners is neither violative of any statutory rule nor mala fide.”

6. The order passed by the learned Single Judge dismissing the writ petition was in the year 2011. The order passed by the learned Single Judge was challenged by the respondents by way of LPA. In the year 2011, the Division Bench granted the interim relief and directed to maintain status quo and pursuant to the said interim order, the respondents were continued in service with the Government. In the year 2021, when the said LPA was taken up for further hearing, it was submitted on behalf of the respondents that as by now the respondents have worked for seventeen years, the State may be directed to absorb them in the Government and their services may be regularised. By observing that as the respondents have worked for a long time, i.e., for seventeen years, the Division Bench has directed the State to consider the cases of the respondents for absorption/regularisation and if required, by creating supernumerary posts. However, while issuing such a direction, the High Court has not at all considered the fact that the respondents were continued in service pursuant to the interim order passed by the High Court. The Division Bench has also not appreciated the fact and/or considered the fact that the respondents were initially appointed for a period of eleven months and on a fixed salary and that too, in a temporary unit – “Project Implementation Unit”, which was created only for the purpose of rehabilitation pursuant to the earthquake for “Post-Earthquake Redevelopment Programme”. Therefore, the unit in which the respondents were appointed was itself a temporary unit and not a regular establishment. The posts on which the respondents were appointed and working were not the sanctioned posts in any regular establishment of the Government. Therefore, when the respondents were appointed on a fixed term and on a fixed salary in a temporary unit which was created

for a particular project, no such direction could have been issued by the Division Bench of the High Court to absorb them in Government service and to regularise their services. The High Court has observed that even while absorbing and/or regularising the services of the respondents, the State Government may create supernumerary posts. Such a direction to create supernumerary posts is unsustainable. Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for absorption/regularisation of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts.

7. From the impugned judgment and order passed by the Division Bench of the High Court, it appears that what has weighed with the High Court was that the respondents were continued in service for a long time, i.e., seventeen years. However, the High Court has not considered that out of seventeen years, the respondents continued in service for ten years pursuant to the interim order passed by the High Court. Therefore, even considering the decision of this Court in the case of *Umadevi (supra)*, the period for which the employees have continued in service pursuant to the interim order is to be excluded and not to be counted. The High Court has totally missed the aforesaid aspect.

8. Now, so far as the reliance placed upon the decision of this Court in the case of *Umadevi (supra)* and the subsequent decision of this Court in the case of *Narendra Kumar Tiwari (supra)*, relied upon by the learned counsel appearing on behalf of the respondents is concerned, none of the aforesaid decisions shall be applicable to the facts of the case on hand. The purpose and intent of the decision in *Umadevi (supra)* was, (1) to prevent irregular or illegal appointments in the future, and (2) to confer a benefit on those who had been irregularly appointed in the past and who have continued for a very long time. The decision of *Umadevi (supra)* may be applicable in a case where the appointments are irregular on the sanctioned posts in regular establishment. The same does not apply to temporary appointments made in a project/programme.

8.1 Even in the case of *Narendra Kumar Tiwari (supra)* also, it was a case of irregularly appointed employees. Even otherwise, in view the facts and circumstances of *Narendra Kumar Tiwari (supra)*, the said decision shall not be applicable to the facts of the case on hand. The case before this Court was with respect to the employees working with the State of Jharkhand which was created only on 15.11.2000 and therefore it was contended on behalf of the irregularly appointed employees that no one could have completed ten years of service with the State of Jharkhand on the cut-off date of 10.04.2006, which was the cut-off date fixed under the relevant rules of the State of Jharkhand.

9. Even otherwise, it is to be noted that though not required, the State, instead of putting an end to the services of the respondents, graciously placed the respondents in the Indian Red Cross Society. No duty was cast upon the State to transfer them to another establishment in a case where it is found that the employees are appointed in a temporary unit and on a temporary contractual basis and on a fixed term salary and on closure of the temporary unit, their services are not required. However, the State Government was gracious enough to place the respondents in the Indian Red Cross Society, which the respondents did not accept.

10. From the impugned order passed by the Division Bench of the High Court it appears that the High Court has observed hereinabove that in the peculiar facts and circumstances of the case, it is directed that the order of absorption and regularisation and if necessary, by creating supernumerary posts, will not be treated as a precedent in other cases. Even such a direction could not have been passed by the Division Bench of the High Court as there were no peculiar facts and circumstances which warranted the above observation. No such order of absorption and/or regularisation even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India.

11. In view of the above discussion and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Order dated 25.11.2011 passed by the learned Single Judge of the High Court in Writ Petition No. 17328/2011 dismissing the writ petition filed by the respondents herein is hereby restored.

12. The present appeal is accordingly allowed. However, there shall be no order as to costs.