

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
&

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 22ND DAY OF FEBRUARY 2021/3RD PHALGUNA, 1942

W.A.No.2084 OF 2018

AGAINST THE JUDGMENT DATED 8.8.2018 IN WP(C).NO.2660/2017(F)
OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 JOY JOSEPH
AGED 49 YEARS, FORMERLY WORKSHOP ASSISTANT
(ELECTRICAL), NOW WATCHER, COLLEGE OF ENGINEERING,
IHRD POONJAR, THEKKAKKARA P.O., KOTTAYAM - 686 582
- 2 TOM THOMAS,
FORMERLY WORKSHOP ASSISTANT (MECHANICAL), NOW WATCHER,
COLLEGE OF ENGINEERING, IHRD, POONJAR THEKKAKKARA P.O,
KOTTAYAM-686582.

BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN

RESPONDENTS/RESPONDENTS:

- 1 INSTITUTE OF HUMAN RESOURCES DEVELOPMENT (IHRD)
PRAJOE TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM - 695 014,
REPRESENTED BY ITS DIRECTOR.

- 2 THE PRINCIPAL,
COLLEGE OF ENGINEERING, IHRD, POONJAR,
THEKKAKKARA P.O, KOTTAYAM-686582.

ADDL.
3RD
RESPOND
ENT

- 3 THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
PIN - 695 001.

THE ADDITIONAL 3RD RESPONDENT IS SUO MOTU IMPEADED
AS PER JUDGMENT DATED 22.2.2021.

R1 BY SRI.DEEPU THANKAN, SC, IHRD
BY ADV.SMT.UMMUL FIDA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
22-02-2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

Gopinath P.,J.

This appeal is filed challenging the judgment of a learned Single Judge of this Court in W.P.(C).No.2660/2017. The appellants, who were the writ petitioners, claimed that they were entitled to regularization of their services under the 1st respondent, the Institute of Human Resources Development [hereinafter referred to as the 'IHRD']. Their claim having been rejected by the Learned Single Judge, they are in appeal before us.

2. The appellants had, together with certain others, earlier approached this Court through W.P.(C).No.2115/2010, which resulted in Ext.P5 judgment, whereby, a Division Bench of this Court had disposed of the matter observing that the IHRD had to take appropriate decision in the matter by “..... *applying the same yardstick that had been adopted in the case of other similarly placed employees.....*”. The learned counsel appearing for the appellants/writ petitioners would contend that Exts.P7 and P8 orders will show that the IHRD had regularized services of

similarly placed persons, and that, the impugned Ext.P15 proceedings will show that in the case of the appellants/writ petitioners, a completely different yardstick had been adopted by the IHRD. He would submit that this is completely contrary and in violation of the directions issued by this Court in Ext.P5 judgment. He would also point out that the reasons mentioned in Ext.P15 are completely incorrect and contrary to the actual facts. He would submit that there are sanctioned posts available, and even after finalization of the Special Rules, certain employees who are similarly placed like his clients, have also been regularized.

3. The learned counsel appearing for the IHRD, on the other hand, submits that the IHRD has not taken any decision regarding regularization of provisional employees, and that there are several matters pending before this Court where similarly placed persons have sought regularization. He would submit that the cases of regularization pointed out by the appellants were made in the peculiar facts and circumstances of those cases, and those cannot be treated as a precedent enabling the appellants to claim that a similar treatment must be extended to them.

4. We have considered the contentions raised by either side. It is settled law that an employee cannot claim regularization merely because he has been working in a post for some time. In **A. Umarani v. Coop. Societies; (2004) 7 SCC 112**, it was held: -

“39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any “State” within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. v. Suresh Kumar Verma [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336] .)”

In **Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.; (2007) 1 SCC 408**, referring to **Secretary, State of Karnataka and Others v. Uma Devi and Others; (2006) 4 SCC 1**, it was held: -

“30. In paras 46 to 48 of the judgment, this Court also observed that temporary,

contractual, casual or daily wage ad hoc employees appointed dehors the constitutional scheme to public employment have no legitimate expectation to be absorbed or, regularised or granted permanent continuation in service on the ground that they have continued for a long time in service. It was observed by this Court that non-grant of permanent continuation in service of such employees does not violate Article 21 of the Constitution and such employees do not have any enforceable legal right to be permanently absorbed, nor to be paid salary of regular employees. A regular process of recruitment or employment has to be resorted to when regular vacancies and posts are to be filled up. This Court further observed that public employment must comply with Articles 14 and 16 of the Constitution as the rule of equality in public employment is a basic feature of the Constitution.

Paragraphs 31-36 “.....”

37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General [(2003) 2 SCC 632 : 2003 SCC (L&S) 191] . Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits.”

Any regularization that has been granted by the IHRD, is contrary to the law laid down by a Constitution Bench of the Supreme Court in ***Secretary, State of Karnataka and Others v. Uma Devi and Others (supra)***. Paragraph 53 of the aforesaid judgment reads as follows:

*“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa (AIR 1967 SC 1071), R.N. Nanjundappa v. T. Thimmiah ((1972) 1 SCC 409) and B.N. Nagarajan v. State of Karnataka ((1979) 4 SCC 507), 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 the courts or of tribunals** and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned*

*posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but **there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.**” [Emphasis is ours]*

5. The law laid down by the Supreme Court is the law of the land. Any deviation therefrom is only to be deprecated. When a Constitution Bench of the Supreme Court has declared that regularization should be permitted only as a one-time measure subject to the conditions mentioned in paragraph 53 of the judgment in ***Secretary, State of Karnataka and Others v. Uma Devi and Others (supra)*** we do not see how any authority can violate those directions and issue orders of regularization contrary to the principles laid down in that judgment. We refrain from making any order declaring that the regularizations already granted by the IHRD are illegal only on account of the fact that the persons who were regularized are not parties to these proceedings.

6. The learned Single Judge had found that if the appellants/writ petitioners have any claim relatable to the rights of employees under the Industrial Disputes Act, it is open to them to raise such claim before the Labour Court in duly constituted proceedings under the Industrial Disputes Act. We are also of the opinion that if the appellants/writ petitioners have any claim, supported by facts, to any right of theirs protected under the provisions of the Industrial Disputes Act or any other Industrial/Labour Statutes, it is for them to establish such claim under the provisions of those Statutes, and in the manner prescribed therein, before the competent forum.

7. Since we have found that any regularization of employees contrary to the principles in ***Secretary, State of Karnataka and Others v. Uma Devi and Others (supra)*** is illegal and against the law declared by the Supreme Court and since we have noticed that orders are being issued contrary to the law declared by the Supreme Court in that Judgment, we deem it appropriate to *suo-motu* implead the Chief Secretary to the Government of Kerala, Government Secretariat, Thiruvananthapuram - 695 001 as additional 3rd respondent to

this Writ Appeal. The Registry shall carry out necessary amendments to the cause title. The Registry shall forward a certified copy of this Judgment to the Additional 3rd respondent who shall upon its receipt take note of the fact that no regularization can be granted to any temporary employee in the Government / its Departments / Statutory bodies including Local Self - Government Institutions / Government Companies / Statutory Corporations / or in any institution like the IHRD where there is '*deep and pervasive state control*' / special purpose vehicles formed for implementing specific projects / institutions of public importance and related to governmental functions etc. contrary to the express directions in ***Secretary, State of Karnataka and Others v. Uma Devi and Others (supra)*** which we have referred to and extracted in this judgment. The Additional 3rd respondent shall taking note of the above issue instructions, in such form and manner that he may decide, to all institutions of the nature indicated above indicating clearly that no regularization shall be permitted contrary to the directions of the Supreme Court in ***Secretary, State of Karnataka and Others v. Uma Devi and Others (supra)***. Let this be done by the Additional 3rd respondent within an outer time limit of 3 weeks from the date of

receipt of a copy of this Judgment.

The Writ Appeal will stand dismissed. No costs.

**Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
GOPINATH P.
JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A

TRUE COPY OF THE JUDGMENT DATED
23.3.2017 IN WPC.NO.30288/2010 OF
THIS HON'BLE COURT.

RESPONDENTS EXHIBITS:

ANNEXURE R-1 (A)

TRUE COPY OF THE JUDGMENT IN W.P.
(C).NO.16181/2014-W DATED 4.7.2014.

//TRUE COPY//

P.S. TO JUDGE