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**(2023) 03 PAT CK 0009**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 8726 Of 2014

Union Of India

APPELLANT

Vs

Manoj Kumar Pathak

RESPONDENT

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**Date of Decision:** March 4, 2023

**Hon'ble Judges:** P. B. Bajanthri, J; Arun Kumar Jha, J

**Bench:** Division Bench

**Advocate:** K.N. Singh, Manay Kumar Singh, Sanjeev Kumar

**Final Decision:** Disposed Of

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### **Judgement**

In the instant petition, Union of India " department feeling aggrieved and dissatisfied with the order of the Central Administrative Tribunal dated

31.05.2013 (Annexure-1) presented this petition.

Brief facts of the case are that respondents were stated to have been appointed on ad-hoc basis with the petitioner department during the intervening

period from the year 1980 to 1996. Their grievance is that they are entitled to regularization against the post held by each of the respondent. In this

regard, respondents have invoked judicial forum on two occasions. In fact matter was taken up before the Hon<sup>ble</sup> Supreme Court. Hon<sup>ble</sup>

Supreme Court while deciding Civil Appeal No. 863 of 2006 and 7566 of 2008 decided on 09.03.2011, order of the Apex Court reads as under:-

"Since the question involved in these two appeals are the same, we dispose of the same by this common order. For the sake of

convenience, the facts are taken from Civil Appeal No. 863 of 2006.

The High Court by the impugned judgment has dismissed the petitions filed by the appellants herein against the order of the Tribunal

whereby the Tribunal directed the appellants herein to consider the case of respondents for regularisation and eventual absorption against

the regular vacancy in due course in terms of the scheme formulated for regularisation of casual Production Assistants and General

Assistants in the All India Radio pursuant to the judgment of Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No.

822/1991 dated 18.09.1992.

The Tribunal further directed that in the alternative, a scheme to be formulated and implemented by the appellants herein for the

regularization of eligible respondents in the light of the scheme already formulated by the Department. The respondents herein are

announcers/ comperes. There is no dispute, whatsoever, that they were engaged on a casual basis. It was specifically contended by the

appellants that the respondents were engaged on assignment basis to work only for six days in a month, that is, for 72 days in a year. It was

the further contention of the appellants that they were not engaged against any regular vacancy and therefore they were not appointed as

regular announcers. It is under those circumstances, the appellants contended that the respondents were not entitled to regularisation on

whatsoever basis. The Tribunal, miserably, failed to advert to these crucial aspects of the matter. There is no finding as such recorded by

the Tribunal either accepting or rejecting the said contention. This issue, in our considered opinion, decides the fate of this lis.

The High Court merely confirmed the directions issued by the Tribunal and there is no finding as such recorded even by the High Court on

this crucial aspect of the matter.

For the aforesaid reasons, the impugned judgments of the Tribunal as well as of the High Court are set aside. These appeals are allowed.

The O.A. filed by the respondents shall stand restored to its file for the hearing on merits with the further direction that the Tribunal may

have to consider the question referred to hereinabove and record a finding thereon. We have not expressed any opinion, whatsoever, on

the merits on any of the contentions placed before us and we have, accordingly, left them open for the decision of the Tribunal.

We request the Tribunal to dispose of the O.A. as expeditiously as possible, preferably within six months from the date of receipt/ production

of a copy of this order.

Impleadment ordered.

The appeals are, accordingly, disposed of.â€

In the light of the Apex Courtâ€™s decision cited (supra) , O.A. No. 541 of 1997 was decided afresh by the Central Administrative Tribunal, Patna

Bench, Patna para 18 to 23 reads as under:-

â€œ18. In our opinion, the contention of the respondents that the applicants are not engaged against the sanctioned and vacant post is also

not tenable as the applicants were admittedly selected through proper notification and after going through the written examination,

interview and training in a similar process required for regular Announcer-cum-Comparer in view of the Circular dated 26.03.1979 In

view of the above, the contention of the respondents that the applicants are not entitled for regularisation and subsequent absorption as

they have only worked for 72 hours in a year and they are not engaged against regular vacancy is not tenable or acceptable to us and in

our opinion the applicants are entitled to be considered for regularisation and subsequent absorption being similarly circumstances with the

persons who got benefit under the different schemes made either as per direction of this Tribunal in OA No. 822/1991 or their own scheme

formulated earlier.

19. In view of the aforesaid discussions of the factual and legal aspect of the matter, we are of the opinion that the case of the applicants is

also squarely covered by the judgment passed by the Hon'ble Apex Court in the case of State of Karnataka Vs. Uma Devi reported in

2006(4) SCC 1 as well as State of Karnataka & Ors. Vs. M.L. Kesari & Ors. Reported in (2010) 2SCC(L&S) 824, wherein the issue of

regularisation of casual labour was dealt with. Hon'ble Apex Court in the matter of State of Karnataka & Ors. Vs. M.L. Kesari & Ors has

held as under:-

5. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi, if the

following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim

order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and

continued him in service voluntarily for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against

sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the applicants will be considered to

be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been

selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly

appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals,

as a one time measure. Umadevi directed that such one-time measure must be set in motion within six months from the date of its decision

(rendered on 10.04.2006).

6. The term "one time measure" has to be understood in its proper perspective. This would normally mean that after the decision in

Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad

hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a

process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so,

regularize their services.

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending

before Courts. Consequently, several departments and instrumentalities undertook the one- time exercise excluding several employees from

consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees

who were entitled to be considered in terms of para 53 of the decision in Umadevi, will not lose their right to be considered for

regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period

mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily- wage/adhoc/those employees who had put in

10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders of courts or tribunals. If any

employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled

to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise.

The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are

so considered.

8. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years

of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was

rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not

perpetuate the practice of employing persons on daily-wage/ad-hoc /casual for long periods and then periodically regularise them on the

ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and

appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.04.2006 (the date of

decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite

qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation

within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such

employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure.

9. These appeals have been pending for more than four years after the decision in Umadevi. The appellant (Zila Panchayat, Gadag) has not

considered the cases of respondents of regularisation within six months of the decision in Umadevi or thereafter.

10. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only

further direction that needs to be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six

months, a general one time regularisation exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila

Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they

fulfill them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of

respondents 1 to 3 because of pendency of these cases, then their cases shall have to be considered in continuation of the said one time

exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services

need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for

the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts. This appeal is disposed of

accordingly.

20. In the instant case also, the applicants were appointed against the proper notification after passing successfully in the written

examination, interview as well as training and were appointed against the sanctioned post as per the circular dated 26.03.1979 on daily

rated basis and worked almost 22 days in a month. It is noted that the contention of the respondents is that the applicants are not on the

same footing with the regular employees as because neither prescribed Selection Board for recruiting regular Announcer/Compere had been

constituted nor any roster point for reservation was followed in the case of appointment of Announcer/Compere, who were engaged on

assignment basis as per normal procedure. But we are not convinced with the said contention of the respondents as admittedly the applicants

were appointed against different notifications and after following proper procedure, and the question of roster point will come in case of

permanent appointment and since admittedly they were appointed on daily rated basis as casual artists, obviously the question of roster

point will not come, and thus, the ground for rejection on this count is not tenable. Moreover, as per the above mentioned judgment, i.e. in

the cases of Uma Devi and M.L. Kesari (supra), the applicants were admittedly appointed and are working since 1980 and onwards without

any intervention of any court and as observed above, as their appointment was also against the sanctioned post and after due process, the

benefit of regularisation as per the law settled by the Hon'ble Apex court in the cases of Uma Devi and M.L. Kesari (supra) cannot be

denied to the applicants. In the present case also the case was filed in the year 1997 and it has gone upto the Hon'ble Apex Court and

thereafter it has been remanded back to this Tribunal. Hence, the applicants are entitled to get the benefit of regularisation and subsequent

absorption.

21. From the above observations, the findings arrived by us are as follows:-

(i) The applicants were appointed against the proper notification after passing successfully in the written examination, interview as well as

training and were appointed against the sanctioned post as per the circular dated 26.03.1979 on daily rated basis.

(ii) They were appointed against sanctioned vacant post as per circular dated 26.03.1979.

(iii) With regard to working of 6 days in a month or 72 days in a year it is observed that as per para 3 of the Revised Scheme dated

17.03.1994 (Annexure P/8 to Supplementary Application), counting of number of days is based on Minimum Wages Act and as per the said

para-3 the applicants are working not less than 22 days in a month for six assignments which has been confirmed by the Hon'ble Apex

Court. The Doordarshan and AIR have also regularised their casual artists on the basis of the said OM dated 17.03.1994. In actual

practice, the applicants have worked throughout the year. Thus, the plea of working of 72 days is not sustainable.

(IV) As the applicants are exactly similarly circumstanced with regard to their procedure of appointment as well as nature of appointment

with the applicants of OA No. 563/1986 and OA No. 822/1991 they cannot be discriminated only on the ground of not being a party to the

said cases.

(V) The case of the present applicants are squarely covered by the judgment of the Honâ€™ble Apex Court passed in the case of Uma Devi

and M.L. Kesari (supra) for the purpose of regularisation and subsequent absorption of the applicants.

22. In view of our observations made in para 8 to 20 above and our findings arrived at para 21 above, we, accordingly, direct the

respondents to consider the case of the applicants for regularisation and eventual absorption against the regular vacancy in due course in

terms of the scheme formulated for regularisation of Casual Production Assistant and General Assistants in the AIR pursuant to the judgment

of the Principal Bench of the CAT in OA No. 822/1991 dated 18.09.1992 or alternatively to formulate a scheme for regularisation of the

eligible applicants in the light of the scheme already formulated by the said Department pursuant to the order passed in OA No. 563/1986

and OA No. 822/1991 within a period of four months from the date of receipt of a copy of this order.

23. The OA is disposed of accordingly with above directions with no order as to costs.â€™

Learned counsel for the respondent submitted that the present lis is to be differentiated in the light of pendency of Special Leave to Appeal (C)



â€..CC No (s). 13876-13877 of 2016 filed on behalf of the petitioner department from the case of Purushottaman C. and Others. Apex Court, on 05.09.2016 while condoning the delay granted, leave and further ordered that status quo shall be maintained as on 05.09.2016.

The present writ petition could be different due to pendency of litigation filed by the petitioner from the case of Purushottaman C. and Others for the reasons that matter relates to regularization. It all depends on each individual service particulars read with the Constitution bench decision in the case of Secy., State of Karnataka and others vs. Uma Devi reported in (2006) 4 SCC 1 and State of Karnataka and Ors. vs. M.L. Kesari and Ors. reported in (2010) 9 SCC 247.

The Central Administrative Tribunal has taken note of both the aforementioned decisions and proceeded to pass orders. Therefore, we feel that pendency of litigation before the Apex Court filed on behalf of the petitioner department insofar as Purushottaman C. and Others case would not come in the way of deciding the petition.

Having regard to the findings given by the Central Administrative Tribunal, Patna interfering only in respect of last portion of the order namely â€œalternatively to formulate a scheme for regularization of the eligible applicants in the light of scheme already formulated by the

Department pursuant to the order passed in OA NO. 563/1986 and OA No. 822/1991 within a period of four months from the date of receipt of a copy of this order.â€

The aforementioned direction by the Central Administrative Tribunal is arbitrary. Accordingly, it is liable to be set aside for the reasons that time and again Courts are held that formulation of any scheme or service condition of an employee of a State or Central Government or its subsidiary units, it is a policy decision that Courts cannot interfere or give positive direction for the purpose of formulating the scheme of regularization. In fact Apex Court in the Case of Secy., State of Karnataka and others vs. Uma Devi itself discussed elaborately that Tribunals/Courts cannot give positive direction for framing of scheme of regularization or for regularization of an ad-hoc employee.

Therefore, petitioners have made out a prima facie case so as to interfere with the order of the Central Administrative Tribunal dated 31.05.2013

passed in O.A. No. 541 of 1997 to the extent of giving direction to the petitioner department by the Central Administrative Tribunal is hereby set

aside. The remaining portion of the orders passed by the Central Administrative Tribunal for the purpose of absorption of each of the respondent is in

order and we cannot interfere. That apart, it is to be noted that ultimate direction given by the Central Administrative Tribunal is to consider the case

of applicants against respondents for regularization. The concerned authority is hereby directed to take note of each of the respondent service particulars

and each of the respondent fulfills the criteria laid down by Apex Court in the case of Secy., State of Karnataka and others vs. Uma Devi Read with

M.L. Kesari. Criteria viz; (a) There should be sanctioned post in the department.

b) Worker/workers shall be working at such post for more than 10 years; (c) The appointment of such employees shall not be illegal, even if it is

irregular; and (d) The employee/employees shall not be working under the umbrella of any order, prominent of interim, by any court of law in India. In

the State of Karnataka Vs. M.L. Kesari, Apex Court held that the service of the employee/employees shall be for 10 regular years, which should

have been completed on or before 10th April 2006 (i.e. date of the judgment in Uma Devi's Case) and that the scheme would be formulated as

one time scheme. Concerned petitioner is hereby directed to pass a speaking order within a period of 4 months from the date of receipt of this order.

Speaking orders shall be communicated to each of the respondent at the earliest for the reasons that this is a second round litigation by the

respondents.

Accordingly, the present writ petition stands disposed of. Pending I.A. if any, stands disposed of.

At this stage, learned counsel for the petitioner submitted that each of the respondent were stated to have not working against sanctioned post,

therefore, whatever the observation made by the Central Administrative Tribunal is required to be set aside. It is to be noted that Central

Administrative Tribunal direction is only for consideration of each of the applicants for regularization in the light of the Apex Court's decision. If

any of the respondent is not working against the sanctioned post, in that event, such respondent is not covered by Apex Court's decision in the

case of Secy., State of Karnataka and others vs. Uma Devi.