

(2007) 04 PAT CK 0112

Patna High Court

Case No: CWJC Nos. 5774, 8258 and 13325 of 2000, 1594, 2843, 4447, 5702, 6252, 9102, 9842, 10092, 15728, 15997, 16086 and 16125 of 2001, 212, 2325, 2407, 5710, 7749, 7990 and 11594 of 2002, 1426, 3099, 3312, 8667, 9573, 10218 and 11674 of 2003, 2882, 5816, 6519, 1

Smt. Chandra Sharma and
Others Etc. Etc.

APPELLANT

Vs

The State of Bihar and Others
Etc. Etc.

RESPONDENT

Date of Decision: April 13, 2007

Judgement

J.N. Bhatt, C.J.

In this group of writ petitions under Article 226 of the Constitution of India, since common questions of facts and law are involved, they have been heard simultaneously, and are, now, being disposed of by this common judgment, upon consensus, and joint request made by the counsels appearing for the parties.

2. In all these writ petitions, the factual profile in each case may be different, but the main questions of some of facts and law in the light of the factual panorama are revolving round as to whether the appointment of the petitioners in the respective Colleges under respective Universities could be said to be legal or illegal, or, regular or irregular, for the purpose of consideration and determination of the claim for regularization of their services in respective Colleges on different cadres and posts of class III and IV viz. Assistant, Laboratory Technician, Library Assistant, Sorter (Class III), Clerk, Computer Programmer, Audio Visual Technician, Physical Training, Security Guard, Typists, Store Keeper, Account Clerk, Cook, Driver, Orderly, Peon, Chaukidar, etc. As noticed above, since main factual situation in each petition raises common questions of law, more so, in the light of latest exposition or proposition of service jurisprudence involved in this group of petitions, and latest case law lucidly, expounded by the Constitution Bench decision of the Hon"ble Apex Court in the case of [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), learned Counsels for the parties have been heard intermittently on three occasions.

Virtually, common submissions, which are placed in focus, are with regard to their claim of regularization in service as they have been working in respective cadres and posts in different departments of the respective Colleges by way of public employment and as such, they are entitled to be regularized.

3. The petitioners have claimed in this group of writ petitions, for the following reliefs that:

(i) payment of the arrears of salary be directed to be made;

(ii) in some cases, services of the persons junior to the petitioners have been regularised in the concerned college/colleges ignoring the claim of the petitioners, which has resulted into manifest injustice to them. Therefore, they have claimed for regularisation on that basis;

(iii) the petitioners are entitled to be regularised on the ground of arbitrariness and discrimination meted out to them by the authority in matters of regularising the services of some and not all;

(iv) though some of the petitioners have been regularised by virtue of the Government decision or the decision of the master or the management of the college/colleges and the concerned University, but the effect of that decision is not being given retrospectively from the date when they entered into service;

(v) if the petitioners were not to be regularized now at this stage and age, apart from great injustice being caused to them, they will be out of employment market because of age bar and post and employment opportunity and they will be put to penury and starvation;

(vi) the unpaid salary to some of the petitioners, who are working, should be directed to be paid with interest;

(vii) in some of the matters, the claim is mainly for back wages after regularisation in the respective departments; this is the gist of submission.

4. Learned Counsels appearing for the respondents authorities and the State have mainly placed reliance on the latest Constitution Bench judgment in the case of Uma Devi (3) (Supra) and have countenanced the submissions raised by the counsels for the petitioners. It is also noticed from the submissions that some of the appointments are totally illegal, on unsanctioned posts, whereas, in some of the cases, the appointments have been made at the relevant point of time without observing due process of recruitment and, therefore, regularisation of service, in such cases, cannot be directed. However, they also contended that in view of the aforesaid decisions rendered in Umadevi (3) (supra), cases of the petitioners of this group of cases may be considered in the light of the observations made in that judgment in paragraph 53 and, wherever it is permissible and possible, in the light of the ratio propounded in that decision, appropriate authority may be directed to

consider or re-examines their cases.

5. Let there be a narration of some of the expositions of law lucidly propounded in the Constitution Bench decision in the case of Uma Devi (3) (supra) at this stage.

6. The absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily-wage or ad-hoc appointees or employees appointed or recruited and continued for long in public employment de-hors the constitutional scheme or public employment cannot be done. However, the submissions in respect of observations made in Uma Devi (3) in paragraph 53 may be relevant, as submitted, upon consensus, at this point of time.

7. Indisputably, the public employment as constitutional scheme has been designed and envisaged by the Government and its instrumentalities on the basis of celebrated doctrine "due process". It cannot be questioned that public employment entails equality of opportunities, in our Constitution. For the public employment, specific provisions are also provided in our Constitution under Articles 14 and 16 in special. From the hallmark of conjoint reading and constitutional provisions of Articles 14 and 16 of the Constitution with regard to the public employment, it is very clear that equal opportunity is the basis for selection or preparation of waiting or select list which ought to be in consonance with the relevant provisions prescribed for the proceeding and process of recruitment in the "public employment" and it is, therefore, settled proposition of law that any recruitment in public employment has to be in terms of the constitutional scheme and statutory provisions made for recruitment, and regularization.

8. The relevant observations in paragraph 53 of the judgment of the Hon"ble Apex Court in Umadevi (3) case, are material which read here, as under:

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in [State of Mysore and Another Vs. S.V. Narayanappa](#), [R.N. Nanjundappa Vs. T. Thimmiah and Another](#), and [B.N. Nagarajan and Others Vs. State of Karnataka and Others](#), and referred to in para 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 the courts or of tribunals. The question of regularisation 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 regularise 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.

9. In the light of the exposition of law, regularisation, absorption and continuance on permanent basis of temporary, contractual, casual, daily wage or ad hoc appointees or their appointments could be considered as one time measure by the Government in the light of the observations made in paragraph 53 of the judgment in the case of Uma Devi (3) (supra), as quoted above.

10. It is in these contexts, as well as, in the backdrop of the submissions raised on behalf of the counsels, in general, and particularly the counsel for the respondents, this Court is inclined to dispose of this group of petitions by giving the following directions to the respondents:

(1) The Vice Chancellor of the concerned Universities, shall constitute a Committee of three members within a period of two months from the date of receipt of the writ of this Court, to examine the manner and mode and the type of appointment and whether such appointments are in consonance with the Recruitment Rules on regular posts, or irregularly made or illegally made or not.

(2) Such Committee shall consider the individual case after giving an opportunity of hearing to the affected employees, the procedure for which the Committee will evolve its own modality and modus operandi so as to reach to a conclusion as to the nature of the appointments of the employees covered in this group of petitions and to ascertain whether their appointments are regular, irregular or illegal and whether they are falling within the ambit of the observations made in paragraph 53 of the decision in Secretary, State of Karnataka and Ors. v. Uma Devi (3) (supra).

(3) The Committee shall, undoubtedly, take a decision in the light of the law laid down by the Constitution Bench of the Hon"ble Apex Court in "Secretary, State of Karnataka" (Supra) and in particular in the light of the observations which are quoted herein above.

(4) It shall, also, be remembered that the exercise of regularisation, if required, shall be a one time measure.

(5) The exercise by the Committee is directed to be completed within six weeks after the creation, thereof, and in the event of any necessity it will be open for the concerned party to seek extension of time by taking leave from this Court.

(6) The contention that in some of the cases out of the present group in earlier round of litigation finality has been attained and achieved shall, also, be examined by the Committee.

(7) Until the Committee concludes its process and exercise directed herein above, the status quo in respect of the petitioners obtainable as on today, is directed to be maintained.

11. In view of the foregoing discussions and the propositions of law, this group of 85 writ petitions under Article 226 of the Constitution shall, accordingly, stand disposed of with no order as to costs.