

Before M.M. Kumar & Gurdev Singh, J.
VANDANA AND OTHERS,—Petitioners

VERSUS

UNION OF INDIA AND OTHERS,—Respondents

CWP No. 2895 - CAT of 2010

30th August, 2011

Constitution of India - Art. 14, 16(1) & 226 - Staff Selection Commission (SSC) - Central Administrative Tribunal rejecting prayer of Petitioners for regularization on ground that they were not recruited through process of SSC but observing that services of Applicants have been utilized for a period of more than 10 years and Respondent department has never held a regular selection through process of SSC - Respondents must thus take steps to evolve a procedure and applicants be put to some kind of competitive examination for appointment on a regular basis - Respondents may also consider creation of posts for vacancies that do not exist and put the Applicants through competitive examination through SSC and Applicants be permitted to participate in the same and in case they are found qualified, they may be considered for regular appointments with grant in relaxation in age - Writ petition was earlier dismissed in view of Supreme Court judgment - Review Petition filed - Order recalled - Petition disposed of.

Held, That Constitution Bench has distinguished between "illegality" and "irregularity" while relying upon RN Nanjundappa v/s T Thimmiah, (1972) 1 SCC 409 and observed that if the appointment itself is an infraction of the Rules or in violation of the Constitution, such illegality cannot be regularized. Reference was also made to BN Nagarajan v/s State of Karnataka, (1979) 4 SCC 507. There is a clear distinction between those who have entered into service in violation of the Rules and basic structure of the Constitution are a class apart from those whose appointment have come to be irregular.

Further held, That the case of the Petitioners would fall in the exception carved out in para 53 of Uma Devis's case inasmuch as that were initially appointed purely on temporary basis for a period of 89 days and that their names were requisitioned through the employment exchange and they had continued in the Respondent department for more than 10 years.

(Para 6)

Further held, That petition disposed off with a direction to the Respondents to frame a scheme for regularization in accordance with Uma Devis's case and if the Petitioners are found suitable their services should be regularized within a period of three months.

(Para 7)

H.C. Arora, Advocate, *for the petitioners.*

Ashwinie K. Bansal, Advocate, for the respondent-Union of India.

M.M. KUMAR, J.

(1) The short issue raised in the instant petition filed under Article 226 of the Constitution is whether the services of the petitioners, who were appointed as Stenographer (OG) on temporary basis initially for 89 days, between June 1993 to October 1995, could be regularised and a direction could be issued to the respondents to frame a Scheme for regularization.

(2) The applicant-petitioners have challenged order dated 2.9.2005 (P-1) rendered by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, 'the Tribunal'). The Tribunal has rejected the prayer of the applicant-petitioners for regularising of their services on the ground that they were never recruited in accordance with the rules through the process of the Staff Selection Commission (SSC), which is now recognised to be a mode of recruitment. However, at the same time, the Tribunal has disposed of the original application by observing in para 7 as under:

“7. Examined under the above proposition of law, we find that applicants were never recruited in accordance with the rules through the process of SSC which is now recognised to be a mode of recruitment. In these circumstances, the prayer of the applicants to order their regularization by grant of relaxation, has to be rejected. We, however, cannot close our eyes to the practical side of life which indicates that the human resources

have been utilized by getting services from persons, like the applicants, which arrangement has continued for a period of more than 10 years. It is very strongly contended by the Id. Counsel for the applicants that the respondent department have never held a regular selection for appointment to the posts of Stenographers through the process of SSC. Applicants, he contends, are being deprived of regular appointment in this case on account of failure of the respondents to get recruitment done through the process known to law. The contention merits consideration not only of this court but also of the competent authority under the respondents. Respondents must evolve some procedure through which applicants also can avail the opportunity of participating in the process of selection through SSC. We, therefore, desire that respondents should take steps to that effect and applicants may be put to some kind of competitive examination for their appointment on regular basis. Respondents may also consider creation of some posts for some vacancies do not exist, taking into consideration the fact that the respondent department was in need of services of these applicants on similarly placed persons working as Stenographers for a very long time and take decision to create any further posts. As and when respondents put the applicants through the regular process of Selection, some competitive examination be held through SSC or any other agency and applicants may be permitted to participate in the same, along with other candidates. In case, they are found qualified in the said competitive examination, they may be considered for their regular appointments with grant of relaxation in age for the period they have already worked under the respondents.”

(3) It is pertinent to mention that at one stage the instant petition was dismissed by the Division Bench in light of the law laid down by the Constitution Bench of Hon'ble the Supreme Court in the case of **Secretary, State of Karnataka and other Secretary, others versus Uma Devi and others (1)**, vide order dated 18.5.2006. Thereafter, the applicant-petitioners filed Review Application No. 207 of 2006 contending that they have come through employment exchange and have been working for the period of ten

years. The Division Bench recalled order dated 18.5.2006 keeping in view of the observations made by their Lordships' of Hon'ble the Supreme Court in para 53 of the judgment in the case of Uma Devi (supra).

(4) We have heard learned counsel for the parties at length and perused the paper book with their able assistance. Their Lordships' of Hon'ble the Supreme Court In the case of Uma Devi (supra) has deprecated regularisation of services of such employees who have entered service by illegal manners.

(5) The Constitution Bench has made distinction between 'illegality' and 'irregularity'. In order to cull out the aforementioned distinction, their Lordships' made a reference to the arguments raised in the case of **R.N. Nanjundappa versus T. Thimmiah (2)**, wherein it was observed that if the appointment made itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, such an illegality cannot be regularised. It has been further observed that ratification and regularisation is possible of an act which could be within the power and province of the authority but there has been some non-compliance of the procedure or manner which did not go to the root of the appointment and that regularisation cannot be a mode of recruitment. If such a proposition was to be accepted then a new head of appointment would be introduced in defiance of rules, which would have the effect of setting at naught the rules. The Constitution Bench has also made a reference to another judgment of the Supreme Court rendered in the case of **B.N. Nagarajan versus State of Karnataka (3)**. Therefore, a clear distinction between those who have entered into service in violation of the rules and basic structure of the Constitution as envisaged by Articles 14 and 16(1) of the Constitution are class apart from those whose appointments have come to be irregular. It is in these circumstances that their Lordships' of the Supreme Court in Umadevi's case (supra) has observed in para 53 as under:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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

(2) (1972) 1 SCC 409

(3) (1979) 4 SCC 507

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 regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

(6) When the aforesaid principles are applied to the facts of the present case, it becomes patently clear that the case of the applicant-petitioners would fall in the exception carved out in para 53 of the judgment in Uma Devi's case (supra), inasmuch as, they were initially appointed purely on temporary basis on the basic pay of '1200+other allowances, for a period of 89 days between June 1993 to October 1995. There is no dispute that their names were duly requisitioned by the respondents through Employment Exchange and that they have been continuing in the respondent department for more than ten years.

(7) As a sequel to the above discussion, the instant petition is disposed of with a direction to the respondents to frame a scheme of regularisation in accordance with the judgment of Hon'ble the Supreme Court rendered in the case of Uma Devi (supra) and if the petitioners are found suitable in all respects their services should be regularised. The needful shall be done within a period of three months from the date of receipt of a copy of this order.

M. Jain