

SUPREME COURT OF INDIA

State Of Karnataka

Vs.

Sri G.V. Chandrashekar

C.A. No.1187 of 2009

(S.B. Sinha and Cyriac Joseph JJ)

25.02.2009

JUDGM ENT

S.B. SINHA, J.

1. Leave granted.

2. These appeals involving similar questions of law and facts were taken up for hearing together and are being disposed of by this common judgment. The short question which arises for consideration herein is as to whether the respondents herein having been appointed on an ad-hoc basis could be treated to have been regularized in their services. We may notice individual fact of the matters before us:- Civil Appeal arising out of SLP(C) No.24124/2004 Respondent herein was appointed as a Typist on 5.9.1985 and worked for more than ten years without break in service. Under these circumstances, he sought direction from appellants herein to regularize his services with all consequential benefits. His claim was denied by the appellants. Aggrieved by the same, respondent approached the Karnataka Administrative Tribunal which by its order dated 22.9.2003 directed that the question of regularization of the services of the respondent be examined by the appellants with

reference to records and decision thereon be taken within 90 days thereafter. Challenging the order of the tribunal, appellant- State approached the High Court which by its order dated 9.8.2004 dismissed the same and directed the appellant to consider the claim of the respondent in terms of the judgment in Premakala Shetty vs. Common Cadre Committee. Civil Appeals arising out of SLP(C) No.24985-25042/2006 Respondents were working in the Forest Department for over ten years as gate watchman, driver, wireless operator and computer operator and sought for regularization of their services from the authorities of the department with all consequential benefits. Their claim was denied by the appellants. Aggrieved by the same, respondents approached the Karnataka Administrative Tribunal which by its order dated 24.9.2003 directed that the question of regularization of the services of the respondent be examined by the appellants with reference to records and decision thereof may be taken within 90 days. Challenging the order of the Tribunal appellant State approached the High Court which dismissed the writ petition by reason of an order dated 21.7.04 and directed the appellant to consider the claim of the respondents following the judgment in Premakala Shetty vs. Common Cadre Committee. Civil Appeal arising out of SLP(C) No.12223/2006 Respondents were appointed as sweepers on 1.4.1980 and 29.4.1978 respectively and sought for regularization of their services with all consequential benefits as they had put in more than ten years of service. Their claim was denied by the appellants. Aggrieved by the same, respondents approached the Karnataka Administrative Tribunal which by its order dated 10.1.2003 directed that regularization of the respondents be made from the day they had completed 10 years of continuous service, as against the posts on which they had been irregularly recruited, with all consequential benefits. Challenging the order of the Tribunal, appellant State approached the High Court, by filing a writ petition which dismissed the writ petition by reason of an order dated 5.1.2004 directing it to consider the claim of the respondents following the judgment in State of Karnataka, By Secretary Forest Department, Bagalore and Ors. vs. T.B. Manjunath and Ors. and Premakala Shetty vs. Common Cadre Committee. Civil Appeals arising out of SLP(C) Nos.15115-15119/2004 Respondents herein have been working as Forest Watchers for more than 10 years, having been inducted as daily wagers. As their applications for regularization was rejected by the appellants, they approached the Karnataka Administrative Tribunal which by its order dated 19.12.2002 directed that in the event of respondents filing fresh application with supportive evidence, their claim for regularization may be taken up and appropriate orders thereon may be passed within three months from the date of representation. Challenging the order of the Tribunal, appellant State approached the High Court by filing a writ petition which rejected the writ petition by reason of an order dated 28.1.04 and directing it to consider the claim of the respondents following the judgment in State of Karnataka, By Secretary Forest Department, Bangalore and Ors. vs. T.B. Manjunath and Ors. and Premakala Shetty vs. Common Cadre Committee. Civil Appeals arising out of SLP(C) Nos.16273-16276/2004 Respondents have been working as mazdoors and sought for regularization of their services having completed more than 10 years of service. As their applications for regularization was denied by the appellants, they approached the Karnataka Administrative Tribunal which by its order dated 24.7.2003 directed that the claim of the respondents be examined and decided within 90 days from the date of receipt of the order and in the event of having completed 10 years of service, on any subsequent date, on any day prior to or after the date of filing of the application, the appellants shall consider the claim for regularization. Challenging the order of the Tribunal, appellant State approached the High Court, by way of writ which was rejected by reason of order dated 28.1.2004 and directing it to consider the claim of the respondents following the judgment in State of Karnataka, By Secretary Forest Department, Bangalore and Ors. vs. T.B. Manjunath and Ors. and Premakala Shetty vs. Common Cadre Committee. Civil Appeals arising out of SLP(C) Nos.17865-17873/2004 Respondents were appointed as forest watcher, literate Assistant and Board Driver and sought for regularization of

their services with all consequential benefits. As their applications for regularization was denied by the appellants, they approached the Karnataka Administrative Tribunal which ordered on 11.11.2002 that the appellants shall consider the claim of the respondents but subject to verification of the claim of their having completed ten years of continuous service be examined and decided within 90 days from the date of receipt of the order. Challenging the order of the Tribunal, appellant State approached the High Court by way of a writ petition which was rejected by reason of order dated 12.1.2004 and directing it to consider the claim of the respondents in terms of judgment in State of Karnataka, By Secretary Forest Department, Bangalore and Ors. vs. T.B. Manjunath and Ors. and Premakala Shetty vs. Common Cadre Committee and directed to comply with the order within two months. Civil Appeals arising out of SLP(C) Nos. 16527-16534/2004 Respondents herein were appointed as first division assistant, stenographer, watchman and have approached the KAT for their regularization of their services. The Tribunal by way of order dated 23.9.03 allowed the application of the respondents herein and directed compliance within 90 days from the date of receipt of the order. Challenging the order of the Tribunal, appellant State approached the High Court by way of a writ petition which was rejected by reason of order dated 17.3.2004 and directing it to consider the claim of the respondents. Civil Appeal arising out of SLP(C) No.11893/2006 Respondent's husband was appointed a Driver on 30.5.1980 and he died on 15.8.92. Respondent sought for regularization of his services with all consequential benefits. The Tribunal on 10.7.2003 relying upon the decision on Bidu vs. State of Karnataka (ILR 2000 KAR 2405) directed to pass appropriate orders within 90 days, including consideration of claim for compassionate appointment. Challenging the order of the Tribunal the appellants came up with a writ petition before the High Court which was dismissed by reason of order dated 9.11.2004, placing reliance on State of Karnataka vs. Karnataka Casual and Daily rated workers' Union (ILR 2001 KAR 1178), Himachal Pradesh vs. Suresh Kumar [(AIR 1986 SC 1565] and Randhir Singh, D.S. Nakara, Dharwad etc. Civil Appeal arising out of SLP(C) No.11894/2006 Respondents herein were appointed as literate assistant, hand-pump helper, typist and sought for regularization of services with all consequential benefits from their authorities. The High Court dismissed the writ petition filed by the State, which challenged the Tribunal's order dated 09.06.2003 and directed the appellant to consider the claim of the respondents.

3. Indisputably, a Constitution Bench of this Court in Secretary. State of Karnataka & ors. vs. Umadevi (3) & ors. [(2006) 4 SCC 1] having regard to the provisions contained in Articles 14 and 16 of the Constitution of India opined that any appointment made in contravention of any recruitment rules framed in terms of the proviso appended to Article 309 of the Constitution of India would be wholly illegal and without jurisdiction, holding: "26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent-- the distinction between regularisation and making permanent, was not emphasised here--can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of Piara Singh [(1992) 4 SCC 118] is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment. 43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates." While saying so, however, the Constitution Bench with a view to give some relief to those employees in respect of whom the process of regularization had been completed and by way of one time measure, held 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 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 abovereferrred 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."

4. The question which arises for consideration herein is as to whether having regard to the aforementioned law as laid down by the Constitution Bench the respondents herein are entitled to any relief or not. Mr. Sanjay R. Hegde, learned counsel appearing on behalf of the appellants and Mr. Girish Ananthamurthy, learned counsel appearing on behalf of the respondents, on the other hand, relied upon two orders passed by this Court; one dated 17.11.2006 in Civil Appeal No. 3956 of 2001 - Madanbi vs. Director of Horticulture & Ors., wherein all appeals have been allowed following Umadevi (supra), whereas in order dated 19.2.2007 in Civil Appeal No.838 of 2007 - State of Karnataka & Anr. vs. S.K. Halappa & Ors. another Division Bench of this Court directed as under:- "We have perused the order passed by the High Court dated 29.3.2004 whereby the Division Bench has directed that Government will consider each case independently in accordance with law, within ten weeks from today for regularization. Suffice it to say that Respondent No.1 (herein) was appointed on a daily wages and he continued for quite some time and thereafter he filed writ petition before the High Court for regularization on permanent basis with all consequential benefits. The High Court directed the State to consider the case of Respondent No.1 in accordance with law and within 10 weeks. Aggrieved against this order, the State is in appeal by way of special leave petition. We have heard learned counsel for the parties and perused the record. In our view, the point involved in this appeal has been decided by this Court in the case of Secretary, State of Karnataka and Others vs. Uma Devi(3) and Others, (2006) 4 SCC 1. The regularization has now been held to be bad in law. But certain observations have been made in the aforesaid judgment. Therefore, in the fitness of things, we set aside the order of the High Court and remit the matter back to the High Court for fresh consideration in light of the law laid down in Uma Devi's case (supra)"

5. Our attention has also been drawn to the order dated 9.6.2003 passed by the learned single judge of the High Court of Karnataka, Bangalore in Writ Petition Nos. 10332-10342 of 2003 (S-Reg) by Mr. Anatha Murthy, which reads as under:- "1. The respondents are directed to consider the cases of the petitioners who have completed ten years of continuous service for regularization subject to the petitioners fulfilling the eligibility criteria for the posts to which they seek regularization. 2. In the event of any of the petitioners being found not to have the qualification for regularization to the post in which they are presently working, they may be considered for regularization to the next lower post for which they have qualification or they should be given a reasonable time for acquiring the qualification. The respondents may not dispense their services merely on the ground that they do not have necessary qualification. 3. The respondents may also consider the request of the petitioners for

extension of regular pay scales applicable to regular employees discharging the same functions, wherever such pay scales are not extended already. 4. The respondents are given three months time from today to comply with the direction given above."

6. Interpretation of Para 53 in Umadevi's case (supra) had come up for consideration before this Court in a large number of decisions. In Mineral Exploration Corpn. Employees' Union vs. Mineral Exploration Corpn. Ltd. [(2006) 6 SCC 310] wherein this Court, while following Umadevi (3) (supra), invoked para 53 of the said decision to opine:

"39. We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi (3) (supra) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal." However, in National Fertilizers Ltd. & ors. vs. Somvir Singh (2006) 5 SCC 493, this Court held:-

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration. xxx xxx
xxx 25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service. 26. It is true that the respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the respondents have worked for some time, the same by itself would not be a ground for directing regularization of their services in view of the decision of this Court in Umadevi(3)" In State of M.P. & Ors. vs. Lalit Kumar Verma [(2007) 1 SCC 575], this Court held:- "20. The decision to implement the judgment was evidently subject to the decision of this Court. But, the Special Leave Petition is barred by limitation. The question, inter alia, which arises for consideration before us is as to whether we should condone the delay or allow the respondent to continue to occupy the permanent post.

21. The legal position somehow was uncertain before the decision rendered by the Constitution

Bench of this Court in Uma Devi (3) (supra). It has categorically been stated before us that there was no vacant post in the department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision has also no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by Article 16 of the Constitution of India." In Punjab Water Supply & Sewerage Board vs. Ranjodh Singh & ors., [(2007) 2 SCC 491], this Court held:-

"19. In the instant case, the High Court did not issue a writ of mandamus on arriving at a finding that the respondents had a legal right in relation to their claim for regularization, which it was obligated to do. It proceeded to issue the directions only on the basis of the purported policy decision adopted by means of a circular letter and, as noticed hereinbefore, even a policy decision adopted in terms of Article 162 of the Constitution of India in that behalf would be void. Any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions. Any appointment, thus, made without following the procedure would be ultravires." In Postmaster General, Kolkata & Others vs. Tutu Das (Dutta) [(2007) 5 SCC 317], this Court held as under:- "20. The statement of law contained in para 53 of Umadevi (3) cannot also be invoked in this case. The question has been considered by this Court in a large number of decisions. We would, however, refer to only a few of them.

21. In Punjab Water Supply & Sewerage Board v. Ranjodh Singh referring to paras 15, 16 and 53 of Umadevi (3) this Court: (SCC pp. 500-01 paras 17-18)

"17. A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones.

18. Distinction between irregularity and illegality is explicit. It has been so pointed out in National Fertilizers Ltd. v. Somvir Singh in the following terms: (SCC pp. 500- 01, paras 23-25)

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration. 24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in State of Mysore v. S.V. Narayanappa, R.N. Nanjundappa v. T. Thimmiah and B.N. Nagarajan v. State of Karnataka wherein this Court observed: [Umadevi (3) case, SCC p. 24, para 16]

"16. In *B.N. Nagarajan v. State of Karnataka* this Court clearly held that the words 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service.' " (See also *State of M.P. v. Yogesh Chandra Dubey and State of M.P. v. Lalit Kumar Verma.*) The controversy, if any, in our opinion, has been given a quietus by a three Judge Bench of this Court in *Official Liquidator vs. Dayanand & ors.* [(2008) 10 SCC 1], holding: "75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in *Secretary, State of Karnataka v. Uma Devi (3)* is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - *Indian Drugs and Pharmaceuticals Ltd. v. Workmen* [(2007) 1 SCC 408], *Gangadhar Pillai v. Siemens Ltd.* [(2007) 1 SCC 533], *Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara* [(2007) 5 SCC 326], *Hindustan Aeronautics Ltd. v. Dan Bahadur Singh* [(2007) 6 SCC 207]. However, in *U.P. SEB v. Pooran Chand Pandey* (2007) 11 SCC 92 on which reliance has been placed by Shri Gupta, a two- Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in *Maneka Gandhi v. Union of India*[(1978) 1 SCC 248]." The Court noticed that in *U.P. SEB v. Pooran Chandra Pandey* (supra), this Court held:

"18. We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi v. Union of India* has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi* case is a decision of a seven-Judge Bench, whereas *Umadevi (3)* case is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, *Maneka Gandhi* case does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application." (Emphasis supplied) However, the said observations were not called for. The Bench noticed several judgments/orders of different Benches taking a view contrary to *Uma Devi (3)* (supra) to opine that those cases were illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. It was opined:

"90. We are distressed to note that despite several pronouncements on the subject, there is

substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in *U.P. State Electricity Board v. Pooran Chandra Pandey* (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench." We feel bound by the observations made therein. Initial recruitment of the respondents being wholly illegal and contrary to the constitutional scheme of this country, the impugned judgment of the High Court cannot be upheld. It is set aside accordingly.

7. In the light of the decision in *Uma Devi (3)* (supra) and the interpretation given to Para 53 therein by this Court in the abovementioned judgments, the appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.