SUPREME COURT OF INDIA

State of Bihar

Vs.

Kirti Narayan Prasad

C.A.No.8649 of 2018

(Madan B.Lokur,J., S.Abdul Nazeer and Deepak Gupta,JJ.,)

30.11.2018

JUDGMENT

S.Abdul Nazeer,J.,

SLP(Civil) No.24742 of 2012

1. Some of the appeals out of the aforesaid group of matters have been filed by the State of Bihar challenging the order of the High Court of Judicature at Patna, whereby the Division Bench has confirmed the order of the learned Single Judge directing reinstatement of the writ petitioners therein on their respective posts with all consequential benefits in terms of the order dated 6.10.2009 in CWJC No. 6575 of 2009 and analogous cases. In CWJC No. 6575 of 2009 and other connected matters, learned Single Judge while allowing writ petitions has directed reinstatement of the writ petitioners therein from the date of their termination on the post, they were working with all consequential benefits. The Letter Patent Appeals filed by the State of Bihar challenging the said order have been dismissed by the Division Bench of the High Court holding that the writ petitioners have been working continuously for more than ten years without protection of any interim orders of the Court and Tribunal. It was further held that in view of the Constitution Bench judgment of this Court in Secretary, State of Karnataka and others v. Umadevi (3) and others, 2006 (4) SCC 1 and in State of Karnataka and others v. M.L. Kesari and others, 2010 (9) SCC 247, the termination order issued against the writ petitioners cannot be said to be legal. Accordingly, LPAs have been dismissed. These orders have also been challenged by the State of Bihar in this group of appeals.

2. In the other connected matters, the Division Bench of the Patna High Court has allowed the LPAs and the writ petitions filed by the petitioners therein have been dismissed holding their appointment as non est and void ab initio.

3. Since a common issue has been raised in all these appeals, they are disposed of by this common judgment.

4. The facts of the cases in brief are as under:

5. The writ petitioners had joined the service of State of Bihar under the orders made by the concerned Civil Surgeon-cum-Chief Medical Officer of the district. None of the writ petitioners was appointed through a proper legal recruitment process. They were posted in Class III or Class IV service in a primary health centre within the jurisdiction of the civil surgeon. The State Government having realised the large scale irregularities committed in the appointment by the concerned Civil Surgeon-cum-Chief Medical Officer, scrutinized all the appointments. The State Government having found that large number of appointments were made on the basis of false or forged documents, without following due process of recruitment and mostly without the appointment orders, cancelled such appointments and the concerned incumbents were discharged from service. Those orders of discharge were challenged before the Patna High Court. The High Court by a common judgment and order set aside the impugned orders of discharge from service solely on the ground of violation of the principles of natural justice. All the writ petitioners were directed to be reinstated in service without the salary or remuneration for the interregnum period.

6. Thereafter, the State Government initiated proceedings to terminate the services of such employees by issuing show cause notice and calling upon each of them to establish legality of their respective appointment. The writ petitioners failed to establish the legality of their appointment. Once again their services were terminated. Feeling aggrieved, the writ petitioners challenged the said orders before the High Court, which eventually reached the Division Bench in Letter Patent Appeals. The Division Bench noticed that the writ petitioners were appointed in Class III or Class IV service and were serving as such for a long time. They had claimed the benefit of regularisation in service. In view of the judgment of this Court in Umadevi (supra), the Division Bench in *State of Bihar v. Purendra Sulan Kit, reported in*[1], directed the State Government to find out which of the affected employees are entitled for regularisation. The direction of the Division Bench is as under:

> "All the Letters Patent Appeals whether preferred by the State or by affected employees and all the Writ Petitions preferred by the affected employees are hereby disposed of by this common judgment and order with a direction to the authorities of the Health Department, Government of Bihar to reconsider the cases of all the affected employees with a view to find out on the basis of relevant facts and law as settled by the Constitution Bench in the case of Secretary, State of Karnataka vs. Uma Devi (supra) as to which of such affected employees are fit for regularisation in terms of that judgment, particularly in terms of paragraph 44 of the judgment. Such exercise should be completed within a period of six months from today. If for any good reason, the time period is required to be extended then the respondent State must file an application for that purpose and seek extension from this Court. Till the process is completed, the State of Bihar and its authorities shall maintain status quo in respect of services of the affected employees as existing on date. The status quo shall get revised by the orders that may be passed by the authorities in respect of affected employees as a result of the exercise to be undertaken by them and their final decision in the light of this judgment and order."

7. Pursuant to the aforesaid directions, the State Government constituted a committee comprising of five officers (for short 'State Committee') to examine the facts of individual cases. However, two members of the said committee did not participate in the proceedings for the reasons best known to them. So, it precipitated into committee of three members which carried out the aforesaid directions and submitted its report. The said committee issued show cause notice to each individual, considered the facts in each individual case and classified the said employees in three categories mentioned hereinbelow:

(i) The employment secured on false and forged document;

(ii) Illegal appointments; and

(iii) Irregular appointments.

8. About 91 cases which were classified as irregular appointments were eventually ordered to be regularised keeping in view the direction in Umadevi (supra). Rest of the appointments being void ab initio, were cancelled and the services of the concerned employees were terminated. The writ petitioners again challenged the order of termination before the High Court. Some of the writ petitions were allowed. Against such orders the State Government approached the Division Bench by filing a group of Letter Patent Appeals. The Division Bench by a common judgment and order, with the consensus of the learned advocates for the parties, referred the matter with detailed directions to a Committee comprising Justice Uday Sinha (retired). These matters have been dealt with by Justice Uday Sinha (retired). He has made report in each case placed before him. Those matters are not the subject-matter of this group of appeals. Writ petitions were filed by a group of appointees challenging the report of the State Committee before the High Court. A learned Single Judge of the High Court allowed the said writ petitions. The respective orders made by the learned Single Judge were challenged by filing LPAs before the Division Bench. The Division Bench allowed some of the appeals. In some cases, the Division Bench directed the State Government for regularisation in service of the writ petitioners. These orders are under challenge in the instant appeals.

9. Learned senior counsel appearing for the State of Bihar submits that the writ petitioners are illegal appointees. Those whose appointments were found to be irregular by the committee constituted in pursuance of the judgment and order of the Division Bench were distinct from those whose appointments were illegal and the same cannot be treated on the same footing. Since, the appointments of the writ petitioners were found illegal, their services were terminated after giving them an opportunity of hearing. The State Committee has examined the correctness of appointment of each of the writ petitioners and found them to be illegal. The appointment of the writ petitioners have not been made against the vacant post by the competent authority. Their appointment was on non-sanctioned post by incompetent authority, without an advertisement and that their appointment could not have been saved in terms of the judgment in Umadevi (supra).

10. On the other hand, learned counsel appearing for the writ petitioners submitted that the writ petitioners have the requisite qualification for being appointed to the post in question. They have been appointed by the committee constituted and headed by the Regional Deputy Director considering their past health service experience and qualification and posted in different primary health centres and worked for the past 2 to 3 decades. Their appointment is fully protected by the judgment in Umadevi (supra) and M.L. Kesari (supra). Therefore, they cannot be terminated from service at this stage of their career, that too without holding any disciplinary enquiry against them.

11. We have carefully considered the submissions of the learned counsel for the parties and perused the materials placed on record.

12. It is not in dispute that the Government of Bihar in its Administrative Reforms department had issued instructions for appointment to Class III posts in the Government office under its circular No. 16440 dated 03.12.1980. The said circular applies to Class III posts other than the posts which are filled in by appointment of candidates selected by Bihar Public Service Commission after a competitive examination and to the posts which are governed by the Government resolution dated 28.01.1976. The said circular sets out a detailed procedure for notifying the vacancies in Secretariat and its attached offices, District Magistrates and other Muffassil Offices and for calling for applications, preparation of a common merit list and appointment from the said common merit list in the order of merit. It also provides the procedure for constitution of selection committee, preparation of merit lists and wait list, duration of merit lists and wait list. A similar circular No. 16441 was also issued on 03.12.1980 for appointment to Class IV posts in the Muffassil Offices of the Government. These circulars had been issued to avoid discrimination in appointment to Class III and Class IV posts in the Government offices and provide for generalized procedure in consonance with Articles 14 and 16 of the Constitution. The appointment of the writ petitioners have not been made in accordance with these circulars. Therefore, the contention of the learned counsel for the writ petitioners is that since the writ petitioners have served for more than 10 years and some of them have even completed 20 years of service, they ought to have been regularized in terms of the judgment in Umadevi (supra) and M.L. Kesari (supra).

13. In Umadevi (supra) the Constitution Bench has held that unless appointment is made 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 was an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. A temporary employee could not claim to be made permanent on the expiry of his term of appointment. It was also 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. In paragraph 43 of Umadevi (supra), it was held as under:

”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."

(Emphasis supplied)

14. However, in paragraph 53 an exception is made to the general principles against regularisation as a one-time measure which is 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 abovereferred 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."

15. In some of the LPAs the Division Bench appears to have followed paragraph 11 in M.L. Kesari (supra) for directing regularisation of service without considering the observations contained in paragraph 7 of the judgment. In paragraph 11, it was observed that "the true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] 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 within six months of the decision in Umadevi (3) as a one-time measure ". However, in paragraph 7 after considering Umadevi (supra) this Court has categorically held that for regularisation, the appointment of employee should not be illegal even if irregular.

”7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3), 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 and continuously 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 appointments 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."

(Emphasis supplied)

16. In *State of Orissa and Anr. v. Mamata Mohanty*[2], this Court has held that once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage. It was held thus:

"68(i) The procedure prescribed under the 1974 Rules has not been followed in all the cases while making the appointment of the respondents/ teachers at initial stage. Some of the persons had admittedly been appointed merely by putting some note on the notice board of the College. Some of these teachers did not face the interview test before the Selection Board. Once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage".

(Emphasis supplied)

17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.

18. Therefore, the Civil Appeals filed by the writ petitioners in the aforesaid batch of appeals are hereby dismissed. The Civil Appeals filed by the State of Bihar are allowed and the writ petitions filed before the High Court of Patna in the said cases are hereby dismissed. There shall be no order as to costs.

Judgment Referred.

[1]*(2006) 3 PLJR 0386*
[2]*(2011) 3 SCC 0436*