REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4916 OF 2015
(Arising out of S.L.P. (Civil) No. 662 of 2014)

SURENDRA KUMAR & ORS. …APPELLANT (S)

VERSUS

GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY & ORS. …RESPONDENT (S)

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of a judgment passed by the Division Bench of the High Court of Judicature at Allahabad dated 29.10.2013 in Writ Petition No.65789 of 2011, in and by which, the High Court held that on the principles laid down in the case of *Secretary, State of Karnataka & Ors. Vs. Uma*

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Devi (3) & Ors., (2006) 4 SCC 1, the appointments of the appellants were ex-facie illegal dehors Articles 14 and 16 of the Constitution of India and directed an inquiry regarding initial appointments.

3. Brief facts giving rise to this appeal are that the appellants were initially engaged on the post of Assistant Manager (Civil) by the respondent No.1–Greater Noida Industrial Development Authority on contractual basis for a period of 89 days. Admittedly, initial appointments of the appellants were not made against any sanctioned posts. However, their engagement continued from time to time, and the appellants have been continuously working on the said post. On 20.11.2002, the respondent authorities published an advertisement for engagement to the posts of Assistant Manager (Civil). The appellants and similarly situated persons who have been engaged on contractual basis filed a Writ Petition being Writ Petition No.54072 of 2002 seeking for a writ of mandamus directing the respondent-authorities to regularise their services on the post of Assistant Manager

(Civil) and to quash the aforesaid advertisement dated 20.11.2002. The appellants contended that as they were working continuously, the respondent authorities instead of issuing a fresh advertisement should have regularised their services on the said post. By the judgment dated 28.09.2005, the learned Single Judge allowed the Writ Petition and quashed the advertisement dated 20.11.2002 and directed the respondent-authorities to consider the claim of the appellants for regularisation of their services on the existing vacancies which were directed to be filled up from the existing contractual employees as per the Regulation/Rules and fresh advertisement could be issued inviting applications from the general candidates only for remaining vacancies. Challenging the order of the learned single Judge, respondent authorities filed Special Appeal before the Division Bench being Special Appeal No.1432 of 2005.

4. Pending adjudication of Writ Petition No.54072 of 2002 before the learned single Judge, a scheme for regularization of the contractual employees was formulated by

the respondent No.1 on 16.04.2003, wherein a policy was framed regarding regularization of 27 contractual employees who had been engaged initially for a period of 89 days and continued thereafter. The State Government, vide its letter dated 05.03.2008, approved the policy formulated by respondent No.1 for regularization of contractual employees. As per the said policy, 60% of the vacancies were sought to be filled up from amongst 27 contractual employees and the remaining 40% of the vacancies through direct recruitment. The special appeal being Special Appeal No.1432 of 2005 was disposed of on 13.01.2010 directing the first respondent authority to take a final decision in pursuance of the policy framed by it and approved by the State Government on 05.03.2008. Pursuant to the policy decision, the appellants and other similarly situated contractual employees were appointed on the post of Assistant Manager (Civil) vide appointment orders dated 06.08.2010.

5. After joining the said post, the appellants filed a Claim Petition No. 174 of 2011 before the State Public Services

Tribunal, Lucknow praying for regularization of their services from the date of existence of vacancies, that is 20.11.2002, the date on which the advertisement was issued, for appointment to the post of Assistant Manager (Civil) and with all consequential benefits. The tribunal, vide its judgment dated 23.06.2011, allowed the Claim Petition and directed the authorities to consider the appellants' claim for regularization of their services on the existing vacancies with effect from 20.11.2002. Aggrieved by the order of the tribunal, the respondent authorities preferred a writ being Writ Petition No.65789 of 2011 before the High Court. The High Court, vide impugned judgment dated 29.10.2013 relying on the Constitution Bench decision of this Court in *Uma Devi's* case (supra) allowed the Writ Petition filed by the respondent authorities and quashed the order dated 23.06.2011 passed by the tribunal granting benefits to the appellants with retrospective effect. Additionally, the High Court also quashed the appointments of the appellants dated 06.08.2010 as *ex-facie* illegal and directed the authorities to initiate

proceedings in respect of illegal appointments which were made in violation of Articles 14 and 16 of the Constitution of India and the principles laid down in *Uma Devi's* case (supra). This appeal assails the correctness of the judgment of the Division Bench dated 29.10.2013.

6. Shri L. Nageswara Rao, learned Senior Counsel for the appellants, contended that the appointment orders dated 6.08.2010 were issued pursuant to the scheme of regularization formulated by the respondent No. 1 which was also approved by the State Government and while so, the High Court erred in holding that the appointments of the appellants were *ex-facie* illegal. It was submitted that the appellants have been continuously working on the said post for more than twenty years and therefore their services ought to be regularised with retrospective effect from 20.11.2002 and they be granted seniority and consequential benefits.

7. The respondent authorities have fairly conceded that appointments of the appellants vide appointment orders dated 06.08.2010 were made pursuant to the regularization

scheme framed by the respondent No.1 and therefore the appointments cannot be said to be illegal being in violation of Articles 14 and 16 of the Constitution of India. However, the respondent authorities have raised serious objections for the claim of the appellants seeking regularisation with retrospective effect from 20.11.2002, when the vacancies were first advertised. To that extent, the respondent-authorities have supported the impugned judgment in setting aside the order of the tribunal. It was further submitted that the appellants were appointed pursuant to the regularisation scheme which never contemplated that the appellants should be entitled to regularisation from the retrospective effect.

8. The main issue that arises for consideration is whether the policy decision extending the benefit of regularisation to contractual employees against 60% vacant posts will be deemed to regularise the services of the appellants from the retrospective date, that is, 20.11.2002, when the said posts were first advertised.

9. At the outset, it is to be pointed out that when the vacancies for the post of Assistant Manager (Civil) were advertised on 20.11.2002, the scheme for regularization of contractual employees was not in vogue and it was only subsequently on 16.04.2003, respondent No.1 had taken a policy decision regarding regularization of 27 contractual employees and the scheme was approved by the State Government vide letter dated 5.03.2008 and it is only thereafter, the appellants came to be appointed on 6.08.2010. Thus, when the vacancies were initially advertised, the appellants did not have any substantive right against the notified vacancies. The appellants cannot be said to have acquired such right to be regularised by virtue of the decision of the learned Single Judge in Writ Petition No. 54072 of 2002 as in *Uma Devi*'s case (supra), this Court held that the High Court should not issue directions for regularization, unless the recruitment itself was made in terms of the constitutional Scheme and the wide power under Article 226 are not intended to be used for issuance of such directions for

regularization. The appellants were actually regularised only by virtue of the policy decision taken by the respondent No.1 and not by virtue of the decision of the High Court.

10. In the impugned judgment, the Division Bench proceeded on the premise as if *Uma Devi's* case (supra) held that the State Government, in no circumstance, can regularise the services of contractual employees. In para (53) of *Uma Devi's* case (supra), the Constitution Bench carved out an exception by observing that the Union of India/State Governments/their instrumentalities should take steps to regularise the services of such irregular employees who have worked for more than ten years and para (53) reads as under:-

> **"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore Vs. S.V. Narayanappa*, (1967) 1 SCR 128, *R.N. Nanjundappa Vs. T. Thimmiah*, (1972) 1 SCC 409, and *B.N. Nagarajan Vs. State of Karnataka*, (1979) 4 SCC 507, and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize 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 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 regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. Considering the facts of the present case on the touchstone laid down in *Uma Devi's* case(supra), it will be seen that the Division Bench was not right in setting aside the appointment of the appellants. More so, it was nobody's case challenging the appointment of the appellants. Admittedly, the appellants were engaged as contractual employees from 1994 and have completed more than ten years of continuous service with respondent No.1. They continued in service not by the orders of the Court/Tribunal, but by the decision of the respondents. The appellants were regularised as per the policy decision dated 16.04.2003 taken by respondent No.1 and approved by the State Government vide letter dated 05.03.2008. Since the appointment of the appellants were made pursuant to the policy of regularization, the High Court was not right in quashing the appointment of the appellants

as the same were never in question before the High Court. The plea that was raised by the appellants was only to seek regularization with retrospective effect from 20.11.2002 and the consequential seniority.

12. The appellants were initially engaged on contractual basis and they were not appointed against any sanctioned post before they were substantially appointed on the said post on 6.08.2010. Even though advertisement dated 20.11.2002 indicated that there were vacancies, the policy of regularization of contractual employees was approved by the State Government only on 05.03.2008. The appellants were appointed on the post of Assistant Manager (Civil) only pursuant to the policy decision of the respondents for regularisation of contractual employees and thus, the appellants cannot seek for regularization with retrospective effect from 20.11.2002, that is when the advertisement was issued, because at that time regularisation policy was not in vogue. By policy of regularisation, it was intended to give the benefit only from the date of appointment. The Court cannot

read anything into the policy decision which is plain and unambiguous. Having accepted the appointment orders dated 6.08.2010 and also joined the post, the appellants cannot turn round and claim regularisation with retrospective effect.

13. The judgment of the High Court quashing the appointment of the appellants vide appointment order dated 06.08.2010 is set aside. However the appellants' plea for regularization with retrospective effect is declined.

14. In the result, the appeal is allowed in part in the above terms. There shall be no order as to costs.

.....J.
(T.S. THAKUR)

.....J.
(R. BANUMATHI)

New Delhi;
July 2, 2015