REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5731 OF 2011

VICE-CHANCELLOR, LUCKNOW UNIVERSITY
LUCKNOW, U.P. ..Appellant

Versus

AKHILESH KUMAR KHARE & ANR. ..Respondents

WITH

C.A.NO.5732/2011, C.A.NO.5733/2011, C.A.NO.5736/2011, C.A.NO.5737/2011, C.A.NO.5738/2011, C.A.NO.5739/2011, C.A.NO.5740/2011, C.A. NO.5741/2011, C.A.NO.5742/2011, C.A.NO.5743/2011, C.A. NO.5744/2011, C.A.NO.5745/2011, C.A.NO.5746/2011, C.A.NO.5747/2011, C.A. NO.5748/2011, C.A. NO.5749/2011 AND C.A.NO.5750/2011

J U D G M E N T

R. BANUMATHI, J.

This batch of appeals arise out of the common judgment of the High Court of Judicature at Allahabad, Lucknow Bench dismissing the writ petitions [W.P.No.6690 of 1996 (S/S) and batch] dated 14.09.2009, whereby the High Court upheld the award passed by the Industrial Tribunal and directed the appellant-university to consider the respondents for regularisation of their services as and when the vacancies arise and till that time

they be paid the emoluments, which are being paid by university authorities to similarly situated workmen against the unsanctioned posts.

2. Before we advert to the contentious points, it would be appropriate to highlight the factual background of the case. In the year 1989, the Finance Officer of the University of Lucknow, Mr.R.S.Vishvakarma engaged the respondents in this batch of appeals as Routine Grade Clerk (RGC)/Peon by oral engagement as daily wagers for the Central Accounts Office and they were being paid from out of the contingency fund. In order to prevent the abuse of power in engaging daily wagers, the then Vice-Chancellor of the Lucknow University issued Order No.VC/1932/90 dated 03.08.1990 notifying that the daily wagers would not be allowed to continue in any case after 31.12.1990 unless prior written approval was obtained from the Vice-Chancellor. It was further directed that if there was any need of any extra hand, the Section Heads must send a demand for creation of posts to the Deputy Registrar (Admn.) with details justifying the need so that a consolidated statement for sanction of new posts in the university be sent to the State Government. As per the appellant-university, the Finance Officer neither dispensed with the respondents/daily wagers nor did he obtain written approval from the Vice-Chancellor. The

engagement of the respondents came to an end with effect from 01.01.1991.

3. The terminated workers sent a legal notice on 28.01.1992 through Mazdoor Sabha to the Vice-Chancellor stating that they served the university till 31.12.1990 continuously and that they were terminated without assigning any reason and put forth the demand for reinstatement in service and backwages. All the ex-daily wagers further filed individual applications to the Deputy Labour Commissioner, Lucknow for conciliation of the dispute raised by them in February 1992. As no conciliation could be achieved, on the recommendation of the Conciliation Officer, the Deputy Labour Commissioner by his order dated 18.08.1992 referred all the cases to the Labour Court, Lucknow for adjudication of the dispute between respondents and the appellant-university. The Presiding Officer, Labour Court vide order dated 30.01.1996 held that termination of the workmen from 01.01.1991 by the university is illegal and directed the reinstatement of respondent No.1 with full back wages. Being aggrieved, the appellant-university filed a Writ Petition before the High Court challenging the award. The High Court disposed of the writ petition and connected petitions vide a common order dated 14.09.2009 affirming the award passed by the Labour Court and

inter alia issued direction as aforesaid. The university has filed this batch of appeals assailing the order passed by the High Court.

4. Learned counsel for the appellants contended that merely because a casual wage worker or a temporary employee worked continuously for more than 240 days in a year, he would not be entitled to be absorbed in regular service or made permanent on the strength of such continuance, if the original appointment was made without following the due process of selection as envisaged by the rules. It was submitted the respondents were not engaged as against any sanctioned post and the impugned judgment of the High Court directing regularisation is violative of the principles laid down by this Court in *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others,* (2006) 4 SCC 1.

5. Per contra, learned Senior Counsel Ms. Shobha Dikshit for the respondents submitted that the services of the respondents were terminated without giving any notice or retrenchment compensation and is contravention of Section 6-N of the U.P. Industrial Disputes Act, 1947. It was argued that the respondents were out of employment since 1991 and they are finding it difficult to survive along with their families with the meagre amount of Rs.650/- awarded to them under Section 17B of the Industrial

Disputes Act, 1947. It was further submitted that the respondents' juniors were retained and continued in service and subsequently, even new hands have been engaged and while so, the respondents were discriminated and the courts below rightly directed their regularisation.

6. We have given our thoughtful consideration to the rival contentions of both the parties and perused the impugned judgment and material on record.

7. Lucknow University is a statutory body and is governed by the U.P. State Universities Act, 1973. The Vice-Chancellor is the Principal Executive and exercises general supervision and control over all its affairs including appointments of non-teaching staff. The Registrar of the University is the administrative head who issues orders of appointment duly made and approved by the Vice-Chancellor. The appointments are to be made by the university against the sanctioned posts created by the Government and the Government determines the pay scale and allowances of the employees. The Finance Officer by himself had no right to appoint any person and university has not created extra post of Routine Grade Clerk or Record Boy or Peon. In the present case, the Finance Officer in the university engaged the respondents as daily wagers for his Central Accounts Section. Admittedly, the

respondents were not engaged by following due procedure and their engagement was not against any sanctioned posts. In order to curb the illegal practice of engaging daily wagers, Vice-Chancellor of the University issued an order dated 03.08.1990 clarifying that the daily wagers will not be allowed to continue after 31.12.1990 until prior written approval is accorded by the Vice-Chancellor. No such approval was taken qua the respondents for their continuance. The respondents were terminated w.e.f. 01.01.1991. When the respondents' appointments were illegal, the respondents would not be entitled to any right to be regularized or absorbed.

8. As noticed earlier, there is no appointment letter issued to the respondents by the Registrar on which they were engaged. The respondents have based their claim on service certificate issued by Mr. R.L. Shukla, the then Finance Officer of the University of Lucknow. Mr. R.L. Shukla in his evidence has stated that the daily wagers were engaged by the then Finance Officer, Mr. R.S. Vishvakarma as daily wage employees in the accounts section as per their need and they were terminated when their services were not required. He further stated that no particular nature of work was assigned to the respondents in the accounts section and the respondents were being paid out of "*recurring expenditure item*". So far as the certificate issued to the

respondents, Mr. Shukla has stated that those certificates issued to the respondents-workmen only to enable them to seek other job.

9. Learned Senior Counsel for the respondents has submitted that after removal of the respondents, similarly placed employees have been regularized and drawn our attention to regularisation of one such Narendra Pratap Singh. Evidence of Mr. Brij Pal Das Mehrotra, former Registrar of the University would show that the persons who are regularized are only those who were appointed by following due procedure. The said Narendra Pratap Singh was also appointed by following due procedure. As seen from Annexure (P-5) filed with rejoinder affidavit, the said Narendra Pratap Singh was appointed by the Registrar of the University as Routine Grade Clerk (RGC) on daily wage basis, the respondents were not so appointed by the Registrar of the university. The respondents have admittedly not produced any document to show that they were appointed by the university against sanctioned posts in accordance with statutory rules. If the original appointment was not made following due process of selection as envisaged by the relevant rules, the respondents cannot seek regularisation. The Labour Court and the High Court, in our view, fell in error in directing the regularisation of the respondents.

10. In the rejoinder-affidavit filed by the appellant-university, it is stated that the university has requested the State Government for sanction of 755 posts in various categories in order to regularise the persons working in the various departments of the university. The State Government sanctioned only 330 posts in various categories, as a result of which regularisation/*samayojan* of 330 persons were made strictly on the basis of their seniority. A bare perusal of letter No.26/C.S./70-4-99-3(27)/99 dated 29.09.1999 by Special Executive Officer, Government of U.P. regarding absorption of non-teaching posts in the Lucknow University, it is clearly mentioned that if there is any disruption in the service of any employee, then the services of the prior period from the said disruption may not be calculated. A perusal of minutes of the Sub-Committee constituted by the Executive Committee held on 16.01.2001, it is clear that employees who were continuously working in the university were only regularised. The respondents have been out of employment from 01.01.1991 and at the time of regularisation/*Samyojan*, the respondents were not in service and, therefore, they cannot seek parity with the persons absorbed.

11. In *Umadevi's case,* this Court settled the principle that no casual workers should be regularised by the Courts or the State

Government and as per constitutional provisions all the citizens of this country have right to contest for the employment and temporary or casual workers have no right to seek for regularization. In para (47), this Court held as under:

> **"47.** When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

12. In para (53) of *Umadevi's case,* the Constitution Bench carved out an exception to the general principles enumerated above and it reads 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 (1967) 1 SCR 128*, *R.N. Nanjundappa (1972) 1 SCC 409* and *B.N. Nagarajan (1979) 4 SCC 507* 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."

13. As the respondents worked as casual workers only for about one and half years and not against any sanctioned posts, be it noted that even the benefit of para (53) of *Umadevi's* case cannot be extended to the respondents.

14. In *Satya Prakash & Others vs. State of Bihar & Others* (2010) 4 SCC 179, this Court held as under:

> **"7.** We are of the view that the appellants are not entitled to get the benefit of regularisation of their services since they were never appointed in any sanctioned posts. The appellants were only engaged on daily wages in the Bihar Intermediate Education Council.
>
> **8.** In *Umadevi (3) case (2006) 4 SCC 1,* this Court held that the courts are not expected to issue any direction for absorption/regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held 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 view of the law laid down by this Court, the directions sought for by the appellants cannot be granted." (Underlining added)

15. The respondents were merely casual workers and they do not have any vested right to be regularised against the posts. The High Court fell in error in affirming the award passed by the Labour Court directing regularisation. In the facts and

circumstances of the case, as the respondents were out of employment for more than twenty years and now they are over aged and cannot seek for regular appointment, in our view, the interest of justice will be subserved if the judgment of the High Court is modified to the extent by directing payment of monetary compensation for the damages to the respondents.

16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in *Incharge Officer & Anr. vs. Shankar Shetty* (2010) 9 SCC 126 and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

> "**2**. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.
>
> **3**. In *Jagbir Singh* v. *Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327*, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey, (2006) 1 SCC 479*, *Uttaranchal Forest Development Corpn.* v. *M.C. Joshi, (2007) 9 SCC 353*, *State of M.P.* v. *Lalit Kumar Verma (*2007) 1 SCC 575, *M.P. Admn.* v. *Tribhuban (2007) 9 SCC 748*, *Sita Ram* v. *Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75*, *Jaipur Development Authority* v. *Ramsahai (2006) 11 SCC 684*, *GDA* v. *Ashok Kumar (2008) 4 SCC 261* and *Mahboob Deepak* v. *Nagar Panchayat, Gajraula (2008) 1 SCC 575* and stated as follows: (*Jagbir Singh case (2009) 15 SCC 327*, SCC pp. 330 & 335, paras 7 & 14)
>
> > "*7.* It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long

line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

4. *Jagbir Singh (2009) 15 SCC 327* has been applied very recently in *Telegraph Deptt.* v. *Santosh Kumar Seal (2010) 6 SCC 773*, wherein this Court stated: (SCC p. 777, para 11)

"*11*. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

17. In the light of the above discussion, the impugned judgment of the High Court is modified and keeping in view the fact that the respondents are facing hardship on account of pending litigation for more than two decades and the fact that some of the respondents are over aged and thus have lost the opportunity to get a job elsewhere, interest of justice would be met by directing the appellant-university to pay compensation of rupees four lakhs to each of the respondents. By order dated 11.07.2011, this Court directed the appellant to comply with the requirements of Section 17B of the Industrial Disputes Act, 1947 and it is stated that the

same is being complied with. The appellant-university is directed to pay the respondents rupees four lakhs each within four months from the date of receipt of this judgment. The payment of rupees four lakhs shall be in addition to wages paid under Section 17B of the Industrial Disputes Act, 1947.

18. In the result, the impugned judgment is modified and these appeals are partly allowed in the above terms. No order as to costs.

.....J.
(DIPAK MISRA)

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

New Delhi;
September 8, 2015