REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3337-3361 OF 2009
[Arising out of Special Leave Petition (Civil) Nos. 11670-11694 of 2005]

HARMINDER KAUR & ORS. …APPELLANTS

VERSUS

UNION OF INDIA & ORS. … RESPONDENTS

WITH
CIVIL APPEAL NOS. 3299-3305 OF 2009
[Arising out of Special Leave Petition (Civil) Nos. 11926-11932 of 2005]

ARUNIMA SHARMA & ORS. … APPELLANTS

VERSUS

U.O.I. & ORS. … RESPONDENTS

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. Appellants are school teachers. They were appointed by the Education Department of Chandigarh Administration on contract basis. Their services are governed by Chandigarh Education Service (School Cadre) (Group 'C') Recruitment Rules, 1991 (for short, "Recruitment Rules,

1991"). We may notice one of the offers of appointment made to one of the appellants herein, relevant clauses whereof reads as under:

> "2. That the person be appointed through Regional Employment Exchange after sending the requisition.
>
> 3. That the contract should be for six months which can be extended further on the basis of performance report for further six months with suitable break.
>
> xxx xxx xxx
>
> 7. That they will have no claim for ad hoc/regular appointment available in the institute.
>
> xxx xxx xxx
>
> 9. The contractual appointment will only be made against the sanctioned posts.
>
> 10. The contractual appointment will only be made when the incumbent has proceeded on leave or is not available for teaching beyond 45 days within 45 days no substitute can be provided as per rules.
>
> 11. The persons put on contracts will only be for a specified period which should not exceed more than six months or till the regular incumbent of the post is absent for not exceeding one year."

3. Indisputably, appellants fulfilled the requisite educational qualification. They have been drawing salary on a scale of pay. Indisputably again they had been continuing in the said posts for a long time.

Appellants, contending that they were entitled to be absorbed in the services of the Education Department, filed applications for their regularization before the Central Administrative Tribunal (for short, "the Tribunal") on the premise that the respondent – Administration could not have issued fresh advertisement for appointment of teachers . The said applications, however, were allowed only to the extent that they may not be replaced or substituted by another set of teachers appointed on contract basis.

4. Another original application was filed before the Tribunal for a direction on the respondent herein to frame a scheme and/or policy to regularize their services and respondents be restrained from appointing or recruiting regular teachers.

By order dated 27.8.2003, the Tribunal dismissed the said Original Application opining that they had no right to be regularized in service and their appointment has to come to an end on their replacement by the regularly selected teachers.

6. However, the respondent – Administration directed appointment of teachers on deputation basis from the States of Punjab and Haryana by an order dated 15.9.2003.

7. On or about 9.10.2003, appellants filed writ petitions before the High Court challenging the judgment and order dated 27.8.2003 passed by the Tribunal.

8. By reason of the impugned judgment, the said writ petitions have been dismissed.

9. Mr. J.L. Gupta and Mr. P.S. Patwalia, learned Senior Counsel appearing on behalf of the appellants would contend that the appointments having been made strictly in terms of the Rules framed by the respondent – Administration, the impugned judgment is liable to be set aside. It was furthermore contended that having regard to the fact that a large number of sanctioned posts have been lying vacant and as the appellants have the essential academic qualification, this Court should apply the principles stated at Paragraph 53 of the decision of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1.

10. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

11. As indicated hereinbefore, the matter relating to recruitment of teachers is governed by statutory rules known as Chandigarh Education Service (School Cadre) (Group – C) Recruitment Rules, 1991; Rules 4 and 6 whereof read as under:

> "4. **Method of Recruitment, Age limit and qualification, etc.:-**
>
> The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in column 5 to 13 of the said Schedule.
>
> xxx xxx xxx
>
> 6. **Power to relax:**
>
> Where the Administrator, Union Territory, Chandigarh is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules in respect of any class or category of persons."

12. The post of teachers with which we are concerned is known as 'General Central Service (Group C)'. It is a 'non-selection' post. The essential academic and other qualifications have been laid down therefor.

The posts are to be filled up: 60% by direct recruitment, 20% by promotion and 20% by transfer on deputation.

13. The short question which, thus, arises for consideration is as to whether, having regard to the long tenure of service, appointment of the appellants should have been or could be directed to be regularized.

14. Appointments had been made strictly in terms of contract by contract. No doubt, for the said purpose an office order had been issued. It furthermore appears that the names of the appellant have been called for from the Regional Employment Exchange. It is, however, beyond any doubt or dispute that they had been appointed only for a specified period. The power conferred on the Heads of the School to engage Lecturers, Masters/Mistresses was for a limited purpose, namely, when the incumbent has proceeded on leave or is not available for teaching beyond 45 days and when no substitute could be provided for in terms of the Rules. We may furthermore notice that the offers of appointment in no uncertain terms provided that the appointee would have no claim for regular appointment available in the Institute.

15. Rule 6 of the Rules empowers the Administrator to make relaxation of the applicability of the Rules only in the event if he is of the opinion that it was necessary or expedient so to do, wherefor not only an appropriate order

was required to be issued but also reasons were to be recorded in writing therefor. Relaxation of the Rules could be made only in respect of any class or category of persons and not with regard to the mode of recruitment. The offers of appointment issued in favour of the appellants clearly go to show that the Rules had been relaxed only for the purpose mentioned therein. We, however, have not been informed as to whether the requisite prior permission from the Department had been obtained by the Heads of the Schools upon assigning detailed reasons/justification therefor as stated in Paragraph 1 of the order dated 27.11.1997.

Be that as it may, it is now well known that long service by itself may not be a ground for directing regularization. Regularization as is well known is not a mode of appointment. When appointments in public office are required to be made, the provisions of Articles 14 and 16 of the Constitution of India are required to be scrupulously followed. When a departure is made for not scrupulously following the conditions precedent laid down in the statutory rules as also the constitutional scheme, it is imperative that the same must be done within the four corners of the delegated power by the Authority concerned. The High Court in its judgment has referred to a few decisions of this Court. We need not advert thereto as the matter has since

been considered by a Constitution Bench of this Court in Uma Devi (supra). Therein, it has categorically been held:

> "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."

Paragraph 53 of the said decision on which reliance has been placed by Mr. Patwalia 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*, *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."

16. A judgment of a Constitution Bench of this Court laying down the law within the meaning of Article 141 of the Constitution of India must be read in its entirely for the purpose of finding out the ratio laid down therein. The Constitution Bench, in no uncertain terms, based its decision on the touchstone of the 'equality clause' contained in Articles 14 and 16 of the Constitution of India. Emphasis has been laid at more than one place for making appointments only upon giving an opportunity to all concerned. Appointment through side-door has been held to be constitutionally impermissible.

17. We are not oblivious of the fact that in some decisions rendered by different benches of this Court taking a sympathetic view in favour of the employees who had been serving the State for a long time, the rigours test laid down therein were sought to be dilated. However, some other benches of this Court had interpreted Paragraph 53 of the Uma Devi (supra) in the light of the decisions mentioned therein.

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:

"*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:

> '*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 Pharamaceuticals 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 had 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 held to have been uncalled 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.

{See also State of Karnataka & Ors. vs. Sri G.V. Chandrashekar [2009 (3) SCALE 653}

Recently, in State of Bihar **v**s. Upendra Narayan Singh [2009 (4) SCALE 282], a Bench of this Court, while holding that equality clause enshrined in Article 16 mandates that every appointment to public posts or office should be made by open advertisement so as to enable all eligible

persons to compete for selection on merit and despite the fact there may be certain exceptions thereto, observed:

> "17. Notwithstanding the basic mandate of Article 16 that there shall be equality of opportunity for all citizens in matters relating to employment for appointment to any office under the State, the spoil system which prevailed in America in 17th and 18th centuries has spread its tentacles in various segments of public employment apparatus and a huge illegal employment market has developed in the country adversely affecting the legal and constitutional rights of lakhs of meritorious members of younger generation of the country who are forced to seek intervention of the court and wait for justice for years together."

The court noticed the spoil system as also a large number of decisions rendered thereon including Uma Devi (supra) to hold:

> "33. In view of the above discussion, we hold that the initial appointments of the respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits."

18. We, therefore, are of the opinion that the High Court was correct in its view. We were, however, informed that 800 posts of teachers are lying vacant. Ms. Kamini Jaiswal informed that the Administration is ready and

willing to fill up the said posts on a regular basis. While doing so, we have no doubt in our mind that the cases of the appellants shall also be taken into consideration and the Administrator may consider the desirability of relaxing the age limit provided for in the Rules.

19. For the aforementioned reasons, the appeals are dismissed. No costs.

…….J.
[S.B. Sinha]

..……..….J.
[Dr. Mukundakam Sharma]

New Delhi;
May 06, 2009