

**\*HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

**+WRIT PETITION No.7393 OF 2015**

**% Dated 10.04.2023**

Between:

# Bandaru Rambabu Reddy ...Petitioner

and

\$ The State of Telangana,  
Rep.by its Principal Secretary,  
Department of higher Education,  
Secretariat, Hyderabad and others. .... Respondents

! Counsel for the petitioner : Sri B.Sree Rama Krishna  
^ Counsel for the respondents : Govt.Pleader for Higher Education  
Avinash Desai

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? Cases referred: :

1. (2006) 4 SCC 1
2. (2010) 9 Supreme Court Cases 247

**THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR****W.P. No.7393 of 2015****ORDER:**

This writ petition has been filed seeking a *writ of mandamus* to declare the inaction of the respondents in regularising the services of the petitioner on par with similarly situated other employees as illegal, arbitrary, violative of Articles 14, 15, 16 and 21 of the Constitution of India besides also violative of the law as set out and settled by the Hon'ble Supreme Court of India vide their (i) Judgment dated 10.04.2006, as made in State of Karnataka Vs. Umadevi, reported in 2006 (4) SCC 1 and (ii) Judgment dated 03.08.2010 as made in State of Karnataka and others Vs. M.L.Kesari and others and also violative of principles of natural justice, equity, conscience and consequently to direct the respondents to regularise the services of the petitioner with effect from 01.08.1993 with all consequential benefits.

2. It is the case of the petitioner that he was appointed by the respondents as Record/Library Assistant on 01.08.1993 in an aided vacancy and since then he has been discharging his duties continuously without any break to the utmost satisfaction of the Organisation. It is submitted that at the time of his appointment he was given appointment letter but he lost the same and though he asked for a copy of the same they have never given it to him but the 3<sup>rd</sup> respondent has given experience certificate showing the joining particulars as and when he asked. Thereafter, he was brought under

the provident fund scheme by the respondents since 1995-96, which can be seen in annual reports and circular dated 04.02.2000. His P.F. account number is AP/7862/30, A.V. College and since then employee and employer's share have been deposited into his said PF account without any interruption. It is further submitted that he has been working with consolidated monthly salary of Rs.500/- and his gross salary as on 31.01.2015 is Rs.9,950/- and net salary is Rs.8,622/- per month. It is also submitted that he is the only bread winner in the family. Since his joining in service, at least 30 employees who were under aid have gone retired and he was appointed in one of such aided vacancy only and therefore, he has rightly acquired legitimate expectation to have his services regularised with effect from his date of joining i.e. 01.08.1993. Moreover, his appointment as well as his continuation in the 3<sup>rd</sup> respondent college has been within the knowledge of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It is also submitted that there are 50 aided non-teaching posts in the 3<sup>rd</sup> respondent college and hence he is under the impression that he would be getting the aided salary and associated benefits but it is not done till now. Further, he categorically submitted that for claiming regularisation under G.O. Ms.No.212, dated 22.04.1994 his case does not fulfil the requisite condition of having put in five years of service as on the cut off date i.e. 25.11.1993 as contemplated under G.O. Ms. No.212 but his case squarely falls under the law as laid down by the Hon'ble Supreme Court in **State of Karnataka Vs. Umadevi**<sup>1</sup> and

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<sup>1</sup> (2006) 4 SCC 1

**State of Karnataka and others Vs. M.L.Kesari and others<sup>2</sup>.**

Questioning inaction on the part of the respondents in regularising his services by the respondents he filed the present writ petition. To substantiate his case, he placed reliance in the case of one and two supra.

3. On behalf of the respondents No.1 and 2 and 3 have filed their separate counters.

4. In the counter affidavit filed on behalf of the respondents No.1 and 2, while denying the averments of the petitioner, *inter alia*, it is submitted that the claim of the petitioner that he has been appointed as Record/Library Assistant on 01.08.1993 in the aided vacancy is not correct and not acceptable in the absence of any supporting material evidence to that effect. It is submitted that even if it is a fact that the petitioner has been appointed during the year 1993, it is purely between the petitioner and the 3<sup>rd</sup> respondent College and the respondents No.1 and 2 have nothing to do with his employment in the 3<sup>rd</sup> respondent's college as the 3<sup>rd</sup> respondent is also running unaided sections. It is also submitted that the Government vide G.O.Ms. No.1119, Education, dated 18.12.1976 had issued certain guidelines regarding selection of candidates for filling up of non-teaching posts in private/aided colleges and the 3<sup>rd</sup> respondent, while appointing the petitioner, has not followed the procedure as contemplated in the said G.O. and also not obtained the necessary

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<sup>2</sup> (2010) 9 Supreme Court Cases 247

permission from the Director/Commissioner of Collegiate Education as per the proceedings in Rc.No.4996/PC-1-4/95, dated 18.09.1995 of the Director/Commissioner of Collegiate Education. Therefore, it cannot be said that the petitioner has been appointed in an aided vacancy and he is eligible for regularisation of his service.

5. A separate counter affidavit has been filed by the 3<sup>rd</sup> respondent stating that the petitioner was appointed as Library Attendant in its college and was subsequently brought under the purview of the EPF scheme by the college on 01.08.1994 and he has been paid his salaries out of the funds received from the fees collected from the students in the unaided courses. It is also submitted that on a request of the respondents No.1 and 2 in the year 2014, the 3<sup>rd</sup> respondent college furnished a list of the non-teaching staff, who were working against vacant aided posts wherein the name of the petitioner was also reflected with respect to the issue of regularisation of services of the petitioner and it is for the respondents No.1 and 2 to implement the scheme for regularisation of services in pursuance to the judgments of the Hon'ble Supreme Court and also for extension of minimum time scale of pay. Further, it is submitted that it is for the Government to appoint staff against the aided posts and the 3<sup>rd</sup> respondent cannot make appointment against the regular aided sanctioned posts without prior permission from the Government.

6. The learned counsel Mr. B.Sreerama Krishna appearing for the petitioner submits that the petitioner is entitled for regularisation of his services in terms of the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove in support of the claim of the petitioner and prayed to pass appropriate orders.

7. On the other hand, the learned Government Pleader for Higher Education appearing for the respondents No.1 and 2 submits that the petitioner is not entitled to the relief as sought for by him in the writ petition since he was not appointed by the respondents No.1 and 2. He would further submit that the respondent No.3 had neither followed the guidelines issued under the G.O.Ms. No.1119, dated 18.12.1976 regarding selection of candidates for filling up of non-teaching posts in private/aided colleges while appointing the petitioner nor obtained any necessary permission from the Director/Commissioner of Collegiate Education as per the proceedings in Rc.No.4996/PC-1-4/95, dated 18.09.1995 of the Director/Commissioner of Collegiate Education and prayed to dismiss the writ petition.

8. Heard the learned counsel for the petitioner, learned Government Pleader for the respondents No.1 and 2 and perused the material made available on record.

9. The main grievance of the petitioner is that though he has been appointed and discharging his services as Record/Library Assistant since 1993 in the 3<sup>rd</sup> respondent's college his services were not regularised in terms of the judgments referred to hereinabove one and two supra by the respondents No.1 and 2.

10. Admittedly, the petitioner had neither adduced any piece of paper to the effect that his appointment was made against the aided vacant post in the 3<sup>rd</sup> respondent's college nor the 3<sup>rd</sup> respondent produced any record to that effect. However, he specifically admitted that his case does not fall within the purview of G.O. Ms. No.212 dated 22.04.1994 as he does not meet the requisite condition of having put in five years of service as on the cut off date i.e. 25.11.1993 as contemplated in the said G.O. In this connection, it is clear that the petitioner was appointed by the 3<sup>rd</sup> respondent without knowledge of the respondents No.1 and 2.

11. In the counter affidavit filed on behalf of the respondents No.1 and 2 it is submitted that the Government had issued G.O. Ms. No.1119 dated 18.12.1976 in respect of selection of candidates for filling up of non-teaching posts in private/aided colleges, which reads as under:

- i) "The management of each private/aided college shall constitute a selection committee, consisting of the following members, which shall interview and select candidates for filling up of the non-teaching posts.

- (a) Representative of director of Higher Education.
  - (b) Principal of the College concerned
  - (c) A representative of the management
- ii) The posts to be filled up shall be advertised in at least two prominent daily news papers, besides fulfilling of other requirements under law, i.e., notification of the vacancies to the employment exchange wherever applicable, before the interview and selection.
- iii) The quorum of the selection committee shall not be treated as complete unless the Government (Director of higher Education's) representative is present.
- iv) The Government representative shall be informed of the interview 15 days in advance.”

12. From the above pleadings, it is not the case of the petitioner and the 3<sup>rd</sup> respondent that the appointment of the petitioner was made duly following the above said guidelines. Hence, it is clear that the 3<sup>rd</sup> respondent itself appointed the petitioner on its own without following the said guidelines and without obtaining necessary sanction from the Government. Hence, the claim of the petitioner that his appointment was made against the aided vacancy is unsustainable. However, it is not out of place to mention here that the 3<sup>rd</sup> respondent had categorically stated in its counter affidavit that the 3<sup>rd</sup> respondent is paying the salaries to the petitioner out of the funds received from the fees collected from its students in the unaided courses and the salaries with respect to aided posts is provided by the State Government. Further, upon a meticulous perusal of the counter

affidavit of the 3<sup>rd</sup> respondent, it is not supporting the claim of the petitioner in *toto* but however, averments of the counter affidavit appears to be via media, which are not useful for consideration of the claim of the petitioner.

13. Furthermore for better appreciation of the case of the petitioner, it is necessary to look into the citations that are placed reliance by the learned counsel for the petitioner.

14. *Firstly*, in **Umadevi's** case (one supra) the Hon'ble Apex Court held that the appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and the Courts cannot direct their absorption, regularisation or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that 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, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. It was further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

However, the Hon'ble Apex Court, appears had given one exception to the above position at para 53 of its judgment, which 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 (State of Mysore Vs. S.V. Narayanappa (1967) 1 SCR 128 : AIR 1967 SC 1071), R.N. Nanjundappa (R.N.Nanjundappa V. T.Thimmaiah (1972) 1 SCC 409 : (1972) 2 SCR 799 and B.N. Nagarajan (B.N.Nagarajan V. State of Karnataka (1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979 3 SCR 937) 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 aboveresferred 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. The object behind the said direction is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or Tribunals before the date of decision in Umadevi's case i.e. 10.04.2006 was rendered are considered for regularisation in view of their long service; and also to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment.

16. Further, it is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi's case (one supra) 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 or 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.

17. Having gone through another citation placed reliance by the learned counsel for the petitioner i.e. **M.L. Kesari** (two supra) it is noticed that the said object and exceptions rendered in the case of **Umadevi** (one supra) have been discussed in detail and in its judgment held at paras 8 to 13 as under:

“8. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification

as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/adhoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those

who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. 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) 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 regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

12. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi or thereafter.

13. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise

within six months, a general one- time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts.”

18. On a conjoint reading of the above judgments, it is clear that taking into consideration the principles laid down in the case of **Umadevi** (one supra), the Hon’ble Apex Court in the case of **M.L. Kesari** (two supra) held that if an employee working against vacant post and possess the requisite qualification for the said post and if so, regularise his services. Further it was observed that at the end of six months from the date of decision in **Umadevi’s** case several daily-wage/ad hoc/casual employees were pending before Courts, consequently, several departments and instrumentalities did not commence the one-time regularisation process. In this regard, it was held that a one-time exercise will be concluded only when all

the employees, who are entitled to be considered in terms of para 53 of **Umadevi's** case, are to be considered if they fulfil the requirements mentioned in para 53 of **Umadevi's** case. Furthermore, it was held that if such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 therein because of the pendency of the cases, then their cases shall have to be considered in continuation of the said one-time exercise within three months. It was further observed that if the respondents do not fulfil the requirements of para 53 of **Umadevi's** case, their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts.

19. Taking into consideration the aforementioned citations, now the point that arises for consideration is (i) whether the petitioner herein had fulfilled the requirements as observed hereinabove and (ii) whether the petitioner is entitled to any relief as sought for by him in the present writ petition.

20. Upon a perusal of the record, the claim of the petitioner is that he was appointed on 01.08.1993 as Record/Library Assistant in the aided vacancy. In this regard, no iota of evidence has been adduced by the petitioner but filed service certificates dated 18.11.1996, 22.11.2000 and 24.02.2015 issued by the 3<sup>rd</sup> respondent's College wherein it is categorically mentioned that the petitioner is working as

Record Assistant against unaided vacancy in the Library since August, 1993. In addition to that the petitioner also filed EPF slip which clarifies that the petitioner is working in the 3<sup>rd</sup> respondent's College and there exists the employee and employer relationship between the petitioner and the 3<sup>rd</sup> respondent and the employer contribution is made by the 3<sup>rd</sup> respondent.

21. Having gone through the counter affidavit filed by the 3<sup>rd</sup> respondent, it is noticed that the services of the petitioner have been used against the vacant aided posts due to the inaction of the respondent Nos.1 and 2 in making fresh appointment for aided posts which stood vacant pursuant to retirements of previous employees. In other words, though the petitioner was appointed against the unaided post but his services are being utilised against the vacant aided post. At this stage, the learned counsel for the petitioner drawn the attention of this Court to the rejoinder/reply affidavit filed by the petitioner in reply to the counter affidavit filed by the respondents No.1 and 2 wherein at page No.144 filed a copy of the reply dated 28.10.2017 to the legal notice wherein it was categorically mentioned that the petitioner filed the present writ petition and has been working since 01.08.1993 in the aided vacancy which arose due to retirement of one Sri M.Rajanna, Record Assistant in the month of June, 1990. In addition to that the Government vide its Memo No.199/Admn.V-1/2014, dated 27.10.2014 sought certain information regarding the mode of appointment and whether working against the aided/unaided

post etc., for which the 3<sup>rd</sup> respondent furnished the information vide its letter dated 18.12.2014 as sought for regarding non teaching staff working against aided and unaided posts and enclosed a copy of the list wherein the name of the petitioner is reflecting at Sl.No.10 stating that he is working against aided post/Record Assistant. From the above, it is noticed that in the service certificates issued by the 3<sup>rd</sup> respondent it is categorically mentioned that the petitioner is working as Record Assistant against unaided vacancy in the Library since August, 1993 and on the other hand, in the reply dated 28.10.2017 to the legal notice it was categorically mentioned that the petitioner has been working since 01.08.1993 in the aided vacancy, which are contrary statements to each other. In the case on hand, the petitioner appears to be working against the vacant post for more than ten years without benefit or protection of the interim order of any Court to Tribunal and his appointment may be considered as irregular appointment and his case appears to have been ignored under one time measure because of the pendency of the present case. In view of the same, it would be appropriate to dispose of this writ petition with the following direction.

22. Having regard to the facts and circumstances of the case, submissions made by the learned counsel on either side and taking into consideration the above all, this Court is of the opinion that the 3<sup>rd</sup> respondent has to furnish information of the petitioner's eligibility for regularisation of his services and pursue the case of the

petitioner as required for its consideration with the respondents No.1 and 2 and obtain necessary orders from the respondents No.1 and 2. The above exercise shall be completed by the 3<sup>rd</sup> respondent within a period of two months, from the date of receipt of a copy of this order and thereafter, the respondents No.1 and 2, shall consider the case of the petitioner based on the information of the petitioner furnished by the 3<sup>rd</sup> respondent and in terms of the judgments referred to hereinabove one and two supra i.e. **State of Karnataka Vs. Umadevi** and **State of Karnataka and others Vs. M.L.Kesari and others** and pass appropriate orders, in accordance with law, within a period of three months, if the petitioner is otherwise eligible for the aided post.

23. Accordingly, this writ petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

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**JUSTICE N.V. SHRAVAN KUMAR**

**Date: 10.04.2023**

**Note: L.R. copy to be marked.**

Note: Furnish C.C. by tomorrow.

B/o.

**LSK**