

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:  
MIZORAM AND ARUNACHAL PRADESH)  
ITANAGAR PERMANENT BENCH

Appeal From  
Writ Petition (Civil)

W.P.(C) No. 482 (AP) 2011

Jum Ngondir & 60 others.

Appellant  
Petitioner.

-Versus-

The State of AP & 308.

Respondent  
Opposite Party.

Counsel for the Appellant  
Petitioner.

D. Panging.  
K. Bogo.  
K. Bagon,  
D. Soki.

Counsel for the Respondent  
Opposite Party.

G.A (AP).

Noting by Officer or Advocate	Serial No.	Date	Office note, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF:

1. Ijum Ngomdir,  
C/o-Executive Engineer,  
Aalo Electrical  
Division, West Siang  
District, Arunachal  
Pradesh
2. Lime Sora
3. Marme Doji
4. Yabar Riba
5. Gode Kato

6. Yamang Taga
7. Jungam Ete
8. Karjum Siram
9. Tago Dada
10. Kato Ori
11. Nyato Riram
12. Miken Ango
13. Pagrik Ete
14. Mobi Ingo
15. Remin Taso
16. Nyapu Karga
17. Junkom Ete
18. Bali Loyi
19. Nampong Rekhung
20. Jumpe Diyum
21. Dumo Loyi
22. Yomdak Badak
23. Dokir Ngomdir
24. Marbi Lotem
25. Mingam Ete
26. Ipu Kamum
27. Hokter Lollen
28. Bade Lona
29. Yatok Pado
30. Marbi Ete
31. Nyigam Payum
32. Bingam Lotem
33. Jomba Diyum
34. Hanging ragmuk
35. Pasang samchung

36. Eling koje
37. Tasap Jenpen
38. Tapor Rida
39. Ram Prakash Pasi
40. Joka Prasad
41. Sushil Kumar Sarkar
42. Kameshar Maji
43. S. N. Rai
44. Bijuli Das
45. M. P. Singh
46. S. chetia
47. Prama Prasad
48. Uday Deka
49. Tara Prasad
50. Dil Bahardur Sherpa
51. Kishor Devi
52. Mon Bahardur Sonar
53. B. B. Sonar
54. Raju Dhobi
55. Ganesh Roy
56. Rakesh Kumar
57. Binod Sharma
58. Prafulla Gogoi
59. Laxman Das
60. Gemo Karga
61. Sumiren Dev Nath

All serving as  
casual employees  
under the Aalo

electrical  
division.  
..... petitioners  
(Common cause)

**-VERSUS-**

1. The state of Arunachal Pradesh represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Secretary, Department of Power, Govt. of A.P, Itanagar.
3. The Chief Engineer, Department of Power, Govt. of A.P, Itanagar.
4. The Executive Engineer, Aalo Electrical Division, Department of Power, Aalo.

..... respondents

E/12

**WP (C) 482 (AP) 2011**

**:::BEFORE:::**

**HON'BLE (MR) JUSTICE A M BUJOR BARUA**

**17.01.2017**

Heard Mr. D. Panging, learned counsel for the petitioners and Mr. S. Tapin, learned Senior Government Advocate appearing on behalf of all the State respondents.

The petitioners being 61(Sixty one) in numbers are stated to be working as casual workers in the office of the Executive Engineer, Aalo Electrical Division, Department of Power for the last 15(fifteen) years or more. The petitioners have been appointed on different dates, but the common fact is that all the petitioners were engaged as casual workers on a fixed pay and have been working for the last 15 years and although their fixed pay were enhanced from time to time in course of their service, but such enhanced pay also do not meet the required financial benefit that they are otherwise entitled depending upon the nature, quality and quantity of work performed by them, more so, in comparison with the regular employees, who are holding same/corresponding posts. It is also stated that some of the petitioners have in fact served as casual workers for more than 25 years.

It is the case of the petitioners that although they are appointed as casual workers, the petitioners are performing work which are of the same nature, quality and quantity as are being performed by the regular employees holding the same/corresponding post.

It is also the case of the petitioners that they had been continuing as casual workers without the aid of any order from any Court. It is further stated that the petitioners had been doing their work to the satisfaction of all concerned and there has been no complaint against anyone as regards the services provided by them. As

Annexure-1 to the writ petition, the petitioners have also annexed a reply under the Right to Information Act, which contains the list of casual workers in the respondent department. The names of all the 61 writ petitioners of this present writ petition finds place in the said list of casual workers. Accordingly, it is stated that although no appointment orders have been annexed by the petitioners, it is an admitted position of all the parties that the writ petitioners were in fact serving as casual workers from various dates continuously and without any break for a period of 15 years or more.

In Para 12 of the writ petition, averments have been made that the petitioners were all appointed against clear vacancies and their services have been continued for a period of more than 15 years. The said averments made in para-12 of the writ petition had not been specifically denied by the respondent authorities. In the corresponding Para 10 of the affidavit-in-opposition of the respondent authorities, which controverts Para 12 of the writ petition, it has been stated that the regularization of casual workers are done by the Departmental Promotion Committee (in short, DPC), as per their seniority and on the availability of sanctioned/vacant post. It is also stated in the said Para that there is no such Government policy for regularizing the services of the casual workers.

Based upon the aforesaid statements made in the affidavit-in-opposition in Para 10, contentions have been raised by Mr. Tapin, learned Senior Government Advocate, that the writ petitioners were not working against any sanctioned vacant post. Be that as it may, in the absence of any specific averment in the affidavit-in-opposition that the petitioners were actually not working against any sanctioned posts, this Court is unable to decide as to whether the petitioners were working as casual workers against sanctioned vacant posts or not.

In the aforesaid circumstances, this writ petition had been preferred by the petitioners *inter-alia* for a direction that the respondents be directed to regularize their service by preparing a scheme as an "One-time Measure".

Accordingly, the learned counsel for the writ petitioners, in order to substantiate their claim, places reliance upon the decision of the Supreme Court in the case of ***Secretary, State of Karnataka vs. Umadevi & Ors, reported in (2006) 4 SCC 1***. The learned counsel places reliance specifically upon the provisions of Para 53 of the said decision of the Supreme Court in the Umadevi's case.

Para-53 of the Judgment in Umadevi's case is as follows:-

***"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 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 the Courts or of tribunals and should further ensure<sup>3</sup> 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 bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."*

The learned counsel for the writ petitioners also relies upon the decision of the Hon'ble Supreme Court in the case of ***State of Karnataka and others –vs- M.L. Kesari and others***, reported in ***(2010) 9 SCC 247*** and specifically relies upon paragraphs 7 to 10 of the said Judgment.

Paragraphs 7 to 10 of the Judgment in M.L. Kesari's case are as follows:-

*"7. It is evident from the above that there is an exception to the general principles against 'regularization' 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.*

*8. Umadevi (3) casts a duty upon the Government or instrumentality concerned, 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 (3) directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.04.2006.).*

*9. The term one-time measure has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or such 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 (3), cases of several daily-wage/ad hoc/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 (3), 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 (3) has expired. The one-time exercise should consider all daily-wage-ad hoc/casual*

***employees who had put in 10 years of continuous service as on 10.04.2006 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 (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), 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 (3), are so considered."***

Accordingly, by placing reliance upon para-53 of the Judgment in Umadevi's case and paragraphs 7 to 10 of the Judgment in M.L. Kesari's case, it is the contention of Mr. D. Panging, the learned counsel for the petitioners that the petitioners having worked for more than 15 years, in fact, having worked for more than 10 years as casual workers as on 10.04.2006, i.e. the date of the Judgment of the Umadevi's case and without the intervention of any order of the Courts or Tribunals, are entitled to be regularized in their services. It is contended that as provided in paragraph-53 of the Judgment in Umadevi's case and as explained in paragraphs 7 to 10 of the Judgment in M.L. Kesari's case, the case of the petitioners are to be considered for regularization as an "one time measure".

On the other hand, it is the contention of the learned counsel for the respondents Mr. S. Tapin that the petitioners having been engaged as casual workers, and they having not been appointed against any sanctioned vacant post, the petitioners are not entitled to be regularized in their services as an one time measure pursuant to the provisions of paragraph-53 of the Umadevi's case. Accordingly, it is the further contention of the learned counsel for the respondents that in view of the inapplicability of paragraph 53 of the Judgment in

Umadevi's case, the subsequent provisions and explanations in paragraphs 7 to 10 of the M.L. Kesari's case would also not be applicable in the case of the petitioners.

On a reading of paragraph 53 of the Judgment in Umadevi's case, it can be seen that the said Judgment provides that in respect of appointments made in favour of persons who are duly qualified, against sanctioned vacant posts, and have continued to work for more than ten years and without the intervention of any order of the Courts or Tribunals, such persons may be regularized in service as an one time measure, even if the initial appointment of such persons may have been irregular.

The aforesaid provisions of law, enunciated by the Hon'ble Supreme Court in paragraph-53 of the Judgment in Umadevi's case came up for further consideration of the Hon'ble Supreme Court in M.L. Kesari's case. In paragraph 7 of the M.L. Kesari's case, it has been provided that there is an exception to the general principles against regularization enunciated in Umadevi's case, if the employees concerned have worked for more than ten years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal i.e. the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years. Further, the appointment should not be illegal, even if irregular, where appointments not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications were considered to be illegal and where persons employed possessed the prescribed qualification and was working against a sanctioned post, but had been selected without undergoing the process of open competitive selection were considered to be irregular. Paragraph 8 of M.L. Kesari's case provides that a duty is cast

upon the Government for regularizing the services of the irregularly appointed employees, who had served for more than ten years without the benefit or protection of any interim order of the Courts and Tribunals, as a onetime measure. Further, paragraph 9 provides that the term one time measure would normally mean that after the decision in Umadevi's case, each department or instrumentality should undertake an one time exercise and prepare a list of all casual, daily wage, ad-hoc employees, who have worked for more than ten years without an intervention of Courts and Tribunals and subject them through a process verification as to whether they are working against vacant posts and possesses the requisite qualification for the post and if yes, regularize their services.

From the aforesaid provisions in paragraph 53 of the Judgment in Umadevi's case and paragraphs 7 to 10 in M.L. Kesari's case, what is discernible is that all such employees who are working continuously for ten years or more as on 10.04.2006, without the aid and protection of any interim order from the Courts or Tribunals and might have been appointed in an irregular manner, would be entitled to be considered for regularization as an one time measure and each department is required to carry out such an exercise for regularization. The other requirement for being entitled to be regularized under the one time measure provided in paragraph 53 of the Judgment in Umadevi's case and explained in paragraphs 7 to 10 of M.L. Kesari's case is that the concerned employee has to be working against a sanctioned post for the aforesaid period of ten years or more without the aid and protection of any interim order from the Courts or Tribunals.

As a corollary to the aforesaid provisions in paragraph 53 in the Judgment of Umadevi's case and paragraphs 7 to 10 in the Judgment of M.L. Kesari's case, it would be apposite to construe that in the event any employee has not been working against any sanctioned vacant

post, the aforesaid benefit of regularization as a one time measure provided in paragraph 53 of the judgment in Umadevi's case and paragraphs 7 to 10 in the judgment in M.L. Kesari's case, would not be available.

In the event, it is verified and established that the petitioners in the present case were working as casual workers against sanctioned vacant post, the provisions of paragraph 53 of the judgment in Umadevi's case and paragraphs 7 to 10 in the judgment in M.L. Kesari's case, would squarely be applicable to the case of the petitioners and they would be entitled for a regularization as an one time measure. It is more so in view of the admitted position that all the petitioners have worked for more than ten years as on 10.04.2006 without the aid and protection of any interim order of any Courts or Tribunals.

But, the situation may be otherwise, if upon such verification, it is established that the petitioners have not been working as casual workers against any sanctioned vacant post.

In this respect, the decision of the Supreme Court in Umadevi's case would throw some light as to what would be the appropriate position of law as regards the question of giving benefit in the nature of a regularization to such employees, who are working continuously for more than ten years as on 10.04.2006, without the aid and benefit of any interim order of the Courts or Tribunals, but not working against any sanctioned vacant post. It often happens, as it is in the present case, that the employees are engaged either as casual workers or as master-roll workers, against a fixed pay, which is much less than that of the regular scale of pay, and such engagements are not against any sanctioned vacant post.

In respect of the manner of engagement of such employees as casual workers against a fixed pay, it cannot be said that such

engagements are wholly illegal. Firstly, the employees who are engaged in such manner as casual workers, are all duly qualified for the work for which they are engaged, but they have been selected/appointed without undergoing any process of open competition. It has been argued that as the petitioners had not entered their engagement through any process of open competition, as such, their engagement is de-hors the constitutional scheme as contemplated in the Judgment in Umadevi's case.

The said argument that the contractual workers like the petitioners were engaged de-hors the constitutional scheme, if looked from the point of view of the provisions of paragraph 7 of the M.L. Kesari's case, such engagement would at the best, can be termed as irregular, but not illegal. From the said point of view also, the engagement of the casual workers being irregular, it cannot be said that they are not entitled to any benefit in the nature of a regularization. The only impediment is that these engagements were not made against any sanctioned vacant post and as such, it has been argued that provisions of paragraph-53 of the Judgment in Umadevi's case would not be applicable in order to enable such casual workers like the petitioners to be entitled to a benefit of regularization. Consequent thereof, as paragraph-53 of the Judgment in Umadevi's case is not applicable, the consequential provisions of paragraphs 7 to 10 in the Judgment in M.L. Kesari's case would also not be available.

In such situation, it may be noticed that the judgment of the Hon'ble Supreme Court in Umadevi's case follows from the factual consideration of two situations. The first situation, as described in paragraph-8 of the said Judgment is that the High Court of Karnataka had proceeded to order that persons temporarily engaged on daily wages for more than ten years are entitled to wages equal to the salary and allowances that are being paid to the regular employees of

their cadre, with effect from the dates from which they were respectively appointed, with a direction to the State to consider their cases for regularization within a period of four months, by following the decision of the Supreme Court in Dharwad District PWD Literate Daily Wage Employees Assn. vs. State of Karnataka, on the premises that they were appointed before 01.07.1984. On the contrary, in another writ petition, the Division Bench of the High Court of Karnataka held that the daily wage employees engaged after 01.07.1984, were not entitled to the benefit of the scheme framed pursuant to the aforesaid Dharwad District PWD case. Situated thus and also taking into consideration the other conflicting judgments, the matter was referred to the Constitution Bench for its adjudication. As transpires from paragraphs-4, 5 and 6 of the Judgment in Umadevi's case, the Constitution Bench of the Hon'ble Supreme Court, apart from considering the cases of the daily wage workers who had worked for a period of more than ten years, as was the subject matter in the two conflicting decisions of the High Court of Karnataka, had also taken into consideration the circumstances by which the States and their instrumentalities have resorted to irregular appointments without resorting to a proper appointment procedure as per the rules and have permitted such irregular appointees or those appointed on contract or daily wage basis to continue for year after year and thus keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. The Hon'ble Supreme Court was considering the cases of such appointments, which were not consistent with the constitutional scheme of public employment, whereby the teeming millions of this Country seeking employment and fair opportunity of competition were being deprived. But, such cases, where the appointees appointed de-hors the constitutional scheme were under consideration, concerns mainly those categories of

employees who had been appointed for working against sanctioned vacant post, but because of the absence of conforming to the constitutional scheme, their appointments/engagements were not made on regular basis.

In the aforesaid background of the Judgment In Umadevi's case, it can be seen that the provision made In paragraph-53 of the Judgment pertains to such cases where appointments had been made against sanctioned vacant post and therefore, one of the pre-requisites of a regularization under paragraph 53, as a one time measure, is that the appointments had been made against sanctioned vacant post. And as a corollary such engagements which had not been made against sanctioned vacant post are not entitled for regularization under paragraph 53.

For such cases, where engagements had been made on daily wage or fixed pay basis, like that of the casual workers involved in the present writ petition, the relevant provision in the Judgment in Umadevi's case would be paragraph-55. The relevant portion of paragraph 55 is quoted as under:

*"55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called*

*and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos.3595-612 and those in the Commercial Taxed Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."*

In paragraph-55, the Hon'ble Supreme Court considered the direction of the Division Bench of the High Court of Karnataka, which had directed that all those engaged on daily wage be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre with effect from the date of appointment.

Accordingly, the Hon'ble Supreme Court was of the view that it was not open for the High Court to impose such an obligation on the State and was of the view that the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to the regular employees be paid to these daily wage employees with effect from the date of its judgment and since these employees are only daily wage earners, there would be no question of other allowances being paid to them and the Courts are not expected to issue direction for making such persons permanent in service. It was further provided that if sanctioned posts are vacant, the State while taking steps for filling up the posts by a regular process of selection, will allow the daily wage category of employees to compete by waiving the age restriction imposed for such recruitment and by giving some wages for their having been engaged for work in the department for a significant period of time.

From the aforesaid provisions of paragraph 55 of the Judgment in Umadevi's case, it is discernible that for that category of employees who are engaged on daily wage or casual basis, but not engaged against any sanctioned vacant post, but have worked for more than ten years up to 10.04.2006, without the aid and benefit of any interim order from the Courts and Tribunals, the ends of justice would be met if they are given the benefit of a regular scale of pay like those of the regular employees working in their cadre, but without the benefit of any allowances being paid to them and nor such employees are entitled to a direction for making them permanent in service. However, whenever a sanctioned vacant post is sought to be filled up by a regular recruitment procedure, such employees be also allowed to compete by allowing them certain weightage for the service rendered by them and further by condoning their age.

Reference has also been made to the decision of the Hon'ble Supreme Court in Government of India and others -vs- Court Liquidator's Employees Assn and others, reported in (1999) 8 SCC 560. The said judgment of the Hon'ble Supreme Court proceeded on the factual matrix that there were two sets of employees in the office of the official liquidator, High Court of Kerela, being the Company paid staff, who were appointed by the official liquidator pursuant to the orders of the High Court under Rule 308 and 309 of the Companies (Court) Rules, 1959 and the other being the staff employed by the Central Government in the office of the official liquidator, where both sets of employees have been discharging identical duties and function. The company paid staffs were engaged in a casual nature, whereas the staff employed by the Central Government was paid the regular salary and allowances, although in discharge of the duties, it often happen that the employees of the two sets sat in tables facing each other and did the identical work. The Hon'ble Supreme Court upon its deliberation had directed that the Company paid staff be also absorbed by framing a scheme. The said direction to frame the scheme also came under consideration of the Hon'ble Supreme Court in the Official Liquidator -vs- Dayanand and others, reported in (2008) 10 SCC 1, wherein, even after taking into consideration the pronouncements made by the Constitution Bench in the judgment in Umadevi's case, the said direction to frame a scheme was referred and by doing so, it had been directed that the Government of India should frame a scheme, which should be modeled on the 1999 scheme.

In view of such provisions of the Hon'ble Supreme Court in the Dayanand's case also, it cannot be totally ruled out that the casual workers or daily wage earners who are not being engaged against any sanctioned vacant post, do not have any right whatsoever for an upgraded financial package.

In ***Nihal Singh and others –vs- State of Punjab and Others***, reported in **(2013) 14 SCC 65**, the Hon'ble Supreme Court while considering the claim for regularization of a set of special police officers, who have the same power privileges and protection and liable to perform the same duties, but so refused for regularization on the sole ground that they were not appointed against any sanctioned vacant post, had expressed the view that sanctioned post do not fall from heaven and the State has to create them by a conscious choice on the basis of some rational assessment of their need. In the said judgment in Nihal Singh's case, the Hon'ble Supreme Court while considering the rejection of the claims for regularization by the High Court of Punjab and Haryana on the ground that no regular cadre or sanctioned posts are available for regularization of their services, held that the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts, but however, that does not conclusively decide the issue on hand. A view was expressed that creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons by creating a contractual relationship only demonstrates the arbitrary nature of the exercise of power. The Hon'ble Supreme Court while considering the usual view of the State authorities that in the absence of sanctioned posts, the State cannot be compelled to absorb the persons into the services of the State, expressed that the posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge. A quotation was made from the 42 American Jurisprudence 902, para-31 that "*Every sovereign government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration.*"

The Hon'ble Supreme Court in State of Punjab -versus- Jagjit Singh (Civil Appeal No.213 of 2013) decided on 26.10.2016, was concerned with the issue as to whether temporarily engaged employees (daily wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to a minimum of the regular pay scale, along with dearness allowances (as revised from time to time) on account of performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts.

In the aforesaid Judgment of the Hon'ble Supreme Court, the decision rendered by the Constitutional Bench in Umadevi's case was also taken into consideration and, more particularly, paragraph 53 thereof, had been quoted.

Upon considering the matter in its entirety, more particularly from the point of view of the principle of equal pay for equal work, the Hon'ble Supreme Court had expressed the view that it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another, who performs the same duties and responsibilities and certainly not in a welfare state. It has been viewed by the Hon'ble Supreme Court that such an action besides being demeaning also strikes at the very foundation of human dignity. Anyone who is compelled to work at a lesser wage, does not do so voluntarily, and he does so, to provide food and shelter to his family, at the cost of his self-respect and dignity and also at the cost of his self-worth and integrity. The employee who accepts such employment, does accept the lesser wage for he knows that his dependents would suffer immensely if he does not so accept. It had further been viewed by the Hon'ble Supreme Court that any act of paying less wages, as compared to others similarly situated, constituted an act of exploitative enslavement emerging out of a

domineering position and the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. Reference was also made to Article-7 of the International Covenant on Economic, Social and Cultural Rights, 1996 of which India is a signatory and also ratified on 10.07.1979.

It has also been viewed by the Hon'ble Supreme Court that before invoking the principle of equal pay for equal work in relation to temporary employees (daily wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that is required for determination is whether the concerned employees were rendering similar duties and responsibilities, as were being discharged by regular employees holding the same/corresponding posts.

Accordingly, the Hon'ble Supreme Court had held that all concerned temporary employees, be it daily wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like, would be entitled to draw wages at the minimum of the pay scale, i.e. at the lowest grade in the regular pay scale, extended to the regular employees holding the same post.

The proposition of law as laid down by the Hon'ble Supreme Court in Jagjit Singh's case, to the effect that the temporary employees are entitled to draw wages at the minimum of the pay scale drawn by the regular employees holding the same post, is also consistent with the proposition laid down by the Constitution Bench of the Hon'ble Supreme Court in Umadevi's case.

From the aforesaid provisions of law as has been laid by the Hon'ble Supreme Court in the Umadevi's case, M.L. Kesari's case, Official Liquidator's case, Dayanand's case, Nihal Singh's case and Jagjit Singh's case, what is discernible is that:-

1. The employees who had been working continuously for more than ten years up to the date of the Judgment in Umadevi's case i.e. 10.04.2006, without the aid and benefit of any interim order/order(s) of any Courts or Tribunals, against sanctioned posts, although appointed in an irregular manner, are entitled to be regularized as an one time measure. The exercise of one time measure is to be made department or institution wise and where appointments may have been made without any selection process, but from amongst duly qualified candidates and against sanctioned posts are to be considered as irregular appointments.

2. Employees engaged on a daily wage basis, and required to perform the same nature, quality and quantity of work as that of the regular employees working against sanctioned vacant posts, are entitled to a salary, at least in the minimum of the pay scale, that are paid to the regular employees.

3. Posts are required to be created by the State depending upon the need to employ people having regard to various functions that the State undertakes to discharge and that the posts are to be sanctioned and created by the State by a conscious choice on the basis of a rational assessment of the need. Any act on the part of the State compelling the employees to take a lesser wage and perform the same work as is being done by the regular employees, by taking advantage of its dominant position and the unemployment scenario prevailing in the Country, would constitute an act of exploitative enslavement, which will also be a violation of Article 21 of the Constitution of India.

4. A stand on the part of the State respondent authorities that such temporary employees had accepted the offered employment at a lower wage on their own volition and that they are not working against any sanctioned posts, and as such, not entitled to a regular scale of pay, or regularization, is as such, not acceptable.

In view of the aforesaid position of the law, a direction is issued to the State respondent authorities to verify the credentials of the petitioners and arrive at a decision, firstly, as to whether they are working against any sanctioned posts and whether they are working for more than ten years as on the date of the Judgment of Umadevi's case, i.e. 10.04.2006 and whether they are continuing in service pursuant to any interim order from any Court or Tribunal. In the event, it is found that all the aforesaid three conditions are satisfied in respect of any of the petitioners, their services is to be regularized as an one time measure in consonance with paragraph-53 of the Judgment in Umadevi's case.

Secondly, on the other hand, it is found that any of the petitioners do not meet the aforesaid three conditions, more particularly the condition that they are working against any sanctioned posts, their cases are to be determined as to whether they are performing the same nature, quality and quantity of work as is being performed by a regular employee working against the same/corresponding posts. If upon the determination it is found that any such petitioner is performing the same nature, quality and quantity of work as is being performed by a regular employee working against the same/corresponding posts, such petitioners are to be paid the wages at the minimum of the pay scale as are being extended to the regular employees holding the same post.

Thirdly, if any such petitioner, upon the determination is found that they are not performing the said nature, quality and quantity of work as being performed by the corresponding regular employees, an appropriate and upgraded financial package be formulated for such employees commensurating with the nature, quality and quantity of work performed by them, and such financial package should not give

the impression that the exploitative enslavement against such employees are still being perpetrated.

The aforesaid exercise be undertaken within a period of four months from the date of receipt of a certified copy of this order.

In terms of the above, the writ petition stands disposed of.

  
**JUDGE**

Cha Gang