



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Landmark Judicial Pronouncements on Labour Law and Reforms related to Regularization

Arnab Pal^a

^aAmity University, Noida, India

Received 27 August 2021; Accepted 24 September 2021; Published 27 September 2021

Regularization is the process of changing the status of ad-hoc/ daily wage labourers to the position of regular employees thereby conferring upon them various rights and benefits. The position of law relating to the regularisation of the ad hoc employees is concerned, there are conflicting views of the Supreme Court of India and the various High Courts. Some of the decisions have held that regularisation is possible only against sanctioned or permanent vacancies. If such vacancies are not available or the candidates lack eligibility or qualifications in any manner, then it would not be possible to order for regularisation of such employees, besides the requirement of compliance with the selection procedure. Thus, a long duration of service would not be a relevant consideration to regularise the services.

*While others have held that the permanent nature of the work is on the basis of the long continuance of service and the vastness of the establishment of the employer. In view of the long duration of work by means of which the employees had gathered practical experience, it has been held that the minimum educational qualification/requirement recommended for the post wouldn't come in the way of regularisation of the employees. Also, there are some decisions taking different views, on the question of cut-off date as provided under the scheme for 'regularisation'. The Court observed that different views have been expressed in different decisions of the Supreme Court. With a view to clarifying the position as it stands under the law regarding regularisation, a matter was referred to a constitutional bench constituting five judges to clarify the legal position of the issue of regularization. Thus, the judgment in *Secretary State of Karnataka vs Umadevi & Ors* clarified the position under the law*

regarding regularization and regarded as an authority in service jurisprudence in matters relating to regularization of ad-hoc/daily wage employees.

Keywords: *labour, judicial pronouncements,*

INTRODUCTION

Government Jobs are considered to be the most secure jobs in India and quite a few desire to get into a government job. The Constitutional plan envisions the government and its agencies employing people based on a pre-determined procedure. Equal opportunity is at the core of the ratio and principle settled in the matter, and the Constitution also envisages that unequals shouldn't be treated as equals. As a result, every public job must adhere to this constitutional framework. An appointment for Government service is done by the set procedure. The goal of any recruitment process for any service or position is to find the most qualified candidate who can meet the job's needs. Regular appointments are to be only made as per extant rules.

However, this procedure is often not followed leading to the Constitutional framework for public engagement being circumvented. The Central Govt., States, and its units have often utilized irregular appointments, particularly in the lower strata, without regard for the obligation to ensure a proper appointment procedure in accordance with the rules governing at the time of selection. As a result, individuals who are more qualified and deserving of the position are excluded from applying, denying them the chance to compete for the position. This has further resulted in people who have been hired without following the proper procedure and sometimes even by the backdoor or on a daily wage basis contacting the courts after a period of time, requesting that they be made permanent in their positions, impeding regular recruitment to those positions.

The Supreme Court in the Umadevi case held that courts haven't always taken legal considerations into account, and have occasionally halted the regular hiring procedure, and in certain instances, even ordered that these unlawful, irregular, or unsuitable applicants be integrated into service. A strata of employment which the court termed as 'litigious

employment', has sky-rocketed and is damaging the constitutional scheme.¹ This fact of conflicting judgments prompted the matter to be referred to a constitutional bench to clarify the legal position on the issue of regularization.

JUDICIAL PRONOUNCEMENT BEFORE UMA DEVI JUDGEMENT

In *Daily Rated Casual Labour vs Union of India & Ors.*² the Supreme Court of India ordered the Govt. to devise a programme to engage the daily-rated casual-labourers who have worked in the Post & Telegraph Department beyond a year. In *State of Haryana vs Piara Singh and Others*, the court while reviewing the legality of certain guidelines issued by the HC in the light of numerous orders issued by the State for the engagement of its ad hoc/provisional employees and daily-wage laborers. The Hon'ble Supreme Court opined that the state should be a model employer and therefore shouldn't exploit its employees and neither should it aim to profit from the powerlessness and grief of the jobless people or its employees. It, therefore, held that equal pay should necessarily be paid for equal work, which is amongst the Constitution's DPSP. Therefore, it is believed that a person should not be kept in a provisional position for an extended period of time.

It further laid down that ad-hoc or provisional appointments should be created in situations of exigencies and efforts should be made to replace such an appointment with a regular employee selected through the appropriate procedure. The ad-hoc employee can also compete alongside others for the regular selection/ appointment. For an ad-hoc employee, the employment of the normally selected applicant cannot be withdrawn or put on hold. Further, a provisional employee must not be swapped by another provisional employee. The position has to be swapped only by an employee selected through the regular appointment procedure. Furthermore, a notice requesting applications must be issued in the appropriate manner, and all applicants who respond should be treated equally.

Also, only when competent people are not accessible through the aforesaid channels, an unqualified person should be appointed. If a provisional employee is retained for an extended

¹ *Secretary, State of Karnataka v Umadevi and Ors.* 2006 (4) SCC 1

² *Daily Rated Casual Labour v Union of India & Ors.* 1988 (1) SCR 598

period of time for any reason, the authorities are duty-bound to contemplate his case for regularization if he is adequately qualified for the position, and has a satisfactory service track record, and such an appointment doesn't conflict with the State's reservation policy.³

In *Director, Institute of Management Development, U.P. vs Pushpa Srivastava*, the Hon'ble Supreme Court held once the employment ended after the completion of the period, the employee doesn't have any right to continue in the post thereby claiming regularisation in service because the appointment was purely contractual and ad-hoc for a set period and was terminable without the need for a notice. The appointee had no right to continue in the job and seek regularisation because there was no rule providing for it beyond the duration of service.⁴

In *Madhyamik Shiksha Parishad, U.P. vs Anil Kumar Mishra and Others*, a 3 judge bench of the Hon'ble Supreme Court held that even though their working tenure lasted from one to two years, ad hoc/ provisional employees employed on an interim basis and remunerated on a "piece-rate basis" for particular clerical work and terminated on the closure of their assignment weren't eligible to reinstatement or regularisation of their services.⁵

In *State of H.P. vs Suresh Kumar Verma*, the Hon'ble SC held that Courts couldn't issue a direction to re-engage a person hired on a daily-wage basis in any other employment or to engage such a person against present vacancies upon his term's expiry since he wasn't an appointee to any post when the venture that employed such a person came to a completion.⁶

In *Ashwani Kumar and others vs State of Bihar and others*, the Hon'ble Supreme Court while contemplating on the validity of regularisation of the irregularly employed, held that if the original admission is unlawful and not in response to a sanctioned vacancy, the matter of regularising such an appointee on such a non-existing opening will never be considered, and even if such alleged regularisation is sanctioned, it will be a futile application.⁷

³ *Mohanan KC v Piara Singh* 1992 (4) SCC 118

⁴ *Director, Institute of Management Development, UP v Pushpa Srivastava* 1992 (3) SCR 712

⁵ *Madhyamik Shiksha Parishad, UP v Anil Kumar Mishra and Others* AIR 1994 SC 1638

⁶ *State of HP v Suresh Kumar Verma* 1996 (1) SCR 972

⁷ *Ashwani Kumar and others v State of Bihar and others* 1996 Supp. (10) SCR 120

In *A. Umarani vs Registrar, Cooperative Societies & Ors.*, it was stated that the employments would be unconstitutional and could not be regularized by the State if they were made unlawfully in contradiction to the Act's compulsory provisions and statutory norms enacted thereunder, as well as by ignoring basic criteria. The State couldn't use Article 162 to make such employments permanent. Furthermore, regularisation cannot provide "permanence" to an employee whose facilities were provisional in nature. It further decided that just because few people had worked for an extensive period doesn't imply they had earned the right to regularisation.⁸

In *UPSC vs Girish Jayanti Lal Vaghela & Others*, the Supreme Court held that Article 16 in cases concerning appointment to any department under the State, stipulates that all people will have equal opportunity. Article 16's principal goal is to establish a paramount right to equal prospect and employment in public posts. The terms "employment" and "appointment" refer to not only the original job, but also other aspects of the job such as getting raise and retirement age amongst other things. Any systematic appointment to a post under the Govt. made without first publishing an advertisement inviting submissions from qualified applicants and then conducting an appropriate selection process in which all eligible candidates are given an unbiased chance to contest would be a violation of the constitutional guarantee enshrined in Article 16.⁹

SECRETARY, STATE OF KARNATAKA VS UMADEVI & ORS.

- **Point of Contention (Question of Law before the Court)**

The position of law relating to the regularisation of the ad hoc employees is concerned, there are conflicting views of the Supreme Court between the decisions of Benches consisting of two Judges and three Judges. Some of the decisions have held that regularisation is possible only against sanctioned or permanent vacancies. If such vacancies are not available or the candidates lack eligibility or qualifications in any manner, then it would not be possible to order for regularisation of such employees, besides the requirement of compliance with the

⁸ *A Umarani v Registrar, Cooperative Societies & Ors* 2004 (7) SCC 112

⁹ *UPSC v Girish Jayanti Lal Vaghela & Others* 2006 (2) SCALE 115

selection procedure. Thus, a long duration of service would not be a relevant consideration to regularise the services.

While others have held that the permanent nature of the work is on the basis of the long continuance of service and the vastness of the establishment of the employer. In view of the long duration of work by means of which the employees had gathered practical experience, it has been held that the minimum educational qualification recommended for the post would not come in the way of regularisation of the employees. Also, there are some decisions taking different views, on the question of cut-off date as provided under the scheme for 'regularisation'. The Court observed that different views have been expressed in different decisions of the Supreme Court.

While issuing notice in the matter and referring the matter to a bench of three judges, it recognised that the result of judgments in such cases has been divided. Few decisions rendered by three-judges benches like in *Ashwani Kumar (Supra)* and *Piara Singh (Supra)* have held that "regularisation is possible only against sanctioned or permanent vacancies. If such vacancies are not available or the candidates lack eligibility or qualifications in any manner, then too it would not be possible to order for regularisation of such employees, besides the requirement of compliance with the selection procedure. Thus, long duration of service would not be a relevant consideration to regularise the services."

However, in *Gujarat Agricultural University v. Rathod Labhu Bechat*, the Supreme Court has approved the view of the High Court inferring the permanent nature of the work on the basis of the long continuance of service and the vastness of the establishment of the employer. Further, in *Bhagwati Prasad v. Delhi State Mineral Development Corporation* which is a three-Judge Bench decision, it was held that the minimum educational qualification pre-requisite for the post would not come in the way of regularisation of the employees who have worked for a long period of time by means of which the employees had gathered practical experience. Furthermore, different views have been taken by various courts on the question of cut-off date as provided under the scheme for regularisation.

KEY TAKEAWAYS FROM UMADEVI JUDGEMENT

- **Regularization:**

Regularisation means “to make regular”. Once the services are regularised, the appointment can become substantive/permanent and can’t be terminated without giving a reasonable chance of being heard. The process of regularisation is commonly seen in daily wage/ ad-hoc or casually employed workers. Giving such persons the wages and benefits in accordance with the permanent employees by making them regular is called regularisation. The act of condoning any procedural irregularity is called regularization. It is only intended to correct only those flaws that can be traced back to the appointment-making mechanism.

- **Legitimate expectation:**

Legitimate Expectation means any person’s rational expectation of being treated in a definite way by the authorities as a consequence of their previous unswerving conduct or as a result of an explicit assurance made by the competent authority. The doctrine of legitimate expectation can only be invoked if:

(i) the Administrative Authority's decisions deprive a person of a benefit that he had formerly been permitted to him to possess by the authority and which he can rightfully presume to continue to enjoy until some rational grounds for withdrawal have been communicated to him or

(ii) he’s been assured by the authority that they wouldn’t be withdrawn without first providing him with an opportunity to present explanations for why they shouldn’t be revoked.¹⁰

- **Irregular Appointments:**

The Union, the States, and their departments and instrumentalities have resorted to irregular appointments, particularly in the lower rungs of the service, without regard for the obligation

¹⁰ *Secretary, State of Karnataka* (n 1), ¶ 37

to ensure a proper appointment procedure through the Public Service Commission or otherwise in accordance with the rules adopted. As a result, individuals who are more qualified and deserving of the position are excluded from applying, denying them the opportunity to compete for the position. It has also resulted in people who have been hired without following the proper procedure or even through the backdoor.¹¹

THE DISTINCTION BETWEEN REGULARIZATION AND PERMANENCE

The Hon'ble Supreme Court in *State of Mysore vs S.V. Narayanappa* affirmed that it was a fallacy to think that regularization meant "permanence."¹² In *B.N. Nagarajan vs In the state of Karnataka*, the Hon'ble Supreme court held that the words "regular" or "regularization" do not connote permanence.¹³ Also, the bench in this judgment held that it was important to keep the distinction between regularisation and permanence in mind and "granting permanence of employment is a totally different concept and cannot be equated with regularization."¹⁴

- Regularization cannot be used as a recruitment strategy. Accepting such a proposal would either mean introducing a new type of employment in contravention of the regulations, or it may have the outcome of nullifying the rules.
- Only in an exigency may a provisional appointment be converted into a permanent position, however, this should be quickly followed by regular recruitment, and appointments to non-available roles should not be taken into account for regularisation. After examining the constitutional system for public employment, the decisions mandating regularisation have mostly proceeded on the idea that after allowing the employee to work for a length of time, he should be absorbed, without truly laying down any law to that effect.

1. Economic Viability is also a consideration

¹¹ *Ibid*, ¶ 3

¹² *Mysore v SV Narayanappa* 1967 (1) SCR 128

¹³ *BN Nagarajan v State of Karnataka* (1979) 3 SCR 937

¹⁴ *Secretary, State of Karnataka* (n 1) ¶ 14

The courts cannot arbitrarily compel/ ask the state or any of its instrumentalities not to employ labourers on an ad-hoc basis and to convert such employees' regular status and confer all the benefits to them too since the Govt. is also controlled by monetary considerations.

The bench in its decision held that even the Govt. is controlled by monetary repercussions of any public employment. The feasibility of the dept. or of the project is also of equivalent concern for the Govt. It further held that a court cannot impose on the Govt. a fiscal burden by insisting on “regularization” or “permanence” in employment. It went on to hold that the burden might become so substantial by such an order that the undertaking itself might collapse under its own load. Thus, the courts must not levy a pecuniary burden on the Govt. as this may even turn counter-productive.¹⁵

2. Article 14 and 16 paramount

The bench held that Article 14 of the Constitution, read with Article 16, has particularly stipulated for equality of opportunity in terms of public occupation. The Constitution forbids any employment independent of the constitutional structure and without following the stipulations set forth therein.¹⁶ It further went on to hold that the law of equality in public occupation is a fundamental feature of the Constitution, and thus a court will be restricted from passing an order supporting a violation of Article 14 or order the disregard of the necessity to conform with the requirements of Article 14 & 16 of the Constitution.¹⁷

DECISION IN UMA DEVI

The constitutional bench of 5 judges clarified the position on regularization of ad-hoc/ daily wage/ casual labourers. It held the following:

- Rule of equality in public employment is paramount: The procedure as laid down in the statute has to be mandatorily followed. There can be no provision to by-passing this and no back door entry into a government position is allowed. The proper method of

¹⁵ *Ibid*, ¶ 17

¹⁶ *Ibid*, ¶ 10

¹⁷ *Ibid*, ¶ 34

appointment is laid down in Piara Singh (Supra). Any appointment completely bypassing this method is termed as illegal or back-door entry and such appointments can by no means be regularized. Only irregular appointments can be regularised as has been held in B.N. Nagarajan & Ors. Vs. State of Karnataka (supra). It held that only procedural irregularities ie. such as defects that can be attributed to the methodology used while making the appointments can be cured and regularised.¹⁸

- Besides the equality provision embodied by Article 14, the bench ruled that Article 16 of the Constitution has precisely stipulated equality of opportunity in terms of public jobs. Any appointment outside of the constitutional system and without complying with the criteria set forth therein is prohibited under the Constitution.¹⁹

No automatic absorption for Temporary Employment: The bench elucidated that simply because an ad-hoc worker is retained for a period of time beyond the tenure of its employees, it isn't entitled to regularisation into regular service or made permanent solely based on the retention of the initial appointment wasn't made through a legally required due procedure of selection.²⁰

The High Court's power under Article 226 on regularization of an ad-hoc employee: The bench held that the courts have no authority to impose restrictions on regular recruiting at the request of temporary employees whose contracts have expired or ad hoc employees who, by definition, have no rights. Ordinarily, H.C. sitting under Article 226 should restrain from issuing absorption, regularization, or permanence orders unless the initial recruitment was done correctly and in conformity with the constitution.

It further went on to hold that an employee wouldn't be eligible to any right to be absorbed or make him permanent in the job just because he persisted under the cover of a court order, which the bench had characterized as "litigious employment" in the earlier section of their ruling. Moreover, in these cases, the H.C. isn't reasonable in issuing interim orders, because such an interim order directing the Govt to allow him to continue at his job would stall the

¹⁸ *BN Nagarajan* (n 13)

¹⁹ *Ibid*, ¶ 10

²⁰ *Ibid*

regular selection process. The courts must be cautious in safeguarding that they don't interfere unduly with the pecuniary arrangement of its affairs by the Govt. or to assist the circumventing of the constitutional and statutory directives. The Court even opined that the courts should necessarily exercise caution in ensuring that they don't unnecessarily impede with the Govt. or its instrumentalities' economic arrangements or lend themselves to facilitating the circumvention of constitutional and legislative duties.²¹

No Fundamental Right to ad-hoc employees or daily wages labourers: It was held that persons who have been engaged on daily wages, either provisionally or contractually, have no fundamental right to claim that they have a statutory right to be incorporated into the workforce. They cannot be considered to be holders of a post, as the Supreme Court has held because a regular appointment could only be made by following the conditions of Articles 14 & 16 of the Constitution. The provision of being treated similarly with other daily wage employees cannot be stretched to include an entitlement for equal treatment with individuals who were employed on a regular basis. That would be similar to regarding "unequal's as equals." When a person seeks remedy from the court through a writ, the court must first determine if the individual seeking relief has any statutory right that is to be enforced. Even though the employees were never recruited in accordance with the applicable laws or in accordance with Articles 14 & 16, it cannot be stated that they have established a statutory right to be made permanent.²²

Regularization is a Single Time Measure: The court noticed that there were circumstances where "irregular appointments" but not unlawful appointments of fully competent personnel in duly sanctioned available positions were made, and the workers had worked for ten years or longer without the intervention of court or tribunal rulings. On the question of regularization of such employees, the Court held that a one-time recruitment process should be undergone by the government departments. But it clarified that it shall only be a one-time thing and shall not become a precedence in the future.

²¹ *Ibid*

²² *Ibid*, ¶ 39

The bench in para 44 of its decision made a provision for a one-time measure to regularize the cases of irregular appointments (not illegal appointments) for employees who have worked for greater than 10 years but without the involvement of court or tribunal orders. The Court ordered the UOI, state governments, and their agencies to take measures to regularise the jobs of such irregularly appointed officials, but only as a one-time thing. It further stated that the process should compulsorily be set in action within 6 months from the date of judgment.

It further clarified that regularisations that have previously been completed but are not in dispute should not be revived as a result of this judgement, and also that there should be no further circumvention of the procedure under the constitution by regularizing or making permanent those who have not been duly appointed according to the rules.²³

STATE OF KARNATAKA VS M.L. KESARI²⁴

This judgment clarifies the direction given in para 53 of Umadevi Judgment. The bench noted that other daily-wage/ad hoc/casual employee issues were yet unresolved in the courts even 6 months after the Umadevi ruling. Several government depts. and agencies didn't begin the one-time regularization procedure, while others did so by omitting several personnel from consideration, either because their matter remained undecided in the courts or because of utter oversight. The court held that "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."²⁵

The court also looked at the purpose/intent of the direction granted in paragraph 53 of the Umadevi decision. It stated that:

- The purpose of Umadevi's direction in paragraph 53 was twofold. The first was to guarantee that those who had served for greater than 10 years without being protected

²³ *Ibid*, ¶ 53

²⁴ *State of Karnataka v ML Kesari* SLP (C) No 15774 of 2006

²⁵ *State of Karnataka & Ors v ML Kesari & Ors* 2010 INSC 578

by some interim decisions issued by courts or CATs prior to the date of the decision in Umadevi shall be deliberated for regularization due to their extensive service. Secondly, departments/instrumentalities must guarantee that they don't continue to employ people on provisional basis for extended periods of time and then regularize them on the basis that they have served beyond 10 years, thus circumventing the constitutional provisions governing appointment/employment.

- The substantial consequence of the direction in Umadevi was that all persons who have served in vacant posts for more than 10 years as of 10th April 2006 (Umadevi decision's date) without the shelter from any interim order of any court or CAT, and who have the required qualifications, are eligible for regularization. The employer not undertaking such regularization within 6 months of the Umadevi decision, or that such regularisation was only undertaken in relation to a small number of employees, does not preclude such employees from being considered for regularization in accordance with the directions in Umadevi as a single-time step.²⁶
- It was further stated that if an employer conducted this one-time action in accordance with Paragraph 53 of Umadevi however if it failed to consider few of the provisional employees who were qualified for that benefit, the employer should do so again as part of the one-time action. Only when every employee who was eligible to be considered under Paragraph 53 has been considered, will the one-time exercise be completed.²⁷
- It further clarified that it went without saying that if the respondents didn't meet with the conditions of Umadevi's paragraph 53, their services will not be regularised. Employees with 10 years of service who don't meet the educational requirements for the position at the time of their appointment might be contemplated for regularisation in the lower-level positions. However, the bench made an arrangement directing the State and its instrumentalities that the employees could be considered for regularization

²⁶ *Ibid*

²⁷ *Ibid*

in lower posts if the candidate don't meet with the minimum educational qualification.²⁸

²⁸ *Ibid*