

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION Nos.22958, 26282, 27338, 27616 OF 2021;

% Dated 28.03.2024

#W.P.No.22958 OF 2021 & 3 other writ petitions

T Muni Ram Prasad,
S/o T Munaiah,
Aged 54 years, Occ Medical Officer,
Government Homeo Dispensary Kallur,
YSR Kadapa District
R/o D.No.2/525, Balaji Nagar, Proddatur,
YSR Kadapa District & 11 others

..... Petitioners

Vs.

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The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Health, Medical & Family Welfare Department,
A.P. Secretariat Building, Velagapudi,
Amaravathi, Guntur District

..Respondents

JUDGMENT PRONOUNCED ON: 28.03.2024

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

Whether Reporters of Local newspapers
may be allowed to see the Judgments?

Whether the copies of judgment may be marked to Law
Reporters/Journals

Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment?

*** THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**
+ WRIT PETITION Nos.22958, 26282, 27338, 27616 OF 2021;

% Dated 28.03.2024

W.P.No.22958 OF 2021 & 3 other writ petitions

M/s. Al-Momin College of Education
Kandukur Revenue Division
East Palem Road, Podili
Prakasam District

..... Petitioners

Vs.

\$
The Registrar,
Acharya Nagarjuna University
Guntur, Andhra Pradesh

..Respondents

! Counsel for the petitioner :

1. Sri Manoj Kumar Bethapudi
2. Sri K.S.S. Sanjay

^ Counsel for the respondent :

1. Sri Kasa Jagan Mohan Reddy
2. Sri T.S.N. Sudhakar
3. Sri V. Venkata Naga Raju

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> HEAD NOTE:

? Cases referred

1. (2006) 4 SCC 1
2. AIR (2021) SC 3305
3. (2010) 9 Supreme Court Cases 247
4. (2006) 4 SCC 1
5. (2010) 9 SCC 247

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**WRIT PETITION Nos.22958, 26282, 27338, 27616 OF 2021****COMMON ORDER:-**

1. All these writ petitions are filed under Article 226 of the Constitution of India by different petitioners, claiming identical relief, as such, I find it expedient to decide all the writ petitions by common order, since the issue involved in all the writ petitions is one and the same.

W.P.No.22958 of 2021

2. By this writ petition, petitioners seek to declare the action of the respondents in not considering their cases for absorption/regularization of their services. Petitioners also seek relief of their being absorbed/regularized to their posts which they are holding, and which posts are contractual posts.

3. The petitioners herein were initially appointed as Medical Officers (Homeopathy) in the year 2008 and they are presently working at various Homeopathy dispensaries (Primary Healthcare Centers) on contract basis. The contract period is initially for one year, which was extended from time to time. The Government of Andhra Pradesh issued Notifications dated 02.04.2008 and 07.01.2009 seeking to fill-up Medical Officers in various disciplines of country recognized medical practices i.e. Ayurveda, Homeopathy, Unani and Siddha, pursuant to the scheme of National Rural

Health Mission (NRHM). Some of the petitioners in the present writ petitions were selected in the Notification dated 02.04.2008 and few of them were selected in the Notification dated 07.01.2009.

4. The Government issued G.O.Rt.No.254 dated 01.02.2011 proposing to fill-up the posts of 439 Medical Officers, including 108 posts of Homeopathy. In the said Notification, the State Government had awarded weightage for contract service rendered by the Medical Officers. Several Medical Officers who were appointed along with the petitioners during the years 2008 and 2009 came to be appointed on regular basis in the said Direct Recruitment. However, the petitioners and others could not be selected. It is submitted that the posts of Medical Officer are created by the first respondent pursuant to the NRHM Scheme formulated by the Central Government, which is funded 60% by the Central Government and 40% by the State Government. The petitioners are discharging their duties on par with the medical officers who are appointed regularly by the Government.

5. Subsequently, the Government issued G.O.Ms.No.105 dated 16.07.2013, G.O.Ms.No.163 dated 12.09.2018 and G.O.Rt.No.301 dated 20.06.2020, according weightage for recruitment of Civil Assistant Surgeons, Dental Assistant Surgeons, Staff Nurses, Lab Technicians, Pharmacists by extending the benefit of weightage for the contract service rendered by them.

6. The Commissioner of AYUSH had addressed a letter to the Principal Secretary to the Government, Health Medical & Family Welfare Department, A.P vide Lr.No.4762/B1/2015 dated 14.02.2017 stating that all the Medical Officers appointed in the Department under contractual services have been made duly following the procedure as done in case of regular appointments by following merit, roster point and presidential orders. As such they are fully eligible for the post of Medical Officer if the recruitment is done on regular basis, the same contract Medical Officers would have been selected. Since the recruitment of Medical Officers was made on contract basis, they were selected as medical officers on contract basis. In view of the instructions of the Government and as per the business rules, the matter may be placed before the Council of Ministers to take a decision for issue of necessary permission to the Commissioner of AYUSH for filling of posts of Medical Officers (Ayurveda/Unani/Homeopathy) by absorbing them, as the Commissioner is the appointing authority for the post of Medical Officer. It is also requested that the Government to consider their request on the same lines as was done earlier, since they have completed 9 years of contractual service, as on 14.02.2017.

7. Basing on the letter addressed by the Commissioner of AYUSH on 14.02.2017, the Principal Secretary to Government addressed a letter to the Secretary, A.P. Public Service Commission in Lr.No.293916/F.1/2016-04 dated 25.09.2017 stating that the Commissioner of AYUSH has

requested the Government for regularization of the services of Medical Officers who were working on contract basis in various rural PHC centers pursuant to NRHM scheme. The Secretary, APPSC was informed that the Government has examined the proposals of the Commissioner, AYUSH and it was decided to delete 107 vacancies of Medical Officers in AYUSH from the orders issued in G.O.Ms.No.110, Finance (HR.I. Plg.& Policy) Department dated 17.06.2016, to enable to regularize services of Medical Officers who are working on contract basis under NRHM dispensaries.

8. In response thereto, APPSC addressed Lr.No.415/RS-22/2016 dated 12.10.2017 to the Commissioner, AYUSH, requesting to furnish the revised indents for the posts of Medical Officer (Homeo/Unani/Ayurveda) along with the rules governing the post, breakup of the vacancies, roster points, applicability of PH/Women reservation, Upper Age Limit, etc. In reply, the Commissioner addressed letter dated 29.01.2018, giving clarifications and requested to issue notification for filling up remaining 44 vacancies of Medical Officers on regular basis at an early date.

9. On 03.09.2019, the Deputy Secretary to the Government issued a Memo to the Commissioner, AYUSH to furnish the information in respect of regularization of the services of Medical Officers, who were working on contract basis pursuant to NRHM:

- i. To state specifically that with whose permission a decision was taken to regularizing the services of 107 Medical Officers working on Contract basis in AYUSH dept and inform what is the criteria*

to withdraw the direct recruitment posts already permitted to notify by the APPSC, in which orders were already issued by the Finance Department vide G.O.Ms.No.110 dated 17.06.2016.

- ii. Is there any rule provision to withdraw the posts related to direct recruitment already permitted to facilitate the medical officers working on contract basis to get regularization.*
- iii. Indicate whether is it necessary to withdraw the regular posts which was already permitted to notify.*
- iv. To indicate why the direct recruitment was not taken place, when the G.O. issued three years back. Health Medical department are pursuing the matter with APPSC to take place of the recruitment.*
- v. To examine the issue of regularization of 107 Medical Officers working on Contract basis without linking up with direct recruitment duly invoking the rule position.*
- vi. To indicate specifically whether any assurance/order given to these contract employees for their regularization when they are appointed initially. Please furnish If any orders.*

10. Later, vide G.O.Ms.No.49 Finance (HR-I Plg. & Policy) Department dated 29.07.2021, the Government accorded permission to APPSC for issue of Notification for various posts, wherein, 53 Medical Officers (Homeo) in Ayush Department were notified, which were earlier deleted from the purview of APPSC.

11. Though the petitioners made several representations seeking regularization of their services to various higher authorities, no action was taken by the respondent authorities.

12. Thereafter, APPSC has issued Notification No.9/2021 dated 24.09.2021 seeking to fill-up various posts, including the posts of Medical

Officers (Homeopathy) without any benefits like age relaxation, service weightage, etc. Hence, the petitioners preferred this writ petition to regularize/absorb their services as Medical Officers (Homeo).

13. Respondent Nos.1 & 2 filed counter and additional counter affidavits. Respondent Nos.4 to 11 filed counter affidavit and vacate stay petition, denying material allegations. It is stated that the petitioners were engaged on contract basis in the year 2008 & 2009 under NRHM Scheme. At the time of engaging their services, in the notification, it was categorically stated that the recruitment was only on contract basis. Specific contract agreement was entered with the petitioners and there was no mention in the contract agreement that their services would be regularized in future and more so the duration of agreement was only for one year and later renewed from time to time. The petitioners accepted the terms and conditions of the contract and joined the service agreeing that they will not claim any right to continue in service in the department of AYUSH beyond the stipulated period. The petitioners have also agreed that they will not claim any right for absorption in the regular vacancies that may arise in future in the department of AYUSH. The Government has hired the petitioners by giving weightage to their contract service in subsequent regular recruitments. It does not mean that the petitioners have right to claim and get weightage marks in every recruitment.

14. The AYUSH Department has separate service and the selection methods, pay scales are also varying from the Allopathy Department. Therefore, the service, rules and methods, G.Os followed by the Allopathy Department may not be applicable to AYUSH Department unless the Government specifies and issues the G.Os making the same applicable to AYUSH Department.

15. It is submitted that, Government in G.O.Ms.No.153 HM&FW (I.2) dated 30.07.2012 have entrusted the recruitment process to APPSC. Further, Government issued G.O.Ms.No.110 dated 17.06.2016 have accorded permission to fill up 151 posts of Medical Officers and the department have requested the APPSC for recruitment of 151 posts of Medical Officers (Ayurveda-72, Homeo-53 & Unani-26) and furnished the intends for the said posts. Accordingly, APPSC/Respondent No.3 has issued open Notification on 24.09.2021 for direct recruitment as per the prescribed procedure.

16. It is submitted that, in response to the notification, the petitioners can apply to the same, but cannot demand for weightage for the service and age relaxation. In case of existence of necessary circumstances, the Government has a right to appoint contract/outsourcing employees or casual labour for various projects, but such persons cannot claim any right to regular employment on absorption. Such temporary/contrary employee working for various schemes/outsourcing employees cannot claim

absorption/regularization as they knew that they were appointed temporarily as mentioned in the agreements. The Government did not give any assurance of regularization without regular recruitment process being followed under the State Government, as such there is no violation.

17. It is submitted that the petitioners are working due to a particular scheme called as NRHM and not against the sanctioned posts, as such they cannot claim for regularization of services as a matter of right solely on the ground that they are working for several years. Regularization of services is an exception and matter of policy of the Government. As the petitioners were never appointed in any of the sanctioned posts created by State, they are not entitled for regularization.

18. During hearing, learned counsel for the petitioners would submit that, the petitioners are working as Medical Officers on contract basis since 2008 with meager salary. They were transferred to another PHC/CHC and few employees were forced to take up the transfer. Even the petitioners were transferred and entered into fresh contracts from time to time. The contracts of the petitioners were extended from time to time. after 2012, the respondents ought to have issued another notification to fill up rest of the Medical Officers lying vacant in the Department of Ayush instead of extracting the services from the petitioners.

19. Learned counsel would submit that, the petitioners were posted at various PHCs under the control of Department of AYUSH and were allotted

all the duties of Regular Medical Officer and also worked during Covid-19 Pandemic on par with regular Medical Officers. Since the petitioners discharged the duties of regular Medical Officer of the concerned PHC where no regular Medical Officer was appointed, all through their service, they are deemed to be working in the sanctioned posts and they are entitled for regularization as they have put in 14 to 15 years of contractual service till date.

20. Learned counsel for the petitioners contended that, when the petitioners were appointed as Medical Officers on contract basis after following necessary selection process for appointment of regular employee in the existing vacancies, they are entitled to claim absorption into services in terms of the principle laid down by the Constitutional Bench of the Hon'ble Apex Court in **State of Karnataka vs. Umadevi**¹ and requested to direct the respondents to regularize/absorb the services the petitioners from the date of their initial appointment.

21. Learned counsel for the petitioners would further submit that, the impugned notification is issued without giving any benefit of age relaxation and service weightage to the petitioners who are working as contract Medical Officers. Moreover, when the petitioners are at the end of crossing their age limit, issuing the impugned notification after a decade seeking to fill up the regular posts to which the petitioners have waited for so long,

¹ (2006) 4 SCC 1

would put the petitioners to loss, since it would be difficult for them to compete at this age.

22. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in **University of Delhi vs. Delhi University Contract Employees Union², State of Karnataka vs. M.L. Kesari³, Secretary, State of Karnataka vs. Umadevi** (referred supra) and on the strength of the principle laid down in the above judgment, would contend that benefit of age relaxation and service weightage should be given to all the contract employees and separate/another notification should be given to fill up the unsuccessful contract employees. Learned counsel submits that, in the present case, the impugned notification is issued without giving any benefits to the contract Medical Officers.

23. On the other hand, Sri Kasa Jaganmohan Reddy, learned Special Government Pleader appearing for the official respondents would contend that, when a person enters a temporary employment or gets engagement as a contractual or casual worker, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the jurisdiction of this Court. Moreover, while engaging these persons, the State did not make any promise either to continue them where they are or to make them permanent and cannot seek a positive relief of being made permanent in the post.

² AIR (2021) SC 3305

³ (2010) 9 Supreme Court Cases 247

24. Learned counsel drawn attention of this Court to Condition No.8(viii) of the Agreement for employment in the Department of Ayush on Contract Basis to the post of Medical Officer (Homeo) under NRHM Scheme, which it reads as follows:

“It is expressly stated and agreed to by the party of the Second party that any duration of service under this agreement shall in no way provide her any right to claim for absorption in regular vacancies that exist now or may arise in future in the Department of AYUSH of the First part.

25. Basing on the above condition, it is contended that the petitioners who have executed the Agreement for employment in the Department of Ayush on Contract basis for the post of Medical Officer (Homeo) cannot claim for absorption in regular vacancies existing at that point of time during subsistence of the agreement or in future. Since the agreement is undertaken and signed by the petitioners, that they will not and shall not claim any right for absorption in regular vacancies in future, their right to claim ceased as per the terms and conditions of the agreement.

26. It is contended that, any appointments in regular vacancies are to be filled through the process by giving opportunity to all equally qualified persons to compete and meritorious will be selected or appointed. Contract employees have no legal right or claim for absorption. Contract appointments made between employees and Government, to meet needs of

the Government are, purely on renewal basis only and petitioners are aware of the terms of their appointment and prayed to dismiss the writ petition.

27. Sri T.S.N. Sudhakar, learned counsel appearing for Respondent Nos.4 to 11 in W.P.No.22958 of 2021 and Sri Challa Gunaranjan for Respondent Nos.4 to 23 in W.P.No.27616 of 2021, while reiterating the contentions of learned Special Government Pleader, would contend that the Government has taken services of the petitioners on contract basis for a period of one year on contract basis and thereafter, the said contract period is extended by the as per the funds earmarked by the Government of India to implement the NRHM Scheme. The dispensaries which are running under the scheme do not come under the sanctioned posts of the AYUSH Department. When the petitioners themselves executed personal bonds by agreeing to the terms and conditions of the agreement to perform as contract employee, they do not have any right to claim to regularization of their services in the department against the regular vacancies that exist now or may arise in future in the Department of AYUSH.

28. Heard the following:

- a. W.P.No.22958 of 2021, heard Sri Manoj Kumar Bethapudi, learned counsel for the petitioners; Sri Kasa Jagan Mohan Reddy, learned Special Government Pleader for Respondent Nos.1 & 2; Sri T.S.N. Sudhakar, learned counsel for

Respondent Nos.4 to 11 and Sri V. Venkata Naga Raju, learned Standing Counsel for APPSC;

- b. W.P.No.26282 of 2021, heard Sri Manoj Kumar Bethapudi, learned counsel for the petitioners; Sri Kasa Jagan Mohan Reddy, learned Special Government Pleader for Respondent Nos.1 & 2 and Sri V. Venkata Naga Raju, learned Standing Counsel for APPSC;
- c. In W.P.No.27616 of 2021, heard Sri K.S.S. Sanjay, learned counsel for Sri P. Rajasekhar, learned counsel for the petitioner; Sri Kasa Jagan Mohan Reddy, learned Special Government Pleader for Respondent Nos.1 & 2 and Sri V. Venkata Naga Raju, learned Standing Counsel for APPSC and Sri Challa Gunaranjan for Respondent Nos.4 to 23;
- d. In W.P.No.27338 of 2021, heard Sri K.S.S. Sanjay, learned counsel for Sri P. Rajasekhar, learned counsel for the petitioner; Sri Kasa Jagan Mohan Reddy, learned Special Government Pleader for Respondent Nos.1 & 2 and Sri V. Venkata Naga Raju, learned Standing Counsel for APPSC;

29. Originally, W.P.No.22958 of 2021 was filed against Respondent Nos.1 to 3, but later, as per the orders of this Court vide I.A.No.2 of 2021 dated 20.06.2022, Respondent Nos.4 to 11 were impleaded as party respondents.

30. During pendency of the writ petition, an interim direction was passed by this Court on 23.10.2021, directing the official respondents not to proceed with the recruitment to the extent of 12 posts of Medical Officers (Homeopathy) in pursuance of the Notification No.9 of 2021 dated 24.09.2021, in view of balance of the irreparable prejudice in favour of the petitioner.

31. The National Rural Health Mission Scheme which was envisaged by the Government of India. The petitioners were not recruited as Medical Officers on contract basis under the scheme by the Central Government or through any agency created under the scheme. But, the recruitment was done by the Department of Ayush pursuant to the availability of funds under NRHM Scheme.

32. It can be seen that the appointment made to the temporary/contract posts under a scheme. In G.O.Ms.No.73 dated 15.03.2008, it was clarified by the Government that the posts created pursuant to NRHM will be included in the State Plan after 2012. Hence, the respondents have asked all the contractual employees to enter into fresh contracts with the Department of AYUSH of the State Government without intervention of the Mission Director, NRHM. Therefore, the contract employees who initially worked with NRHM are now working in the Department of AYUSH in the State Government.

33. The petitioners were appointed on fixed tenure of one at a time; their services terminated notionally for a cosmetic one day break to create the facade of the termination of the appointment immediately followed by fresh appointment letter issued for one year. This practice has been continuing for a period of over three decades. Many Medical Officers were initially appointed on ad-hoc basis after written test and interview and were being paid full salaries and allowances payable to a newly appointed Medical Officers. These very persons were subsequently appointed on contract basis for a fixed 'fee'.

34. It is an admitted position before this Court that the persons so appointed are holding the same qualification, if not better, than persons holding permanent posts of Medical Officers. They are also performing the same functions. It is also undisputed that all these persons have rendered satisfactory service.

35. This writ petition was filed for the reason that the respondents are not considering the cases of the petitioners for absorption/ regularization of their services and issuing Notification No.9 of 2021 without according the benefit of concessions like weightage of marks, age relaxation, etc.,.

36. The petitioners have pointed out that the essential qualifications as well as the mode of selection was identical to the manner in which they were appointed and thus apprehended denial of absorption/regularization of their services in a clandestine manner on the basis of a condition

incorporated in the terms and conditions of the contract in the appointment letter which enables the respondents to prohibit the petitioner from claiming any right for absorption in regular vacancies leading to the filing of the writ petitions.

37. It is also the case of the petitioners that they had been continuing as Medical Officer 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 any concerned and there has been no complaint against anyone as regards the services provided by them.

38. The petitioners were appointed against vacant post and hence, petitioners are entitled for regularization in view of the decision reported in **State of Karnataka v. Umadevi**. For better understanding, Paragraph No.53 of the Judgment in **Umadevi** case is extracted hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases 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 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 by passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

39. The petitioners before this Court are pressing for a direction to the respondents to extend the benefit of regularization of their services as Medical Officers (Homeopathy) whereby they could be considered for appointment taking into account the years of their experience in the light of their possessing the requisite eligibility qualifications.

40. The further submission is that the contractual appointments of the petitioners were made as per the exigency of the situation. It is submitted that these contractual appointments were for a fixed tenure of period on consolidated remuneration. No difference could be pointed out on behalf of the respondents to the process of recruitment which was undergone by these contractual recruits from that which is undergone by persons to whom regular appointment is offered under the rules. It is writ large on the

face of the record that the petitioners have actually undergone a procedure akin to that prescribed under the recruitment rules for regular appointment to the post of Medical Officer, though they have been offered only the contractual appointment.

41. So far as the notification of the tenure on the appointment letter is concerned and the respondent's contention that the employees accepted the same, in the view of this Court, the said stipulation is not being treated as sacrosanct by the respondent for the reason that the authorities were aware that the appointment was being made against vacant permanent posts and that there was need for the services of the person concerned. For this reason, technical and cosmetic breaks of merely a single day were being given between extensions of the same appointment by a further tenure. Such breaks were in vogue and a strategy was adopted by the statutory authorities for decades to avoid claims of regularization, viz employing "daily wagers", "muster roll employees (even "temporary muster roll" and "regular muster roll", adhoc employment and contractual employment. Several such engagements led to regularisation orders which have come to an end by the binding and authoritative Constitutional Bench pronouncement in **Secretary, State of Karnataka & Ors. v. Umadevi & Ors**⁴.

⁴ (2006) 4 SCC 1

42. In the same breath, it has been argued by Sri Manoj Kumar Bethapudi, learned counsel for the petitioners that if the respondents did not make the appointments on contract basis, the Medical Department could not have functioned and the interest of the State would have suffered. This submission in fact clearly underlines the imperative need of the services of the appellants.

43. This Court now proposes to discuss the directions of the Supreme Court in the pronouncement reported in **Secretary, State of Karnataka & Ors. v. Umadevi & Ors.** In this case, the Supreme Court was concerned with a challenge to matters of absorption, regularization of permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment. In para 52, the Court has declared that no writ of mandamus should be issued in favour of employees notifying the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the state has a legal duty to make them permanent.

44. In Paragraph No.53 of **Uma Devi** case, it is held 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 [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan

[(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 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 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.”

45. A distinction between an illegal and an irregular appointment is that, illegal appointment would be of a kind where there exists no sanctioned post and a person is appointed by means of a selection process which hits the very essence of a Recruitment Rule. An irregular appointment would be where a procedure to follow the appointment, not going to the root of the appointment is followed. Now, a procedure or manner of appointment which goes to the root of the appointment would be where a person who is ineligible is appointed and there is no sanctioned post; eligibility, with

reference to the educational, experience and age requirement is ignored. In the present case, the writ petitioners have undergone the recruitment process for being selected as contract Medical Officers (Homeo).

46. The petitioners have however urged that the respondents have ignored one material factor in the manner in which they were denied the benefit of absorption/regularization, as was extended to other members in the earlier notifications. It is submitted that the respondents are conscious when they gave the one-time benefit earlier to the other members who were equally educationally and technically trained under courses and training programmes then in vogue, akin to the petitioners. There is no dispute to the fact that all such persons who applied possessed the prescribed qualifications and were eligible for consideration of regularization. The qualifications and skills were acquired prior to the appointments on contract basis which have admittedly continued/renewed over a long period of time. As noted by this Court, the petitioners/contract employees have rendered satisfactory service.

47. 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.

48. In paragraph 7 of the **State of Karnataka vs. M.L. Kesari**⁵, 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, 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 one-time 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

⁵ (2010) 9 SCC 247

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.

49. 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

50. 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. In the event, it is verified and established that the petitioners in the present case were working as Medical Officers (Homeo)

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.

51. One of the contention raised by the respondents is that the contractual workers like the petitioners were engaged de-hors the constitutional scheme. Firstly, the petitioners who are engaged in such manner as Medical Officers, are all duly qualified for the work for which they are engaged and they have been selected/appointed on contract basis by following due process of selection. 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 petitioners cannot be said that they are not entitled to any benefit in the nature of a regularization.

52. 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.

53. That apart, the Legislature of the State of Andhra Pradesh enacted Act No.30 of 2023 i.e. An Act Further to Regularize the Services of Persons Appointed on Contract Basis in the Gazette in Part IV-B Extraordinary dated 20.10.2023, wherein, in Chapter-II, specifically says that the persons appointed on contract basis shall be regularized, subject to fulfilling certain conditions. A Schedule is annexed to the Gazette mentioning the codes and name of the department(s) to which the said act would be made applicable. Among them, at Serial No.65 – HMF06 – Ayurveda, Yoga, Unani, Siddha & Homeopathy (Ayush) Department is mentioned.

54. According to Clause (1) of the Act, persons appointed on Contract Basis means a person appointed in Government Departments duly following the conditions specified in Clause 3 under Chapter-II of this Act. At the same time, under Chapter-II Clause 3(3), specifies that the contract appointments should have been made on full time basis only and Clause 3(4) says that the contract appointments should have been made against substantive vacancies of permanent sanctioned posts with concurrence of Finance Department under the provisions of the Act, provided that such persons appointed on contract basis, if discontinued temporarily in vacation departments, shall also be entitled to be regularized. Clause 3(5) specified that the regularization of a person appointed on contract basis shall be considered only if his initial appointment was in due compliance with the procedure relating to

selection process, rule of reservation, eligibility, age & educational qualifications prescribed for the post and notification of vacancies.

55. In the present case, the petitioners are qualified persons and duly selected, who are working as Contract Medical Officers (Homeo) against the duly sanctioned vacant posts are continuing to work for ten years or more but without the intervention of orders of the courts or of tribunals. The petitioners are appointed on Contract Basis and working under the Department of Ayush and their appointments were made on full time basis and against the substantive vacancies of permanent sanctioned posts. As per proviso to Clause 3(4) under Chapter-II, even though the petitioners appointed on contract basis are discontinued temporarily, they shall also be entitled to be regularized as per the Act. Hence, temporary discontinuation or cosmetic break is not a bar for regularization of the petitioners. Moreover, the petitioners have undergone regular selection process, complied with the eligibility, age and educational qualifications, thereby, the petitioners are entitled for regularization.

56. Hence, 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 the Hon'ble Apex Court in the judgments referred supra and also in view of the Act No.30 of 2023 enacted by the State Legislature i.e. An Act Further to Regularize the Services of Persons Appointed on Contract Basis. Hence, the State Government and it's

instrumentalities should take steps to regularize the petitioners as a one-time measure, since the petitioners were neither appointed irregularly in duly sanctioned posts nor they are working under the cover of orders of the courts or tribunals. Even as per the directions in Paragraph No.53 of the judgment of the Hon'ble Apex Court in the judgments referred supra, it is the duty of the State to ensure that regular recruitments are undertaken to fill those vacant posts that require to be filled up, in cases where temporary employees are being now employed. The process must be set in motion within six months from this date.

57. Indeed, it is undeniable that at the time of the judgment in Umadevi case delivered by this Court, the contract employees had only accrued approximately 3 to 4 years of service. However, at present, the majority of them have surpassed the milestone of 10 years of service on a contractual basis. While the prospect of regularization may not be feasible, it is imperative to afford them a fair chance to compete alongside other candidates by means of public advertisement. Proposing a distinct examination solely for contract employees would be counterproductive, as it would limit the pool of eligible candidates exclusively to those already engaged in contractual roles.

58. The Hon'ble Apex Court in **University of Delhi vs. Delhi University Contract Employees Union** (referred supra) held as follows:

(a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.

(b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

(c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.

(d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only after three months of the receipt of applications from the candidates.

59. A stand on the part of the State respondent authorities that such contract 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 claim absorption or regularization, is not acceptable and unsustainable, for the reason that, continuation of services of petitioners for a period more than one and half decade, proves that petitioners have been continuing against vacant posts only.

60. In view of foregoing discussion, W.P.No.22958 of 2021 is allowed with the following directions:

- a. The action of the respondents in not considering the cases of the petitioners for regularization/absorption of their services and issuing Notification No.9 of 2021 dated 24.09.2021 without according benefit of concessions like weightage of marks, age relaxation etc to the petitioners, who are working as Medical Officers on contract basis is declared as illegal and arbitrary.
- b. The respondents/authorities are directed to verify the credentials of the petitioners and arrive at a decision, since they are working against vacant posts and if they are working for more than ten years and whether they are continuing in service pursuant to any interim order from any Court or Tribunal. In the event, it is found that the above condition is 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.
- c. If the respondents found that any of the petitioners do not meet the aforesaid conditions, more particularly the condition that they are working against vacant 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 given

(i) benefit of age relaxation.

(ii) They shall be given the benefit of 10 marks in the ensuring selection process, while for every additional year that a contract employee had put in.

(iii) Benefit of one more mark subject to the ceiling of 8 additional marks be given.

(as per **University of Delhi vs. Delhi University Contract Employees Union**).

d. The respondents are permitted to resume the recruitment process from the point where it was halt, taking into consideration the directions issued by this Court.

e. Consequently, I.A.Nos.1, 2 & 3 of 2022, shall stand closed.

f. In view of the detailed order passed in W.P.No.22958 of 2021, I.A.No.4 of 2022 becomes infructuous.

61. Consequently, miscellaneous applications pending if any, shall also stands closed.

W.P.No.26282 of 2021

62. In view of the detailed order passed by this Court in W.P.No.22958 of 2021; W.P.No.26282 of 2021 is also allowed. No order as to costs.

63. Consequently, miscellaneous applications pending if any, shall stand closed.

W.P.No.27338 of 2021

64. In view of the detailed order passed by this Court in W.P.No.22958 of 2021; W.P.No.27338 of 2021 is also allowed. No order as to costs.

65. Consequently, miscellaneous applications pending if any, shall stand closed.

W.P.No.27616 of 2021

66. In view of the detailed order passed by this Court in W.P.No.22958 of 2021; W.P.No.27616 of 2021 is also allowed. No order as to costs.

67. Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE VENKATESWARLU NIMMAGADDA

Date:28.03.2024
Note: LR copy to be marked
b/o
SP

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION Nos.22958, 26282, 27338, 27616 OF 2021

Date:28.03.2024

SP