REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4210 OF 2023

[Arising out of Special Leave Petition (C) No. 5726 of 2020]

OM PRAKASH BANERJEE … APPELLANT(S)

VERSUS

THE STATE OF WEST BENGAL & ORS. … RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave granted.

2. The present appeal is directed against the judgment and final order dated 10.12.2019 passed by the High Court of Judicature at Calcutta (hereinafter referred to as **'High Court'**) in MAT No. 611 of 2018 and CAN No. 10038/2018 filed by the Appellant herein against the order dated 04.05.2018 passed by a Single Judge of the High Court in Writ Petition No. 31399 (W) of 2017, seeking regularisation of service.

3. The High Court dismissed MAT No. 611 of 2018 and CAN No. 10038/2018 filed by the Appellant herein.

BRIEF FACTS:

4. The Appellant in the present case was a casual worker in Respondent No.3- Municipality, since 1991. The brief facts giving rise to the present appeal are that on 18.04.1991, the Appellant herein was appointed by Respondent No.3- Municipality as a casual worker @ Rs.25/- on a daily wage basis, to assist the Engineering Section of the Municipal Office. Prior to this, he had worked as an enumerator in the Census of 1981 and 1991, respectively. On 14.06.1996, the Appellant was appointed for 6 months on probation on a consolidated pay of Rs.1000/- per month. On 22.01.1997, Director of Local Bodies, West Bengal, issued a letter, wherein it was mentioned that as per order dated 13.03.1996, casual workers who were engaged by different Urban Local Bodies up to 31.12.1991 and were still continuing as such will be eligible for absorption against sanctioned and vacant Group "C" and "D" categories of post depending upon their eligibility within the purview of approved staff pattern of the respective Urban Local Bodies and as per the Board of the Councillors, subject to the fulfilment of terms and conditions. However, such absorption never actually happened.

5. In 1999, the Appellant herein along with 16 other casual workers of Respondent No. 3- Municipality filed Writ Petition No. 19555 (W) of 1999 before the High Court, seeking a writ of mandamus directing Respondent No. 3- Municipality herein to regularise and/or absorb in permanent vacancies in which

they were discharging their duties as casual workers. On 09.03.2000, an office order was issued by Respondent No.- 3 Municipality stating that in pursuance of his satisfactory performance since last 3 years, he is being appointed in the post of Clerk in the dispatch section in the scale of Rs. 3350-6325/- plus usual admissible allowances with retrospective effect from February, 2000. On 20.06.2000, the High Court dismissed the aforementioned Writ Petition No. 19555 (W) of 1999. The relevant portion of the High Court's order is being reproduced hereunder :-

> *"By the order dated 26th September, 1996 passed in C.O. No. 9662(W) of 1991, the respondent municipality was directed to consider the case of the writ petitioners for absorption in the permanent vacancy. Pursuant to the said order, the case of the petitioners were considered and they were ultimately absorbed in permanent vacancies. Prior to such absorption, the petitioners were serving as casual workers. Upon such absorption, the petitioners have been granted the regular scale of pay with effect from the date of their permanent absorption. Such permanent absorption was made considering the service of the writ petitioners as casual workers in the respondent municipality for a considerable period of time and therefore, such permanent absorption in the regular vacancy did not relate to an appointment with a retrospective effect and as such the petitioners are not entitled to such a permanent and/or regular scale upon such absorption with a back date.*
>
> *This writ petition does not submit any consideration. Hence, the case is dismissed."*

Following this, the Appellant wrote several letters and reminders to the Respondents for considering his eligibility and gradation list for absorption under the exempted category to the sanctioned posts; but to no avail.

6. On 15.12.2003, 60 employees including 4 Writ Petitioners in the aforementioned Writ Petition No. 19555 (W) of 1999, were regularised. However, the Appellant's service has not been regularised till date. On 08.03.2005, some 24 more employees were regularised in service by Respondent No. 3- Municipality.

7. Since February, 2000, the Appellant was receiving a higher pay scale and admissible allowances. But, from July, 2010, the allowances and increments were stopped. Being aggrieved, the Appellant, along with another employees, filed Writ Petition No. 17892 (W) of 2010 before the High Court. Vide Order dated 03.09.2010, the said Writ Petition was disposed of by directing Respondent No. 2 herein to pass a reasoned order with regard to the question of approval of the petitioners in the Municipality within 8 weeks.

8. On 08.11.2010, a meeting of the Board of Councilors was held, wherein the agenda for approval of 76 employees was taken for consideration. In spite of a specific direction of the High Court to pass a reasoned order within 8 weeks, no such reasoned order was communicated to the Appellant. Being aggrieved, the Appellant filed Writ Petition No. 18281 (W) of 2011 before the High Court. Vide Order dated 09.01.2012, the said Writ Petition was disposed of by directing Respondent No. 2 herein to dispose of the matter regarding the filling up of vacant posts of clerks within 8 weeks. Accordingly, on 07.03.2012,

Respondent No. 2 herein passed a reasoned order stating that the filling up of vacant posts of clerk cannot be considered for absorption from the gradation list of pre-1992 casual workers. Hence, the Appellant herein was denied absorption in regular service.

9. The Appellant states that till 2016, he made several representations for compliance of High Court's aforementioned Order dated 20.06.2000 passed in Writ Petition No. 19555 (W) of 1999, but to no avail. It has been further stated that some similarly situated employees filed Writ Petition No. 25838 (W) of 2014 and Writ Petition No. 18863 (W) of 2007 against Respondent No. 3-Municipality, and, pursuant to the High Court's orders in the said writ petitions, their services were regularised by creating supernumerary post of pump operator. On 05.04.2017, Joint Director of Local Bodies, Government of West Bengal wrote a letter to the Chairman of Respondent No. 3- Municipality for taking necessary action upon the Appellant's request for regularisation. However, no such action was taken in this regard.

10. Being aggrieved by the inaction of the Respondents, the Appellant herein filed another Writ Petition [being Writ Petition No. 31399 (W) of 2017] before the High Court. On 04.05.2018, the said Writ Petition was dismissed in view of the aforementioned reasoned Order dated 07.03.2012 passed by Respondent No. 2. Being aggrieved by the dismissal of the Writ Petition, the Appellant filed an

intra-court appeal (being MAT No. 611 of 2018) before a Division Bench of the High Court. During the pendency of the said appeal, Respondent No. 3-Municipality issued a letter to Respondent No. 2 for granting approval of appointment of 23 employees including the Appellant herein. Vide impugned Judgment and Order dated 10.12.2019, the High Court dismissed the appeal filed by the Appellant herein.

11. It is against this judgment of the High Court that the Appellant has preferred the present Civil Appeal.

12. We have heard learned counsel for the parties.

SUBMISSIONS:

13. Mr. Surajdipta Seth, learned counsel appearing on behalf of the Appellant argued that the Appellant had been continuously writing letters in 2016 and 2017, and even after 15 years of litigation since 1996, after High Court's directions regarding the Appellant's absorption, the Respondents never absorbed the Appellant into regular service, even though his co-employees were. As such, the High Court ought to have adopted a sympathetic approach towards the Appellant and should not have dismissed his appeal on the technical ground of delay.

14. The learned counsel further argued that the Appellant is an ex-census worker working continuously from 1981, i.e., before the commencement of West Bengal Municipal Act. Vide G.O. dated 19.03.1996, all those engaged prior to 31.12.1991 and still continuing in service, became eligible for absorption, and so did the Appellant. The learned counsel also made a mention of G.O. dated 21.08.2002, which places ex-census employees in the exempted category which is to be directly absorbed in permanent vacancy. Moreover, the G.O. dated 28.06.2004 states that no approval of the Directorate of Local Bodies is required for appointments that fall under the purview of Local Bodies/Municipalities.

15. The learned counsel further contended that the Appellant though qualifying all criteria, exemptions and despite the High Court's directions for absorption, he was sidelined while several other similarly placed employees (including his juniors) were absorbed. The learned counsel brought our attention towards the High Court's Order dated 26.09.1996 in CO No. 9662 of 1991, directing the Appellant's absorption in permanent vacancy. Moreover, on 22.01.1997, the Respondents directed the regularisation of those engaged prior to 31.12.1991 and were still continuing. However, such absorption of the Appellant never happened in spite of the orders. The learned counsel also brought to our attention the fact that the High Court's Order dated 20.06.2000 passed in Writ Petition No. 19555 of 1999 clearly reflects that absorption has

been given effect to vide Order dated 26.09.1996 passed in the aforementioned CO No. 9662 of 1991. The High Court had dismissed the writ petition to the extent of entitlement of back dated appointment and arrears. However, the Respondents never paid any heed to such order and inordinately delayed the Appellant's appointment, while simultaneously absorbing other casual employees. The learned counsel argued that when a particular set of employees is given relief by the Court, all other similarly situated persons should be treated alike by extending the same benefit. Not doing so would amount to discrimination, arbitrariness and would be in violation of Article 14 of the Constitution. The learned counsel also referred to several letters in this regard as well as the Appellant's service book which mentions that Respondent No. 3-Municipality has absorbed the Appellant in view of the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 (W) of 1999. The learned counsel also placed on record the memo of the Chairman of Respondent No. 3-Municipality dated 15.09.2006, proposing the regularisation of 12 persons including the Appellant. The High Court in its Order dated 03.09.2010 passed in Writ Petition No. 17892 of 2010 has also recorded submissions of the Respondents that resolutions for the Appellant's absorption are already in place and the same have been sent for approval.

16. The learned counsel then argued that the High Court ought to have looked that the facts of the present case are clearly distinguishable from the facts of

Secretary, State of Karnataka vs Umadevi[1], since it cannot be applied to a case where regularisation has been sought in pursuance of Article 14. In support of her argument, the learned counsel relied on this Court's judgment in ***UP SEB vs Pooran Chandra Pandey***[2]**,** the facts of which are similar to the present case. In the said case, it was held that the decision in **Umadevi (supra)** cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make **Umadevi (supra)** inapplicable. Lastly, the learned counsel mentioned that the Appellant retired in 2021 (after a service of 30 years) without any benefits.

17. Per contra, Ms. Astha Sharma, AOR, learned counsel appearing on behalf of Respondents No. 1 and 2 argued that the High Court has rightly dismissed Writ Petition No. 31399 (W) of 2017, as the same was filed by the Appellant after an inordinate delay of 5 years, and the representations made by the Appellant do not constitute a sufficient ground to condone the delay. In this regard, the learned counsel relied on this Court's judgment in ***Surjeet Singh Sahni vs State of U.P. & Ors.***[3], wherein it has been held that representation does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time.

1 (2006) 4 SCC 1
2 (2007) 11 SCC 92
3 2022 SCC OnLine SC 249

18. The learned counsel brought to our notice the High Court's order dated 24.08.2009, passed in Writ Petition ST No. 483 of 2009. In the said order, the High Court declared regularisation circulars dated 13.08.1979, 28.08.1980 and 13.03.1996, respectively, as *ultra vires* to the Constitution. Therefore, the said circulars have seized to exist in the eyes of law. The learned counsel also contended that the High Court in its order dated 20.06.2000 passed in Writ Petition No. 19555 (W) of 1999, had rightly held that the absorption of permanent vacancies of casual workers would not be considered retrospectively and would only have a prospective effect. She further contended that the Appellant failed to produce documents before the High Court to substantiate if the Order dated 04.05.2018 passed in Writ Petition No. 31399 (W) of 2017 suffers from any perversity.

19. Learned counsel placed reliance on this Court's judgment in **Umadevi (supra)** wherein it has been held that casual/temporary/ad hoc appointees are not entitled to regularisation. The relevant portion of the said judgment is being reproduced hereunder:

> **"19.** One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may

> collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive."

The learned counsel also argued that the Appellant cannot claim that he has been discriminated as against those who have been regularly recruited. She stated that it has been rightly held in **Umadevi (supra)** that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. Therefore, there is no violation of Articles 14 and 16 in the matter.

20. Learned counsel also relied on this Court's judgment in ***Union of India v. Vartak Labour Union.***[4] The relevant portion of the said judgment is being reproduced hereunder:

> "**17.** We are of the opinion that the respondent Union's claim for regularisation of its members merely because they have been working for the BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued, and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules."

ANALYSIS:

21. We have carefully considered the rival contentions advanced at the Bar.

4 (2011) 4 SCC 200

22. At the outset, we would like to state that this a case of gross violation of Article 14 and 16 of the Constitution. The Appellant, who has been working in Respondent No. 3- Municipality since 1991, and was, subsequently, appointed as a clerk in 1996; has not been regularised in his service. Moreover, his several of his co-employees (including juniors) have been regularised in service. The High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. The said writ petition was dismissed to the extent of entitlement of back dated appointment and arrears. However, the Respondents never paid any heed to such order and inordinately delayed the Appellant's appointment, while simultaneously absorbing other casual employees. Even the Appellant's service book records that Respondent No. 3- Municipality has absorbed the Appellant in view of the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 (W) of 1999.

23. The Respondent has relied on **Umadevi (supra)** judgment to contend that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. The relevant portion of the factual position in **Umadevi (supra)** is being reproduced as hereunder:

> *"8. ….the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of*

Karnataka claim that they worked in the Department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the Department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3-7-1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they had not made out a right either to get wages equal to that of others regularly employed or for regularisation. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to 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. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."

24. However, in the present case, as we have observed, the Appellant was appointed as a casual worker in 1991. While the services of other co-employees were regularised, that of the Appellant and some others was left out. The High Court in its Order dated 03.09.2010 passed in Writ Petition No. 17892 of 2010 has also recorded the Respondents' submissions that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Therefore, the judgment rendered in **Umadevi (supra)** will not apply to the facts and circumstances of the present case.

25. Now, coming to the Reasoned Order dated 07.03.2012 passed by Respondent No. 2 herein, which states that in pursuance of the High Court's order dated 24.08.2009 to not to give effect to the instruction of the Labour Department (pertaining to regularisation of casual employees) as communicated in the circulars dated 13.08.1979, 28.08.1980 and 13.03.1996; the Appellant's services cannot be regularised. However, what is to be seen here is that, as early as 2002, i.e., the High Court's Order dated 20.06.2000 in Writ Petition No. 19555 of 1999 clearly shows that absorption has been given effect to vide Order dated 26.09.1996. Moreover, as has been observed above, the Respondents had also submitted before the High Court in Writ Petition No. 17892 of 2010 that resolutions pertaining to the Appellant's absorption are already in place and the same have been sent for necessary approval. Apart from this, as is evident from the facts and circumstances mentioned above, the non-regularisation of the services of the Appellant in the present case, is, in our view, a violation of the fundamental rights of equality before law and equality of opportunity in matters relating to employment under the State, as enshrined under Article 14 and Article 16(1) of the Constitution, respectively. It is to be noted that the Appellant has retired in 2021.

26. The facts of **U.P. SEB (supra)** are similar to the case at hand. The relevant portion of the said judgment is being reproduced hereunder:

*"**3.** By means of the writ petition, 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society (hereinafter referred to as "the Society") had prayed for regularisation of their services in the U.P. State Electricity Board (hereinafter referred to as "the Electricity Board"). It appears that the Society had been taken over by the Electricity Board on 3-4-1997. A copy of the minutes of the proceeding dated 3-4-1997 is Annexure P-2 to this appeal. That proceeding was presided over by the Minister of Cooperatives, U.P. Government and there were a large number of senior officers of the State Government present in the proceeding. In the said proceeding, it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board "in the same manner and position".*

***4.** Pursuant to the said proceeding, the respondents herein were absorbed in the service of the Electricity Board.*
***5.** Earlier, the Electricity Board had taken a decision on 28-11-1996 to regularise the services of its employees working on daily-wage basis from before 4-5-1990 on the existing vacant posts and that an examination for selection would be held for that purpose.*

***6.** The contention of the writ petitioners (the respondents herein) was that since the Society had been taken over by the Electricity Board, the decision dated 28-11-1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 4-5-1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on daily-wage basis.*

***7.** The learned Single Judge in his judgment dated 21-9-1998 held that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board, and (ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board. This view of the learned Single Judge was upheld by the Division Bench of the High Court.*

***8.** We are in agreement with the view taken by the Division Bench and the learned Single Judge.*

***9.** The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before 4-5-1990 and their services were taken over by the Electricity Board "in the same manner and position". In our opinion, this would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated 28-11-1996.*
…….
***19.** In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years' service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied*

the benefit of regularisation and are made to face the same selection which fresh recruits have to face."

27. The principles of natural justice, too, demand that the Appellant cannot be denied the benefit of the regularisation of services when his similarly placed fellow employees have been granted the said benefit.

28. Therefore, we do not agree with the view taken in the impugned judgment of the High Court as well as by the learned Single Judge in Writ Petition No. 31399 (W) of 2017. The Appellant herein, in our considered opinion, is entitled to receive back wages and benefits from 1991, along with an interest of 10%.

29. Accordingly, the Appeal is allowed. The impugned judgment of the High Court dated 10.12.2019, passed in MAT No. 611 of 2018 and CAN No. 10038/2018 is hereby set aside. However, in the facts and circumstances of the case, we do not make any order as to costs.

….....……...…….,J.
(KRISHNA MURARI)

……..…...….....…,J.
(SANJAY KAROL)

NEW DELHI;
19TH MAY, 2023