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***State of Karnataka v. Uma Devi*, AIR 2006 SC P.1806**
PRINCIPLES OF 'REGULARISATION' OF SERVICES:
A CRITICAL STUDY

*[By: Dr. Mukund Sarda, Professor, Principal & Dean, Faculty of Law,
 Bhartiya Vidya Peet University, New Law College, Pune]*

1. The exception to the Uma Devi principles formulated by the Supreme Court is a great measure of social justice to several employees who were employed prior to April 10, 2006¹. The principles may be stated as follows:-

(i) Appointments made without following the due process or rule relating to appointment did not confer any right on the appointees;

(ii) In such appointments, the Courts should not direct their regularization, absorption or re-engagement or make their services permanent;

(iii) Such appointments are treated as 'illegal' and any interference by the Courts would upset the economic arrangement, of the State or its instrumentalities

(iv) Courts should not lend themselves to be instruments to facilitate the by passing of the Constitutional and Statutory mandates; and

(v) A temporary, contractual, casual or a daily wage employee has no legal right to be made permanent, unless he has been appointed in terms of relevant rules

2. An exception to the *Uma Devi*² principles relates to "irregular" appointments as distinguished from "illegal appointments". Illegal appointments are those which are made contrary to Constitutional or Statutory mandates (as enunciated in *Uma Devi*'s case). An 'irregular appointments' has been explained in several cases³ decided by the apex courts and may be summarized as follows:-

(i) Appointments made of duly qualified persons;

(ii) Such appointments made in duly sanctioned posts;

(iii) The employees have continued to work for ten years or more;

(iv) Such continuance is without the intervention or orders of the Courts or tribunals. (The continuance of services must be voluntary);

(v) Regularization of such employees have to be considered on merits;

(vi) In such cases of "irregular appointments" the State and their instrumentalities should take steps to regularize as a 'one time measure' and the process must be set in motion within six months from April 10, 2006.

3. The only lacuna in such irregular appointments is that they are not selected by the process of open competition - where no advertisement is made or selected by the process of selection. Such appointments are sought to be justified on grounds of 'emergency' where the persons are required immediately to run the departments, as the normal process of selection and recruitment is.

1. *Uma Devi* decision was rendered on April 10, 2006

2. *Supra*

3. In *Re S.V.Narayanappa*, AIR 1967 SC O.1071; In *Re R.N.Nanjundappa*, AIR 1972 SC P.1767; and In *Re B.N. Nagarajan*, AIR 1979 SC P.1676

time-consuming and attended with several procedures and any deviation from the rules in making the appointments would violate Article 14 and Article 16 of the Constitution and the relevant service rules relating to the recruitments. The expression 'one time measure' means that the departments concerned should prepare a list of all casual, daily-wage or *ad hoc* employees and regularize their services subject to the triple condition - (i) working for more than 10 years without the intervention of Courts or tribunals; (ii) subject to verification as to the fact whether they are working against duly sanctioned vacant posts and (iii) they possess the requisite qualification prescribed for the posts in question; (iv) In cases where they do not possess the educational qualification prescribed, they may be considered for absorption in the lower posts in which the qualification they possess is adequate or sufficient.

With reference to the cut-off date *i.e.*, April 10, 2006 and applicable to all cases pending or ignored by sheer over-sight.

4. Despite the ruling of the apex court, in a recent case⁴, the Court elaborated and reiterated the cut-off date, regularization and other matters. The apex Court categorically asserted that 'illegal appointments' cannot be regularized. It may be necessary for the authorities to frame necessary rules relating to 'emergency appointments' to deal with immediate administrative exigencies. The following suggestions are made in this regard:-

(i) All authorities - Government, and its instrumentalities should fill up all posts within a time-frame of one year and the practice of emergency appointments should be restricted to this period only, by holding a 'walk in interview' as is done in many private organizations. Thereafter the recruitment process should be taken up within a period of one year according to rules;

(ii) All emergency appointments should not exceed a period of (6) months;

(iii) All emergency appointments should be made keeping in view the qualification prescribed for such appointments as otherwise the administration will be inefficient and of poor quality and public will suffer on account of such persons;

(iv) All appointments made in violation of rules, the appointing authority shall be made responsible and accountable. Salaries made to such illegal appointees shall be recovered from the persons responsible and be recovered as "arrears of land revenue";

(v) The Government, should conduct a periodic inspection to find out such cases of illegal appointments and take steps to remove them;

(vi) The unfair labour practice indulged in by the employers to continue in service of employees by giving break such as teachers not continued during the vacation period and appointed again in the commencement of the new academic year, be notionally treated as continuance of service' for the purpose of computing the ten year's continuous service and given the benefit of exception to the *Uma Devi* principles; and

(vii) Lastly, as a measure of social justice, such illegal appointees should be considered for the posts to which they are eligible and quicken the process of appointing them as per rules, by giving them preference based on their performance during the short tenure of six months. This will be consistent with Article 21 of the Constitution - providing means of livelihood effectually the protection of the right to life. As an alternative, they may be assisted by self-employed schemes, so that they may eke out their livelihood and of their dependents.

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4. *State of Karnataka and Others v. M.L Kesari and Others* AIR 2010 SC P.2587 decided on August 3, 2010