

## ARTICLES

### REGULARISATION OF DAILY WAGE EMPLOYEES: A STUDY

By

*Prof (Dr) Mukund Sarda*

*Principal & Dean, Bharati Vidya Peeth University, New Law College, Pune.*

The problem of regularization of daily wage employees has become a burning problem in many of the States. In Telangana, attempts made by the executive to regularize the services of daily wage employees pursuant to electoral promise made by the party in power, is strongly resisted by the students on the ground that such regularization would reprove their chances of getting employment. However, when we look at the problem of thousands of daily wage employees working for a few decades, one has to feel that the right to livelihood is deprived without any form of social security to these employees.

2. The Supreme Court in *Uma Devi's* case<sup>1</sup> has ruled: "Irregular appointment of employees, who have worked for more than 10 years shall be considered on merits" and are entitled to regularization. There are attempts made in the case of irregular appointees to deprive them the benefit of regularization, through illegal appointees are not entitled for the benefit of regularization. Illegal appointments, if regularized would result in the consequence of conferring a benefit to which they are not entitled.

3. The difference between "Illegal appointments" and those which are irregular has been fully elucidated in *M.L. Kesari's* case<sup>2</sup> thus:—

- (i) As an exception to the general rule laid down in *Uma Devi's* case (supra) with regard to regularization if the following conditions are fulfilled:—
  - (a) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit of the interim order of any Court or Tribunal. This means that the State or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for 10 or more years.
  - (b) The appointment should not be illegal.
    - (i) Illegal appointments are those where appointments were made or continued not against sanctioned posts.
    - (ii) The persons appointed do not possess the prescribed minimum qualifications.

In other appointments made not against sanctioned posts of persons who do not possess the minimum qualifications prescribed are 'ex-facie' illegal. A general condition may also be added to the effect that the appointments are contrary to law or in violation of law. Further they must have been continued voluntarily by the employees and not under order of any Court or Tribunal.

On the other hand, irregular appointments are those where the employee possessed the prescribed qualification and working against sanctioned posts but selected without undergoing the process of open competitive selection, they are treated as 'irregular'.

1. *Secretary, State of Karnataka and others v. Uma Devi*, 2006 (109) FLR 826 (SC).

In other words, irregular appointments have the following distinctive features:—

- (i) The employee possessing the required qualification; and
- (ii) They are working against sanctioned posts.

The only infirmity relates to their selection *i.e.*, they are not selected by the process of competitive selection.

4. The ratio in *M.L. Kesari's* case (supra) was applied in the case of regularization of police officers in the *State of Punjab*<sup>1</sup> and the Apex Court observed thus:-

- (i) The existence of the need for creation of posts is a relevant factor with reference to which the executive Govt., is required to take rational decision based on relevant consideration;
- (ii) Where the facts demonstrate that there is a need for creation of posts, the failure of the executive Govt., to apply its mind and take a decision to create post or stop extracting work from persons for decades together would be arbitrary action (inaction) on the part of the State;
- (iii) The other relevant factor, which the State is required to keep in mind while creating or abolishing posts is the financial implication involved in such a decision, as the creation of posts results in additional financial burden on the State. Depending on priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature.

It may a useful scheme to meet the financial burden, if the posts, which are created for the service of certain organization like banks or corporate etc. the organization may be asked to meet the expenditure involved.

- (iv) Persons, though initially working against unsanctioned posts may be continuously employed later in sanctioned posts, so that they may get the benefit of regularization.

In conclusion, the following suggestions are made:-

- (a) The State Government or its instrumentalities should have half-yearly programme of recruitment of all vacant posts including the newly created posts.
- (b) Any appointment made on daily wages should be on emergency basis for a period of six months and thereafter, they may be considered for regular appointment by the recruitment process.
- (i) All daily wages appointments should be of persons qualified and must be asked to work in sanctioned posts. They may be given the chance of getting recruited on regular basis;
- (ii) Care should be taken to ensure that the financial allocation is made for meeting the expenditure;
- (c) A co-ordinate committee must be established to explore the possibilities of posting such persons on daily wages basis to the establishment which can bear the expenditure involved;
- (d) Employees working for 10 years or more continuously on the sanctioned posts, who are qualified must be regularized, provided they are continued voluntarily without any Court orders etc. This shall be viewed as a provision for social security for the employees and to safeguard their right to livelihood;

1. *Nihal Singh and others v. State of Punjab and others*, 2013 (139) FLR 309 (SC).

- (e) The competent authority should get the necessary sanction required, so that recruitment is not held up;
  - (f) The need to employ daily wage employees may be reduced considerably. On the other hand, suitable opportunities should be provided for their regular appointment; and
  - (g) The law laid down in *Amarkant Rai's* case<sup>1</sup> by the Apex Court may be circulated to all Government and its agencies for compliance.
-