

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY 2024

BEFORE

THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD

WRIT PETITION No.40204/2012 [S-REG]

C/W

WRIT PETITION No.54553/2014 [S-R]

IN WP NO. 40204/2012

BETWEEN :

SMT SHANTHALAKSHMI
W/O GUNDU RAO
AGED ABOUT 52 YEARS
GROUP C EMPLOYEE
OFFICE OF THE SERICULTURE
EXTENSION OFFICER
T S C SERICULTURE DEPARTMENT
KADAKOLA, NANJANGUD TALUK
MYSORE-570019.

... PETITIONER

(BY SRI. V. LAKSHMINARAYANA, SENIOR ADVOCATE FOR
SRI. VIKRAM BALAJI B.L., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF
SECRETARY TO GOVERNMENT
VIDHANA SOUDHA
BANGALORE-560001.

- 2 . THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY TO
SERICULTURE DEPARTMENT
VIKASA SOUDHA
BANGALORE-560001.
- 3 . THE COMMISSIONER & DIRECTOR
SERICULTURE
5TH FLOOR, M S BUILDING
DR B R AMBEDKAR ROAD
BANGALORE-560001.
- 4 . THE SERICULTURE EXTENSION
OFFICER, T S C SERICULTURE DEPARTMENT
KADAKOLA, NANJANGUD TALUK
MYSORE-570019.

... RESPONDENTS

(BY SRI. REUBEN JACOB, AAG)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE NON CONSIDERATION OF CASE OF THE PETITIONER IN TERMS OF JUDGMENT OF THE SUPREME COURT IN MT VENKATESH'S CASE IS ARBITRARY AND VIOLATIVE OF ARTICLES 14 AND 16 OF CONSTITUTION OF INDIA QUASH THE ENDORSEMENT DATED 14.6.10 ISSUED BY THE COMMISSIONER AND DIRECTOR OF SERICULTURE BANGALORE RESPONDENT NO.3 VIDE ANNEX-H DIRECT THE RESPONDENT TO CONSIDER THE CASE OF THE PETITIONER ON PAR WITH THAT OF JUNIORS WHOSE CASE HAS BEEN CONSIDERED AND REGULARIZED VIDE ANNEX-A.

WRIT PETITION No.54553/2014

BETWEEN:

- 1 . SRI M NARAYANASWAMY
S/O MUNISWAMY,

AGED ABOUT 48 YEARS,
OFFICE OF THE ASSISTANT,
DIRECTOR OF HORTICULTURE,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
YALDOOR HOBLI,
SRINIVASPUR TALUK,
KOLAR DISTRICT.
PIN 563138.

- 2 . SRI NARASIMHAPPA
S/O CHINNAPPA,
AGED ABOUT 48 YEARS,
OFFICE OF THE ASSISTANT,
DIRECTOR OF HORTICULTURE,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
YALDOOR HOBLI, SRINIVASPUR TALUK,
KOLAR DISTRICT. PIN 563138.
- 3 . SRI VENKATARAVANAPPA
S/O ANJALAPPA,
AGED ABOUT 45 YEARS,
OFFICE OF THE ASSISTANT
DIRECTOR OF HORTICULTURE,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
YALDOOR HOBLI, SRINIVASPUR TALUK,
KOLAR DISTRICT. PIN 563138.
- 4 . SANJEEVAPPA
S/O VENKATARAYANAPPA,
AGED ABOUT 45 YEARS,
OFFICE OF THE ASSISTANT DIRECTOR OF
HORTICULTURE, HOGALAGERE
HORTICULTURE FARM,
HOGALAGERE POST,
YALDOOR HOBLI,
SRINIVASPUR TALUK,
KOLAR DISTRICT. PIN 563138.

- 5 . SRI T VENKATESHAPPA
S/O THIMMAIAH,
AGED ABOUT 45 YEARS,
DAILY WAGE WORKER, HOGALAGERE
HORTICULTURE FARM,
HOGALAGERE POST,
SRINIVASPURA TALUK,
KOLAR DISTRICT. PIN 563138.
- 6 . SRI N C VENKATESHAPPA
S/O THIMMAIAH,
AGED ABOUT 45 YEARS,
DAILY WAGE WORKER,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
SRINIVASPUR TALUK,
KOLAR DISTRICT - 563 138.
- 7 . SRI T C ADINARAYANA SETTY
S/O CHINNAPPA SETTY,
AGED ABOUT 50 YEARS,
DAILY WAGE WORKER,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
SRINIVASPUR TALUK,
KOLAR DISTRICT. PIN 563138.
- 8 . SRI HANUMANTHU
S/O MUNISHAMY,
AGED ABOUT 46 YEARS,
DAILY WAGE WORKER,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
KOLAR DISTRICT. PIN 563138.
- 9 . SRI T N GOVINDAPPA
S/O NARAYANAPPA,
AGED ABOUT 46 YEARS,
DAILY WAGE WORKER,

- HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
KOLAR DISTRICT. PIN 563138.
- 10 . SRI K VENKATESHAPPA
S/O KOLAPPA,
AGED ABOUT 46 YEARS,
DAILY WAGE WORKER,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
KOLAR DISTRICT. PIN 563138.
- 11 . SRI ERAPPA
S/O MUNISAHAMY,
AGED ABOUT 44 YEARS,
DAILY WAGE WORKER,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
KOLAR DISTRICT. PIN 563138.
- 12 . SRI G VENKATESHAPPA
S/O CHIKKAGANGAPPA,
AGED ABOUT 53 YEARS,
DAILY WAGE WORKER,
HOGALAGERE HORTICULTURE FARM,
HOGALAGERE POST,
KOLAR DISTRICT. PIN 563138.
- 13 . SRI M VENKATARAM
S/O MARAPPA,
AGED ABOUT 44 YEARS,
DAILY WAGE WORKER,
JODI VOMMASANDRA
HORTICULTURE FARM,
MUDINUR POST,
MULBAGIL TALUK ,
KOLAR DISTRICT - 563131.
- 14 . SRI P SANJAPPA
S/O ERAPPA,

AGED ABOUT 45 YEARS,
DAILY WAGE WORKER,
JODI VOMMASANDRA
HOTICULTURE FARM,
MUDINUR POST,
MULBAGIL TALUK ,
KOLAR DISTRICT - 563 131.

- 15 . SRI VENKATRAMA
S/O MUNIYAPPA
AGED ABOUT 46 YEARS,
DAILY WAGE WORKER,
JODI VOMMASANDRA
HOTICULTURE FARM,
MUDINUR POST,
MULBAGIL TALUK ,
KOLAR DISTRICT - 563 131.
- 16 . SRI VENKATACHALAPATHI
S/O HANUMANTHAPPA,
AGED ABOUT 45 YEARS,
DAILY WAGE WORKER,
JODI VOMMASANDRA
HOTICULTURE FARM,
MUDINUR POST,
MULBAGIL TALUK ,
KOLAR DISTRICT - 563 131.
- 17 . SRI YAMANNA
S/O MUNISWAMY,
AGED ABOUT 58 YEARS,
DAILY WAGE WORKER,
JODI VOMMASANDRA
HOTICULTURE FARM,
MUDINUR POST,
MULBAGIL TALUK ,
KOLAR DISTRICT-563138.

...PETITIONERS

(BY SRI. V. LAKSHMINARAYANA, SENIOR ADVOCATE FOR

SRI. VIKRAM BALAJI B.L., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY
THE CHIEF SECRETARY,
M S BUILDING,
DR.AMBEDKAR ROAD,
BANGALORE-560001.

- 2 . STATE OF KARNATAKA
REPRESENTED BY THE PRINCIPAL,
SECRETARY TO HORTICULTURE DEPARTMENT,
M S BUILDING,
DR.AMBEDKAR ROAD,
BANGALORE-560001.

- 3 . THE DIRECTOR OF HORTICULTURE
HORTICULTURE DEPARTMENT
LALBHAG,
BANGALORE - 560 004.

- 4 . THE DEPUTY DIRECTOR OF HORTICULTURE
KOLAR DISTRICT,
KOLAR - 563 101.

...RESPONDENTS

(BY SRI. REUBEN JACOB, AAG)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO RE-CONSIDER THE CASE OF THE PETITIONERS FOR ABSORPTION ON THE BASIS OF THE REPRESENTATION AT ANNEX-D DATED 20.8.2012 BY WITHDRAWING THE ENDORSEMENT AT ANN-C DATED 15.6.2012; IF RESPONDENTS FAIL TO WITHDRAW THE ENDORSEMENT AT ANNEX-C, ISSUE A WRIT OF CERTIORARI QUASHING THE ENDORSEMENT DATED

15.6.2012 ISSUED BY R-3; DIRECT THE RESPONENTS TO CONSIDER THE CASE OF PETITIONERS FOR REGULARIZATION OF THEIR SERVICES ON THE BASIS OF THE ORDER OF SUPREME COURT DATED 7.3.2014 AND THE ORDERS OF GOVERNMENT DATED 19.6.2014 VIDE ANNEX-G & F1 AND OTHER ORDERS ISSUED FROM TIME TO TIME IN THE YEARS 2003, 2005 & 2006

THESE PETITIONS, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These petitioners have been working as Daily Wage Workers with effect from 01.07.1984 with the Departments of Sericulture and Horticulture, Government of Karnataka. The petitioner in WP No. 40204/2012 is employed with the Department of Sericulture, and the petitioners in WP No. 54553/2014 are employed with the Department of Horticulture. The petitioners are aggrieved by the respective Endorsements which are dated 14.06.2010 and 15.06.2012, and these Endorsements are produced as Annexure - H and Annexure C in the respective writ petitions.

2. The impugned Endorsements are issued by the concerned essentially informing the petitioners that the request for regularization of their services cannot be considered and the details of these impugned endorsements are as follows.

The details of the impugned Endorsement dated 14.06.2010, which is impugned in WP No. 40204/2012 are as follows:

2.1 This petitioner is informed that her application for regularization of the services is examined, as is required in terms of this Court's order dated 03.04.2008 in WP No. 8809/2006 and connected matters, in the light of the decision of the Apex Court in CA No. 3595-3612 and connected civil appeals and SLP (CC) No. 9103-9105/2001 [these proceedings are a reference to the decision of the Apex Court in the **Secretary, the State of Karnataka v. Umadevi and**

others¹ and is hereinafter referred to as '**Umadevi's Case**'] and the subsequent Circular dated 05.01.2006 issued by the State government for the purposes of implementing the directions issued by the Apex Court in this decision.

2.2 The petitioner is further informed that for regularization she should have been appointed against a sanctioned post and that she should have continued in service for more than 10 years independent of any interim orders by Courts, but because she is not appointed against any sanctioned post and that her continuation in service as a Daily Wage Worker with the Department is because of the interim orders granted on 11.04.1990 in Writ Petition No. 8192/1990 and on 23.04.1993 in WP No. 12610/1993, her request for regularization cannot be considered.

¹ (2006) 4 SCC 1

The details of the impugned Endorsement dated 15.06.2012, which is impugned in WP No. 54533 /2012 are as follows.

2.3 The Endorsement first refers to the writ petition filed by the petitioners in WP No. 40934-40953/2011. It is observed that this Court's direction on 13.03.2012 in these petitions is to consider the petitioners' application/s for regularization in the light of the decision of the Apex Court in **State of Karnataka v. ML Kesari**², but the petitioners cannot draw any support from the decision in **ML Kesari** [*supra*] or the decision to regularize the Daily Wage Workers with the Department of Sericulture, Department of Forest and other Zilla Panchayats. The Endorsement reads that the petitioners cannot draw support from the above because the decision to regularize in those cases is specific to the

² (2010) 9 SCC 247

circumstances of the concerned and the particular directions issued.

2.4 The Endorsement also refers to the report by the Senior Assistant Horticulture Director (Kolar) stating that the petitioners are engaged on Nominal Muster Rolls [NMR] after 01.07.1984 while also furnishing the date of birth of each of the petitioners and the details of the current wages paid to them. This report also confirms that the petitioners have been in continuous employment with the Department.

2.5 The Endorsement finally states that, in terms of the decision of the Apex Court in ***Umadevi's case***, a Daily Wage Worker can be regularized if that person is appointed as against a sanctioned post and has continued in service for more than 10 years without a break, independent of interim orders by Courts, but the petitioners are not appointed against

sanctioned posts and they have been continued in service only because of the interim orders dated 11.04.1990 and 23.04.1993 in WP No. 8192/1990 and WP No. 12610/1993 respectively.

3. This Court must record that Sri Reuben Jacob, Additional Advocate General for the State, is categorical that because of the provisions of the Karnataka Daily Wage Employees Welfare Act, 2012 [for short, the '*Daily Wage Employees Act*'], the claims of the Daily Wage Workers, who are continued in such service beyond ten years, are settled upon completion of 60 years before they are relieved; and that even the petitioners' claims have to be settled in the light of the Daily Wage Employees Act.

4. As such, this Court must examine the merits of the impugned Endorsements while deciding whether the petitioners' services should have been regularized in the respective departments and the

specific directions that will have to be issued based on this Court's view on whether the petitioners' request for regularization of their services is erroneously rejected. These aspects will have to be examined in the light of the rival submissions, and the rival submissions are essentially as thus.

5. Sri V Laxminarayana, the learned Senior Counsel for the petitioner, canvasses the following in support of his contention that the impugned Endorsements are contrary to the settled law.

5.1 The petitioners have filed their respective writ petitions in W.P.No.8809/2006 and connected matters and W.P.Nos.40934-40953/2011, which have been disposed of on 03.04.2008 and 13.03.2012 respectively directing the concerned respondents to consider the request for regularization in the light of the directions issued by a Co-ordinate Bench of this Court on 10.09.1999 in W.P.Nos.33541-

571/1998 and connected matters [this case is hereinafter referred to as '**H S Raghupathi Gowda's case**'] and the directions of the Apex Court in SLP (C) Nos.4105-4242/2005 which is decided on 25.02.2008.

5.2 The petitioners' seek regularization because they are similarly circumstanced as the petitioners in **H S Raghupathi Gowda's case**. The petitioners in the present set of writ petitions, as the petitioners in **H S Raghupathi Gowda's case** are appointed after 01.07.1984, and these petitioners as well have completed more than 10 years of continuous service without any break. This Court has disposed of the writ petitions in **H S Raghupathi Gowda's case** on 10.09.1999 directing regularization, and this Court's decision is confirmed by a Division Bench while deciding on the *intra court* appeal preferred in WA Nos. 2765-2905/2000 as against this order dated 10.09.1999. The Apex Court has also confirmed the

direction to regularize the aforesaid persons with its order dated 05.11.2001 in CA Nos. 7855-7995/2001. The petitioner's reliance on these orders/decisions is elaborated by relying on the circumstances as stated next.

[i] The State Government by its Order dated 06.08.1990, has formulated a scheme [hereinafter referred to as the '**Dharwad Scheme**'] to implement the directions of the Apex Court in **Dharwad District P.W.D. Literate Daily Wages Employees Association and Others v. State of Karnataka and Others**³ [hereinafter referred to as the **Dharwad's Case**]. The State Government under this Scheme has regularized a set of persons who were appointed as Daily Rated Wagers prior to 01.07.1984. The petitioners in **H S Raghupathi Gowda's case**, because their services were not

³ (1990) 2 SCC 396

regularized only on the ground that they were appointed after 01.07.1984 though they had completed 10 years of continuous services, approached this Court seeking for regularization.

[ii] This Court has disposed of **H S Raghupathi Gowda's case** by order dated 10.09.1999 directing the State Government to regularize the Daily Wage workers employed for more than 10 years continuously without any delay while also stipulating that insofar as those in employment with the Zilla Panchayat, the service must be constituted as is contemplated under Section 196(5) of the Karnataka Panchayat Raj Act, 1993 within a period of one and half years observing that the service of those who cannot be accommodated for want of vacancy must be continued in service must be regularized as and when the vacancy arises.

[iii] The State Government has called this Court's order dated 10.09.1999 [in **H S Raghupathi Gowda's case**] in intra Court appeals in Nos.2765-2905/2000 *inter alia* on the ground that those appointed on 01.07.1984 and thereafter must be treated differently because they will not come under the **Dharwad Scheme** dated 06.08.1990 issued in compliance with the directions in the **Dharwad's case**. The Division Bench by its order dated 23.01.2001, while concluding that this Court has rightly issued directions, has rejected this contention opining that:

The very fact that the respondents have worked for more than 10 years continuously shows that the need is permanent. The claim for regularisation of their services has to be considered after framing the Scheme."

[iv] This Court's order dated 10.09.1999 in **H S Raghupathi Gowda's case** and the Division Bench's

order dated 23.01.2001 in the aforesaid intra-Court appeals are carried to the Apex Court by the State Government in CA Nos.7855-7995/2001 which are dismissed on 05.11.2001. Thereafter, the State Government in the light of these decisions has issued, the order dated 19.07.2002 [hereinafter referred to as the '**2002 Scheme**'] to implement the directions, and crucially this Scheme is universal in its application viz., that it applies to not only those who are in service with Zilla Panchayats as Daily Wage Workers but also those with the other departments.

[v] The application of the **2002 Scheme** to all is underscored by an explicit provision⁴ in the order

⁴ ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಕಾರಣಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ ಮತ್ತು ಕೋಲಾರ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್‌ಗಳಲ್ಲಿ ಹಾಗೂ ಇನ್ನಿತರ ಇಲಾಖೆಗಳಲ್ಲಿ ದಿನಗೂಲಿ ಆಧಾರದ ಮೇಲೆ ನೇಮಕಗೊಂಡಿರುವ ಈ ಆದೇಶಕ್ಕೆ ಲಗತ್ತಿಸಿರುವ ಅನುಬಂಧ ನೌಕರರನ್ನು ಅನುಬಂಧ 2 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ದಿನಗೂಲಿ 1 ರಲ್ಲಿ ನಿಗದಿಪಡಿಸಿರುವ ಷರತ್ತುಗಳಿಗೊಳಪಟ್ಟು ಮಾಸಿಕ ವೇತನ ಸಿಬ್ಬಂದಿಯಡಿ ವಿಲೀನಗೊಳಿಸಲು : ಸದರಿ ನೌಕರರು 10 ವರ್ಷ ಸೇವೆ ಪೂರೈಸಿದ ನಂತರ ಅವರುಗಳ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಲು ಸರ್ಕಾರವು ಆದೇಶಿಸಿದೆ.

dated 19.07.2002 and also the stipulation⁵ that if the existing vacancies would not suffice to regularize, supernumerary posts must be created.

[vi] Another set of similarly circumstanced Daily Wage Workers, including those from the Department of Sericulture have filed their petitions in W.P.Nos.39117-176/1999 [this case hereinafter referred to as '**S.Nagaraju's case**'] for regularization and these writ petitions are also allowed with directions for regularization on 15.12.1999. The State Government has carried this order in an intra-Court appeal in W.A.No.5697/2000 and connected matters which are disposed of in the light of the orders in the aforesaid writ appeals in W.A.Nos.2765-2995/2000 on 23.01.2001. The State Government's special leave

⁵ ಸಂಬಂಧಿಸಿದ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್‌ಗಳು ಹಾಗೂ ಇಲಾಖೆಗಳು ಸಾಧ್ಯವಾದಷ್ಟು ಮಟ್ಟಿಗೆ ಮಂಜೂರಾದ ಖಾಲಿ ಹುದ್ದೆಗಳೆದುರು ಮಾತ್ರ ಸಕ್ರಮಗೊಳಿಸಲು ಕ್ರಮ ಕೈಗೊಳ್ಳತಕ್ಕದ್ದು- ಅನಿವಾರ್ಯವಾದಲ್ಲಿ ಮಾತ್ರ ಸೂಪರ್‌ನೂಮರಿ ಹುದ್ದೆಗಳನ್ನು ಸೃಜಿಸಲು ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂ.ರಾಜ್ ಇಲಾಖೆಗೆ ಸೂಕ್ತ ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸತಕ್ಕದ್ದು.

petitions in SLP Nos.109-498/2003 are also dismissed by the Hon'ble Supreme Court on 21.07.2005.

[vii] The petitions in SLP Nos.109-498/2003 are initially listed to be considered along with **Umadevi's case**, but it is later disposed of in the light of the fact that the directions for regularization are implemented with the State Government's order dated 19.07.2002 notifying the **2002 Scheme**. After the decision in SLP Nos.109-498/2003⁶, the State Government, in the case of 161 of those who had filed contempt proceedings in CCC No. 659/2005 and 761/2005, relying upon the orders in **S.Nagaraju's case**, has issued the order dated 29.12.2005 framing a Scheme [referred to as '**2005 Scheme**'] for their regularization. However, the others who had not joined the contempt proceedings, though they were

⁶ *These petitions are disposed of on 21.07.2005.*

parties to the petitions in S.Nagaraju's case, were excluded from this **2005 Scheme**.

[viii] The petitioners in **S.Nagaraju's case**, who were not given the benefit of the 2005 Scheme [about 129], have commenced contempt proceedings in CC No. 67/2006. During the pendency of these contempt proceedings, the State government has issued order dated 08.03.2006 regularizing 64 persons, and the next Government Order dated 18.04.2006 is issued regularizing 55 persons. Insofar as 74 persons for whom orders for regularization were not issued, the contempt proceedings in CC No. 67/2006 are closed with directions to the State government to consider the request for regularization with liberty to revive the contempt proceedings.

[ix] As the State government did not take any decision, these 74 persons have filed the next

contempt proceedings in CC No. 669/2006. During the pendency of these contempt proceedings, the State Government has issued orders rejecting the request for regularization opining that because 74 persons do not satisfy the four requirements emphasized by the Apex Court in **Umadevi's case**. The Contempt Court has not accepted this Endorsement resulting in its order dated 26.03.2007 holding that a *prima facie* case of contempt is established but granting some time for compliance.

~~[x]~~ This order dated 26.03.2007 is carried to the Apex Court resulting in the decision on 07.03.2014 which is reported under the title **Malathi Das v. Suresh & others**⁷ [hereafter referred to as *the 'Malathi Das's case'*]. The Apex Court has held as follows:

“ In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting

⁷ [2014] 13 Supreme Court Cases 449

regularisation on the date of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is required to be dealt with in accordance with the conditions stipulated in para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] inasmuch as the claims of the respondent employees can well be decided on principles of parity. Similarly placed employees having been regularised by the State and in case of some of them such regularisation being after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stems from their perception and understanding of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty-bound to regularise the services of the respondents (74 in number)

which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.”

5.3 Sri V Laxminarayan, relying upon these circumstances, canvasses three fold submissions. Firstly, in view of the directions issued in the earlier writ petitions in WP No. 8809/2006 and connected matters and WP Nos. 40934-40953/2011, the petitioners request for regularization of their services must be considered in the light of the decision of the Apex Court in SLP Nos. 4105-4242/2005 [which is decided on 25.02.2008]. Secondly insofar as the petitioners, the applicable law will be the decision in ***H S Raghupathy Gowda's case***. Thirdly, the petitioner's request for regularization must be considered on the ground of parity.

5.4 Sri V Lakshminarayana, on the first ground, relies upon certain observation by the apex court in SLP Nos.4105-4242/2005 to emphasize that

the State government should have individually examined each case based on the relevant scheme under the provisions of law on the subject available in the State. The learned Senior Counsel relies upon the following observation in the orders of the Apex Court in the aforesaid observation.

“We direct that in the light of paragraph 53 of the decision of this Court in the case of state of Karnataka and others versus Umadevi [2006] 4 SCC 1 the case of these respondents, who have already completed more than 22 years of service, shall be individually examined by the authorities concerned. We hope and trust that the authorities will look into the individual case and examine their continuation in service in terms of the schemes or under provisions of law on the subject available in the state.

5.5 Sri V Lakshminarayana, to buttress the petitioner’s case as regards the Scheme/ law applicable to them [*the second ground*], contends that the State Government cannot dispute that the

petitioners, who are appointed after 01.07.1984, have been in continuous service over all these years, and if the State Government cannot dispute these aspects, it also cannot dispute that similarly circumstanced persons as the petitioners, and within the same Departments, have been regularized consequent to the *Dharwad Scheme*, the 2002 Scheme, the 2005 Scheme, the Government Orders dated 08.03.2006 and 18.04.2006 and also consequent to the decision of the Apex Court in ***Malathi Das's case***. Therefore, the petitioners' request for regularization can only be considered in terms of the afore Schemes/Orders.

5.6 Sri V Lakshminarayana submits that if similarly circumstanced persons within the same Departments have been regularized under the aforesaid Schemes/Government Orders without reference to whether they are appointed as against sanctioned posts, the petitioners' requests cannot be rejected on the

ground that they are not appointed against sanctioned posts, or for that matter that they are not duly qualified. The learned Senior Counsel emphasizes that the petitioners have continued in employment for 10 years and more not because of any interim order but because the Departments required their services. Therefore, this Court must interfere on the ground of parity. The learned Senior Counsel further submits that even as late as March 2021, some of the persons who are similarly circumstanced as the petitioners but working with the Department of Sericulture have been regularized by order dated 01.03.2021

6. Sri Reuben Jacob, relying upon the paragraphs 8, 9 and 10 in ***Umadevi's case***, submits that prior to this decision, as observed by the Apex Court, there were two conflicting views in the decisions of this Court with one view being that those who have completed ten years would be entitled for regularization

and the other view being that the regularization cannot be only because an employee has been in service for ten years with the emphasis that the appointment to the sanctioned post must according to the due process of selection as envisaged by the Constitutional scheme.

6.1 Sri Reuben Jacob submits the controversy arising from these conflicting views are resolved by the Apex Court in ***Umadevi's case***, after reference to ***Dharwad's case***, directing regularization as a one time measure and that too when the initial appointment is as against a sanctioned post and the concerned has continued in employment for ten years and more but not under the cover of the interim orders granted by the courts or tribunals.

6.2 Sri Reuben Jacob submits that the Apex Court has also directed that the regularization process must begin within a period of six months from the date of its decision. The learned Additional

Advocate General argues that to comply with this direction the State government has issued the Circular dated 13.11.2006 to regularize ad-hoc/contractual employees; that the Circular dated 13.11.2006 is categorical is stating that initial appointment of a Daily Wage Worker, or an *ad hoc* employee, must be against a sanctioned post and subject to prescribed minimum educational qualification and that those who seek regularization must have completed ten continuous years in service without any interim orders of the courts or the tribunals.

6.3 Sri Reuben Jacob argues that the petitioners' services were taken on Nominal Monthly Rolls [NMR] to meet certain exigencies and not against any sanctioned strength and that the petitioners' services would not have been continued except for the interim orders granted on 11.04.1990 in WP No. 8192/1990 and on 23.04.1993 in WP No. 12610/1993.

The learned Additional Advocate General emphasizes that if the petitioners are not appointed against sanctioned posts and they have been continued only because of interim orders granted, they cannot seek for regularization of services.

6.4 Sri Reuben Jacob submits that the Government while notifying the **Dharwad Scheme** vide its Order dated 06.08.1990, also issued directions prohibiting appointments of Casual/Daily Rated Workmen and stipulating that the appointments of all casual/Daily Rated Workman made after 01.07.1984 shall stand automatically cancelled. The petitioners' appointment, by virtue of this order, would have ceased but for the fact that such order is challenge in the writ petitions in WP No. 8192/1990 and WP No. 12610/1993. If this order was initially stayed in WP No. 8192/1990 on 11.04.1990, the operation of this order is also stayed in the writ petition in WP No. 12610/1993

on 23.04.1993, and ultimately, the writ petition in WP No. 12610/1993 is disposed of on 22.09.1998.

6.5 Sri Reuben Jacob, while thus underscoring that the petitioners have been continued as Daily Rated Workmen only because of the interim orders granted even prior to the date they completed 10 years of service, next submits, relying upon the report filed by the Senior Assistant Horticulture Director [*which is referred to in Annexure C to the writ petition in WP No. 54553/2014*] that the petitioners are appointed on NMR and not against any sanctioned posts, and that if the petitioner's have thus continued in service because of interim orders granted and they are not appointed against sanctioned posts, they cannot seek regularization of their services.

6.6 Sri Reuben Jacob argues that the petitioners, who did not join the others in **H S Raghupathi Gowda's case** or in **S Nagaraju's Case**,

cannot claim parity with those who are parties to such proceedings, nor claim the benefit of the *2002 Scheme* or *2005 Scheme*. The benefit of the orders in these two proceedings, and every scheme or other order pursuant thereto, must be confined only to the persons who were parties to the proceedings and not otherwise, and especially the petitioners who have initiated proceedings only after the decision in ***Umadevi's case*** in the year 2006 [*in filing WP No. 8809/2006*] and 2011 [*in filing writ petition No. 40934-953/2011*]. The learned Additional Advocate General contends that every request for regularization after the decision ***Umadevi's case*** must necessarily be considered in the light of the directions therein and the circular issued by the State government to implement the directions.

7. In rejoinder, Sri V Lakshminarayana submits that as is envisaged by the Hon'ble Supreme

Court in ***Sheo Narain Nagar v. State of U.P.***⁸, true spirit of the decisions in the ***Umadevi's case*** is not to continue those who have been in daily wage employment without payment of salary to which they would be entitled under the Constitution of India and that they cannot be denied the benefits of the proper salary or retiral benefits when they have been in service for more than ten years. The learned Senior Counsel proposes to rely upon this decision to rebut the canvass that Daily Wage Workers who are not covered under the Circular dated 13.11.2006 are given the benefit of the Daily Wage Employees Act and that therefore their services cannot be regularized.

8. Admittedly, the petitioner in WP No. 40204/2012 has attained the age of superannuation in the year 2021, and if this petitioner's grievance as against the impugned Endorsement dated 14.06.2010

⁸ (2018) 13 SCC 432

[Annexure – H] is favored by this Court, the question for consideration will be the relief that she will be entitled to. Insofar as the other petitioners [in WP No. 54553/2014], it is seen that some of them have also attained the age of superannuation while some of them are yet in service with the Department of Horticulture. The incidental question therefore, even in this petition, will be about the relief that the petitioners will be entitled to if the petition is favored. However, the primary questions for this Court's consideration must be:

*[a] Whether the petitioners' requests for regularisation of their services as Daily Wage Workers must be examined in the light of the orders in **H S Raghupathi Gowda's case/S Nagaraju's case** and the consequential notification of 2002 Scheme, 2005 Scheme and the subsequent orders referred to by the Apex Court in **Malathi Das's case**.*

[b] If indeed the petitioners request for regularization of their services must be considered in the light of the above, what should be the reasonable and just outcome there of?

9. This Court must, in answering the afore questions, first refer to admitted facts and circumstances. The State Government/ Local Authorities/ Local Bodies have employed Daily Wage Workers prior to 01.07.1984 and thereafter. The services of those who are so appointed prior to 01.07.1984, are regularized pursuant to the orders of the Apex Court in **Dharwad's case** and the **Dharwad Scheme** notified *vide* the order dated 06.08.1990.

9.1 The State Government has simultaneously taken a decision to cancel the employment of all the Daily Wage Workers, but this decision is called in question in the writ petitions in WP

Nos. 8192/1990 and 12610/1993 and connected matters. This decision is stayed at the very first instance in the year 1990 in WP No. 8192/1990 and subsequently even in the later petition in the year 1993. This Court, in its order dated 22.09.1998 in WP No. 12610/1998, has not favoured the decision to cancel the daily wage workers' employment, and this Court's view in WP No. 12160/1993⁹ reads as under:

“In my opinion, it is difficult to accept the submission of the learned counsel for the respondents for more than one reason. Firstly, a perusal of the operative portion of the judgement in Dharwad Dist PWD Employees Association would not suggest that the relief granted in that case will only apply to the daily rated workmen who were employed prior to 01.04.1984 [sic]. In the aforesaid decision the Court was pleased to declare that stopgap, temporary appointments are intended to serve emergent situations, but once such appointment

⁹ *The parties have not placed on record any material to show the outcome, Sri Laxminarayan has only placed on record decision dated 14.01.2003 of a Division Bench in WP No. 219-255/2003 to contend that the decisions were in favour of regularising those who completed 10 years of service.*

are continued for long, the services of the temporary employees requires to be regularised if the incumbent possess requisite qualifications for the course . Having said so, the Court was pleased to direct the State to evolve a scheme providing for absorption and regularisation of the daily rated employees who have put in more than 10 years of service in many one of the department under its control. Therefore, in my view, to restrict the regularisation of the services of the daily rated employees only to those employees who were employed prior to 01.07.1984 is wholly contrary to the observations made by the Supreme Court.

10. This Court must observe that if this view could prevail, and there was no change in law, it should have been an open and shut case for the petitioners, but there are two significant circumstances. The first being the case of the Daily Wage Workers, with the same Departments as the petitioners, approaching this Court with their respective writ petitions [*which have culminated in 2002 Scheme and 2005 Scheme and*

subsequent other orders for regularization] and the second being the exposition by the Apex Court in **Umadevi's case** for regularization, as a one-time measure, of those who were temporarily employed but have continued in service for more than 10 years subject to four conditions¹⁰.

11. However, the petitioners contend that they must be treated on par with those who have had the benefit of *2002/2005 Schemes* and the subsequent orders for regularization because **[a]** some of their juniors, in the very same department, are regularized *[an assertion that is not contested by the State Government]* because they have been in continuous employment for more than 10 years with their initial appointment as Daily Wage Workers after 01.07.1984,

¹⁰ *The conditions stipulated are: the concerned must appointed as against sanctioned posts; they should have continued for a minimum period of 10 years without any intervening orders by the courts/tribunals for the continuation; they should have possessed the requisite educational qualification and the appointment should be upon open advertisement.*

[b] their regularization is not denied on the count that they are not appointed as against sanctioned posts or that they did not possess educational qualification or that they were continued in employment only because of the interim orders in WP Nos. 8192/1990 and 12160/1993, and **[c]** the regularization of some of the similarly circumstanced persons [*the petitioners in **H S Raghupathi Gowda's case and S Nagaraju's case***] is even after the decision in **Umadevi's case** and the reference in this regard is to the Government Orders dated 08.03.2006, 18.04.2006 and 01.03.2021.

12. As against these submissions, on behalf of the State Government, it is asserted that notwithstanding the circumstances, the petitioner's case for regularization of their services must be considered subject to they satisfying the four conditions exposted in **Umadevi's case** and that because the petitioners did not join others in instituting proceedings prior to the

decision in **Umadevi's case**, they cannot claim parity. The contention is that this must be so notwithstanding the decision to regularize in cases of those who are similarly circumstanced [*such as being appointed as Daily Wage Workers after 01.07.1984 and continued in employment for over decades*] without reference to the four conditions exposted in **Umadevi's case**.

13. This Court, from these submissions, must observe that both the petitioners in the case on hand and those whose services are already regularized pursuant to *2002/2005 Schemes [and subsequent orders in 2006/2021]* are placed on even kneel if the date and the nature of appointment and the continuity in service are considered. Therefore, they constitute one class of persons, but a distinction is canvassed between these two sets of persons essentially based on the indisputable fact that the petitioners have approached the Court after the decision in **Umadevi's case**

resolving the conflicting views on regularization as also the circumstances in which regularization of services could be allowed. There is no gainsaying that but for this canvassed reason, the petitioners must be treated equally with the aforesaid group of persons lest there be arbitrariness and unreasonableness in such decision.

14. As such, the crucial question will be whether the reason canvassed on behalf of the State Government can bring about a valid and reasonable distinction between the petitioners and those similarly circumstanced persons [*the petitioners' juniors in the same department*] whose services have already been regularized under the *2002/2005 Schemes* and the later orders. It is settled that the clarification between two similarly circumstantial persons must be founded on substantial differences and such substantial difference, the *intelligible differentia viz.*, the reason for differentiating between any similarly circumstanced

persons should be to achieve a legal objective; otherwise, the distinction will not be real or substantial leading to an arbitrary and unreasonable decision. This Court must refer to the proposition laid down in **State of W.B. v. Anwar Ali Sarkar**¹¹ by the Apex Court and the following reiteration of such proposition in **Pattali Makkal Katchi v. A. Mayilerumperumal**¹² in the following terms:

“95. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same. This brings in the question of classification. As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class, the legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated. The classification should never be arbitrary, artificial or evasive. It must

¹¹ (1952) 1 SCC 1

¹² (2023) 7 SCC 481

rest always upon real and substantial distinction bearing a reasonable and just relation to the thing in respect to which the classification is made; and classification made without any reasonable basis should be regarded as invalid [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : 1952 SCR 284] . The whole doctrine of classification is based on discrimination without reason and discrimination with reason and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances [Kathi Raning Rawat v. State of Saurashtra, (1952) 1 SCC 215 : 1952 SCR 435.

96. Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial

differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.

15. This Court must observe that reason for regularization of services of those who have been appointed temporarily but continued for 10 years and more without a break is to ensure that there is no exploitation, which would be if a person is continued on temporary basis for a long period without being paid due/financial benefits/salary, and that after the decision in ***Umadevi's case***, to ensure that a one-time decision is taken *qua* departments to regularize the service of persons subject to conditions. The Apex Court in ***Sheo Narain Nagar and others v. State of Uttar Pradesh and others*** [*supra*], while considering the grievance against the decision to regularize and terminate the services of those who were initially engaged on daily wage basis, has opined that a balance

must be struck to really implement the ideology in the exposition in **Umadevi's case** recognizing a right against exploitation, The Apex Court has declared thus:

“We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130] , from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection

and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].”

16. If the petitioners' services are regularized there will be no exploitation because there

will be due recognition, as in its case of their juniors and other similarly placed persons, that they have worked in their heydays. However, the reason to treat the petitioners differently from their juniors and the others in the very same department is because the petitioners have approached this Court after the decision in **Umadevi's case**. The petitioners are similarly circumstanced as their juniors inasmuch as they are also appointed after 01.07.1984 and continued in service for more than ten years, and if their juniors' services are regularized under *2002/2005 Schemes* and under the subsequent orders after the **Umadevi's case** without considering whether they are appointed against sanctioned post or other circumstances underscored in this decision, the reason that the petitioners have approached the Court after decision in **Umadevi's case** does not subserve the objective and will only lead to artificial classification to deny them the benefit of regularization taking advantage of a particular

circumstance. The petitioners have also approached this Court in 2006 and 2011.

17. The respondents also contend that the petitioners' services could not have been continued but for the interim orders dated 11.04.1990 in Writ Petition No. 8192/1990 and 23.04.1993 in WP No. 12610/1993. This Court must observe that the petitioners have not themselves approached the Court for protection against the possible termination of their daily wage employment, as a consequence of the Government Order dated 11.04.1990 and the only sets of petitions filed by the petitioners [before the present petitions] are in W.P. Nos. 8809/2006 and 40934-40953/2011 and they have sought for mandamus for regularization in such petitions. These writ petitions are disposed of directing the respondents to consider their cases in terms of the law/scheme applicable resulting in the impugned Endorsements. It is admitted that even the

similarly circumstanced persons [*including the petitioners' juniors*] were continued in service, as the petitioners, because there were interim orders in WP No.8192/1990 and 12610/1993. The petitioners are also similarly circumstanced on this score as well.

18. Therefore, the questions for consideration must be answered declaring that the petitioners are entitled for regularization in terms of 2002/2005 Schemes and quashing impugned Endorsements, which are issued ignoring that the similarly circumstanced persons [*even petitioners' juniors*] are regularized and wedging a difference between persons of the same class by reason that is artificial. Further, the corresponding first and second respondents must be directed, within a time frame fixed, to issue orders for regularization of the petitioners' services on same terms as those who have

had the benefit of the *2002/2005 Schemes* and the orders passed subsequent thereto. Hence the following:

ORDER

[a] The petitions are allowed quashing the impugned Endorsements dated 14.06.2010 and 15.06.2012 [*Annexures- H and C*] issued respectively by the corresponding third respondent in these petitions and declaring that the petitioners are entitled for regularization in terms of 2002/2005 Schemes.

[b] The corresponding second respondents in these petitions are directed to issue appropriate Orders in view of this Court's declaration as aforesaid within a period of three [3] months from the date of receipt of a certified copy of this order.

[c] The petitioners are reserved liberty to file a representation enclosing a certified copy of this order with the corresponding respondents within a period of four [4] weeks from the date of receipt of such order.

Sd/-
(B.M. SHYAM PRASAD)
JUDGE

Nv