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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

**ON THE 29<sup>th</sup> OF JANUARY, 2024**

**WRIT PETITION No. 16417 of 2012**

**BETWEEN:-**

**KASHIRAM PATEL S/O SHRI LAMPU PATEL, AGED  
ABOUT 57 YEARS, OCCUPATION: ASSISTANT SUB  
INSPECTOR KRISHI UPAJ MANDI DAMOH DISTT.  
DAMOH (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI MANOJ SHARMA - SENIOR ADVOCATE ASSISTED BY SHRI  
DEEPAK SAHU - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH TH:ITS  
SECRETARY, DEPARTMENT OF AGRICULTURE  
VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE SECRETARY GENERAL ADMINISTRATION  
DEPARTMENT MANTRALAYA VALLBHA BHAWAN  
(MADHYA PRADESH)**
- 3. M.P. RAJYA KRISHI VIPDAN BOARD THROUGH  
ITS MANAGING DIRECTOR KISSAN BHAWAN, 26  
ARERA HILLS, BHOPAL (MADHYA PRADESH)**
- 4. ADDITIONAL DIRECTOR [PERSONNEL] M.P.  
RAJYA KRISHI VIPRAN BOARD KISSAN BHAWAN,  
26 ARERA HILLS, BHOPAL (MADHYA PRADESH)**
- 5. KRISHI UPAJ MANDI SAMITI, DAMOH THROUGH  
ITS SECRETARY KRISHI UPAJ MANDI SAMITI,  
DAMOH (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR THE  
RESPONDENT NO.1 AND 2 AND SHRI RAMESHWAR PRASAD SINGH -  
ADVOCATE FOR RESPONDENTS NO. 3, 4 & 5)***

.....  
*This petition coming on for hearing this day, the court passed the*

*following:*

**ORDER**

Dictated in open Court :

This petition is filed by the petitioner being aggrieved of order dated 01.02.2012, passed by the Madhya Pradesh State Agriculture Marketing Board, Bhopal (M.P.), in pursuance of the decision rendered by a Coordinate Bench of this High Court in Writ Petition No.255/2011 (S) on 10.01.2011, directing the respondents herein to consider case of the petitioner for regularisation in terms of the law laid down by the Supreme Court in *Secretary, State of Karnataka and others Vs. Umadevi [(2006) 4 SCC 1]*.

2. Petitioner's contention is that petitioner's representation for regularisation has been rejected on two grounds, namely, when he was appointed as a daily wager, then at that point of time, as per the recruitment rules in vogue, educational qualification was not fulfilled by the petitioner. Similarly, at the time of his initial engagement, he was above the prescribed age limit in the said rules.

3. Learned counsel for the petitioner placing reliance on the judgment of Supreme Court in *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation [(1990) 1 SCC 361]* and drawing attention of this Court to para 6 of the said judgment, submits that the ratio of law laid down in *Bhagwati Prasad* (supra), is that if a person was engaged as a daily rated worker and at the time of consideration of their cases for regularisation, the question relevant will be not the qualification at the stage of appointment, but the practical experience which was gained by a worker by virtue of his work. Thus, it is submitted that even if, petitioner was not qualified at the time of his initial engagement as 'Nakedar', then also he will be entitled to regularisation in terms of the law laid down by the Supreme Court in *Bhagwati Prasad* (supra).

4. Placing reliance on the judgment of Supreme Court in *Umadevi* (supra), it is submitted that in case of *Umadevi* (supra) though considered decision of *Bhagwati Prasad* (supra) in para 18. But, as far as educational qualification is concerned, law laid down in case of *Bhagwati Prasad* (supra) is not overruled and, therefore, ratio of *Bhagwati Prasad* (supra) as far as requirement of educational qualification being upset by the experience will still hold the field and, therefore, respondents were required to consider the case of the petitioner without taking into consideration the requirement of educational qualifications or that of age at the time of initial engagement as daily rated worker.

5. Shri Rameshwar P. Singh, learned counsel placing reliance on Annx.R/3, which is an extract of Madhya Pradesh Krishi Upaj Mandi Up Vidhi, 1972, submits that in Schedule-III under Sub-rule 38(A), minimum qualification prescribed for Nakerdar/Announcer is Higher Secondary Examination pass. He submits that the minimum age was 18 years and maximum prescribed age is 30 years and since this qualification is not available at the time of initial engagement of the petitioner, who was admittedly High School pass and was 32 years of age, therefore, regularisation could not be made as his appointment was not irregular as mentioned in case of *Umadevi* (supra), but illegal.

6. To this submission, Shri Manoj Sharma, learned Senior Advocate, submits that Schedule-III is to be read which in Note III, submits that the maximum age for employees of Mandi Samiti will be 38 years. To support his contention, it is submitted that before being appointed as 'Nakerdar' on 02.10.1986 at Damoh, petitioner had worked for a year at Patharia as 'Nakerdar' and, thereafter, on 27.06.1998 post of 'Nakerdar' was redesignated as Assistant Sub Inspector and it has become a State Cadre post. Thus, placing reliance on this fact that the petitioner was already an employee of Mandi Samiti, prior to his engagement as

'Nakedar' on 02.10.1986 at Damoh, it is pointed out that maximum age limit will be 38 and not 30 years, as has been mentioned by the respondents in impugned order Annx.P/1.

7. After hearing learned counsel for the parties and going through the record, ratio of law laid down by the Supreme Court in *Umadevi* (supra) is to the effect that in para 54, Hon'ble Supreme Court has held as under :-

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

Prior to that, in para 53, the ratio of law is laid down as under :-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore Vs. S.V. Narayanappa, R.N. Nanjundappa Vs. T. Thimmiah and B.N. Nagarajan Vs. State of Karnataka* 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 subjudice, 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."

8. In case of *R.N. Nanjundappa Vs. T. Thimmiah [(1972) 1 SCC 409]*, Supreme Court has held that regularisation of appointment by stating that notwithstanding any rules, the rule itself is open to criticism on the ground that it is violation of current rules. Regularisation cannot be said to be a mode of recruitment. When the Government acted under Article 309 of the Constitution, the Government cannot be said to have acted also under Article 162 of the Constitution in the same breath, the two Articles operate in different areas.

9. Thus, it is evident that ratio of law laid down in *R.N. Nanjundappa* (supra), is that even for regularisation, a person is required to fulfill the conditions laid down in the rules framed under Article 309 of the Constitution.

10. Supreme Court in *R.N. Nanjundappa* (supra), referring to case of *B.N. Nagarajan Vs. State of Karnataka [(1979) 4 SCC 507]*, it is held that if rules were made, the executive would have to follow the rules and the executive could not under Article 162 of the Constitution ignore the rules. Therefore, in the present case, the executive acted illegally in regularising the appointment of the respondent Thimmiah.

11. In case of *State of Mysore Vs. S.V. Narayanappa (AIR 1967 SC 1071)*, in para 10, it is held that :-

"10. Coming now to the Order, sub-cl(i) of Clause.2 provides that all appointments to class III posts by direct recruitment made upto December 31, 1959 should be regularised provided the candidates satisfied the conditions as

to age and qualifications at the time of their initial appointment."

12. When these aspects are taken into consideration, then in case of *Bhagwati Prasad* (supra), having not taken into consideration the earlier judgments in case of *State of Mysore Vs. S.V. Narayanappa* (supra) and that of *R.N. Nanjundappa Vs. T. Thimmiah* (supra), will not be a binding precedent, then the ratio of law which is culled out from the decision in case of *B.N. Nagarajan Vs. State of Karnataka* (supra), *R.N. Nanjundappa Vs. T. Thimmiah* (supra) so also by the Constitution Bench in *Secretary, State of Karnataka and others Vs. Umadevi* (supra), is that regularisation can be considered only for those employees who were duly qualified and were appointed against vacant sanctioned posts. Thirdly, they continued to work for ten years or more without the intervention of the orders of the Court or of tribunals. That defines irregularly appointed persons meaning thereby those who were not appointed after fulfilling the due process of recruitment.

13. Illegal appointment by implication will be that where a person was appointed against a post as a daily wager not only without following the procedure, but also *dehors* the qualifications prescribed for the post.

14. When these aspects are taken into consideration, then in the considered opinion of this Court that submission made by the learned Senior Advocate that the law laid down in case of *Bhagwati Prasad* (supra) has not been implidely or directly overruled by the decision of Constitution Bench in *Umadevi* (supra) is concerned, that proposition is not correct.

15. In para 54 of *Umadevi* (supra)'s case, all the directions running counter to the ones given in the case of *Umadevi* (supra) have been declared to stand

denuded of their status as precedents. Therefore, law laid down in case of *Bhagwati Prasad* (supra), will not be applicable in view of para 54 of the judgment of Constitution Bench in case of *Umadevi* (supra) and also on account of the law laid down by Supreme Court in *R.N. Nanjundappa* (supra) and *B.N. Nagarajan* (supra).

16. When it is examined from this aspect then petitioner admittedly not possessing the requisite qualification of Higher Secondary as was the requirement since 1972, as per the bye-laws, copy of which has been enclosed as Annx.R/3 by the contesting respondents, even if the aspect of age as pointed out by Shri Manoj Sharma, Senior Advocate, to be relaxable upto the age of 38 is taken into consideration, but in absence of the requisite educational qualifications will not entitle the petitioner to seek benefit of regularisation.

17. When tested from this aspect and the law discussed above, this Court is of the opinion that impugned order Annx.P/1 as far as it deals with the rejection of claim of the petitioner for regularisation on account of not fulfilling the requisite qualification on the date of his initial engagement being the ratio laid down in case of *R.N. Nanjundappa* (supra) and *B.N. Nagarajan* (supra) and *Umadevi* (supra), there is no infirmity or illegality in the said order calling for interference.

18. Accordingly, petition fails and is dismissed.

**(VIVEK AGARWAL)**  
**JUDGE**

A.Praj.