

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

WRIT PETITION (S/S) NO. 108 of 2008

Smt. Padma Arya

.Petitioner.

Versus

State of Uttarakhand and others

.....Respondents.

Present: Mr. M.C. Pande, Advocate for the petitioner.
Mr. N.P. Sah, Standing Counsel for the State of
Uttarakhand/respondent nos. 1 to 3.

Hon'ble Sudhanshu Dhulia, J.(Oral)

Heard Mr. M.C. Pande, Advocate for the petitioner and Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand/respondent nos. 1 to 3.

The petitioner was appointed as a Master Craftsman in the then Department of U.P. Handloom in the erstwhile State of Uttar Pradesh on a consolidated salary of ₹ 300/- per month in district Almora. She is continuing as such even today, although from time to time the consolidated salary has increased and the last salary drawn by the petitioner, according to his counsel, is around ₹ 3,000/- per month or near about. The petitioner has been continuing as Master Craftsman since her appointment since 1983 without any break in service and without any intervention by a Court or Court's order. All these are admitted facts.

In the year, 1996, the petitioner had approached the High Court of Judicature at Allahabad by filing a writ petition being *Writ Petition No. 30631 of 1996 Smt. Padma Arya and another Vs. State of Uttar Pradesh and others* for regularization of her services wherein an order was

passed directing the Director Handloom to decide her representation. Her representation was decided by order dated 30th October, 1996 (Annexure 14 to the writ petition), whereby it was stated that since the petitioner is not working against any post, she cannot be called an employee of the State Government and therefore her services cannot be regularised.

She has now filed the present writ petition, where she has made the following prayers before this Court:

“A- Issue a writ, order or direction in the nature of mandamus by commanding the respondents to pay the minimum payscale to the petitioner payable to the similarly placed employees performing similar kind of duties.

B- Issue a writ, order or direction in the nature of mandamus by commanding the respondents to regularize/consider regularization of the services of the petitioner as Master Craftsman under the rules called The Uttaranchal Regularisation of Adhoc Appointments (On posts outside the purview of the Public Service Commission) Rules, 2002.

C- Issue any other writ, order or direction which in the ends of justice and under the circumstances of the case the Hon’ble Court may deem fit and proper.

D- To award the cost of the petition to the petitioner.”

Learned Standing Counsel for the State has submitted before this Court that in view of the constitution Bench judgment namely **State of Karnataka and others Vs Uma Devi (2006) 4 SCC 1** the prayers

made by the petitioner cannot be granted and the petitioner cannot be regularized. The submissions of the learned State Counsel are correct, however, where a law exists for regularization or where there is a scheme by the Government, an exception has already been carved in paragraph 53 of **Uma Devi** case. It reads as follows:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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 abovereferred 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 sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

On the basis of the facts that the petitioner is a woman and has been working as a Master Craftsman in District Almora for the last almost 30 years, this writ petition is disposed of with the following direction:

The Secretary, Industries, Government of Uttarakhand shall consider the case of the petitioner

sympathetically inasmuch as the petitioner has a legitimate expectation from the State Authorities. In case she can be regularized on the post on which she has been working treating her to be an ad hoc employee under the Uttaranchal Regularisation of Adhoc Appointments (On posts outside the purview of the Public Service Commission) Rules, 2002 it must be considered but if this cannot be done, the Secretary will also explore other avenues for absorbing her in the Department of Industries, in accordance with law. The Secretary, Industries, Government of Uttarakhand shall consider the case of the petitioner as referred above as expeditiously as possible but in any case before three months from the date a certified copy of this order is produced before him.

No order as to costs.

(Sudhanshu Dhulia, J.)
31.3.2011

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