

GAD-SC-GCS-0169-2020 10682 /Gen.,

Government of Odisha
General Administration and Public Grievance Department

OFFICE MEMORANDUM

Bhubaneswar dated the 19th April, 2022

Subject: Regularization of qualified workers appointed against sanctioned posts; — Uma Devi judgment- facts/clarification- regarding.

The undersigned is directed to say that the instructions for regularization of qualified workers appointed against sanctioned posts in the light of Hon'ble Supreme Court's Judgement dated 10.04.2006 in case of Uma Devi was clarified vide this Department letter dated 7210/Gen., dated 03.03.2021 in the form of checklist.

2. However, in the meantime, various cases have been received in this department seeking clarifications regarding implementation of the above judgment. Therefore, it has been decided that further important aspects of the judgement dated **10.04.2006** may be enunciated for the purpose of clarity of the judgement. These important points as quoted from the judgement are reproduced below:

- (i). Equality of opportunity is the hallmark for public employment and it is in terms of the Constitutional scheme only **(Para 1)**.
- (ii). The filling of vacancies cannot be done in a haphazard manner or based on patronage or other considerations **(Para 2)**.
- (iii). The State is meant to be a model employer and can make appointments only in accordance with the rules framed under Article **309** of the Constitution **(Para 5)**.
- (iv). Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India, or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularization, furthermore, cannot give permanence to an employee whose services are ad hoc in nature. The fact that some persons had been working for a long time would not mean that they had acquired a right for regularization. **(Para 27)**.
- (v). Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article **16** of the Constitution **(Para 30)**.

- (vi). If it is a contractual appointment, the appointment comes to an end at the end of the contract **(Para 34)**.
- (vii). Regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme **(Para 44)**.
- (viii). In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them **(Para 46)**.

3. Additionally, it is also stated that vide the judgement of **State of Karnataka Vs. M.L Kesari dated 03.08.2010**, the Hon'ble Supreme Court had clarified some aspects of the Uma Devi judgement which are pertinent for proper understanding of the said judgement dated 10.04.2006. These aspects brought out in the M.L. Kesari judgement are reproduced as under:

- (i). The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. ***In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.***

(ii). ***The appointment of such employee should not be illegal, even if irregular.***

Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

(iii). The employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 44 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those **employees who had put in 10 years of continuous service as on 10.4.2006** without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 44 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 44 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. **The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 44 of Umadevi, are so considered.**

4. It is also clarified that regularization under Uma Devi judgement was only a **one time exercise.**

5. It is also emphasized that all concerned administrative authorities should take steps to defend the Court cases effectively on the basis of the principles outlined in Uma Devi judgement dated 10.04.2006 and instructions issued by the GA & PG Department vide letter No.7210 , dated 03.03.2021 in due time without giving any scope for adverse conclusion of the cases against the Government on the grounds of delay in filing counter reply/appeal. Any laxity in the matter to comply with these instructions leading to adverse orders of the Courts shall be viewed seriously inviting disciplinary action in the matter.

Patra
19.4.2022

Additional Secretary to Government

Memo No 10683 /Gen., Bhubaneswar

Dated the 19th April, 2022

Copy forwarded to all Departments of Government/ all Heads of Departments/ all RDCs. / all Collectors/ The Registrar, Orissa High Court, Cuttack/The Registrar, O.A.T., Bhubaneswar / Odisha Public Service Commission, Cuttack/ Odisha Staff Selection Commission, Bhubaneswar/ Odisha Sub-Ordinate Staff Selection Commission, Bhubaneswar for information and necessary action.

Patra
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Copy forwarded to all sections of G.A. & P.G. Department/ G.A. & P.G. Department Library (20 copies)/ Guard file (S.C. Branch) (20 copies) for information and necessary action.

Patra
19.4.2022

Additional Secretary to Government

Memo No 10685 /Gen., Bhubaneswar

Dated the 19th April, 2022

Copy forwarded to A.R. Cell, G.A. & P.G. Department with a request to hoist this Office Memorandum in the website of G.A. & P.G. Department.

Patra
19.4.2022

Additional Secretary to Government