

**15 -ാം കേരള നിയമസഭ**

**3 -ാം സമ്മേളനം**

**നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 3504**

**26-10-2021 - ൽ മറുപടിയ്ക്ക്**

**സർവകലാശാലകളിലെ അനധ്യാപക തസ്തികകളിലേക്കുള്ള നിയമനം**

ചോദ്യം		ഉത്തരം	
<b>ശ്രീ . ടി. വി. ഇബ്രാഹിം</b>		<b>Dr. R. Bindu</b> (ഉന്നതവിദ്യാഭ്യാസ-സാമൂഹ്യനീതി വകുപ്പ് മന്ത്രി)	
(എ)	സംസ്ഥാനത്ത് സർവകലാശാലകളിലെ അനധ്യാപക തസ്തികകളിലേക്കുള്ള നിയമനാധികാരം കേരള പബ്ലിക് സർവീസ് കമ്മീഷനിൽ നിക്ഷിപ്തമാക്കിക്കൊണ്ടുള്ള Act 18 of 2015 എന്നു മുതലാണ് പ്രാബല്യത്തിൽ വന്നതെന്ന് അറിയിക്കാമോ;	(എ)	2015 സെപ്റ്റംബർ 29-ാം തീയതി മുതൽ പ്രാബല്യത്തിൽ വന്നു.
(ബി)	പ്രസ്തുത ആക്ട് പ്രാബല്യത്തിൽ വന്നതിനുശേഷവും സർവകലാശാലകൾ ഏതെങ്കിലും അനധ്യാപക തസ്തികകളിലേക്കുള്ള സ്ഥിരനിയമനത്തിന് വിജ്ഞാപനം പുറപ്പെടുവിച്ചതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ; വിശദാംശങ്ങൾ ലഭ്യമാക്കാമോ;	(ബി)	പ്രസ്തുത ആക്ട് നിലവിൽ വന്നതിനുശേഷം സർവകലാശാലകൾ സ്ഥിരം നിയമനത്തിന് വിജ്ഞാപനം പുറപ്പെടുവിച്ചിട്ടില്ല.
(സി)	കേരള പബ്ലിക് സർവീസ് കമ്മീഷൻ മുഖേനയല്ലാതെയുള്ള അനധ്യാപക തസ്തികകളിലേക്കുള്ള നിയമനത്തിന് എംപ്ലോയ്മെന്റ് എക്സ്ചേഞ്ചുകളുടെ സേവനം ഉപയോഗപ്പെടുത്തണമെന്ന നിർദ്ദേശം സർവകലാശാലകൾക്ക് നൽകിയിട്ടുണ്ടോ; എങ്കിൽ പ്രസ്തുത സർക്കാർ നിർദ്ദേശത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കാമോ; സർവകലാശാലകൾ പ്രസ്തുത നിർദ്ദേശങ്ങൾ പാലിക്കുന്നതിൽ വീഴ്ച വരുത്തിയതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ;	(സി)	സർക്കാർ സ്ഥാപനങ്ങളിൽ പി.എസ്.സി യുടെ പരിധിയിൽ വരാത്ത നിയമനങ്ങൾ എംപ്ലോയ്മെന്റ് എക്സ്ചേഞ്ച് വഴി നടത്തണമെന്ന പൊതു നിർദ്ദേശം നിലവിലുണ്ട്. ഇതു സംബന്ധിച്ച് തൊഴിലും പുനരധിവാസവും വകുപ്പിന്റെ 05.02.2014 ലെ സർക്കുലറിന്റെ പകർപ്പ് അനുബന്ധം (1) ആയി ചേർക്കുന്നു.
(ഡി)	09.10.2006 ന് ശേഷം ദിവസവേതന/താൽകാലിക ജീവനക്കാരെ സ്ഥിരപ്പെടുത്തുന്നത് ഉമാദേവി Vs സ്റ്റേറ്റ് ഓഫ് കർണാടക കേസിലെ പരമോന്നതകോടതിയുടെ നിർദ്ദേശങ്ങളുടെ ലംഘനമാണെന്നുള്ള ധനകാര്യവകുപ്പ് മുഖേന ലഭ്യമായ സംസ്ഥാന നിയമവകുപ്പിന്റെ നിയമോപദേശം ഉന്നതവിദ്യാഭ്യാസ വകുപ്പ് സർവകലാശാലകൾക്ക് നൽകിയിട്ടുണ്ടോ; ആയതിന്റെ വിശദാംശങ്ങൾ ലഭ്യമാക്കാമോ;	(ഡി)	ഉണ്ട്. (പകർപ്പ് അനുബന്ധം (2) ആയി ചേർത്തിരിക്കുന്നു).

<p>(ഇ) ദിവസവേതന/താൽക്കാലിക ജീവനക്കാരെ സ്ഥിരപ്പെടുത്തുന്നതുമായി ബന്ധപ്പെട്ട പ്രസ്തുത നിയമോപദേശം ഉന്നത വിദ്യാഭ്യാസ വകുപ്പിൽ നിന്ന് ലഭ്യമായിട്ടും പരമോന്നത കോടതി വിധിക്കെതിരായി ഏതെങ്കിലും സർവകലാശാല തീരുമാനം എടുത്തതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ; വ്യക്തമാക്കാമോ?</p>	<p>(ഇ) ദിവസവേതന/താൽക്കാലിക ജീവനക്കാരെ ആരെയും തന്നെ സ്ഥിരപ്പെടുത്തിയിട്ടില്ല.</p>
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സെക്ഷൻ ഓഫീസർ



Permanently - I.

## GOVERNMENT OF KERALA

Labor & Rehabilitation (G) Department

### CIRCULAR

No.25941/G2/2013/LBR

Dated, 05.02.2014 Thiruvananthapuram

Sub:- Labour & Rehabilitation Department – Direct Recruitment by Government Departments and Establishment – Violation of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and Government Directions-Avoidance of – Instructions Issued - Reg.

Ref:- Government Circular No.39483/G2/87/LBR dated:05.01. 1988.

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As per the circular referred, Government have issued direction to all the Chief Executives of Government Establishments/Undertakings/Boards/Companies Corporation that the service of Employment Exchanges should be utilized for filling up vacancies coming outside the purview of the Public Service Commission as per the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 for strict adherence. But instances have been brought to the notice of the Government, that the Provisions of the Act and Government Circulars have been violated by some of the Government Departments / Establishments/ Undertakings / Boards / Companies and Corporations.

Government here by direct all the Heads of Departments / Chief Executives of Government Establishments / Undertakings / Boards/Companies / Corporations that the service of Employment Exchanges should invariably be utilized for filling up vacancies coming outside the purview of the Public Service Commission. They are also cautioned that violations if any, on the above direction will be viewed seriously and may lead to severe action under the provisions of the Act. The Heads of Departments / Chief Executives will personally be held responsible for ensuring strict compliance with the statutory requirements in this regard.

(Sd/-)

TOM JOSE IAS  
Principal Secretary to Government.

*Rabish*

മുഖ്യമന്ത്രിയുടെ കാര്യാലയം



Per. 20/01/2016. II

GOVERNMENT OF KERALA

TR 09/K1/IG/H.Edn.

Higher Education (K) Department,  
Thiruvananthapuram,  
Dated : 28/01/2016.

From  
Principal Secretary to Government

1. The Director of Collegiate Education, Thiruvananthapuram.
2. The Director of Technical Education, Thiruvananthapuram.
3. The Deputy Director General, NCC, Thiruvananthapuram
4. State Librarian, State Central Library, Thiruvananthapuram.
5. The Secretary, Kerala State Library Council, Thiruvananthapuram
6. The State Liaison Officer, State Level NSS Cell, 6<sup>th</sup> Floor, Vikas Bhavan, Thiruvananthapuram
7. The Director of Printing, Thiruvananthapuram
8. The Commissioner for Entrance Examinations, Thiruvananthapuram
9. The Controller of Stationery, Thiruvananthapuram
10. The Managing Director, Kerala State Centre for Advanced Printing and Training, H.O.Complex, Vattiyookavu, Thiruvananthapuram - 13
11. The Director, Institute of Human Resource Development, Prajoe Towers, Vazhuthacaud, Thiruvananthapuram
12. The Director, Kerala State Science and Technology Museum, Thiruvananthapuram
13. The Director of LBS Centre, Thiruvananthapuram
14. The Director, Centre for Continuing Education Kerala, Anathara Lane, Charachira, Kowdiar P.O., Thiruvananthapuram - 3
15. The Principal, Law College, Thiruvananthapuram/Ernakulam/ Thrissur/Kozhikode.
16. The Registrar, University of Kerala, Thiruvananthapuram/M.G.University, Kottayam/ Sree Sankaracharya University Sanskrit, Kalady, Ernakulam/Cochin University of Science and Technology, Kochi/Calicut University, Malappuram/Kannur University, Kannur/Malayalam University, Thirur/National University of Advanced Legal Studies, NUALS Campus, H.M.T. Colony P.O., Kalamassery, Ernakulam/A P J Abdul Kalam Technological University, College of Engineering Campus, Thiruvananthapuram
17. The Member Secretary, Kerala State Higher Education Council, KSSTM Campus, Vikas Bhavan P.O., Thiruvananthapuram
18. The Director, Kerala Council for Historical Research, Vyloppilly Samskrithi Bhavan, Nalanda P.O., Thiruvananthapuram.

Sir,

Sub:- Higher Education Department – Regularisation of employees on daily wages  
– Judgement of Hon'ble Supreme Court dated : 10/04/2006 in Appeal (Civil)  
3595-3612 of 1999 – *State of Kerala vs. Uma Devi* - reg.

Ref:- Note No. 2661/Exp A1/15/Fin received from Additional Chief Secretary,  
Finance (Expenditure - A) Department.

A copy of the note cited in the reference is forwarded herewith for information and strict compliance.

Yours faithfully,

T.J.VARKEY

Under Secretary

for Principal Secretary to Government

Approved for issue

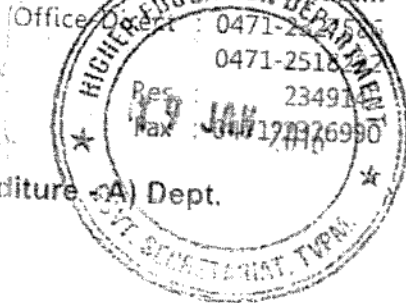
Principal Secretary to Government



**Dr. K. M. ABRAHAM CFA, IAS**  
 SECRETARY TO GOVERNMENT

*Umark DS +*  
~~SECRET~~  
*Submitted*

Finance & Stores Purchase Departments  
 Government of Kerala



No. 2061/Exp A/15/Fin

Finance (Expenditure - A) Dept.

**NOTE**

**Sub: Regularisation of employees on daily wages - Judgement of Hon'ble Supreme Court dated 10.4.2006 in Appeal (Civil) 3595-3612 of 1999 - State of Kerala vs. Uma Devi**

Please the attached note from Law Department. This advice was received in a file in which Finance Department had made a reference on the implications of the judgement of the Hon'ble Supreme Court in State of Karnataka vs. Uma Devi (2006) viz:

1. Is it legal to regularise daily wage workers after the last date (9.10.2006) referred to in the judgement of the Hon. Supreme Court in State of Karnataka vs. Uma Devi?
2. Can the Council of Ministers regularise any such appointment after the specified date referred to above?

The advice of the Law Department categorically affirms the fact that regularising daily wage workers/ temporary appointees including deputationists after 9.10.2006 in Government and Government institutions would be violative of the directions of the Hon'ble Supreme Court.

I am circulating the advice received from Law Department for your guidance so that files for regularisation of daily wages/temporary appointments and persons on deputation are not processed any further in violation of the judgement of the Hon'ble Supreme Court and Government Orders are not issued in contravention of the same.

*All HED officers*  
*For strict compliance*  
*[Signature]*

*[Signature]*  
 K. M. Abraham

To  
 All Additional Chief Secretaries/Principal Secretaries  
 /Secretaries/Spl Secretaries

*this opinion associated*

Public employment by the Government and its instrumentalities under our constitution is based on a procedure established in that behalf. The power of the State as an employer is circumscribed by the constitutional confines of Article 309 of the Constitution. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. Nonetheless, sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. There were several conflicting views of various High Courts and by Benches of lesser strength of the Hon'ble Supreme Court on the question of regularisation of temporary appointments and workers engaged on daily wages. The Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka v. Umadevi* AIR 2006 SC 1806 resolving the conflict observed that it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. Approving the dictum of in *B.N. Nagarajan and Ors. v. State of Karnataka and Ors.* [(1979) 3 SCR 937], the 5 Judge Bench in *Umadevi* clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. The Court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution.

in contravention of the rules. Hon'ble Supreme Court in Umadevi AIR 2006 SC 1808 held that regular process of recruitment or appointment has to be resorted to as and when regular vacancies in the posts arise. The Supreme Court emphatically held that the filling up of those vacancies cannot be done in a slapdash manner based on patronage or other considerations. The Court however directed the Union of India, the State Governments and their instrumentalities to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts. It was made clear that such continuance in service should not have been under the cover of orders of courts or of tribunals.

In Umadevi the Hon'ble Supreme Court directed the Union of India, the State Governments and their instrumentalities to 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 employed. The process was to be set in motion within six months from the date of the judgment in Umadevi. Hon'ble Supreme Court emphasised that there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

Regarding the heartburn caused to the those who toiled many years on the basis of temporary appointments and whose services could not be regularised the Court observed as follows:

*"It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be*

*appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."*

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Supreme Court further held that such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in consultation with the Public Service Commission.

Hon'ble Supreme Court further observed thus:

*"There are so many waiting for employment and an equal opportunity for competing for employment. It is in that context that the Constitution as one of its basic features has included Articles 14, 16 and 309 to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment."*

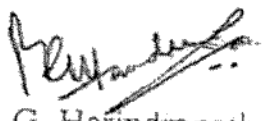
The Supreme Court further held in the decision that the Union of India, the State Governments and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals. The Court emphasised that further

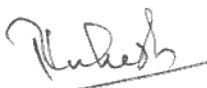


regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The Supreme Court finally in the judgment said that there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. Hon'ble Supreme Court in *State of U. P. v. Rekha Rani* AIR 2011 SC 1893 that a claim for regularisation of service cannot be allowed merely because some similarly situated had been granted relief.

The decision in *State of Karnataka v. Umadevi* was rendered on 10.4.2006. In *State of Karnataka v. M. L. Kesari* AIR 2010 SC 2587 Supreme Court held that the object behind the direction given in *Secretary, State of Karnataka v. Umadevi* AIR 2006 SC to the Government or its instrumentalities, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of Courts or Tribunals, as a one-time measure within six months from date of decision, was two fold. First was to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or Tribunals, before the decision in *Secretary, State of Karnataka v. Umadevi* AIR 2006 SC 1806 was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual; for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment.

Therefore, it is clear that the direction in Secretary, State of Karnataka v. Umadevi was only as a onetime measure and that this practice of employing persons on daily-wage/ad hoc/casual for long periods and then periodically regularise them on the ground that they have served for more than ten years was not <sup>to be</sup> perpetuated by the departments/instrumentalities any further. This judgment was later followed in various decisions including "State of Jharkhand Vs. Kamal Prasad" AIR 2014 SC (Supp) 390. The administrative department may take a decision in accordance with the decisions of the Hon'ble Supreme Court cited supra.

  
B.G. Harindranath,  
Law Secretary.

  
on behalf of B.G. Harindranath