
(2009) 12 CHH CK 0009
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 7428 of 2009

Alok Dubey and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2010) 3 MPJR 1

Hon'ble Judges : S.K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Agnihotri, J.—With the consent of learned counsel appearing for the parties, petition is heard finally.

2. By this petition, the petitioners seek the following the reliefs :

10.1 That, this Hon''ble Court may kindly be pleased to quash/set-aside the impugned notice dated 2/12/2009 (Annexure - P/1) passed by the respondent No. 3.

10.2 That, this Hon''ble Court may kindly be pleased quash/set-aside the impugned advertisement (Annexure - P/2) published in daily newspaper dated 20.11.2009.

10.3 That, this Hon''ble Court may kindly be pleased to direct the respondents to continue the petitioners till the continuation of RNTCP program.

10.4 That, this Hon''ble Court may kindly be pleased to direct the respondents to grant all the monetary allowance as like fixed allowance of Rs. 1000/- per month and enhanced, remuneration @ 5% per annum regularly as per the norms and guidelines for the contractual staff.

10.5 Any other relief, including the cost of this petition, it appears to be fit and

appropriate to this Hon"ble Court.

3. Learned counsel appearing for the petitioners submits that pursuant to the advertisement issued by the respondent authorities in the year 2002, the petitioners applied for the post of Senior Tuberculosis Laboratory Supervisor (for short "STLS") and after participating in the entire selection process e.g. interview, etc. the petitioners were appointed on 22-6-2002 for a period of one year on contract basis on affixed pay of Rs. 6,000/- per month. Learned counsel further submits that even after completion of one year also the respondent authorities permitted the petitioners to continue their service on account of their work being found satisfactory and, as such, the petitioners are working in the respondent department without any break. However, all of a sudden on 2-12-2009 the respondent authorities issued the impugned order, by giving one month termination notice to the petitioners and issued the fresh advertisement to fill the vacant posts on contract basis for a period of one year, which is evident from Annexure - P/2. Learned counsel next submits that the action of the respondent authorities in issuing the impugned notice is without any reason and the notice has been issued with male fide intention by making fresh appointments on the said post only to give undue advantage to the persons of the own choice of the respondent authorities. Thus, this petition.

4. I have heard learned counsel appearing for the petitioner, perused the pleadings and documents appended thereto.

5. Admittedly, the appointment of the petitioners was on contract basis for a period of one year. According to the petitioners, the petitioners have continued on service after completion of one year contract period. No order has been filed to indicate that there was any sanction or order for extension of time of one year contract period. Thus, it appears that the petitioners have continued after completion of one year without authority of law and, as such, the continuation may be held as illegal.

6. In *Secretary, State of Karnataka and Others v. Umadevi (3) and Others*, the Supreme Court observed as under:

12. In spite of this scheme, there may be occasions when the sovereign State or Its instrumentalities will have to employ persons, In posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing In the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in

various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

47. 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. 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 concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees, it cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48...There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service....

7. The services of the petitioners came to an end after completion of one year. Continuation thereafter does not confer any right on the petitioners for further continuation on the post. Thus, the petitioners have no right to the post on which they were appointed on contract basis for a period of one year.

8. Second contention of the petitioners that the respondent authorities have advertised for appointment of other persons on the said post, the same is bad in law and unjust is concerned, the same is noticed to be rejected, as the law as held in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, has already been considered and overruled in *Umadevi (supra)*, wherein a constitution Bench of the Supreme Court observed that the directions running counter to the constitutional scheme of employment is no longer a good law. The observations in this regard are 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.

9. No contract employee has a legal right to be continued for ever till regularly selected employees are appointed. The right of the petitioners on the post came

to an end on completion of period of one year.

10. The Supreme Court, in State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., observed as under:

22. These are cases of persons employed on contract. To such persons the principle of equal pay for equal work has no application. The Full Bench judgment dealt only with daily-rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In State of Haryana v. Surinder Kumar persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging the same duties. It was held that the very object of selection is to test the eligibility and then to make appointment in accordance with the rules. It was held that the respondents had not been recruited in accordance with the rules prescribed for recruitment?

11. As far as the contention of the petitioners that they are entitled to other allowances is concerned, the same is also noticed to be rejected, as the petitioners have not stated that they have not been paid wages. Seeking a direction to grant more additional increments/allowances the same cannot be granted by the Court, as it is for the employer to decide as to what should be the wages/ increments and what should be the allowances.

12. For the reasons stated hereinabove and applying the well settled principles of law to the facts of the present case wherein the petitioners were appointed on contract basis for a period of one year, the petitioners are not entitled to any relief.

13. In the result, the writ petition is dismissed at the motion stage itself.