
(2000) 06 CAL CK 0045
In the Calcutta High Court
Case No : M.A.T. No. 1181 of 2000

Chairman, Midnapore Municipality

APPELLANT

Vs

Prabir Kumar Nag and Others

RESPONDENT

Date of Decision : 29-06-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2001) 2 LLJ 1153

Hon'ble Judges : S.B. Sinha, J;H. Banerji, J

Bench : Division Bench

Advocate : Anami Sikdar and Abhijit Basu, for the Appellant;Pijush Dutta, Ashok Banerji, P.K. Khanna, Fazbal Haque and Dipendra Nath Bose, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This appeal is directed against a judgment and order dated March 8, 2000 passed in Writ Petition No. 10214(W) of 1998 whereby and whereunder the writ application filed by the respondents herein was allowed.

2. The writ petitioners were appointed by the Councillors in a meeting held on September 26, 1997 in terms of Resolution No. 36 which reads thus:

"With the consent of all the Councillors present in the meeting the matter of engagement of field personnel @ 2 per Ward as per instruction of the C.V.B. is discussed. It is resolved that 42 field. personnel i.e. @2 per Ward be engaged for assessment work on daily rated basis."

3. Pursuant to the said resolution they had been issued with an offer of appointment, a sample copy whereof is Memo No. 2772/CA/42 dated September 9, 1997 which reads thus:

"You have been selected to work as field Assistant/Helper in connection with the field survey work to be undertaken by the C.V.B., West Bengal from September 21, 1997 for valuation of "Lands and Buildings" under Municipality.

The training programme for the said work will be held on September 10, 11 and 12, 1997 at Krishna Lodge Aligunj from 11.30 a.m. to 4.30 p.m. and you are requested to attend the same.

The work will commence on and from September 21, 1997. You will have to work under the supervision of officers appointed for the purpose by the Municipality and have to follow one instruction of the officers of C.V.B. and Municipal Authority.

The work will be done on job-rate (Contract) basis and you will get remuneration per holding to be communicated to you by the Authority later on. Your minimum performance should be 6 (six) holdings per day.

This engagement is purely temporary and may be cancelled without any notice if your performance is not found satisfactory or at the discontinuance/completion of the programme."

4. They had allegedly worked for more than 240 days including the period covered by the interim order passed by this Court.

5. The writ petitioner in their writ application prayed for the following reliefs:-

"(a) Issue a writ/order/direction in the nature of Mandamus/directing the respondent authorities to allow the petitioners to continue their services as daily-rated workers/casual workers and regularise the services of the petitioners under the said Municipality and to give regular scale of pay;

(b) Issue writ/order/direction in the nature of Certiorari commanding the respondent to transmit the entire records in connection with their case before this Hon'ble High Court so that conscionable justice may be done."

6. Mr. Basu, the learned counsel appearing on behalf of the appellant, inter alia, submitted that having regard to the nature of their appointment, the learned trial Judge erred in allowing the writ application. According to the learned counsel, the period of 240 days includes the period which is covered by the order of status quo dated November 30, 1998 as a result whereof they have continued to work. According to the learned counsel, although an application for vacating the stay was filed, the writ petition itself was heard. It has been submitted that the impugned order is bad in law as:

(1) job is not permanent, (2) the selection process had not been complied with, (3) the services of the respondents were temporary and they had delayed the entire work purposely, and (4) the State of West Bengal has not sanctioned the post.

7. It has been contended that working for a period of 240 days alone would not entitle the writ petitioners to be absorbed in services. Reliance in this connection has been placed on Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., and West Bengal Essential Commodities Supply Corporation Ltd. Vs. Md. Sarif,

8. Mr. Pijush Dutta, the learned senior counsel, appearing on behalf of the respondents, on the other hand, submitted that having regard to the fact that the writ petitioners were appointed in terms of Resolution of the Councillors of the Municipality who was the appointing authority, they are entitled to continue in their services. Referring to the definition of "retrenchment" as contained in Section 2(oo) of the Industrial Disputes Act, 1947 the learned counsel submits that the writ petitioners could not have been retrenched in violation of Chapter V of the said Act. Mr. Dutta would urge that assessment is an integral part of the function of the Municipality in terms of Chapter X of the West Bengal Municipal Act and having regard to the fact that no period of their work had been fixed as also in view of the tenor of the appointment letter quoted supra the services of the petitioner cannot be terminated. Strong reliance in this connection has been placed on *Biman Kumar Roy v. Union of India*, reported in 1999 (5) SLR 771, *Samishta Dube Vs. City Board, Etawah and Another*, and a recent decision of the Apex Court in *Secretary, H.S.E.B Vs. Suresh and Others etc. etc.*, .

9. A bare perusal of the resolution dated September 26, 1997 passed by the Councillors of the Appellant-Municipality would clearly show that the writ petitioners were engaged as per the instruction of the Central Valuation Board. The writ petitioners were, therefore, not engaged as per the decision taken by the appellant. In terms of the provision of the West Bengal Municipal Act, certain procedures laid down therein for recruitment of its employees must be complied with. Sections 53(3) and 54 of the West Bengal Municipal Act read thus:-

""Section 53. Municipal establishments. - (1)

(3) The Board of Councillors at a meeting may, subject to the norms regulating the size of the municipal establishment for each Municipality and the categories or designations of officers and other employees of each Municipality with their scales of pay as may be fixed by the State Government from time to time, determine what officers and other employees, other than the officers mentioned in Sub-section (1), are necessary for a Municipality, create posts of such officers and other employees, and fix the salaries and allowances to be paid and granted to such officers and other employees.

Section 54. Cadre of common municipal service, appointments, etc.- (1) The State Government may constitute a cadre of common municipal service for the State in respect of such officers of the municipal establishment referred to in Sub-section (1) of Section 53 as may be determined by it from time to time.

(2) The Director of Local Bodies shall be the appointing authority of all officers and employees borne in the cadre of common municipal service. The Director of Local Bodies shall be the authority to transfer the officers and employees of the cadre of common municipal service from one municipal area to another.

Explanation.- "Director of Local Bodies" shall mean any person appointed as such by the State Government by notification for all or any of the purposes of this Act, and shall include a Deputy Director of Local Bodies or Assistant Director of Local

Bodies, appointed under Sub-section (2) of Section 425:

Provided that until the cadre of common municipal service for the State is constituted under Sub-section (1) no appointment of any officer, other than an Executive Officer, Health Officer, Engineer or Finance Officer, referred to in Sub-section (1) of Section 53, shall be made by a Municipality without the prior approval of the State Government;

(3) The appointment of all other officers and employees shall be made by the Municipality.

Provided that the State Government may determine the category and the scale of pay of a post to which no appointment shall be made by the Municipality without the prior sanction of the State Government even though the creation of such post is within the limit of one per cent of the total number of sanctioned posts of officers and other employees in existence in the year immediately preceding.

(3A) The recruitment to the posts of officers and other employees not required to be made through the Municipal Service Commission constituted under Sub-section (1) of Section 55, shall be made through the local employment exchange or through such other method as the State Government may determine from time to time.

(4) Save as otherwise provided in this Act, the State Government may by rules provide for the (qualifications for) appointment, conditions of service and other allied matters relating to the officers and employees of Municipalities."

10. It is not in dispute that the aforementioned provisions have not been complied with and the posts are also not sanctioned ones.

11. The writ petitioners evidently had been engaged on a contract basis and their engagement was bound to be discontinued being temporary in nature, inter alia, at the discontinuance/completion of the programme, Furthermore, as noticed hereinbefore they were appointed keeping in view the direction of the Central Valuation Board and not for doing any work on the posts sanctioned by the State of West Bengal. In fact, the State of West Bengal has not sanctioned any such post.

12. The appellant is also a local authority within the meaning of Article 12 of the Constitution of India. For the purpose of recruitment in the posts, therefore, they were required to comply with the provisions of Articles 14 and 16 of the Constitution of India. It is now a well settled principle of law that any appointment which is made in violation of a statute or the provisions of the Constitution of India would be a nullity. The writ petitioners were engaged for a particular purpose, they cannot continue to work once the programme for which they had been employed is completed.

13. In State of Madhya Pradesh and Another Vs. Dharam Bir, , the Apex Court

has held that the status of an employee cannot be changed only because they had worked for some time.

14. This aspect of the matter has been considered in *W.B.E.C.S. Corpn. Ltd. v. Md. Sarif*, (supra), *Director of Public Instructions of West Bengal v. Dr. Ashish Pal* 1998 (2) CHN 241; *Director of Public Instruction v. Krishna Prasad Ghosh* 2000 (2) C LT 141. *Biman Kr. Roy v. Union of India*, reported in 1999 (5) SLR 771, *Swapan Kumar Banerjee v. Union of India* 2000 Lab IC 1255; *State of West Bengal v. Ranjit Kumar Paul* 1998 Lab IC 1796 and *Rameshbhai Ratnaji Marwadi v. Air India, Gujarat Sales Office, Ahmedabad* 1998 Lab IC 2840.

15. It is now a well settled principle of law that when a project work is completed, no regularisation is permissible.

16. In *Bank of India v. Radharaman Samanta* 1999 (4) SLR 358 (Cal), it has been stated:--

"The second principal question framed by the learned trial Judge must also be answered in negative in view of the fact that the teachers when so appointed having not been appointed under any provision of law or upon following any rule conforming to the provisions of Articles 14 and 16 of the Constitution and their services being not protected under any statute, question of their regularisation does not arise. This Bench in several cases including in *Registrar of North Bengal University v. Biplab Roy and Ors.* in FMA No. 159/93 disposed of on January 24, 1996 inter alia, observed...."

17. The Supreme Court of India in a number of decisions categorically held that regularisation cannot be a mode of appointment. Reference in this connection may be made to *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, and *R.N. Nanjundappa Vs. T. Thimmiah and Another*, which have recently been followed by the Supreme Court in *V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others*, ; *Sk. Jamaluddin v. State of West Bengal*, 1995 Lab IC 1853 (Cal). Similar view has been taken in *Asoke Kumar Pal v. State of West Bengal C.O. No. 4244(W) of 1995* disposed of on April 25, 1995 1995 Lab IC 319 (Cal); *Narendra Nath Paloi v. State of West Bengal* 1995 (99) C WN 440 : 1995 (70) FLR 294 : 1995 Lab IC 1972 (All) and *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, ; *Dr M.A. Haque and Others Vs. Union of India (UOI) and Others*, This aspect of the matter has also been considered by various Division Benches of the Patna High Court on amongst others 1994 1 Pat LJR 68: 1995 (2) Pat LJR 309 and 1995 (2) Pat LJR 573.

18. It is also well settled in view of decision of the Supreme Court in *Madyamik Shiksha Parisad v. Anil Kumar* (supra) that only because a person has worked 240 days, he is not entitled to regularisation of service. Reference in this connection may also be made to *Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others*, . Once the Court considers that a right has accrued in favour of person under a bipartite agreement, such a right can be enforced only when the conditions precedent laid down therein are fulfilled.

19. In *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another*, it has been held at p. 890 para 7:

"We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify any criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supported on those findings. Expensive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability,"

20. In *Biman Kumar Roy v. Union of India*, (supra) upon which Mr. Dutta himself relied upon, this Court has stated the law in the following terms:

"Mr. Ghosh, when questioned as to whether there exists any Rule or Policy Decision as regards regularisation of such seasonal workers, fails to show any. He stated that if an employee works more than 120 (one hundred twenty) days and 240 (two hundred forty) days, his services are entitled to be regularised. The contention raised by Mr. Ghosh is contrary to the decision of the Apex Court in the case of *Madhyamik Siksha Parishad, U.P. v. Anil Kumar Mishra*, wherein the Apex Court observed in *Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.*,

"4. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly aspect itself out. It is difficult to envisage for them, the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of completion of 240 days work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947 are entirely different from what by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days" work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy. In an extended or enlarged form here."

21. In view of the aforementioned authoritative pronouncement it cannot be said that the learned trial Judge completely erred in passing the impugned order. This aspect of the matter is squarely covered in *Sairindhri Dolui v. State of W.B.* 2000 (1) SLR 803 (Cal).

22. In *Samishta Dubey v. City Board Etawah*, (supra) the Apex Court has merely

held that a Municipal Board is an industry within the meaning of Section 2(k) of the Industrial Disputes Act. The said decision was rendered in respect of General Administration Department of a Municipal Corporation.

23. The question posed in this writ application is not as to whether the Municipality would be an industry. Even assuming that the writ petitioners were workmen, they could raise an industrial dispute if and when their services are terminated in violation of Section 25-F of the Industrial Disputes Act but as has been held by the Supreme Court in *Madhyamik Siksha Parishad, U. P. v. Anil Kumar Misra*, (supra) that the said provision does not confer any right upon the employees to be absorbed in permanent services only because they have completed 240 days of service. It has clearly been laid down by the Apex Court that Section 25-F merely imposes an obligation on the employer not to terminate the service of a workman who has completed 240 days of work without paying compensation in the manner as laid down therein.

24. Although Mr. Dutta contended that the petitioners had filed the application keeping in view the fact that they apprehended that their services would be terminated without complying with the provision of Section 25-F of the Act, neither any such case has been made in the writ application nor could it be so, inasmuch as in any event the remedy of the concerned workman would be to raise an industrial dispute and not to file a writ application.

25. A disputed question as to whether compensation has been paid or not cannot be gone into in a writ proceedings nor can a writ Court be converted into an Industrial Court. In any view of the matter such a question raised by Mr. Dutta is hypothetical in nature as no cause of action therefore has yet arisen.

26. Reliance placed by Mr. Dutta in *Secretary, Haryana State Electricity Board* (supra) is wholly misplaced. In that case the Apex Court was considering an award wherein a finding had been arrived at that the alleged contractors' labourers are in fact the workmen of the principal employer. Contractor in view of the findings of the Apex Court, was appointed by way of a facade or smoke and screen. In this case neither such a case has been made out nor in the facts and circumstances of this case, the principle embodied in *Contract Labour (Regulation and Abolition) Act, 1970* are applicable.

27. We may place on record that even the correctness of the decision of the *Air India* (supra) whereupon, reliance has been made out in *Suresh* (supra) having been doubted, the matter stands referred to a larger Bench. Be that as it may, keeping in view the position in law as has been laid down by the Apex Court in various decisions as also this Court, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. In the facts and circumstances of this case there will be no order as to costs.

H. Banerji, J.

28. I agree.