
(2001) 12 DEL CK 0121

In the Delhi High Court

Case No : C.W. No"s. 2131, 2675, 2850, 2851, 2852, 3071, 3122, 3158, 3673 and 4433 of 1998 and 153, 5473 and 5474/99, C.Ms. 3482, 6311, 6592, 6593, 6601, 6904, 7007, 7833, 8234, 8598 and 9075/98, 215, 6897, 9982 and 9983/99, 107, 225, 349, 2323, 2543, 4572 and 975

Chattar Singh and Others

APPELLANT

Vs

Indira Gandhi National Open University

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2002) 4 AD 365 : (2002) 96 DLT 390

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Shyam Babu, Sanjay Parikh, A.K. Mishra, Mushtaq Ahmed, R.R. Chandrachud and Raman Duggal, for the Appellant; Sandeep Sethi and Ritika Sawhney, for the Respondent

Judgement

Mukundakam Sharma, J.—As the facts and issues raised in the present petitions are similar, I propose to dispose of all these writ petitions by this common judgment and order.

2. The petitioners in these writ petitions were engaged by the respondents for various jobs like Production Assistant, Attendant, Technician, Cameraman, Helper (Electrician) and Office Attendant. Some of the petitioners were initially appointed on adhoc basis. However, all the petitioners were subsequently appointed on contract basis. A complete chart showing names of the petitioners, the post against which they were appointed, date of commencement of their first contract and the date of expiry of last extension is shown here below -

----- S.No. CWP Name(s)
of Post Date of Date of expiry No. petitioner(s) commence- of last ment of
extension first contract 1. 3158/98 Snajeev Katoach Prod. 17.1.1996 2.7.98

Assistant 2. 6593/98 Bhuvan Pant -do- 26.5.1995 2.7.98 3. 2675-98 Chattar Singh Tech. 27.9.1995 31.3.98 Assistant 4. 2852/98 Manoj K. Singh prod. 17.1.1996 2.7.98 Assistant 5. 2850/98 Mohd. Kausar -do- 1.1.1997 2.7.98 6. 3122/98 Jaidev JAT/Steno 8.7.1996 15.6.98 7. 153/99 Rajendra Singh Attendant 3.10.1997 4.1.99 8. 4127/98 Mastan Singh -do- 11.11.96 26.8.98 9. 2131/98 Suresh Poddar & Veena Rani Gupta Technicians 4.2.97 2.7.98 10. 3673/98 Bindu Bachhe -do- 4.2.97 27.1.98 11. 3071/98 Mahua Santra Prod. Assistant 3.4.98 2.7.98 12. 4433/98 Deepak Sharma Cameraman 8.6.98 8.9.98 13. 5473/99 Rampal Office 4.11.94 28.8.99 Attendant 14. 5474/99 Vasudev " 2.7.97 28.8.99 -----

3. All the petitioners herein seek for a direction to the respondents to regularise their services from the date of their initial appointment and to give all consequential benefits to the petitioners including the relief of grant of equal pay as is being paid to the regular employees of the respondent/university for doing similar nature of work. By virtue of interim orders passed by this court, some of the petitioners are still working with the respondent/university whereas services of some of the petitioners stand terminated and they have not been working with the respondent/university as of date.

4. I have heard Mr. Sanjay Parikh, Mr. Raman Duggal, Mr. Shyam Babu and Mr. Mushtaq Ahmed appearing for various petitioners as also Mr. Sandeep Sethi, appearing for the respondents and have also perused the records, which were placed before me including the original records placed by the respondents.

5. It was submitted on behalf of the petitioners that all the petitioners have worked for the respondent/university in various capacities being engaged as against the posts as shown hereinabove. It was submitted that the petitioners have been working, continuously for the respondent/university with occasional artificial break in service and that since there are sanctioned posts in all the categories, which the petitioner are holding, the services of the petitioner cannot be adhoc contract employees. It was another set of adhoc contract employees. It was further submitted that since they have worked for more than 240 days and some of them still continue to work for the respondent/university, their services are required to be regularised. It was also submitted that there are vacancies existing in the university in the categories of Production Assistant, Attendant, Technician, Cameraman, Helper (Electrician) and Office Attendant and the works done by the petitioners are of perennial nature and accordingly the action of the respondents in proposing to terminate the services of the petitioners is a mere camouflage and there is total non compliance of the provisions of Section 25(F) of the Industrial Disputes Act. In support of the aforesaid contention counsel appearing for the petitioners relied upon the decision in State of Haryana and others Vs. Piara Singh and others etc. etc., and also the decisions in SECRETARY-CUM-CHIEF ENGINEER, CHANDIGARH V. HARI OM SHARMA AND ORS. reported in 1990 (5) SCC 87, State of Haryana Vs. Surinder Kumar and others, and Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others,

6. Mr. Sandeep Sethi, appearing for the respondents ,however, submitted that although there are vacancies in some of the categories of posts yet since the work in respect of the said posts is fluctuating ,no order could be passed by the court for filling up the said vacancies even if there be any. It was also submitted by him that two of the petitioners ,namely, Ram Pal and Vasudeo were considered for the purpose of regularisation of their services but Ram Pal was not found suitable by the committee constituted for the purpose whereas Vasudeo was found ineligible. It was also submitted that there are also allegations against four petitioner, namely, Rajender Singh, Jaidev, Vasudeo and Rampal for tempering with the records of the university and, Therefore, their services cannot be ordered to be regularised by this court. He also drew my attention to various documents placed on record in support of his contention that the nature of work done by the petitioners is fluctuating and, Therefore, there is no occasion for regularising the services of the petitioners. He further submitted that all the petitioners were appointed on contract basis, the terms and conditions of which were accepted by the petitioners with their eyes open and since their services were on contract basis, they cannot seek for regularisation of their services after expiry of the contract period particularly when their initial appointments were dehors the rules of recruitment for the said posts. In support of his contention ,counsel relied upon various decisions, namely , RAKESH KUMAR DEDHA AND ORS. V. JAWAHARLAL NEHRU UNIVERSITY AND ORS, CWP No. 5589/98 and similar other cases disposed of on 8.3.2000, Amit Yadav and Others Vs. Delhi Vidyut Board, , A.K. NAHRA AND ORS. V. SCHOOL OF PLANNING AND ARCHITECTURE, NEW DELHI reported in 2001 (VI) AD (Delhi) 680, Union of India (UOI) and Others Vs. Debika Guha and Others, C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain, , Ajay Kumar and Others Binesh Kumar Vs. Govt. of N.C.T. of Delhi and Others, Executive Engineer, Electricity Distribution Division, U.P.S.E.B., Bareilly Vs. Hydro Electric Employees" Union and Others, Secretary, H.S.E.B Vs. Suresh and Others etc. etc., Union of India (UOI) Vs. Uma Maheswari and Others, U.P. STATECOOP. LAND DEVELOPMENT BANK LTD. V. TAZ MULKANSARI AND ORS. reported in 1994 Supp (2) SC 745, DIRECTOR, INSTITUTE OF MANAGEMENT DEVELOPMENT, U.P.V. SMT. PUSHPA SRIVASTAVA reported in 1992 (5)SLR 86 and in DR. ARUNDHATI AJIT PARGAONKAR V. STATE OF MAHARASHTRA AND ORS. reported in 1994(5) SLR 234.

7. In the light of the aforesaid submissions of the counsel appearing for the parties and the propositions of law laid down by the Supreme Court, I proceed to dispose of these writ petitions by this common judgment and order.

8. The petitioners were engaged by the respondent/university for doing various jobs for it. Some of the petitioners were initially appointed on adhoc basis but later on the said petitioners were appointed on contract basis. There cannot be any dispute to the fact that all the petitioners were engaged to work in the respondent/university on contract basis and were working as such when proposed action of termination of their service was allegedly contemplated by the respondent university.

9. The respondent/university has recruitment rules in accordance with which recruitment are to be made to the various posts including the posts which were held by the petitioners. In the present case we are concerned with regard to recruitment and regularisation in the posts of Production Assistant ,Attendant, Technician, Cameraman, Helper(Electrician) and Office Attendant. On perusal of the records, I am of the considered opinion that the method of recruitment, as laid down in the said recruitment rules, was not followed while engaging the petitioners either on daily wage basis or on contract basis as against the aforesaid posts. Therefore ,the only conclusion which is irresistible is that their initial appointment to the said posts was dehors the recruitment rules. When the petitioners were initially appointment they did not go through the rigour of the said recruitment rules prescribed and their suitability was considered only to the limited extent for the purpose of their daily wage / contract appointment. In view of the aforesaid could a relief be granted to the petitioners, as sought for in these writ petitions ,directing for regularisation of their services without being selected through the regular process of selection in accordance with the rules prescribed for recruitment. However, it cannot be denied that no person can claim regularisation without going through the prescribed procedure laid down in the Recruitment Rules. Law in that regard is well-settled as laid down by the Supreme Court in the cases, which were refereed to and relied upon by the counsel appearing for the respondent. Following discussion would support the said conclusion .

10. In Pushpa Srivastava's case (supra) it was held by the Supreme Court that when the appointed was purely on adhoc and on a contractual basis for a limited period, the right to remain in the post comes to an end upon expiry of the contract period. While coming to the aforesaid conclusion the Supreme Court also considered the ratio of the decision in JACOB M.PUTHUPARAMBIL AND ORS. ETC. ETC. v. KERALAWATER AUTHORITY AND ORS. ETC. ETC. reported in11990 (6) SLR 54 . It was held that as there was a specific rule in the said case, which governed the case and was binding on the authority as well as the employees and in that context the said decision was rendered and the same would have no application to the case of Pushpa Srivastava. It was categorically held in the said case that where appointment is contractual and comes to an end by efflux of time, the appointment itself comes to an end and that the person so appointed would have no right to continue in the said post. The pleas that the services of the employees being continued from time to time on adhoc basis for more than a year, the concerned person should be entitled to regularisation, was negatived by the court .

11. In the case of Dr. Arundhati Ajit Paragaonkar (supra), it was held by the Supreme Court that a person who is appointed on purely temporary basis against a permanent post and even continuing in the said post for nine years without any break, cannot be ordered to be regularised inservice even on the ground of eligibility and continuance working on the said post for nine years ,as such an order would amount to over reaching the law as requirement of rules of selection

through commission which cannot be substituted by humane considerations.

12. A three Judges Bench of the Supreme Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, held that it is settled law that having made rules of recruitment to various services under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointment has to be made accordingly in terms of the aforesaid rules. It was further held that the vacancies are required to be filled up in accordance with the Rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment Along with all the eligible candidates. It was also held that the appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption .Thus, the law laid down by the Supreme Court is clear and categorical. No person who is appointed dehors the rules can be ordered to be regularised straightaway without going through the rigours of the selection/recruitment process as laid down in the recruitment rules.

13. The contracts of appointments of the petitioners are on record. The terms and conditions of the said appointment would indicate that they were appointed for three months on contract basis on a consolidated amount with specific stipulation that their services can be terminated at any time without assigning any reasons thereof by giving 15 days notice and that the said persons would have no claim for regular appointment .The petitioners accepted the aforesaid terms of appointment on contractual basis without any protest and demur. They joined pursuant to the said letters of appointment and served as per the engagement receiving the consolidated amount paid to them every month. The petitioners are, Therefore, bound by the terms and conditions of their appointment and also bound bythe proposition of law laid down by the Supreme Court ,which have been referred hereinabove. It was sought to be contended by the petitioners that appointment on contract basis is arbitrary and void ,as they could not have been appointed on contract basis with arbitrary terms. The said contention is without merit. The petitioners. accepted the said terms, worked on the basis thereof and derived financial benefit out of the same .They did not challenge the validity of such contractual appointment or any term thereof during the currency of the same but when the same came to an end or about to come to an end by efflux of time ,the petitions are filed in this court. The principle of waiver and estoppel shall, Therefore, apply .Besides, the allegation is vague and no proof in support of the bald allegation could be produced .It is not shown as to how the terms and conditions of the contract appointment are void and arbitrary .Therefore, the said contention is rejected .

14. The procedure for appointment to the various posts, in which the petitioners were engaged ,have been set out in the recruitment rules of the respondent/ university. The said Rules mandate that there has to be a selection committee

consisting of an outsider expert member and the recruitment/selection is to be on the basis of the written test and/or skill test and interview by an open recruitment committee pursuant to an advertisement on all India basis. The said mode of selection has to be undergone by an intending candidate seeking for regular appointment.

15. Counsel for the petitioners strongly relied upon the decision of Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, A perusal of the said decision would show that the said decision was rendered in the light of the facts of the said case where the petitioners were working as daily rated labourers for long 10 years. The petitioners in our cases were working in the university for much shorter period. In the case of Khagesh Kumar and others Vs. Inspector General of Registration and others, there was a specific rule of regularisation which prescribes a period of three years continuous service and, therefore ,both the aforesaid cases are distinguishable on facts. But even in the later case the Supreme Court held that unless the petitioners fulfill the requirement of the Regularisation Rules, they cannot be regularised. In the case of STATE OF HARAYANA V. PIARA SINGH ANDORS. reported in 1992 (1) SCC 118 and relied upon by the petitioners, it was held that if a casual labourer has continued for a fairly long spell, say two or three years - a presumption may arise that there is a regular need for his services and in such a situation it becomes obligatory of the authority to examine the feasibility of regularisation. But in the said case a note of caution was issued by the Supreme Court by observing that it cannot be held that in each and every case a direction for regularisation must follow irrespective of and without taking into account the other relevant circumstances and considerations .

The consideration that a person appointed dehors the Recruitment Rules cannot be ordered to be straightaway regularised without following the rigours of recruitment/selection is based on the pronouncements of the Supreme Court in a catena of decisions ,reference to some of which is made herein before. That being the settled position of law ,no deviation thereto is permitted and could be allowed .

A contention was raised that there is violation of the provisions of Industrial Disputes Act .In order to prove the said allegation the petitioners have to lead evidence to show that It is a case of retrenchment and that they were entitled to compensation. The petitioners should have approached the appropriate forum prescribed for raising such grievances. Such a pleas cannot be entertained in these writ petitions.

16. However, it cannot be denied that vacancies exist as against the aforesaid categories of posts, as is indicated from the statement furnished by the respondents themselves showing the number of sanctioned posts and the number of posts filled up and to be filled up. It is, however, the stand of the respondents that although there are regular vacancies in respect of some of the categories of posts, it is always open for the department to assess the quantum

of work and fill up such vacancies as are commensurate with the load of work and requirement. It was submitted that the decision to fill up or not to fill up the vacant posts is to be taken by the department and the discretion vests in them. It was further submitted that the petitioners cannot seek for a writ of mandamus directing the respondent/university to fill up the vacancies. In support of the said contention, counsel relied upon the decisions in the case of Uma Maheshwari (supra). In this connection, reference may also be made to the decision of the Supreme Court in SHANKARSAN DASHV. UNION OF INDIA reported in 1991 (2) SLR 779 wherein a Constitution Bench of the Supreme Court has held that the State is under no legal duty to fill up all or any of the vacancies provided such non filling up of the said vacancies is not for any arbitrary reason. The aforesaid decision of the Constitution Bench of the Supreme Court was also followed in a later case of UNION OF INDIA V.K.B. VIJEESH reported in 1996 (2) SLR 319 and also in Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others, In this connection, reference may also be made to the decision of the Supreme Court in Union of India and others Vs. N.R. Banerjee and others, and in All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.,

17. In view of the aforesaid settled position of law by the Supreme Court, the contention of the counsel appearing for the respondents appears to have some force. The respondent/university is the best Judge to decide whether any or all the vacant posts is/are to be filled up or not. The court cannot substitute the satisfaction of the recruiting agency and direct that all vacant posts have to be filled up irrespective of the fact whether the same is immediate need based or not. The respondent/university has taken up a stand that in some projects only temporary hands are necessary, which is got done by offering a contract to an independent body, who engages their own personnel for doing the jobs of the nature being done by the petitioners herein. In the light of the said circumstances could the court direct that such projects should not be got done by the university through independent firm or body, but should be got done by filling up the vacant posts through the process of regularising the services of the petitioners? The answer has to be in the negative, for the court cannot substitute and act as an appellate authority over the recruitment policy and satisfaction of the respondents. But at the same time the respondents cannot be permitted to recruit persons through the backdoor policy. In Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, the Supreme Court deprecated the appointments made by the Railways on adhoc basis in disregard of the recruitment rules. The Supreme Court has pointed out that it has of late been witnessing a consistent violation of the Recruitment Rules. Therefore, as and when there is a necessity of a hand in any of the post, which is vacant, the same is required to be filled strictly in accordance with the Recruitment Rules. However, if for any reason any engagement for a very short period becomes necessary, the same could be filled up on daily wage basis/contract basis but such appointment shall always have to be for a very short period as otherwise a presumption has to be drawn that there is a need of appointment on regular

basis.

18. In view of the aforesaid discussion and in the light of the settled principles of law, I am of the considered opinion that neither any direction could be issued to the respondents to regularise the services of the petitioners without going through the process of regular selection, as laid down under the recruitment rules nor any direction could be given straightaway to the respondents to fill up all the vacant posts immediately. However, the fact remains that some of the petitioners had worked for about 3 to 4 years with the respondent/ university. Therefore, considering the entire facts and circumstances of the case, including the fact that the petitioners had worked for the respondent/university for several years, it is ordered that the respondent/university shall maintain a list of all the petitioners and as and when the respondent/university shall maintain a list of all the petitioners and as and when the respondent/university decides to fill up the vacant posts, the same shall be processed in accordance with the recruitment rules wherein the petitioners herein should also be allowed to apply for and in that event their cases shall be considered in accordance with law giving due weightage to the past experience of the petitioners and their service rendered to the respondent/university and in case any age relaxation is to be granted to any of the petitioner, the same shall also be granted to the petitioners to the extent of their service rendered in the university. It is also ordered that in case the respondents proceed to appoint person(s) as against any of the aforesaid posts which were/are held by the petitioners on daily wage/adhoc contract basis, the cases of the petitioners shall be first considered and such engagements shall be made strictly in accordance with the seniority position of the petitioners in the list directed to be prepared subject, however, to fulfillment of eligibility criteria for the post and only when no such petitioner is available then only the respondents shall engage any other person(s). It shall be, however, open to the respondents to judge the suitability of the petitioners and to scrutinise the eligibility criterion while making such appointment engagement, which shall only be for a very short duration. In view of the aforesaid observations and directions, all the writ petitions stand disposed of.

19. Some of the petitioners also filed applications seeking for drawing up contempt proceedings and also applications u/s 340Cr. P.C. I have considered all those applications and in view of discussion above, I find no force in them. The allegation that the respondents have willfully violated the orders passed by this court is found to be without subsistence, as according to the respondents the cases where interim orders were received before release of the concerned petitioners, they have been retained in service and the remaining petitioners were released from service, which is found to be justified. Accordingly, the applications also stand disposed of.