
(2001) 04 AP CK 0100
In the Andhra Pradesh High Court
Case No : WA No. 323 of 2001

Chunduri Balaji

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 30
Constitution of India, 1950 — Article 162, 309

Citation : (2001) 3 ALT 639

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. M. Sunder Rao, for the Appellant; Mr. K. Subrahmanya Redd and Mr. T.V. Prabhakar Rao, SC for Board of Intermediate, for the Respondent

Judgement

S.B. Sinha, CJ

1. This writ appeal is directed against the judgment and order dated 28-11-2000 passed by a learned single Judge of this Court in WP No.8464 of 1996 whereby and whereunder the writ petition filed by the appellant for regularisation of his services as Scientific Assistant Grade-A in the office of the 3rd respondent was dismissed.

2. The appellant was appointed as Lower Division Clerk on 23-1-1985 in Board of Intermediate Education, 4th respondent herein. By a notification dated 10-1-1992, applications were invited for filling up of the vacancies of Scientific Assistants in National Remote Sensing agency (NRSA), Department of Space, Balanagar, Hyderabad. The appellant also applied for the same and was called for interview. He having been selected for the said post, jointed the establishment of the 3rd respondent on a consolidated pay of Rs.2,000/- per month. Such appointment was renewed from time to time for every three months. On or about 19-7-1994 a contract appointment was made for a period of one year on payment of Rs.28,800/- per annum.

3. The learned single Judge having regard to the aforementioned factual circumstances, inter alia, came to the conclusion:

"The notification, pursuant to which the petitioner has been appointed, itself would reveal the temporary nature of the post and its duration. Admittedly, after the project work was over, the petitioner herein was awarded appointment on contract basis subject to certain terms and conditions mentioned therein. The duration of the contract was fixed at one year. It is thus clear that at no point of time the petitioner has been selected and appointed into any regular post as such on any regular pay scales. Therefore, no directions could be issued compelling the respondents to absorb and regularise the services of the petitioner."

4. Mr. Surrender Rao, learned Counsel appearing for the appellant, however, submits that having regard to the fact that the appellant herein was earlier appointed in a permanent establishment i.e., Board of Intermediate Education on a regular basis and his services having been regularised therein, his subsequent appointment as Scientific Assistant in NRSA should not be held to be a temporary one.

5. Our attention has further been drawn to Rule 30 of the A.P. State and Subordinate Services Rules which deals with resignation of a member of a service in the State Government.

The advertisement pursuant where to the appellant was appointed to the post in question clearly show that the posts were purely on temporary basis for a period of six months initially. Whereas in relation to some posts like Stenographers regular scale of pay was provided for, in respect of posts of Scientific/Technical Assistant, consolidated pay of Rs.1,800/- per month was fixed. The appellant herein agreed for such appointment. It is, therefore, not correct to contend that the appointment of the appellant has been made in terms of the recruitment rules on regular basis. Furthermore, as noticed hereinbefore, the appellant herein accepted the terms and conditions of appointment and also extension of service given to him from time to time without any demur whatsoever. It is also not in dispute that by a letter dated 30-5-1994, a contract was offered to him for a period of one year for an amount of Rs.28,800/- per annum on the following terms and conditions:

"The above contract is liable to be terminated on one month's notice by either parties and in the event of such termination, payments will be settled only for the quantum of work completed satisfactorily.

This contract job order is acceptable to you on the aforesaid terms and conditions. Please communicate your acceptance on or before 1-6-1994."

Yet again another contract for a period of one year was awarded in his favour on 26-5-1995.

6. The appellant himself by letter dated 30-8-1994 prayed for his reappointment

as Junior Assistant in Board of Intermediate Education. Even under the State and Subordinate Service Rules, appointment on contract service is permissible. It is, therefore, not necessary that each and every recruitment must be done on regular basis.

7. Furthermore, the appellant herein having accepted the appointment without any demur whatsoever, now, cannot be permitted to turn round and contend that he was appointed on a regular basis in terms of the rules.

8. In a situation of this nature even sympathy shown in favour of the appellant, if any, would be misplaced. In any event, the appellant must be deemed to have waived his rights and/or estopped from raising the aforementioned contentions.

The Apex Court in *Munindra Kumar v. Rajiv Govil* AIR 1991 SC 1697, observed:

"We do not agree with the High Court to quash the entire selection made by the Board for the posts of Assistant Engineers (civil). It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations."

9. In *Calcutta District Primary School Council v. Anuva Roy* (1996) 8 SLR 579, it was observed:

"Moreover, it is now beyond any cavil of doubt that any appointment in contravention of a provision of recruitment rules will be ultra vires and a nullity. In the instant case it is admitted that the vacancy arose in the year 1990 and the 1973 Act came into force with effect from 2-7-1990. The petitioner filed an application for her alleged regularisation in the year 1991. Any appointment which has to be made on and after 2nd July, 1990 must be done in terms of the 1973 Act and the rules framed thereunder. Any appointment in violation of such recruitment rules would be nullity. This aspect of the matter has been considered in *Smt. Ravinder Sharma and Another Vs. State of Punjab and Others*, as also various recent decisions of the Patna High Court reported in 1995 (2) PLJR 835, 1995 (2) PLJR 184, 1995 (2) PLJR 537, 1995 (2) PLJR 474 and 1995 (2) PLJR 309."

10. Thus, the appellant herein having not been appointed in terms of the rules, could not have been directed to be regularised in service. This aspect of the matter has also been considered in *Tarak Chowdhury v. State of West Bengal* 2000 (2) SLR 445, wherein it has been held:

"It has not been disputed that the petitioner was appointed on an ad hoc basis. At the time of his appointment recruitment rules framed in terms of the proviso appended to Article 309 of the Constitution of India had not been followed. The State while granting appointment to a person is not only bound to follow the

recruitment rules made in terms of the proviso appended to Article 309 of the Constitution of India but is also bound to give effect to the provisions of Articles 14 and 16 of the Constitution of India. No right far less any enforceable right flows from such illegal appointments. The recruitment rules, inter alia, provide for grant of equal opportunity to be considered for appointment to all eligible candidates. A person who is appointed through back-door cannot claim permanence only because he had been working for sometime. Reference in this connection may be made to the case of *Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others*, and several decisions of the Apex Court following the same. It is further well known in view of several decisions of the Apex Court that only in irregular appointment can be regularised and not an illegal appointment. It is further well settled that regularisation cannot be a mode of recruitment. (See *R.N. Nanjundappa Vs. T. Thimmiah and Another*, and *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, which decisions have been considered by the Apex Court in, *Sreenivasa Reddy and others v. Government of Andhra Pradesh and others* reported in *V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others*, . It is now also well settled in view of the recent decisions of the Apex Court in *State of Madhya Pradesh and Another Vs. Dharam Bir*, , that the status of a person cannot be changed with the passage of time. A person who was appointed on temporary or ad hoc basis, thus cannot claim the status of a permanent servant only because he had worked for sometime. The said decision along with other decisions had been considered by this Court in a large number of cases. Reference in this connection, however, may be made to *Biman Ch. Karmakar v. State of West Bengal* reported in 1999 (2) CHN 289 and *West Bengal Essential Commodities Supply Corporation Limited v. Md. Sarif* reported in 2000 (1) CHN 210 : 2000 (2) SLR 229]. The aforementioned circular letter dated 3rd August, 1979 is not a statute. Even a policy decision cannot be adopted in derogation of a statutory rules. Even the said purported memorandum dated 3rd August, 1979 is not an executive instruction within the meaning of Article 162 of the Constitution of India."

11. For the reasons aforementioned, we find no merit in this writ appeal which is dismissed accordingly. No order as to costs.