

(2008) 04 AHC CK 0030
In the Allahabad High Court

Dr. Devendra Dutta Tripathi

APPELLANT

Vs

Director, I.E.R.T., Committee of Management cum
Commissioner, Allahabad Division, Controller, I.E.R.T. and
Director, Technical Education

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 309

Citation : (2008) 3 UPLBEC 2343

Hon'ble Judges : S. Rafat Alam, J; R.K. Rastogi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rafat Alam and R.K. Rastogi, JJ.—In the instant writ petition, the petitioner has come up for issuance of a writ of mandamus commanding the respondents to regularize his services as Lecturer in the institute of Engineering & Rural Technology, Allahabad (for short IERT) and also to pay him regular salary of Lecturer.

2. We have heard Mr. Faujdar Rat, learned Counsel for the petitioner and Mr. Aditya Kumar Singh, learned Counsel for respondents No. 1 and 2 as well as the learned Standing Counsel for respondent No. 3.

3. The short facts giving rise to the instant petition, briefly stated, are that the petitioner was engaged as guest speaker on payment of Rs. 80/- per lecture to teach Mathematics and Mechanics in the department of Science and Humanities vide letter of engagement dated 5.7.2000 for one Semester. His appointment was purely temporary. It was further provided therein that on the basis of this appointment as guest speaker, he will not claim any sort of appointment on any post in the Institute and that if he was agreeable to accept this invitation/proposal on the terms and conditions contained in it, he should give his written consent and that his appointment will be for the period till completion of the course of Semester only, it was also provided in the letter of appointment that no

payment shall be made if there is a holiday and if the students are not available.

4. The petitioner accepted the terms and conditions and joined as guest lecturer. He claims that since then he has been regularly teaching in the I.E.R.T. It has further been averred that for filling up the post of Lecturer, an advertisement was made in October, 2001 pursuant to which the petitioner also applied but the selection process has not yet started. The petitioner has, therefore, claimed regularization on the post of lecturer on the ground that he possesses all the qualifications for the post and as he has been working on the post since the year 2000, his services be regularized under the Rules.

5. Respondents No. 1 & 2 have filed a joint counter affidavit whereas respondent No. 3 has given a separate counter affidavit refuting the above claim of the petitioner. The petitioner has filed rejoinder affidavits in reply to the aforesaid counter affidavits. Supplementary counter affidavits and supplementary rejoinder affidavits have also been filed. We have gone through all of them and have heard the learned Counsel for both the parties.

6. Shri Faujdar Rai, learned Counsel for the petitioner vehemently contended that since he is continuing as lecturer for the last several years, he is entitled to be regularized. He further drew our attention to the letters issued from the Technical Education Board, copies whereof have been filed as Annexure 7 to the rejoinder affidavit and Annexure 2 to the supplementary rejoinder affidavit, and placed reliance on a Division Bench judgment of this Court in the case of Dr. Sangita Srivastava Vs. University of Allahabad and Others, and submitted that similar benefit may be extended to him.

7. On the other hand, learned Counsel for the respondents opposed the prayer and vehemently contended that the petitioner was never given regular appointment on substantive basis after due selection as per law and because of exigencies of work he was offered engagement for a fixed term on a fixed salary which does not confer any right to claim regularization dehors the Rules on the basis of such engagement. It is also submitted that the selection and appointment to the post of Lecturer are governed by the statutory rules; and since his engagement was done without following that process for selection, to meet the exigencies, he cannot claim regularization.

8. We have considered the submissions made on both sides.

9. The short question, in the facts of the case, involved in this matter is as to whether on the strength of the so called appointment/engagement of the petitioner vide letter dated 5.7.2000 (Annexure-1 to the writ petition), he is entitled for regularization as lecturer in IERT. To resolve it, it would be useful to go through the letter of appointment dated 5.7.2000, from a perusal whereof it is apparent that he was never given regular appointment on substantive capacity against any post or as lecturer. The letter further shows that the appointment was given on his application dated 24.6.2000 on payment of Rs. 80/- per period. It further recites in clear terms that the appointment is purely temporary as a

guest lecturer and will not give him any right to claim appointment against any post of the department. The petitioner having accepted the terms and conditions of the letter of appointment, joined the post and, therefore, he cannot now be allowed to claim regularization on the strength of the same order by which he was given conditional appointment. Now after lapse of time, he cannot take U-turn and claim regularization on the strength of the same letter/order and thus, the letter of appointment is of no help to the petitioner.

10. Sri Faujdar Rai, learned Counsel for the petitioner, during the course of argument, placed heavy reliance on the letter of the Secretary. Technical Education Board (in short the Board) dated 15.3.2003, contained in Annexure-7 to the rejoinder affidavit and submitted that he was virtually being treated as regular employee and from time to time assigned work of the examination conducted by the Board. In our view, all these letters in respect of setting of question papers and evaluation of answer books at the rates mentioned therein do not give the least indication that he was given regular appointment, hence they are also of no help to the petitioner. Besides that, even if the Board entrusted him some work pertaining to examination that would not clothe him with a right to claim regularization de hors the Rules.

11. There is another aspect of the matter. Admittedly no regular process of selection was adopted before appointment of the petitioner as guest speaker. It was "Kamchalao" (workable) temporary arrangement as asserted by respondents No. 1 and 2. In case a regular process of selection had been adopted and if the petitioner had been given ad hoc appointment on a cadre post on the basis of result of that process of selection, then in that event, he could have contended for regularization of his service provided there was any rule or statutory provision giving such benefit, but in time absence of any selection process or any statutory provision he cannot claim regularization. Commenting on such type of appointments the Hon'ble Apex Court has made the following observations in its judgment in the case of Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 2 UPLBBC 1880:

10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of

recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, Rules or Regulations for implementing the above Constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employments outside this Constitutional Scheme and without following the recruitments set down therein.

11. 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.

12. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of

Punjab Vs. Jagdip Singh and Others, . It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status.

12. Reliance on a Division Bench judgment of this Court in Sangeeta Srivastava (Dr) (supra) is misplaced and is of no help to the petitioner for the reason that the facts of that case are different to the present case. In that case Dr. Sangeeta Srivastava was appointed as per statute of the University as Lecturer on ad hoc basis and she had been working for 12 years continuously on that post and taking into consideration other factors also she was found entitled to regularization. In the present case the petitioner was not appointed on any cadre post on ad hoc basis after following the prescribed procedure for such appointment, hence the above ruling does not render any help to him. Admittedly, his appointment as guest lecturer was made without adopting the process of selection and as such, he has got no claim in view of the ruling of the Apex Court in the case of Uma Devi (supra), which is squarely applicable in the facts of the present case. In para 45 of the judgment the Hon''ble Apex Court held as under:

45. 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.

Thus, any appointment made in violation of prescription of law and Constitution does not confer any right to the post upon such appointee on the strength of appointment made in violation of law.

13. Learned Counsel for the petitioner, however, relying on the observation made by the Hon''ble Apex Court in the case of Uma Devi (supra) submitted that the petitioner has been working for the last several years and thus, the respondents may be directed to take steps to regularize as one time measure, the services of all such appointees, as have been working in IERT for a long period.

14. We are not impressed with the submissions. In para 44 of the judgment in the case of Uma Devi (supra) the Hon''ble Apex Court observed that there may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without intervention of the orders of the Courts or of Tribunals. The regularization of such employee may be considered on merit in the light of the principles settled by the Hon''ble Apex Court as one time measure. Admittedly, in the instant case the petitioner was, for the first time, engaged in the month of July, 2000 for one session and he has not completed continuous service of ten years and, therefore, he cannot claim any benefit or advantage out of the above observations. Besides that the exception carved out by the Hon''ble Apex Court is confined to the case where

the appointments are irregular and not illegal. Where the appointment is made in total disregard of the constitutional scheme and also the recruitment rules, it would be illegal but where substantial compliance of the constitutional scheme as well as of the rules is made, the appointment may be irregular in the sense that some provision or some rule might not have been strictly adhered to. Reference may be made to the judgment in the case of State of M.P. and Others Vs. Lalit Kumar Verma,

15. As noticed above, in the case in hand, no material has been placed before us showing that the applications were invited by open advertisement in the newspaper; hence it is in violation of the Constitutional scheme. Thus, this being the position and also in the absence of any provision for regularization, no such direction can be given. As per Regulation 1996, 75% posts of lecturer are to be filled by direct recruitment through the selection committee constituted as per law, and 25% by promotion through selection amongst substantively appointed Instructor (Engineer) and Assistant Lecturer of the concerned discipline, who have completed 15 years of continuous service. No provision of the Regulation nor any statutory provision is brought to our notice whereunder the petitioner could have been considered for regularization by the respondents. The Constitution Bench of the Hon"ble Apex Court in the case of Uma Devi (supra) in para 40 of the judgment observed as under:

40. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

16. Thus, in the absence of any legal right of the petitioner to claim regularization and also in view of the exposition of law made by the Constitution Bench of the Apex Court in the case of Uma Devi (supra), we are of the view that the relief sought in this petition cannot be granted. However, looking to the facts of the case, it is hereby provided that if the respondents decide to make fresh advertisement for filling up the post, and if the petitioner also applies in

pursuance thereof, his candidature may also be considered by the respondents along with other candidates provided he fulfills the requisite qualification and the criteria laid down by the respondents.

17. With the above observations this petition stands dismissed. There shall be no order as to costs.