
(2006) 05 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7021 of 2006

Dr. Sandeep and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16(1)

Citation : (2006) 143 PLR 484

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Advocate : R.K. Malik, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The prayer made by the petitioners is for issuance of a writ in She nature of certiorari for quashing the condition restricting their tenure to a period of three years by the appointment letter dated 8.6.2003 (Annexure P.2). It is appropriate to mention that respondent No. 1 issued an advertisement through Haryana Public Service Commission being advertisement No. 8 for filling up the tenure posts of Senior Resident and Demonstrator, Class I! for a fixed, period of three years at PGIMS (Denial College), Rohtak. The petitioners were selected and appointed for a period of three years and accordingly appointment letter was issued on 8.6.2003 (Annexure P.2). In the appointment letter Clause 2 specifically provided as under:

This post is for a tenure of three years only subject to your medical fitness and in anticipation of verification of your character antecedents (to be got verified afterwards).

2. It is further pointed out that in 2004 again the tenure posts were advertised in the same manner and some candidates were selected and appointed who joined in July, 2004. A similar condition for three years" tenure has been incorporated in their letters of appointment as well. It is suggested that those who have joined

later would continue after the petitioner have left. The petitioners have filed representation with the prayer that they may be allowed to continue till regular recruitment is made,

3. Mr. R.K. Malik, learned Counsel for the petitioner has argued that once appointment has been made through proper channel then such like condition restricting the tenure to three years cannot be incorporated in the appointment letter. According to the learned Counsel such a condition would be unconstitutional as has been held by two Division Benches of this Court in the cases of *Polu Ram v. State of Haryana* 1998(4) R.S.J. 152 and *Surinder Kumar and Ors. v. State of Haryana and Ors.* 2000(3) R.S.J. 499. Learned Counsel has insisted that the petitioners be permitted to continue till the appointment is made on regular basis because permitting the petitioner to continue only for three years would result into unconscionable and inequitable results as the persons who were appointed in 2004 would be permitted to continue who are junior to the petitioners. The learned Counsel has maintained that it would result into exploitation by the respondents.

4. Having heard the learned Counsel at a considerable length we are of the view that this petition is liable to be dismissed. A Constitution Bench judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, has held that once an appointment has been made on contractual basis for a fixed period then no interim directions could be issued by extending the tenure beyond the period prescribed. It is admitted position that the post of Demonstrator was advertised only for a fixed tenure of three years although the appointment has been made through the Haryana Public Service Commission. The fact remains that advertisement dated 8.6.2003 was for three years and appropriate condition was incorporated in the appointment letter. The petitioners were fully aware that they were being appointed for a period of three years and cannot make a grouse that restricting their tenure to three years is violative of Articles 14 and 16(1) of the Constitution and it should be extended till such time a regular appointment is made. It is well known that when a post is advertised for a restricted period of three years large number of persons from distant areas may not apply and wait for advertisement of regular vacancies. Such appointment cannot be considered to be made in accordance with rules or the constitutional scheme envisaged by Articles 14 and 16(1) of the Constitution which is now held to be the basic structure of the Constitution.

5. In para 52 of the judgment it has been noticed by their Lordships that such like employees approach the Courts for issuance of directions to the employer either to absorb them in service permanently or to allow them to continue. A prohibition has been engrafted in para 52 by citing the judgments of the Supreme Court in the case of *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, restraining the Courts from issuing any interim order because no legal right for directing the continuation of such like employees would come to vest which could be enforced by issuing a writ of mandamus. In para 54

of the judgment it has also been clarified that those decisions which run counter to the principle settled in that case or in which, directions counter to what has been held were to stand denuded of their status as precedents.

6. In view of the above, we, regret our inability to accept the principles laid down by the two Division Benches of this Court in the cases of Polu Ram (supra) and Surinder Kumar (Supra). In both the judgments, the condition restricting the tenure of the employee have been declared as ultra vires of the Constitution which cannot now be done in view of the judgment of the Supreme Court in the case of Umadevi (supra). Even otherwise, the law declared by the Supreme Court is binding on all the Courts and authorities under Article 142 of the Constitution.

7. In view of the above, the writ petition fails and the same is dismissed.