
(2008) 08 OHC CK 0046

In the Orissa High Court

Dr. (Smt.) Urmimala Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 106 CLT 891

Hon'ble Judges : B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This appeal has been filed by the appellant against the judgment and order dated 10.4.2001 passed by the learned Single Judge by which the writ petition of the appellant to provide the benefit of, grant-in-aid scheme to her after completion of three years from the date of sanction of the post has been rejected.

In fact appellant claims the benefit from the date one year before the date the institution, where appellant is serving, itself has been granted the benefit of the grant-in-aid scheme.

2. The facts and circumstances giving rise to the case are that one Indira Gandhi Women's College was established in the year 1978. It was duly recognized by the State Government from the academic session 1979-80 and got affiliation with Utkal University in the year 1983-84 academic session. Earlier, there had been only one post of Oriya Lecturer, the second post in the said subject was created on 1.12.1984 by the resolution of the Government Body of the college. The State Government took a policy decision in 1985 that non-Government Women's Colleges would be entitled to receive the grant-in-aid benefit after 3, 5 and 7 years at the rate of 1/3rd, 2/3rd and full salary respectively for their admissible staff. As the first post of Oriya language became vacant in 1986, one Smt. Basabadutta Pattnaik working in the second post was adjusted on the first

post and appellant- petitioner was appointed against the second post vide letter dated 27.2.1986, and she joined the service on 1.3.1986. The institution came under the Scheme of grant-in-aid w.e.f. 1.6.1988. Appellant claims that her appointment to the post of Lecturer in Oriya language was approved by the Governing Body of the College vide resolution dated 27.6.1991. with effect from 1.3.1986 i.e. the date of her joining in service.

3. Appellant's grievance is that vide order dated 11.3.1997 she had been given the benefit of grant-in-aid with effect from 1.6.1990 though she ought to have been given the said benefit on completion of three years from the date of sanction i.e. with effect from 1.6.1987 as the post stood created with effect from 1.6.1984. As the relief was not granted to her she filed the writ petition merely on the ground that normally in all other Women's colleges this has been the procedure. Therefore, she is entitled to get the grant-in-aid from 1.6.1987.

Learned Single Judge by his well discussed judgment rejected appellant's claim on the ground that the benefit of grant-in-aid scheme for the first post in Oriya language had been granted in the similar manner and neither the institution nor the occupant of the post had ever raised any grievance in this regard, thus, no relief can be granted to the appellant-petitioner. Hence this appeal.

5. Sri P. Acharya, learned Counsel appearing for the appellant has reiterated all the submissions which had been advanced before the learned Single Judge; case of the petitioner is not to be examined in the light as how the benefit of the scheme was granted in respect of the first post. It is to be examined in view of the practice prevailing for grant-in-aid principle for women's colleges and as in all women's colleges it had been granted on expiry of three years from the date of sanction of the post, the appellant is entitled to get the benefit thereof with effect from 1.6.1987 and the appeal deserved to be allowed.

5. Learned Standing Counsel appearing for the Respondent-State has vehemently opposed the appeal contending that the matter has to be decided on the basis of statutory provisions and not on the basis of prevailing practice for the reason that practice may be in contravention of statutory provisions.

6. More so, the appellant-petitioner could not be granted that benefit for the reason that she had not acquired any right to the post on 1.6.1987 as she did not hold the post in substantive capacity at all. In case the institution came under the grant-in-aid scheme w.e.f. 1.6.1988, the appellant cannot claim the benefit of scheme w.e.f. 1.6.1987, as the benefit of the scheme was not made available to the said institution on that date. Appeal is devoid of any merit and is liable to be dismissed.

We have considered the rival contentions made by the learned Counsel for the parties and perused the record.

7. There is nothing on record to show that the petitioner had been appointed against the second post by following the procedure under any law i.e. by making

an advertisement and inviting applications for the post. She was appointed by the Governing Body of the institution. Her appointment letter dated 27.2.1986 reads as under:

You have been selected as a lecturer in - Oriya on a consolidated pay of Rs. 400/- (Rupees Four Hundred only) per month. The post is purely temporary and can be terminated at any time without any notice. No traveling allowance is allowed for joining the post.

8. In pursuance to the said appointment letter, she claims to have joined the post on 1.3.1986. The institution came into grant-in-aid scheme w.e.f. 1.6.1988. The Governing Body of the institution passed a resolution approving her post and appointment as is evident from the letter dated 27.6.1991. The relevant part of the letter reads as under:

I am directed to say that the matter relating to the subject of approval of post and appointments of lecturers of the College was discussed in the meeting held on 7.11.90 and after careful consideration the Governing Body of the College has been pleased to approve your post and appointment as a lecturer in Oriya from 1.3.86, the date of your joining in service in this College.

9. Learned Counsel for the appellant-petitioner was confronted with fact situation that there is nothing on record to show that the petitioner had been appointed by issuing any advertisement and holding selection in accordance with law. More so, she had been appointed purely on temporary basis and was liable to be terminated any time without notice. Under what provisions, her appointment could be approved and she could claim to hold the post substantively w.e.f. 1.3.1986. Learned Counsel submitted that relief sought was only against the State, therefore the aforesaid issues are neither relevant nor worth consideration.

10. Public exchequer is not a bounty that appellant can stalk her claim to it. Appellant, by disclosing and proving all material facts has to establish that in law, she is entitled for the relief sought. The questions so raised are very much relevant to determine appellant's entitlement to get benefit of grant-in-aid scheme even prior to the date, the institution was granted benefit thereof.

11. Appellant petitioner was holding the post temporarily and her services were not governed by any statutory Rules. Admittedly, an employee appointed on temporary basis, is not governed by any service Rules and he is bound by the terms and conditions incorporated in the appointment letter and he does not have any right to hold the post.

12. In State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , the Apex Court categorically held as under:

Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service.

13. In a case like the instant, the Court has to be satisfied about the legally justiciable right of the employee which has been infringed, for which he could resort to the discretionary relief under Article 226 of the Constitution of India. The Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, has held that "A person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier" and further held that "a Government servant holding a post temporarily does not have any right to hold the said post."

14. Similarly, in *Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another*, ; *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, ; *Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others*, ; *Triveni Shankar Saxena Vs. State of U.P. and others*, ; *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, ; *Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others*, ; *Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another*, ; *Ram Chandra Tripathi Vs. U.P. Public Services Tribunal IV and Others*, ; *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, ; *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others*, ; *State of U.P. and Others Vs. Dr. Deep Narain Tripathi and Others*, ; *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others*, ; *Union of India (UOI) and Others Vs. Harish Balkrishna Mahajan*, ; *Punjab State Electricity Board and Another Vs. Baldev Singh*, ; *Chandra Deo Gautam Vs. State of U.P. and Others*, ; *Nazira Begum Lashkar and Ors. v. State of Assam AIR 2001 SC 102; 2001 (2) AWC 1291 (SC)*; *Union of India (UOI) and Others Vs. A.P. Bajpai and Others*, ; *Dhananjay Vs. Chief Executive Officer, Zila Parishad, Jalna*, ; and *Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan*, ; the Apex Court has categorically held that incumbent to a post who has been given appointment on temporary basis, terminable without notice, has no right to hold the post and he is not entitled for any opportunity of hearing before his services are dispensed with as his termination does not amount to forfeiture of any legal right. Under such circumstances continuation for a long time in office does not crystallize into any enforceable right nor such an employee can claim any lien over the said post unless he stands.

15. In *Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni*, , the Apex Court explained the difference of a permanent employee and an employee holding the post on probation and held that the services of a probationer cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. "This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that post becomes entitled to have lien on that post."

16. In *State of Punjab and others Vs. Surinder Kumar and others*, , the Apex

Court has held that the court must seek the adherence to the said terms and conditions of the appointment and there is no reason why terms and conditions incorporated in the appointment letter cannot be enforced in a contract of service.

17. In *Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others*, , the Apex Court held that where the rules specifically provide for permanent appointment on probation for a specific period and an employee is appointed without stipulating any condition regarding probation, the inference is to be drawn that he was not appointed in substantive capacity.

18. A temporary or ad hoc appointment does not confer any legal right. Such an appointee cannot claim equity in his favour, nor the equitable relief can be granted to him by the Court even if he had worked for an unusual long period, on humanitarian considerations. A person holding a temporary/ad hoc post is not a member of service in accordance with the statutory Rules and, therefore, cannot have any vested right in the post. The only relief/protection an ad hoc appointee can claim in law is that he should not be replaced by another ad hoc employee. Vide *P.D. Aggarwal and Others Vs. State of U.P. and Others*, ; *Dr. A.K. Jain v. Union of India and Ors.* 1987 Supp see 497; *Rajbinder v. State of Punjab and Ors.* 1988 Supp see 428; *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, ; *State of U.P. and Another Vs. Dr. S.K. Sinha and Others*, and *State of Haryana and others Vs. Piara Singh and others etc. etc.*, .

20. Therefore, the law on the issue can be summarised that an ad hoc appointment means a stop gap arrangement. The appointment is defeasible, and thus, incapable of creating any legal right in favour of the appointee for the reason that such an appointment is made in public interest considering the administrative necessity, temporarily, or to meet a temporary necessity for a specific purpose. An ad hoc appointee cannot have any grievance whatsoever as he is not deprived of any right or vested interest in the post. He cannot claim to be a member of the service in accordance with the rules. The only protection law gives to an ad hoc appointee is, not to be replaced by another ad hoc appointee and he has to make room for a regular appointee whenever he comes to join.

20. In the instant case, the following facts remain undisputed.

(i) There is nothing on record to show that the appellant-petitioner had ever been appointed by issuing advertisement and inviting applications.

(ii) Appellant-petitioner had been appointed purely on temporary basis on a consolidated salary of Rs. 400/- per month, w.e.f. 1.3.1986 and her services were liable to be terminated any time without any notice.

(iii) The appellant continued working under the said appointment letter and carried on the same status of temporary employee without having any right in the post.

(iv) The sanctity of the said resolution of the Governing Body according approval of her appointment communicated vide letter dated 27.6.1991 is very much

doubtful.

(v) Appellant had never been appointed on probation.

(vi) No order of confirmation of her services had ever been passed.

(vii) The Institution came under the benefit of the Grant-in- Aid Scheme w.e.f. 1.6.1988.

21. In the aforesaid backdrop, as the appellant-petitioner was not holding the post in substantive capacity, and the benefit of the grant-in-aid scheme was made available to the institution w.e.f. 1.6.1988, appellant could not be given the said benefit w.e.f. 1.6.1987.

We find no force in the submission canvassed before us on behalf of the appellant that once appellant stood regularised w.e.f. 1.3.1986, i.e. from the date of initial appointment by the resolution of the Governing Body of the college, she was holding the post in substantive capacity.

There is distinction in regularisation and confirmation. As regularisation means removing the irregularities in making the appointment while the confirmation means giving right to the post.

22. In *State of Mysore and Another Vs. S.V. Narayanappa*, the Hon"ble Supreme Court has held that regularisation does not mean permanence and if a person has been regularised, that does not mean that he is to be considered as a permanent employee.

23. In *B.N. Nagarajan and Ors. v. State of Karnataka and Ors.* AIR 1973 SC 1676, the Hon"ble Supreme Court held that if a person has been appointed on a regular basis, it does not mean that it gives a colour of permanence, nor it can be presumed that the person has been appointed substantively. The words "regular" or "regularisation" do not connote "permanence". They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments and cannot be construed so as to convey an idea of the nature of tenure of appointments.

24. Similar view has been reiterated in *R.S. Garg Vs. State of U.P. and Others*, ; *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, ; and *Hindustan Petroleum Corporation Ltd. v. Ashok Ranghba Ambre* 2008 AIR SCW 647.

25. In view of the above, appellant-petitioner cannot be given the benefit claimed by her. The appeal is devoid of any merit and is accordingly dismissed. No costs.

B.N. Mahapatra, J.

I agree.