
(2009) 02 CAL CK 0042
In the Calcutta High Court
Case No : C.A.J. (A.S) F.M.A. No. 2452 of 2004

Gopal Chandra Kundu and Another	Vs	APPELLANT
State Bank of India and Others		RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 121 FLR 683 : (2009) 3 LLJ 419

Hon'ble Judges : Debiprasad Sengupta, J; Debasish Kar Gupta, J

Bench : Division Bench

Advocate : Gopal Chandra Ghosh, Om Narayan Rai and Ashutosh Pal, for the Appellant; A.K. Routh and S. Pal Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Debi Prasad Sengupta, J.—This appeal is directed against the judgment and order dated July 10, 2003 in C.O. No. 15974 (W) of 1995 passed by the learned single Judge of this Court.

2. The writ petitioners/appellants were appointed on contract basis as Temporary Site Engineers on a consolidated salary of Rs. 2,000/- per month without any other allowance and any other benefit. The writ petition was preferred before this Court praying for a direction upon the respondent authorities for regularizing their services. The writ petition was dismissed and hence, the present appeal.

3. Admittedly, the writ petitioners appellants were appointed on contract basis and an agreement was also executed between the bank and the writ petitioners for such appointment. The learned advocate appearing for the appellants refers to the advertisement inviting applications for appointment in the said post of Temporary Site Engineers. In the said advertisement it was specifically mentioned that such appointment was purely temporary for a period of one year. From the appointment letter appearing at page 34 of the paper book, it appears that it was specifically mentioned therein that such appointment was for a period

of one year and would automatically stand terminated on the expiry of the said period. It was also made clear in the appointment letter that such appointment was strictly restricted to a particular period and the candidate would not have any claim for permanent appointment in the bank. The main question, which fell for consideration before the learned single Judge, was whether the writ petitioners, whose appointment was a contractual appointment for a limited period of one year, can claim absorption/regularization in regular services of the bank.

4. It is the contention of the learned advocate appearing for the appellants that the writ petitioners/appellants worked as Temporary Site Engineers for a long period and although such appointment was initially given for a limited period of one year, this was time to time extended by the bank authority and as such, they are entitled to be regularized in the regular services of the bank. The learned advocate appearing for the appellants submits that the nature of service was perennial in nature. The writ petitioners were primarily appointed to work under the instructions of architects for day-to-day supervision of the project work according to the specification and they were also required to keep a constant check on quality of workmanship of all the items of work. They discharged their duties for a long period to the satisfaction of the bank authority and accordingly, they are entitled to be regularized/absorbed in the services of the bank.

5. It is the contention of the learned advocate of the appellants that finding of fact of the learned Trial Judge was erroneous and there was non-consideration of the Apex Court's judgment. But we are unable to accept such contention as we find that no judgment of the Apex Court was placed before the learned single Judge when the writ petition was moved before this Court. So far as finding of fact is concerned, we do not find any merit in such submission. The learned advocate relies upon a judgment of the Hon'ble Apex Court Secretary, Secretary, State of Karnataka and Others Vs. Umadevi and Others, Relying upon paragraph 53 of the said judgment, it is submitted by the learned advocate of the appellants that the concerned authority should be directed to take steps to regularize services of the writ petitioners/appellants, who worked for ten years or more in the post of Temporary Site Engineers. It is the contention of the learned advocate of the appellants that keeping in view the verdict of the Constitutional Bench in the case of Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra), the respondent authorities are duty-bound to consider the case of the writ petitioners appellants for regularization of their services.

6. The learned advocate of the appellants also relies upon a judgment of the Hon'ble Apex Court Mineral Exploration Corporation Employees' Union Vs. Mineral Exploration Corporation Limited and Another, and he refers to paragraph 17 of the said judgment, which is as follows at p. 487 of LLJ:

77. It is seen from the above paragraph that this Court directed the Union of India, the State Governments and their instrumentalities to regularise as a one-time measure, the services of such irregularly appointed workmen, who have

worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.

7. From a reading of the said judgment it appears that the Hon''ble Apex Court took into consideration paragraph 53 of the judgment in the case of Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra) wherein the Hon''ble Apex Court directed the respondent authorities to regularise as "one time measure" the services of workmen who worked for 10 years or more in duly sanctioned posts. But in the present case contractual appointments were given to the writ petitioners/appellants and such appointments were not against any sanctioned post.

8. It is submitted by the learned advocate of the appellants that long and uninterrupted service given by the writ petitioners/appellants has created a "legitimate expectation" that their services would be regularized in future. But we are unable to accept such contention because we are of the view that a person cannot invoke the theory of "legitimate expectation" for being confirmed in a post when such appointment to the post was purely on temporary basis and contractual without following the proper procedure of selection. In the case of Secretary, Secretary, State of Karnataka and Others Vs. Umadevi and Others, :

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

In paragraph 45 of the judgment of the Hon''ble Apex Court in the case of Secretary, Secretary, State of Karnataka and Others Vs. Umadevi and Others,

36. While directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the

employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.

9. The Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra) was of the view that acting under Article 226 of the Constitution of India, the Court should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made in terms of the constitutional scheme.

10. As we have discussed above, in the case of Secretary, State of Karnataka and Ors. v. Uma Devi and Ors. (supra), the Hon'ble Supreme Court having considered various judgments of the Hon'ble Supreme Court as also other High Courts observed that appointments made without following due process or the rules for appointment do not confer any right on the appointees and that the Court cannot direct their absorption, regularization reengagement or making them permanent.

11. In view of the discussion made above, we do not find any merit in the submission made by the learned advocate of the appellants. We are of the view that when the initial appointment of the writ petitioners/appellants was contractual one and for a limited period of one year, they cannot claim absorption and/or regularization of their services in the bank. Their continuance in such contractual service does not confer any right upon them to claim absorption or regularization.

12. The appeal is accordingly dismissed. There will be no order as to costs. Urgent Xerox certified copy of this judgment and order may be supplied to the learned advocates of the respective parties, if the same is applied for.