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(2008) 09 J&K CK 0009

In the Jammu And Kashmir High Court

Joginder Kour — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2009) 2 JKJ 198

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—It is not dispute that the petitioner was appointed as a Lower Division Clerk on ad hoc basis on 16.6.1980 in Central

Water Commission under Chanab Investigation Circle, Jammu. She was required to clear the test to be conducted by the Staff Selection

Commission, New Delhi, which she could not qualify, so her service were terminated vide Order No. CIC/PF-326/80/3253-57 dated 1.12.1986

issued by the Superintendent Engineering, Chenab Investigation Circle, CWC, Jammu. She made a representation to the Chairman, CWC, New

Delhi praying for her continuation. Accordingly, her case was referred to Ministry of Water Resources, New Delhi and, in the meanwhile, the

Superintending Engineer, Chenab Investigation Circle. Jammu was instructed to restore her services to the original position. Consequently, she was

again put in the position of ad hoc Lower Division Clerk. However, vide letter No. A-12026/1/76 Estt. VII dated 29.7.1988 her case for

regularization was not accepted by the DOPT, New Delhi and, instead, the Superintending Engineer, Chenab Investigation Circle, CWC, Jammu

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was directed to rehabilitate her in an equivalent post in work charged establishment. Accordingly, the services of petitioner as adhoc Lower

Division Clerk were terminated vide Order No. CIC/PF/326/80/2115-54 dated 4.8.1988.

2. After the said termination of services, the petitioner was re-engaged as Work Assistant (Work-Sarkar Grade-II) on adhoc basis under work

charged establishment on 59 days basis vide order dated 3.10.1988. Thereafter, she continued to serve for different spells of 59 days with a break

of one day.

3. For seeking regularization of her services, the petitioner filed SWP No. 1067/96 in this Court, which was disposed of on 17.7.2000 in the

following manner:

This petition is disposed of with a direction that respondents would treat |the writ petition as a notice of demand. They would take notice of the

alcove position of law and pass such order as is permissible under law. Let this be done within a period of three months from the date copy of

order passed by this Court is made available by the petitioners to the respondents and also their Counsel. Petitioner shall also make available copy

of judgment referred to above to the respondents.

4. Pursuant to the said direction, the respondents accorded consideration to the case of petitioner for regularization of her services and vide order

dated 17.10.2000 rejected the same for the following reasons:

a) The post of work sarkar gr. II against which Smt. Joginder Kour was working adhoc work sarkar Gr. II on 59 days basis is a 100%

promotional cadre post and she cannot be regularized against the same post as per work charged recruitment rules.

b) Smt. Joginder Kour cannot be appointed in any other similar post under work charged established post as she is age barred and the age limit for

direct recruitment is 30 years, whereas Smt. Joginder Kour is more than 44 years of age.

c) As per Govt, of India order vide CWC letter No. 1/57/91-EXII dated 22.04.94, there is complete ban for recruitment of work charged staff.

5. Being aggrieved of her rejection order, the petitioner has filed the instant writ petition for seeking a direction to the respondents for regularization

of her services and quashment of rejection order dated 17.10.2000; with a

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further prayer for prohibiting the respondents from terminating her

services.

6. The stand of respondents as disclosed in their reply is as follows:

In reply to paras 9, 10 and 11, it is clarified that there was no vacant post in work charged establishment to accommodate the petitioner.

However, as a special case she was given appointment on ad-hoc basis as Work Assistant, which post was re-designated as Work Sarkar Gr. -

II in April, 1988 itself. The post of Work Sarkar Gr -II is required to be filled up 100% by promotion from Work Sarkar Gr. III. However, due to

non-availability of post, non-fulfilling of the eligibility Criteria and reduction in the. establishment under 10% cut as per Govt. Policy, the petitioner

could not be regularized on any post. The contention of the petitioner that she continues to be in service till date is totally incorrect and misleading,

since her services stood terminated w.e.f. 26.07.2000.

7. From the above reply two things are manifest; one, that the services of petitioner stand already terminated with effect from 26.7.2000 and,

second, the post on which the petitioner was working on adhoc basis is a post which can be filled up 100% by promotion from amongst the

incumbents holding the post of Work Sarkar Grade-Ill. In such a situation the question arising for consideration is whether the petitioner possesses

any right for regularization on the ground that she has been holding the post on adhoc basis for a period of about two years.

8. In Secretary, State of Karnataka and Others Vs. Umadevi and Others, , a Learned Constitution Bench of the Supreme Court held as follows:

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the

core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the

overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the

scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual

appointment, the appointment comes to an end at the end of the contract, if it

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were an engagement or appointment on daily wages or casual basis,

the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of

his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time

beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such

continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to

the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc

employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution,

should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in

terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as

litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In

fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found

entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim

direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee

who is really not required. The Court must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by

the State or its instrumentalities or lend themselves the instruments to facilitate the by passing of the constitutional and statutory mandates.

9. In view of the above observations, the petitioner's claim for regularization would be unsustainable. However, Mr. Abrol, Learned Counsel for

petitioner argues that the ratio of Uma Devi's judgment has been explained by a two Judge Bench of Hon'ble Supreme Court in UP State

Electricity Board v. Pooran Chandra Pandey 2007 (II) SLJ 491, in which their Lordship after noticing Uma Devi's case and other cases including

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the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , observed as follows:

18. We may further point out that a seven-Judge Bench decision of this Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ,

has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable

and non-arbitrary manner otherwise Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary

manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi's case (supra) is a decision of seven Judge Bench, whereas

Uma Devi's case (supra) is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger

Bench decision of the Court. No doubt, Maneka Gandhi's case (supra) does not specifically deal with the question of regularization of Government

employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

On the strength of above observations, Mr. Abrol states that since the petitioner has rendered more than 20 years of adhoc service, as such is

entitled to regularization.

I am not in agreement with Mr. Abrol. The above authority would have not application to the present case. Firstly, the petitioner had not been

holding the same post, may be on ad hoc basis, for the entire spell of 20 years. Her service were terminated on 4.8.1988 and, thereafter, was re-

employed under work charged arrangement with effect from 3.10.1988. Secondly, under the relevant rules the post on which the petitioner was

working could not be filled up by direct recruitment. The post can only be filled up by promotion from amongst the incumbents holding the post of

Work Sarkar Grade - III. Since the direct recruitment is not permissible on the said post, the regularization of adhoc employee would not be

permissible.

In view of the above, there is no merit in the writ petition and the same is, accordingly, dismissed. Interim direction, if any, shall stand vacated.

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