
(2015) 11 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : LPA Nos. 282 and 303 of 2010

Lal Singh and Others

APPELLANT

Vs

H.P. State Co-operative Milk Producers Federation Limited
and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 11 SHI CK 0033

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Subhash Sharma, Advocate, for the Appellant; M.R. Verma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Both these appeals are outcome of one judgment, thus, are being determined by this common judgment.

2. These Letters Patent Appeals are directed against the judgment and order, dated 25.10.2010, made by the learned Single Judge in CWP (T) No. 12255 of 2008, titled as Lal Singh versus H.P. State Cooperative Milk Producers" Federation Ltd., and CWP No. 217 of 2010, titled as Dhani Ram versus State of H.P. and others, whereby the writ petitions filed by both the writ petitioners came to be dismissed (for short "the impugned judgment").

Brief facts:

3. Appellant-Lal Singh, who was working as Dairy Helper in the H.P. State Cooperative Milk Producers" Federation Limited (for short "the Federation"), was appointed on ad hoc basis as Milk Procurement Assistant in terms of order, dated 31.05.2004 (Annexure A-1 in CWP (T) No. 12255 of 2008), which was withdrawn

vide order, dated 27.07.2005 (Annexure A-2 in CWP (T) No. 12255 of 2008), constraining appellant-Lal Singh to invoke the jurisdiction of the H.P. State Administrative Tribunal (for short "the Tribunal") by the medium of Original Application No. 1953 of 2005.

4. Learned counsel for the appellant-Lal Singh made a request before the Tribunal that the Original Application be treated as representation, the Managing Director of the respondent-Federation be directed to examine and decide the same within six weeks and the order of withdrawal, dated 27.07.2005 be stayed. The said Original Application was disposed of, in terms of order, dated 10.08.2005 (Annexure A-3 in CWP (T) No. 12255 of 2008) and the Managing Director of the respondent-Federation was directed to examine and make a decision on the representation within six weeks from the date of receipt of the order, after hearing the appellant-Lal Singh and till the decision of the representation, the order, dated 27.07.2005, was kept under eclipse.

5. The representation was examined and rejected vide order, dated 27.09.2005 (Annexure A-4 in CWP (T) No. 12255 of 2008), constraining appellant-Lal Singh to question the same by the medium of Original Application No. 2493 of 2005.

6. By the medium of the said Original Application, appellant-Lal Singh has sought quashment of order, dated 27.09.2005 (Annexure A-4), but has not sought any relief vis-a-vis the withdrawal order, dated 27.07.2005 (Annexure A-2). The respondent-Federation resisted the same on the grounds taken in the memo of the reply.

7. During the pendency of the lis, the Tribunal was abolished and the file was transferred to this Court and was diarized as CWP (T) No. 12255 of 2008.

8. The learned Single Judge, after hearing the parties and perusing the record, dismissed the writ petition vide the impugned judgment.

9. It appears that during the pendency of the second petition, i.e. CWP (T) No. 12255 of 2008, one Dhani Ram filed a writ petition, being CWP No. 217 of 2010, with the prayers that he be appointed as Milk Procurement Assistant and the seniority list of the Milk Procurement Assistant be revised, on the grounds taken in the said writ petition, was resisted by the respondents, came to be dismissed in terms of the impugned judgment.

10. The case of the appellant-Lal Singh revolves around the orders of appointment and withdrawal, dated 31.05.2004 and 27.07.2005, respectively. Both the orders were not the subject matter of CWP (T) No. 12255 of 2008. However, it is apt to reproduce the relevant portions of both the orders herein:

"THE HP STATE COOPERATIVE MILK PRODUCERS FED. LTD. TOTU SHIMLA-11

NO. HMF/HQ-III/PER-361/98-975 Dated: 31.5.04

OFFICE ORDER

Shri Lal Singh-II Dairy Helper is hereby appointed as Milk Procurement Assistant in the pay scale of Rs. 4020-120-4260-140-4400-150-5000-160-5800-200-6200 with initial start of Rs. 4020/- plus allowances admissible to Milkfed Employees on Ad-hoc basis till the time the post is filled on regular basis and posted under Milk Chilling Centre Kepu with Head Quarter at Neither, Distt. Kullu. He will have no claim for seniority and other benefits during the period of Ad-hoc appointment."

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"THE HP STATE A COOPERATIVE MILK PRODUCERS" FEDERATION LTD. HEAD OFFICE: TOTU, SHIMLA-11

No : HMF/HQ-III/PER-361/98-1410 Dated: 27/7/2005.

OFFICE ORDER

Reference under this office order No. HMF/HQ-III/Per-361/98-975-78, dated: 31.5.2004.

The Ad-hoc appointment order as Milk Procurement Assistant in the pay scale of Rs. 4020-6200 ordered vide this office order referred to above is hereby withdrawn with immediate effect. However, consequent to withdrawal of this ad-hoc appointment, he will continue to work at his present place of posting."

11. Appellant-Lal Singh has laid the foundation of his case on the basis of so called appointment order. It appears that he was working as Dairy Helper and by the so called appointment order, was allowed to work against the post of Milk Procurement Assistant. Virtually, his appointment was conditional to the effect that he had to work against the said post on ad hoc basis till the same was to be filled up on regular basis. The said order also contained a rider clause that he would not claim any seniority or other benefits. He accepted the said order without any murmur. This order was withdrawn and he was directed to work against the post of Dairy Helper.

12. It appears that the appointment of appellant-Lal Singh was made only on ad hoc basis, that too, without following the due process. He continued to work on the said post because of such order and thereafter, had obtained stay order from the Tribunal.

13. The question is - whether such appointment will confer any right upon him? The answer is in the negative for the following reasons:

14. Appellant-Lal Singh accepted the terms and conditions contained in the office order, dated 31.05.2004 (supra), which was temporary in nature and had to lose its efficacy on the date when the regular appointment was to be made against the said post. He also accepted the condition that he will not claim any seniority or any other benefits. Then how can he claim regularization in terms of the said

ad hoc arrangement.

15. The Apex Court, in a series of cases, has considered the question as to whether ad hoc appointment/temporary arrangement/stop gap arrangement will create any right, title, equity or interest.

16. The Apex Court in a case titled as Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , held that a person, who was appointed on ad hoc basis or without following the due process, cannot claim any right for his regularization. It is apt to reproduce paras 22 and 23 of the judgment herein:

"22. In dealing with this, at page 577 (of 1990 (1) Supp SCR 562) : (at p. 2238 of AIR 1990 SC 2228), the Court observed:

"If any person who does not possess the requisite qualifications is appointed under the said clause, he will be liable to be replaced by a qualified person. Clause (iii) of Rule 9 states that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (e) of Rule 9, however, provided for regularisation of service of any person appointed under clause (1) of sub-rule (a) if he had completed continuous service of two years on December 22, 1973, notwithstanding anything contained in the rules. This is a clear indication that in the past the Government also considered it Just and fair to regularise the services of those who had been in continuous service for two years" period to the cut-off date. The spirit underlying this treatment clearly shows that the Government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years" period to the cut-off date. "This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised."

23. In the instant case, there is no such rule. The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period

of six months, the right to remain in the post comes to an end."

17. The Apex Court in another case titled as State of Karnataka and Others Vs. P.M. Bhaskara Gowda and Others, , laid down the same principle.

18. In the cases titled as Chief Commissioner of Income Tax, Bhopal and Others Vs. Leena Jain and Others, , Accounts Officer (A and I) APSRTC and Others Vs. K.V. Ramana and Others, , and Rajasthan Krishi Vishva Vidhyalaya, Bikaner Vs. Devi Singh, , held that an employee cannot claim regularization merely on the basis of long rendition of service.

19. This question again arose for consideration before the Apex Court in the case titled as State of U.P. & Anr. versus Ram Adhar, reported in 2008 AIR SCW 5479, wherein it has been held that a person appointed in a temporary capacity has no right to continue till regular selection is made. It is apt to reproduce para 5 of the judgment herein:

"5. It may be mentioned that there is no principle of law that a person appointed in a temporary capacity has a right to continue till a regular selection. Rather, the legal position is just the reverse, that is, that a temporary employee has no right to the post vide State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, . Hence, he has no right to continue even for a day as of right, far from having a right to continue till a regular appointment."

20. We have laid down our hands on a judgment, which has arisen from the judgment rendered by a learned Single Judge of this Court in Ravinder Singh versus State of H.P. & ors., reported in 2006 Lab. I.C. 1409 . In terms of the said judgment, the learned Single Judge of this Court directed the State Government to consider the case of an employee, who was appointed on daily rated basis, for regularization, which came up for consideration before the Apex Court in the case titled as State of Himachal Pradesh and Another Vs. Ravinder Singh, and the judgment of this Court was set aside. It is profitable to reproduce paras 8 and 9 of the judgment herein:

"8. In addition it has to be noted that the Labour Court had observed that the name of the respondent claimant was not sponsored by the employment exchange; there was no appointment order; the requirements relating to procedure to be followed at the time of recruitment were also not fulfilled. There was a mere back-door entry. It was further noted that they were not selected in the manner as applicable to regular employees who are liable to be transferred and are subject to disciplinary proceedings to which daily-rated workers are not subjected to.

9. In the background of what has been stated above the directions given for regularization in the post of clerk being indefensible are set aside. However, undisputedly the appellants had regularized the services of the respondent as a Chowkidar in July, 1997 which the respondent had refused. If the respondent is so advised, he may accept the order in that regard by submitting the requisite

documents within six weeks from today. If not so done, the respondent shall not be entitled to any relief in terms of the High Courts impugned order which as noted above we have set aside."

21. The Apex Court in the cases titled as State of Karnataka & Ors. versus G.V. Chandrashekhar, reported in 2009 AIR SCW 2346 , and State of Orissa and Another Vs. Mamata Mohanty, , has held that continuation of a person wrongly appointed on the post does not create any right in his favour. It is worthwhile to reproduce paras 18 to 20 of the judgment in Mamata Mohanty's case (supra) herein:

"APPOINTMENT/EMPLOYMENT WITHOUT ADVERTISEMENT:

18. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, ; State of Haryana and others Vs. Piara Singh and others etc. etc., ; Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, ; Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others, ; Binod Kumar Gupta and Others Vs. Ram Ashray Mahoto and Others, ; National Fertilizers Ltd. and Others Vs. Somvir Singh, ; Telecom District Manager and Others Vs. Keshab Deb, ; State of Bihar Vs. Upendra Narayan Singh and Others, ; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214 : (Air 2009 SC 2892 : 2009 AIR SCW 4533).

19. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open

advertisement as to enable all eligible persons to compete on merit.

ORDER BAD IN INCEPTION:

20. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi Vs. State of Assam and Others, ; Mangal Prasad Tamoli (Dead) by Lrs. Vs. Narvedshwar Mishra (Dead) by Lrs. and Others, and Ritesh Tewari and Another Vs. State of U.P. and Others, . The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. (Vide Dr. M.S. Patil Vs. Gulbarga University and Others,)."

22. In the latest judgment in the case titled as Nand Kumar Vs. State of Bihar and Others, , the Apex Court held that an ad hoc appointee has no right to seek regularization. It is apt to reproduce paras 19, 20 and 23 of the judgment herein:

"19. Therefore, considering the facts of the present case, it appears to us that the appellants were never appointed through a proper procedure. It is not in dispute that they all served as daily wagers. Therefore, it was within their knowledge all the consequences of appointment being temporary, they cannot have even a right to invoke the theory of legitimate expectation for being confirmed in the post. Accordingly, we cannot accept the contention of the appellants in the matter. We have further considered the case of the appellants in the light of Section 6 of the Repeal Act which has made it clear that the employees of the Board and the appellants cannot be said to be of the same status and cannot enjoy the benefit given under Section 6(i) of the Repeal Act, 2006. Therefore, we are unable to accept the contention that the daily wagers would also come within the meaning of "all officers and employees" as specifically stated in Section 6 of the Repeal Act. In these circumstances, we are unable to accept the submission of learned senior counsel appearing on behalf of the appellants.

We have also considered the decision in State of Karnataka and Others Vs. M.L. Kesari and Others, of this Court which deals with the exception contained in para 53 of Umadevi (supra) but considering the facts of this case, we do not have any hesitation to hold that the said decisions can not be a help to the appellants.

20. We have heard learned counsel for the parties. We have also perused the records placed before us. We find that the status of the appellants was

continuing to be as daily wagers. They cannot be treated as permanent Government employees. They all worked as employees of the Board. We have also found that no steps were followed by the Board to safeguard the service of these appellants. We have not been able to find out whether any advertisement was issued by the Government to regularise them. In these circumstances, in view of the submission which has been advanced on behalf of the appellants, we do not find that there is any substance in the matter/arguments put forwarded before us on behalf of the appellants as we have been able to find out that the appellants have served as daily wagers and we do find that Section 6(i) makes it clear that after the repeal of the Agriculture Produce Act, 1960, all officers and employees of the Board are to continue in employment and they shall continue to be paid what they were getting earlier as salary and allowance till such time the State Government takes an official decision as per the further provisions of Section 6. Such provision certainly allows continuance of the officers and employees of the Board to continue in employment in the same status. The status of the daily wage employees and regular employees of the Board is eminent from the said provision. It cannot be said that the status of the daily wage employees can enjoy or acquire the same status as that of the regular employees. In these circumstances, we do not find that there was any discrimination between the daily wage employees and the regular employees as is tried to be contended before us. Therefore, such submission has no substance, in our opinion, for the reason that the difference continues and is recognised under the said provision of the Repeal Act. So far as the power of the Committee of Secretaries constituted in terms of section 6(ii) of the Repeal Act is concerned, it is to prepare a scheme of absorption as well as of retirement, compulsory retirement or voluntary retirement and other service conditions of officers and employees of the Board. In our opinion, the scheme which was prepared by the Committee of Secretaries is only in the nature of recommendation and the State has the power either to accept, modify or amend the same before granting its official approval. Therefore, after the sanction is granted by the Government in respect of the said scheme, it would gain the status of statutory scheme framed under the said Act and would be enforced within the time to be indicated in section 6(iii) of the Repeal Act, 2006.

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23. In these circumstances, in our considered opinion, the regularisation/absorption is not a matter of course. It would depend upon the facts of the case following the rules and regulations and cannot be de hors the rules for such regularisation/absorption."

23. The Apex Court in a case filed as I.C.A.R. and another Vs. T.K. Suryanarayan and others, , held that promotion, which is made de hors the Rules, cannot be a ground to claim any right or title. It is profitable to reproduce relevant portion of para 8 of the judgment herein:

"8..... Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective of 1st October, 1975 should not be adhered to because in some cases erroneous promotions had been given. The statutory Service Rules must be applied strictly in terms of the interpretation of Rules as indicated in the decision of Three Judges Bench of this Court in Khetra Mohan's case (1994 AIR SCW 4154)..... "

24. Mr. Subhash Sharma, learned counsel for the appellant-Lal Singh, argued that he was performing his duties continuously in terms of the interim directions right from the date of filing of the first Original Application No. 1953 of 2005, now cannot be deprived of the same.

25. The argument, though attractive, is devoid of any force for the reason that the Apex Court in a series of cases has held that the court orders cannot clothe any person with any right and he has no right to continue if he has been appointed without following due process of law.

26. The service jurisprudence provides that if a person/employee works on a post in terms of Court orders, that cannot be treated as appointment and can also not create any right, title or interest in his favour.

27. The Apex Court in the case titled as State of U.P. and Others Vs. Raj Karan Singh, , laid down the same principle. It would be profitable to reproduce para 2 of the judgment herein:

"2. Heard counsel on both sides. It appears that a division bench of the High court comprising V.N. Khare and S.K. Mookerji, JJ. had by their order dated 27/4/1989 directed that the ad hoc appointment of the respondent may continue till a regularly-selected candidate becomes available for appointment or till his services are terminated in accordance with law or the post is abolished. Under the said interim order, the respondent is continuing to function as an Assistant Lecturer (Civil Engineering) on ad hoc basis. By the impugned order dated 26/10/1994, another division bench of the High court has directed that since the respondent was retained in service beyond one year, he should be treated as on "regular service" and his services cannot be terminated without issuing any formal order. Thus the respondent was directed to be treated on regular service by the impugned order merely because by the earlier order of 27-4-1989, he was permitted to continue till a regularly-selected candidate was available. The original prayer of the respondent was for the issuance of a writ to allow him to

continue till regular selection through the UPSC is made. The impugned order of 26/10/1994, therefore, goes beyond the relief claimed by the respondent in the writ petition itself. Besides, merely because a person continues under the interim orders of the court, such continuance on the post cannot and, in this case, does not confer on him any right for continuance, it does not enhance his case for regularisation. It is only an interim arrangement pending decision by the court and cannot disturb the position in law or equities, as on the date of the petition."

(Emphasis added)

28. The same principle has been laid down in the judgment, the author of which is one of us (Justice Mansoor Ahmad Mir, Chief Justice), in the case titled as I.C.A.R. and another Vs. T.K. Suryanarayan and others, . It is apt to reproduce relevant portion of para 12 of the judgment herein:

"12..... It appears that the petitioner is working as teacher on the strength of court orders referred to hereinabove. Even if a person is continuing on a particular post, on the strength of court orders, to which he is not entitled to in terms of the recruitment rules, and has been made to work on the said post de hors the rules, he has no right to continue on the said post and his continuation will not create any right in him to seek regularization..... "

29. It is apt to record herein that the order of withdrawal, dated 27.07.2005, was questioned by appellant-Lal Singh in the first Original Application, was not quashed. He has not questioned the order of withdrawal, dated 27.07.2005 in the present lis, i.e. CWP (T) No. 12255 of 2008, but foundation of his case is based on the order of ad hoc appointment, dated 31.05.2004. On this count only, CWP (T) No. 12255 of 2008 was to be dismissed.

30. Even otherwise, in terms of the Rules occupying the field, appointment to the post of Milk Procurement Assistant was to be made by direct recruitment and was not to be filled up by promotion or any back door entry. Thus, the appointment of appellant-Lal Singh was illegal.

31. The writ petition filed by appellant-Dhani Ram, being CWP No. 217 of 2010, also came to be dismissed in terms of the impugned judgment.

32. Appellant-Dhani Ram, for the first time, came to the Court in the year 2010 by the medium of CWP No. 217 of 2010, has not raised any voice against the order of ad hoc appointment of appellant-Lal Singh made in the year 2004 in terms of order, dated 31.05.2004. Even, he has not joined the litigation before the Tribunal or before the Writ Court in the first round of litigation, rather, remained silent and came out of slumber in the year 2010, i.e. after six years.

33. However, be as it is, the case projected by appellant-Dhani Ram was that he was appointed as Dairy Helper on 05.12.1986, was working as such till the year 2005, had done his graduation from Indira Gandhi National Open University and was eligible for the post of Milk Procurement Assistant, but the person junior to him was appointed as such.

34. At the cost of repetition, it is worthwhile to record herein that he has not questioned the appointment of appellant-Lal Singh as Milk Procurement Assistant with effect from 31.05.2004 till the year 2010, when he filed the writ petition. Moreover, by the medium of CWP No. 217 of 2010, he has not laid any challenge to the appointment of appellant-Lal Singh as Milk Procurement Assistant, but has only prayed that he be appointed as Milk Procurement Assistant and the seniority list be revised.

35. As discussed hereinabove, the appointment to the post of Milk Procurement Assistant was to be made by direct recruitment and not by promotion.

36. Having said so, both the writ petitions rightly came to be dismissed in terms of the impugned judgment, needs no interference.

37. Viewed thus, the impugned judgment is upheld and both the appeals are dismissed alongwith all pending applications.