

(2017) 07 SIK CK 0011
In the Sikkim High Court
Case No : 42 of 2016

Mandeep Sunwar & Ors Vs State of Sikkim & Ors

Date of Decision : 15-07-2017

Acts Referred:

Citation : (2017) 07 SIK CK 0011

Hon'ble Judges : Satish K. Agnihotri

Bench : Single Bench

Advocate : A. Moulik, K. D. Bhutia, Ranjit Prasad, J. B. Pradhan, Santosh K. Chettri, Pollin Rai, Rita Sharma

Judgement

1. The petitioners, working as temporary employees in Group C and D category in the various departments of the State Government, have come up with this petition, seeking a direction to the respondent-State to regularise their services under the regular establishment from the date of initial appointment on muster roll basis and also consequential seniority.

2. The facts, in brief, as projected by the petitioners, are that the petitioners were initially appointed as muster roll employees in different departments of the Government of Sikkim. The petitioners possess requisite qualifications as required for the posts. The petitioners, thereafter, were appointed on temporary basis after completion of 10 (ten) years against the sanctioned posts created for the same vide Notification dated 22.02.2014 (Annexure R-4). Now, the petitioners are working as temporary employees. It is further stated that the petitioners have completed more than 10 to 15 years in service and have the requisite qualifications for the posts. Thus, the State Government may be directed to regularise them on completion of 10 (ten) years in service with effect from the initial date of appointment with consequential benefit.

3. Mr. A. Moulik, learned Senior Counsel appearing for the Petitioners, would contend that after sanction of the posts, the petitioners have been appointed on temporary basis. The State Government is in need of the petitioner's services as they are working against the sanctioned posts. Thus, the petitioners are entitled to be regularised on the posts as they possess the requisite qualifications.

Referring to Circular dated 20.08.2014 (Annexure-A1) whereby the Government has decided to regularise the services of the temporary employees, who have completed 15 years and more as on 31.01.2013 working under various departments, Mr. Moulik would submit that as on date, all the petitioners have completed 15 years service and as such the petitioners are entitled to regularisation as per the Circular (supra).

4. Contrasting the submission put forth by learned Senior Counsel for the petitioners, Mr. J. B. Pradhan, learned Additional Advocate General, would contend that the petitioners are not entitled to regularisation under law. Mere working on the post for a long time, subsequently on temporary basis, does not confer any right on the petitioners to claim regularisation as a matter of right. Thus, the petition does not merit any consideration. However, the State Government has decided to consider the case of the petitioners who have completed 15 years and more of service as on 31.01.2013 only against a vacancy, being available as per Circular dated 20.08.2014.

5. Considered the contentions advanced by learned Senior Counsel appearing for the parties, perused pleadings and documents, appended thereto.

6. It is no longer *res integra* that in normal circumstances, the Court cannot direct regularization, particularly, when the appointment, made on temporary, ad-hoc, casual basis, is not in accord with the constitutional scheme of the employment. The constitutional philosophy of employment is enshrined in Article 14 read with Article 16 of the Constitution of India. It contemplates that the public employment has to be made after a proper competition among qualified persons on the basis of invitation through wide publicity, enabling all eligible candidates to make applications for the same. The selection is required to be made in accordance with statutory provisions, on merit, in the spirit of constitutional mandate of equality of opportunity without discrimination on the ground of sex, caste, place of birth, residence and religion. In the case on hand, no party has placed any material on record to establish that the appointment of the petitioners was made through proper selection on the public notice, inviting applications from all the candidates. In such a situation, it is difficult to hold that the appointment of the petitioners was made strictly in accordance with the constitutional scheme of employment.

7. At this stage, it is pertinent to refer to the observations made by the Supreme Court in various cases, on this issue.

8. A Constitution Bench of the Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors*, (2006) 4 SCC 1 propounded the proposition of law as under:- "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 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....."

9. In *Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mani Parishad & Ors*, (2006) 7 SCC 684 reiterating the constitutional philosophy as observed hereinabove, the Supreme Court held as under:- " 37. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

10. Yet, in *Official Liquidator v. Dayanand*, (2008) 10 SCC 1 the Supreme Court observed as under:- " 68. The abovenoted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/ engaged throughout the length and breadth of the country by backdoor methods. Those

who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. ..."

11. In *Nand Kumar v. State of Bihar & Ors*, (2014) 5 SCC 300 considering regularization of the daily wagers, the Supreme Court held as under:- " 26. 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 dehors the rules for such regularisation/absorption."

12. The afore-stated principle was further expounded in *Amarkant Rai v. State of Bihar & Ors*. (2015) 8 SCC 265 wherein the Supreme Court, referring to para 53 of *Umadevi (3)* (supra), held as under:- " 13. In our view, the exception carved out in para 53 of *Umadevi (3)*³ is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one *Yatindra Kumar Mishra* who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010."

13. In the light of well settled principle of law, as afore-stated, no positive direction can be issued to the State Government to regularize the petitioners only on the sole ground that they have been working for last 10 (ten) to 15 (fifteen) years. The indisputable facts, involved in the case on hand, are that the petitioners were initially appointed on muster roll. Thereafter, after completion of about 10 (ten) years, the Government granted a sanction for creation of posts in various departments exclusively for appointment on temporary basis, belonging to Group-C and Group-D, wherein the petitioners herein have been working, as is manifest from the Notification dated 22.02.2014 (Annexure R-4). Accordingly, the petitioners were appointed on temporary basis. The State Government has further taken decision to regularize the temporary employees, who have been working against sanctioned posts in accordance with guidelines laid down in Circular dated 20.08.2014. As observed hereinabove that no material has been produced by both the parties to establish that the appointment of the petitioners was made in accordance with the constitutional scheme.

14. There is no challenge to the said Circular dated 20.08.2014 and as such I am not inclined to go into the validity of the Circular at this stage. The State Government, as pleaded by the parties, has granted benefit of the Circular to

other employees similarly placed. In such view of the matter, the State Government is obligated to consider cases of the petitioners in accordance with the said Circular dated 20.08.2014 expeditiously as early as possible, preferably, within 3 (three) months.

15. Resultantly, the petition is disposed of. No order as to costs.