

(2004) 05 AHC CK 0048
In the Allahabad High Court
Case No : Special Appeal No. 225 of 1998

Mukhya Nagar Adhikari, Nagar Nigam and Another	APPELLANT
Vs	
Raman Kumar Singh and Others	RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 19, 20

Citation : (2004) 5 AWC 4067 : (2004) 3 UPLBEC 2465

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : C.K. Parekh, for the Appellant; A.K. Srivastava, A.N. Singh and Sabhazeet Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This special appeal has been filed against the impugned judgment of the learned Single Judge dated 5.1.1998.

2. Heard learned Counsel for the parties:

3. The respondent No. 1 (writ petitioner) was engaged on contract basis under a World Bank Scheme as Junior Engineer by the Nagar Nigam, varanasi (the appellant No. 2 in this appeal). On 18.8.1992 the contract was terminated. The writ petitioner filed earlier Writ Petition No. 35106 of 1992 in which an interim order was passed but the writ petition was ultimately dismissed on 28.10.1997 vide Annexure-3 of the Stay Application in the Special Appeal.

4. A perusal of Annexure-3 to the Stay Application in this appeal (which is a copy of the judgment dated 28.10.1997 in Writ Petition No. 35106 of 1992) shows that the Nagar Nigam, varanasi undertook a project under a World Bank Scheme and under this Scheme it became necessary to appoint certain Junior Engineers for completion of the Project under the World Bank Scheme. The petitioner and two other persons were appointed as Junior Engineers vide letter dated

20.11.1990. That letter states that these appointments are made for completing the work of the World Bank Project within a period of two years.

5. The said judgment also indicates that a resolution was passed by the general body of the Nagar Nigam, varanasi on 24.6.1996 stating that there was no work left of the World Bank Scheme and hence the petitioner and other persons appointed in the said project had become a liability for the Nagar Nigam. The writ petitioner did not deny that the World Bank Project had come to an end. However, the contention of the learned Counsel for the writ petitioner was that there are still various vacancies in the Nagar Nigam, varanasi where the petition can be absorbed.

6. The appointment letter of the petitioner (Annexure-1 to that writ petition) clearly indicated that the petitioner was not appointed on a regular sanctioned post of the Nagar Nigam. He was appointed because of additional work under the World Bank Project. Appointment of Junior Engineers under the Nagar Nigam are to be made in accordance with the provisions of the U.P. Palika Centralised Service Rules, 1966. Under these Rules only the State Government can make appointments and that too after selection by the U.P., Public Service Commission., The petitioner was not appointed in accordance with the said Rules. He was appointed on contract basis for a World Bank Project. Hence it was rightly held in the judgment dated 28.10.1997 that the petitioner cannot claim to be regularised on any post covered by the U.P. Palika Centralised Service Rules 1966.

7. It is alleged by the appellant in this special appeal that the writ petitioner did not disclose about the filing and dismissal of Writ Petition No. 29527 of 1997. The respondent No. 1 (writ petitioner) also suppressed order dated 2.1.1998 (Annexure-11 to the Stay Application with this Appeal) in which it is stated that the petitioner was appointed against a Project on 23.11.1990. The respondent No. 15 (writ petitioners'') contract was terminated by the said order, In our opinion, the writ petition against which this special appeal arises should have been dismissed on the ground that the writ petitioner did not come with clean hands as he suppressed the fact of dismissal of Writ Petition No. 35106 of 1992 by judgment dated 28.10.1997 and he also suppressed the order dated 2.1.1998 of the Mukhya Nagar Adhikari, Nagar Nigam, varanasi Annexure-11 to the Stay Application.

8. It may be mentioned that the Scheme of the World Bank came to an end and no fund was left in it. As such on 24.6.1996 a resolution was passed by the general body of the Nagar Nigam to terminate, the services of the respondent No. 1 (writ petitioner) and others who had been engaged in the Project and Scheme vide Annexure-5 to the Stay Application filed alongwith this special appeal; It appears that the State Government had directed the Nagar Nigam not to engage any person on a post under the U.P. Palika Centralised Service Rules, 1966 as these post can only be filled up through U.P. Public Service Commission. The Nagar Nigam was directed to disengage these persons on 27.6.1996 and 9.8.1996 vide Annexures-6 and 7 to the Stay Application filed alongwith this

special appeal. The State Government rejected the representations of such persons on 2.11.1996 Annexure- 10 to the Stay Application filed alongwith this special appeal.

9. In our opinion the judgment dated 28.10.1997 in Writ Petition No. 35106 of 1992 had become final and has binding on the petitioner. He concealed this judgment and the impugned order was passed by the learned Single Judge in ignorance of that judgment passed in the previous writ petition. Hence this appeal is liable to be allowed on this ground alone. Moreover, the impugned judgment was passed ex parte by the learned Single Judge. No information was given to the learned Counsel for the Nagar Nigam and the writ petition was decided by the learned Single Judge without calling for any counter affidavit and without giving any opportunity of hearing to the Nagar Nigam. The name of the learned Counsel for the Nagar Nigam was also not printed in the cause list. On this ground also the impugned judgment is liable to be set aside.

10. Apart from the above, we are of the opinion that the appointment of the petitioner was not made in accordance with the U.P. Palika Centralised Services Rules and hence no claim for regularisation is made outside Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, . In Krishan Kumar Vs. State of Rajasthan and others, , State of Himachal Pradesh v. Ashwani Kumar and Ors., 1996 (1) SC 214 and State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and others, , the Supreme Court observed that a person appointed in a Scheme or Project which has been closed down cannot claim regularisation.

11. In E. Ramakrishnan and Others Vs. State of Kerala and Others, and Union of India v. Bishamber Dutt, JT 1996 (1) 329, the Supreme Court observed that where an appointment was not on regular basis the Government cannot take any decision contrary to the Constitution to regularise the service of candidate dehors the recruitment rules and statutory process for selection through Public Service Commission.

12. In our opinion regularisation can only be made in accordance with the Service Rules as held by the Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., and Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, Appointments dehors the rules are invalid and they violate public policy as well as Article 16 of the Constitution vide Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, ; Smt. Harpal Kaur Chahal v. Director, Punjab Instructions 1995 (9) Supp SCC 706; Bhagwan Singh and Another Vs. State of Punjab and Others, ; Chancellor v. Shankar Rao and Ors., (1999) 6 SCC 255 , etc.

13. Recently a Division Bench of this Court in State of U.P. and Others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Others, , held that for getting regular, appointment the candidates have to face a regular selection in accordance with the rules and they cannot be regularised without such selection

otherwise Article 16 of the Constitution will be violated.

14. In *State of Orissa and others Vs. Smt. Sukanti Mohapatra and others*, the Supreme Court observed that appointment in disregard to the rules cannot be allowed to be regularised merely by invoking the provisions of relaxation. Invoking the power of relaxation in such cases will amount to total suspension of the rules and regularisation of such appointment by relaxation will be illegal.

15. In *R.N. Nanjundappa v. T. Thmmiah and Anr.* 1972 SLR 94, it was observed:-

"If the appointment itself is in infraction of the rules or of it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of the rules or it may have the effect of setting at naught the rules."

16. In the present case also the engagement of the petitioner on contract basis was dehors the rules. Hence his service cannot be regularised under the rules.

17. In our opinion the regularisation of the petitioner will be wholly illegal and in violation of Articles 14 and 16 of the Constitution as well as of the U.P. Palika Centralised Rules, 1966. The post of Junior Engineers is a post in the Centralised Service. Hence the appointments to the post can only be made in accordance with the U.P. Palika Centralised Services Rules. Such appointment can only be made by the State Government and not by the Nagar Nigam or Mukhya Nagar Adhikari. Moreover, the writ petition from which this Special Appeal has arisen was in fact not maintainable in view of the judgment of this Court in Writ Petition No. 35106 of 1992. In fact it was the second petition by the same petitioner.

18. The learned Single Judge in his judgment dated 5.1.98 has observed that the State Government had taken a decision to regularise the services of the adhoc appointment and 153 posts were sanctioned for this purpose. These observations were made without even calling for counter affidavit. In Paragraph 14 of the affidavit filed in support of the Stay Application filed with this Appeal it is stated that the State Government had issued a Government Order directing the local bodies not to continue any such person on a post which is governed by the U.P. Palika Centralised Services Rules, 1966. Petitioner's appointment was not made in accordance with the above rules. It was in fact made on contract basis at a local level and was terminated on 17.8.1992 from the World Bank Project by the Mukhya Nagar Adhikari.

19. For the reasons given above the appeal is allowed. Impugned judgment of the learned Single Judge dated 5.1.1998 is set aside.