
(2014) 01 AHC CK 0045

In the Allahabad High Court

Case No : Writ Petition Nos. 1372, 848 of 2013 (S/B), 915, 708, 699, 701, 700 of 2012 (S/B), 370 of 2013 (S/B), 630, 932, 976 of 2012 (S/B) and 954 of 2013 (S/B)

Nikhil Saxena and Others

APPELLANT

Vs

U.P. Jal Nigam and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309, 32

Citation : (2014) 2 ADJ 264 : (2014) 4 ALJ 270 : (2014) 1 ESC 580

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Prashant Chandra, Shashank Bhasin, Niraj Kumar Srivastava, Vivek Raj Singh, Ashok Kumar Verma, A.N. Singh, Upendra Nath Mishra, Savita Jain, Advocate for the Appellant; I.P. Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Prashant Chandra, Senior Advocate, assisted by Mr. Shashank Bhasin, Mr. Niraj Kumar Srivastava and Mr. Vivek Raj Singh, Mr. Ashok Kumar Verma, Mr. A.N. Singh, Mr. Upendra Nath Mishra, Mr. Savita Jain, Counsel for the petitioners, learned Standing Counsel for the State and Mr. LP. Singh, Counsel for the U.P. Jal Nigam. As common question of facts and law are involved in these writ petitions, as such, all the above captioned writ petitions are being taken up together with and decided by a common order.

In writ petition No. 1372 (S/B) of 2013, the petitioner-Nikhil Saxena has claimed to forthwith issue order of permanent placement of the petitioner on the post of Assistant Engineer (Electrical/Mechanical) in compliance of the judgment and order dated 17.10.2012, passed in writ petition No. 1425 (S/B) of 2012 and resolutions passed by the Board of Directors on 18.3.2010 and 16.8.2012 before appointing the candidates who have been selected from the open market. It has also been prayed that the petitioner be treated as regularly appointed w.e.f.

16.9.2011 and accord him all consequential benefits.

2. In writ petition Nos. 848 (S/B) of 2013 and 954 (S/B) of 2013, the petitioners have assailed the advertisement dated 10.5.2013 published in daily news paper "Dainik Jagran" issued by the Chief Engineer (A-2-1), U.P. Jal Nigam, Lucknow (opposite party No. 4), whereby applications have been invited to make appointment on the posts of Assistant Engineer (Civil, Electrical & Mechanical), on which, the petitioners and other identical incumbents are already working.

3. In writ petition No. 370. (S/B) of 2013, the petitioner-Sameer Sharma has claimed that opposite parties be directed to consider the candidature of the petitioner for regular appointment as he has been appointed under one the appointment procedure provided under Rule 5 of the U.P. Jal Nigam Engineers (Public Health Branch), Service Regulations, 1978 [hereinafter referred to as the "Regulation, 1978"] on the basis of his appraisal form.

4. In writ petition Nos. 915 of 2012 (S/B), 708 of 2012 (S/B), 699 of 2012 (S/B), 701 of 2012 (S/B), 700 (S/B) of 2012, 630 of 2012 (S/B), 932 of 2012 (S/B) and 976 of 2012 (S/B), the petitioners have assailed office memorandum dated 16.5.2012 issued by the Chief Engineer (A-2-1), U.P. Jal Nigam, Lucknow, whereby the services of the petitioners have been terminated after giving one month's notice.

5. It has been contended by the Counsel for the petitioner that pursuant to the resolution passed by the Board of Directors on 18.3.2010, the petitioners being fully qualified as per Regulation 10(2) of the Regulation, 1978 and after having been selected in accordance with Regulation 16 of the Regulations 1978, was appointed on 16.9.2011 by the Chief Engineer (E-2-1) on the post of Assistant Engineer (Electrical/Mechanical). The appointment though made in accordance with Rules, the letter of appointment, however, mentioned that the appointment was on contract basis for a period of six months. There is no provision under Rules to make an appointment on contract basis.

6. Counsel for the petitioner has next contended that the qualification prescribed in the Regulation, 1978 are fully satisfied by the petitioner and he was duly selected for appointment on the post of Assistant Engineer in accordance with procedure prescribed in Regulation 16 of the Regulations 1978. The approval granted by the Board on 18.3.2010 read with 16.8.2012 creates a legitimate expectation for being treated as a regular Assistant Engineer. Moreover, the qualification has been attained by the petitioners with prior consent of the Nigam. Therefore, the Board of the Nigam has consciously taken a decision to regularly appoint qualified persons working in U.P. Jal Nigam on the existing vacancies of Assistant Engineers; and the said decision cannot be flouted by the opposite party No. 3.

7. In the backdrop of the aforesaid facts, it has been vehemently argued that the petitioners have got every right to be regularised on the post of Assistant Engineer (Electrical/Mechanical) in compliance of the judgment and order dated

17.10.2012, passed in Writ Petition No. 1425 (S/B) of 2012 and the resolutions dated 18.3.2010 and 16.8.2012, passed by the Board of Directors of the Nigam before appointing the candidates, who have been selected from the open market and to treat the petitioner as regularly appointed on 16.9.2011 and to accord him seniority accordingly, otherwise the petitioner would suffer an irreparable loss and injury, which cannot be made good in any event.

8. Per contra, Sri I.P. Singh, Counsel for the Jal Nigam has submitted that in order to execute/complete the work relating to the Water Supply and Sewerage work under different projects in Urban/Rural Areas for engaging Assistant Engineers (Civil) (Contract), Assistant Engineers (Electrical/Mechanical) (Contract), Junior Engineers (Civil) (Contract), Assistant Engineers (Electrical/Mechanical) (Contract), through contract appointment for short term of six months, the U.P. Jal Nigam issued an advertisement dated 18.6.2011, inviting the applications from the eligible persons.

9. Sri Singh has further submitted that in respect of such employees working against Class-III and Class-IV posts and on or before entering into the services of U.P. Jal Nigam, they possessed Bachelor of Engineering or with the permission of the U.P. Jal Nigam, during service period, they have upgraded their qualification by obtaining Degree of Bachelor of Engineering, the Chief Engineer, U.P. Jal Nigam, Lucknow circulated guidelines vide letter No. 599 A-2-1/2151-0201/11 dated 11.7.2011, providing for taking interview test for their appointment on contract basis against the posts of Assistant Engineer (Electrical/Mechanical) and Assistant Engineer (Civil). Thereafter, vide Office Memorandum No. 860/A-2-1/2151-0201/11 dated 16.9.2011, the petitioners were engaged for a short term of six months on contract basis as Assistant Engineer {Mechanical} on a consolidated/fixed honorarium of Rs. 28,000/- per month and as per the condition No. 3 of the Office Memorandum, the services of the petitioners shall be reverted to his original post after expiry of the contract.

10. Mr. Singh has further submitted that Rule 5 of the Regulations of 1978 deals with the Source of recruitment for filling up the substantive vacancies, while the appointment of the petitioners were made on contract basis under the conditions specified in the agreement/contract bond. The petitioners, who entered in service under a contract agreement executed in between the U.P. Jal Nigam and the petitioner, by signing the contract bond, they are bound to abide by his declaration in the contract bond.

11. Mr. Singh has further submitted that the State Government has granted permission vide letter dated 1.5.2013 for filling up the existing vacancies. Accordingly, the U.P. Jal Nigam has notified the vacancies vide letter dated 10.5.2013 and the same has also been published in various newspapers vide advertisement dated 10.5.2013. Now, the process of selection has been completed and the appointment letters have been issued to all the successful candidates and most of them have joined.

12. Mr. Singh has further submitted that certain persons, who were the employees in U.P. Jal Nigam and obtained B. Tech Degree during their employment, applied for their appointment on contract basis, accepting the terms and conditions given in the advertisement issued for the purpose and they were, accordingly, appointed on contract basis initially for a period of six months, which could be extendable only once for a further period of six months only and various such contract Assistant Engineers approached this Court through various writ petitions.

13. There is no dispute to the fact that by the advertisement dated 18.6.2011, the applications were invited for appointment on the post of Assistant Engineer/Junior Engineer in different branch purely on contractual basis. These appointments were made essentially with a view to execute/complete the work relating to the water supply and sewerage work under different projects in urban/rural areas. At condition No. 4 of the advertisements, it was clearly provided that the appointment would be for a limited period of six months, which may be extended in the exigencies of work. In the advertisement, there was no provision that the candidates so appointed may be regularized in the near future or may be appointed against substantive vacancies. Therefore, the petitioners cannot claim that since they have requisite qualifications, they should be given regular appointment.

14. At this juncture, it would be useful to mention that in Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another, , which has also been relied upon by the learned Counsel for the Jal Nigam, the Apex Court has observed that the acceptance of service conditions with open eyes by an employee means that he can now have no grievance. In this case the personnel recruited after 1.11.1996 were clearly given to understand as to what would be their working houses, in case they accept the appointment. The acceptance of conditions with open eyes by the employees and the recruits after 1.11.1996 means that they can now have no grievance. In paragraph 36 the Apex Court further held:

Differential treatment in our opinion does not per se amount to violation of Article 14 of the Constitution. It violates Article 14 only when there is no conceivable reasonable basis for the differentiation. In the present case, as pointed out above, there is a reasonable basis and hence in our opinion there is no violation of Article 14 of the Constitution.

There is no allegation in the writ petition that the employees were coerced/forced/unduly influenced to submit the undertaking. Therefore, at a later stage, it is unfair to take claims of service conditions other than the ones that were stipulated and accepted earlier.

15. There is also no dispute to the facts that the recruitment and service conditions of the Engineers of the U.P. Jal Nigam are regulated by Uttar Pradesh Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978. The

regular appointment can be made only after following procedure prescribed under the aforesaid Regulations. If we accept the claim of the petitioners for regular appointment, it would be a denial of equal opportunity to other aspirants as there might be a chance that on account of mentioning contractual appointment for a period of six months in the advertisement dated 6.8.2011, large number of candidates/aspirants might not have applied. It may be noted that the project undertaken by the Jal Nigam although continue for sometime was initially intended to be a time bound one i.e. for a period of six months. It was not meant for generating employment on regular basis. In view of the number of decisions of the Apex Court, on the subject, this Court, while exercising jurisdiction cannot issue direction for regularization of services of persons working as contractual employees, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution.

16. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , the Constitution Bench of the Apex Court, while discussing the role of State in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then, the Government can make appointments only in accordance with the rules, for the State is meant to be a model employer. The Apex Court has further held that in absence of any legal right under the statute for claiming regularisation, a person who is not appointed in public service complying with the requirement of Article 16 of the Constitution, cannot have a right either to hold the post or to continue in service or to claim regularization. The Apex Court in *Uma Devi* (supra) very categorically held:

The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional Scheme.

17. In *Umadevi* (supra), which has been relied upon by the petitioner of writ petition No. 848 (SB) of 2013, the Apex Court has also held in clear words as under:

In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary. posts or projects that are not needed permanently. This right of the Union or of the State Government cannot be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a Court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this

right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

18. Following the decisions rendered in Uma Devi (supra), in Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others, , the Apex Court has held as under:

Equal opportunity is the basic feature of our Constitution....Our constitutional scheme clearly envisages equality of opportunity in public employment.....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.

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.

19. Elaborating the procedure of regular appointment, in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, , the Apex Court observed that regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner, which would include inviting of applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

20. In Principal, Mehar Chand Polytechnic, Jalandhar City and Another Vs. Anu Lumba and Others, , the Apex Court observed that public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India and that the recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

21. The Apex Court in State of Rajasthan and Others Vs. Daya Lal and Others, , following the decision in Uma Devi (supra) held as under:

The High Courts, in exercising power under Article 226 of the Constitution will

not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of constitutional scheme.

22. In State of U.P. and Others Vs. Rekha Rani, , the Apex Court observed as under:

12. It has been held in a recent decision of this Court in State of Rajasthan and Others Vs. Daya Lal and Others, following the Constitution Bench decision of this Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , that the High Court in exercise of its power under Article 226 cannot regularise an employee. Merely because some others had been regularised does not give any right to the respondent. An illegality cannot be perpetuated.

23. As regards the assertions of the petitioners that in view of the judgment and order dated 17.12.2012 passed in writ petition No. 1425 (S/B) of 2012 and the Board's resolution, they shall be treated as regularly appointed Engineers with effect from 16.9.2011, we would like to point out that in the aforesaid judgment and order dated 17.12.2012, it was provided that the petitioners of writ petition No. 1425 (S/B) of 2012, 1442 (S/B) of 2012 and 1458 (S/B) of 2012, shall be allowed to continue on their posts, till the regularly selected candidates are appointed. It was further provided that the contractual employees shall not be substituted/replaced by other set of contractual employees. Nowhere in the aforesaid judgment, it was provided that they shall be allowed to continue indefinitely or as a regular incumbent. Petitioner-Nikhil Saxena has also filed a contempt petition, bearing No. 1474 (C) of 2013, for implementation of the judgment and order dated 17.12.2012. The learned Judge, dealing with contempt matters, vide its order dated 31.7.2013, dismissed the contempt petition being frivolous and having been filed on presumption, assumptions and surmises. Therefore, the assertion of the petitioners is wholly misconceived. Moreover, one Akash Srivastava and others have challenged the advertisement in writ petition No. 933 (S/B) of 2013 and while the writ petition was dismissed on merits, petitioners got the writ petitions dismissed as not pressed vide order dated 4.6.2013. For the aforesaid discussion, we are of the considered view that the petitioners have no legal right to claim appointment on regular basis as they were appointed on contractual basis for a limited period. Therefore, no interference under Article 226 of the Constitution is made out. Moreover, in the counter-affidavit it has been clearly stated that after the advertisement, the process of selection has been completed and the appointment letters have also been issued to all the successful candidates and most of them have joined. Therefore, petitioners have no right to continue on the posts in question as in the earlier judgment, it was provided that they would continue till the regularly

selected candidates joined.

All the afore-captioned writ petitions are dismissed, accordingly. However, considering the facts that the Counsel for the Jal Nigam had earlier assured this Court that if the petitioners participate in the selection process not only they would be given age relaxation but will also be considered and preference will be given to them, we deem it apt to provide that such contractual employees shall be considered on priority basis against the vacancies for regular appointment, if they apply/submit applications in accordance with law within a period of one week and thereafter the selection process including declaration of result shall be completed within a period of six weeks.