
(1993) 01 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Special Appeal No. 238 of 1991

Nyas Employees Union Jodhpur

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-01-1993

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 41

Citation : (1993) WLN 22

Hon'ble Judges : Rajendra Saxena, J; A.K. Mathur, J

Bench : Division Bench

Judgement

A.K. Mathur, J.—This is a special appeal directed against the judgment of the learned Single Judge dated 28.5.1991.

2. The brief facts, which are necessary for the convenient disposal of this appeal, are that the petitioner Vyas Employees Union has filed a writ petition under Article 226 of the Constitution of India with the prayer that the members of the Association may be given salary in the regular scale of pay on the basis of principle of equal pay for equal work from the date of their initial appointment with consequential benefits. It is also prayed that the respondents may be directed to regularise the services of the members of the petitioner Association on their respective posts with effect from the date of their initial appointment.

3. The learned Single Judge after hearing both the parties held that the employees mentioned in Schedule A" who are in the service of the Urban Improvement Trust, Jodhpur on daily wages, are entitled to salary in the regular scale of pay of the posts which are being held by them and it was directed that they shall be fixed at the minimum of the regular pay scale and shall be entitled to dearness allowance and additional dearness allowance sanctioned from time to time. This relief was granted with effect from 12.11.1990 i.e. from the date of filing of the writ petition. However, their claim for regularisation in service of the trust was rejected. Aggrieved against this order of the learned Single Judge dated 28.5.1991 the petitioner Association has filed this special appeal.

4. The main grievance of the learned Counsel for the appellant is that a direction for regularisation of all the members of the Association as detailed in Schedule "A" should be given, as they have been in the service of the Trust for number of years and some of them have even become over age. It is alleged that some of the members of the Association are in service of the Trust for the last 8 years and some are for varying periods. Therefore, it is prayed that a direction should be given for regularisation of the services of these incumbents. In support thereof learned Counsel has invited our attention to *Narender Chadha and Others Vs. Union of India and Others*, *S.M. Hamilton v. All India Institute of Medical Sciences*. 1990 (3) SCC 39 *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, , *All Manipur Regular Posts Vacancies Substitute Teachers' Association Vs. State of Manipur*, , *State of U.P. and others Vs. Sant Lal*, , *N.S.K. Nayar and others Vs. Union of India and others*, , *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, .

5. As against this, Mr. L.S. Udawat, learned Additional Advocate General, has invited our attention to *Sandeep Kumar and others Vs. State of Uttar Pradesh and others*, , *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, and *State of Rajasthan Vs. Rajendra Kumar Rawat and Others*,

6. We have considered the various decisions of the Hon''ble Supreme Court cited by the learned Counsel for our consideration.

7. Primarily the problem is of adhocism and regular selection has not been made for one reason or the other. Number of directions have been issued/given by the Hon''ble Supreme Court in various decisions as well as by this Court also from time to time on humanitarian grounds. The job opportunities are few and people, who are anxious for public employment, are large. Therefore, the claim for public employment is converted into a legal battle and the courts are crowded with such writ petitions that such employees have been in service for such a long time and suddenly they are asked to go home to accommodate some one else. This gives rise to the problem of bread and butter of such employees, who are being sought to be replaced by the new incumbents. No hard and fast rule has been laid down by the Hon''ble Supreme Court or by this Court and in some cases the courts have given a direction for regularisation looking to the exigencies of the situation and in some cases courts have declined to grant any direction for regularisation expressing a mere sympathy for such unfortunate lot. Therefore, no useful purpose will be served by referring all the decisions given by the Hon''ble Supreme Court on this issue as they are not laying down any proposition of law but they are more in the nature of guidance because in each situation the direction has been given looking to the peculiar feature of case before the Hon''ble Supreme Court. Thus, the cases do not lay down the law nor does it lay down a ratio but a direction looking to the facts of each case warranting a human approach by the authorities concerned. If the regular appointment has been followed perhaps this occasion would not have arisen, but the regular

appointment has been followed perhaps this occasion would not have arisen, but the state of our society as it is, it has become endemic and no solution appears to have been offered for solving this problem. However, for our guidance we may refer few of the recent judgments of Hon''ble Supreme Court.

8. The Hon''ble Supreme Court in the case of Narender Chadha (supra) has directed that when officer has worked for a long period for nearly fifteen to twenty years on a post and had never been reverted it cannot be held that the officer''s continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances, the entire period of this case on account of continuous officiation for 15 to 20 years, the Hon''ble Supreme Court took a humanitarian approach that they should be regularised and be given the benefit of their past services. This was a very hard case.

9. Next in the line is S.M. Hamilton''s case (supra). In this case, the services of activities in different projects AIIMS continuously for more than 10-15 years were sought to be terminated on the ground of absence of further projects. In that back-ground the Hon''ble Supreme Court directed that such incumbents should be provided suitable employment looking to their past services.

10. The case of Bhagwati Prasad (supra) was a case in which the incumbents had served for considerable long time and their services were sought to be terminated on account of being not possessing initial minimum prescribed educational qualifications at the time of appointment. Hon''ble Supreme Court held that their three years experience would be sufficient for making good their lack of initial minimum educational qualifications.

11. The case of Jacob M. Puthuparambil (supra) was a case of the employees of Kerala Water Authority and in that case, the Hon''ble Supreme Court invoked Article 41 of the Constitution of India and observed that the employees, who were serving on the establishment for long spells and have the requisite qualifications for the job should not be thrown out but their services should be regularised as far as possible.

12. In the case of Santlal (supra) the employee had put in more than 28 years of service and his services were sought to be terminated. This was set aside by the High Court and the Hon''ble Supreme Court held without deciding the validity of the termination order that, the State Government should regularise the services of the respondent and give him all benefits such as promotion etc. to which he is entitled to.

13. All Manipur Regular Posts Vacancies Substitute Teachers'' Association (supra) was a case by Manipur Teachers. They have been working as substitute/ad hoc teachers in the Education Department for the last several years and the State Government did not take any step for regularising their services. Therefore, the Hon''ble Supreme Court held that the services of such employees should be regularised and certain directions were given, namely, that all the substituted/ad

hoc teachers, who have put in five years service or more as on 1.10.1990 shall be regularised. The regularisation should be subject to the condition that they possess the required qualifications at the time of their initial appointment and other teachers, who have not put in more than 5 years service on the stipulated date shall be allowed to appear before the D.P.C. for selection and on their selection they shall also be regularised. It was further directed that all the teachers, who are continuing in service, shall be allowed to continue till the D.P.C. declared its result and the services of those who do not appear before the D.P.C. or could not be selected by the D.P.C. could be terminated unless their services are required for a further period.

14. N.S.K. Nayar (supra) was a case from Telecommunication Service and in that case it was found that some of the officers had been allowed to continue for 10/15 years in the STS posts and they were sought to be reverted. In that context, it was observed that denying them the right of regularisation and the consequent benefits in the said grade would be wholly arbitrary and violative of Article 16 of the Constitution of India, therefore, it was observed that the promotee officers (promoted under Rule 27(b)) who have worked in STS for a continuous period of five years and are holding the posts to-date shall be deemed to be regular members of Group A Service in STS.

15. Karnataka State Private College Stop-Gap Lecturers Association (supra) was a case of Education and Youth Services Department of the State of Karnataka. In that case, the Hon'ble Supreme Court gave direction that the services of temporary teachers, who have worked for 3 years, including the break till today shall not be terminated and they shall be absorbed as and when regular vacancies arise. If regular selections have been made the Government shall create additional posts to accommodate such selected candidates. The teachers, who have undergone the process of selection under the directions of the High Court and have not been appointed because of the reservation policy of the Government, be regularly appointed by creating additional posts. From the date of the judgment every temporary teacher shall, be paid salary as is admissible to teachers appointed against permanent post. Such teachers shall be continued in service even during vacations.

16. As against this Mr. Udawat, learned Additional Advocate General has invited our attention to Rajendera Kumar Rawat's case (supra). This was a case from Rajasthan and in that the services of the Legal Assistants were sought to be terminated on account of the selections made by the Public Service Commission, wherein it was held that notwithstanding that they have put in a number of years service, they cannot claim for employment on the basis of their employment under the Rules.

17. In the case of Sandeep Kumar (supra) the Hon'ble Supreme Court observed that direction for regularisation of such work charge employees working in the Government Company cannot be given. However, it was directed that as and when any vacancy of permanent nature occurs, preference for regularisation may

be offered to the work charge employees on the basis of their seniority and entitlement according to rules.

18. Similarly, in the case of Smt. Pushpa Srivastava (supra), it was observed that where the employment is purely on ad hoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue in the post. This is so even if the person is continued from time to time on "ad hoc" basis for more than a year. He can not claim regularisation in service on the basis that he was appointed on ad hoc basis of more than a year. However, the Hon"ble Supreme Court directed the management to consider their cases sympathetically, if regularisation is possible.

19. Both these judgments are of 3 bench Judges. In this case, the earlier judgments of the Hon"ble Supreme Court given in the case of Jacob M. Puthuparambil were considered but still the direction given in that case was not followed in this judgment and that case was distinguished by their Lordships of the Supreme Court in view of the Kerala State and Subordinate Service Rules, 1958.

20. Likewise, learned Counsel has also invited our attention to Surendra Kumar Gyani Vs. State of Rajasthan and Another, . This was a case from Rajasthan and in that the question was that the employees, who were appointed as temporary clerks in the office of the Director, State, Insurance and General Provident Fund, Government of Rajasthan, were allowed to continue from time to time and some of them continued for more than 2/3 years and the Hon"ble Supreme Court after reviewing various judgments did not direct for regularisation but Only observed as under:

In our view, it is only just and proper if a pragmatic and sympathetic consideration is made in respect of the appellant and the other petitioners in the Special Leave Petitions so that if they have got the requisite qualifications like similarly circumstanced persons being eligible for appointment and/or regularisation they also should be considered for appointment and for regularisation against the available vacancies so that useful service rendered by them in past may get a proper recognition. It is reasonably expected that State Government should give an anxious and sympathetic consideration to the appellant and the petitioners in the Special Leave Petitions in the matter of appointment in the available vacancies according to the seniority and length of service rendered by such persons as Daily Rated Lower Division Clerks in the said State Insurance and Provident Fund. Department by making appropriate provision. With the aforesaid observations. Civil Appeal No. 883 of 1986 and the SLP Nos. 6597-6607 of 1986 and 12528 of 1986 are disposed of without any order as to costs.

21. From the survey of various judgments, which have been quoted above, it emerges that the Hon"ble Supreme Court has given directions from time to time looking to the exigencies of the situation and from these judgments no uniform

ratio can be inferred that from what date the incumbent's services should be regularised. But the recent trend from 1992 onwards is that the Hon'ble Supreme Court has refrained itself from issuing any direction for regularising the services of ad hoc and temporary employees but only observed that they should be sympathetically considered for regularisation, if the rules permit. Having considered all the decisions of the Hon'ble Supreme Court, we are of the opinion that the learned Single Judge has rightly rejected the prayer of such employees for regularisation as a matter of right. However, since these incumbents have been serving for fairly long period of time running from 5 to 8 years and looking to the economic hardship and paucity of job/employment, we direct that the respondent U.I.T. shall sympathetically consider the question of their absorption, provided they possess the minimum requisite qualifications at the time of their initial appointment and subject to availability of the vacancies and their length of service put in by them. However, the respondent U.I.T. is under no obligation to regularise their services if the vacancies are not available in the department.

22. We dispose of this writ petition with the above observations.