
(2022) 08 DEL CK 0141

In the Delhi High Court

Case No : Letter Patent Appeal No. 284 Of 2021, Civil Miscellaneous Application
No. 33833 Of 2022

Rabel Guharoy

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2022) 08 DEL CK 0141

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : Anand, Rajeshri N. Reddy, Anil Soni, Devesh Dubay

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Letters Patent Appeal is arising out of the judgment dated 15.03.2021 passed by this Court in W.P.(C.) No. 9717/2020 and other connected writ petitions, dismissing the writ petitions preferred by the appellants.

2. The facts of the case reveal that the Government of India as well as the State Governments for revamping the technical education system in the country to make it demand driven with relevant courses in new and emergent technologies with adequate infrastructure resources, competent faculty and effective teaching-learning processes, took an initiative with the help of the World Bank by launching Technical Education Quality Improvement Programme (TEQIP) which was to be implemented in three phases. The first phase commenced from March 2003 to March 2009. The second phase commenced in 2009 till 2017 and the third phase started from March 2017. Large number of Assistant Professors was recruited in TEQIP Project and it was an appointment purely in a project on contract basis for a specified period.

3. The Assistant Professors who were just Assistant Professors in a particular

project came up before this Court by filing large number of writ petitions claiming their continuance on the post of Assistant Professor.

4. In one such writ petition i.e W.P.(C.) No. 9647/2020 following reliefs were prayed for by the writ petitioner:

"For the facts and circumstances stated in the accompanying writ petition, it is most, therefore, most respectfully prayed that this Hon'ble Court may be graciously pleased to: -

a. Direct the respondent to allow the petitioner to continue in service on the post of "Assistant Professor" and also pay him regular salary / remuneration, during the pendency of instant writ petition, in the interest of justice;

b. To issue a writ, order or direction in the nature of mandamus commanding the Respondent Nos. 1 and 2 to allow the petitioner to continue on the post of "Associate Professor" till regular selection is held and finalized for the said post;

c. To issue a writ, order or direction in the nature of mandamus commanding the Respondents to allow the petitioner to perform the duties attached to the post of "Assistant Professor" and further pay him regular salary / remuneration, as and when the same becomes dues as per AICTE Rules and Regulations;

d. Pass such other / further order / orders or direction / directions as this Hon'ble Court may deem fit and appropriate on the facts and circumstances of the case."

The learned Single Judge has dismissed the writ petition and in those circumstances, the present LPA has been filed against the judgment dated 15.03.2021.

5. The facts of the case reveal that the appellant in the present case completed his B.Tech from West Bengal University of Technology in the year 2012. He successfully completed his masters degree i.e. M.Tech from West Bengal University in the year 2014. He was appointed by an order dated 03.01.2018 under the third phase of TEQIP.

6. The advertisement issued on the subject made it clear that the appointment was for a period of 3 years with emoluments of Rs.70,000/- per month. The petitioner wanted to continue in spite of the fact that the period of appointment is over and in those circumstances a writ petition was preferred and the same has been dismissed.

7. The learned Single Judge, while dismissing the writ petition, in paragraph 20 to 27 has held as under:

"20. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the petitioners are entitled to the reliefs as prayed for.

21. There is no dispute that the petitioners' appointment was with regard to a project (TEQIP-III) started on the basis of the funding made by the World Bank.

The purpose of the Project is very clear to improve the technical education in the country and the same is to be achieved by appointing faculties in different Govt. / Govt. funded institutes. The terms of appointment of the petitioners are very clear that the same is temporary for a period of three years. It is the case of the respondent No.1 that the World Bank has decided not to fund the Project beyond March 31, 2021 and pursuant thereto the Project Unit shall be disbanded. In other words, the Project for which the petitioners are working would no more exist. The very basis of employment of the petitioners shall cease to exist. If that be so, the appointment of the petitioners shall also be discontinued. The petitioners being Project employees, cannot continue beyond the project life, i.e., March 31, 2021. The plea of Mr. Mehta is that the posts being in existence, the petitioners need to be continued. I am not in agreement with the said submission for the reason, the posts on which the petitioners are working were created for the purpose of the project namely TEQIP-III and are called the project posts and shall with the disbanding of the project, ceases to exist. The plea of Mr. Mehta, that the objective of the Project being perennial in nature, the same need to be continued is also not appealing as (1) the project is funded by the World Bank, who has decided to stop the funding and in the absence of the same, project has to be discontinued (2) it is for the authorities and not for the Court to decide, whether the project has to be continued or not.

22. Insofar as the reliance placed by Mr. Mehta on the judgments in the case of Karnataka State Private College Stop Gap Lecturers Association (supra), State of Karnataka v. Uma Devi (supra) are concerned, the same have no applicability in the facts of this case, inasmuch as (i) the employees in the aforesaid judgments were engaged in the regular establishment but on ad hoc / temporary / contractual basis and not in a project that too funded by an outstanding agency for limited duration. (ii) The employees in those cases have worked for a longer duration unlike in the case in hand where the petitioners have been engaged for the last three years and which appointment is co-terminus with the project and (iii) in Uma Devi (supra), the Supreme Court has held that appointments can be made by the Government or authority against sanctioned posts; vacancies in sanctioned posts; through open competition; by persons having eligibility in terms of the recruitment rules. None of the conditions are fulfilled when engagement is in a project, of a limited duration and funded by an outside agency.

23. The learned counsel for the respondent No.1 is justified in relying upon the Judgment in the case of Mohd. Abdul Qadir and Ors. (supra) wherein in Para 13 to 15, the Supreme Court has held as under:

"13. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said scheme is being extended from time to time and is being continued. If the temporary or ad-hoc engagement or appointment

is in connection with a particular project or a specific scheme, the ad hoc or temporary service of the persons employed under the Project or Scheme would come to an end, on completion/closure/cessation of the Project or the Scheme.

14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts co-terminus with the scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such Project or Scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. (See *Bhagwan Dass v. State of Haryana* - 1987 (4) SCC 634, *Delhi Development Horticulture Employees Union v. Delhi Administration* - 1992 (4) SCC 99, *Hindustan Steel Works Construction Ltd., vs. Employees Union* - 1995 (3) SCC 474, *UP Land Development Corporation vs. Amar Singh* - 2003 (5) SCC 388, *Madhyamik Shiksha Parishad UP v. Anil Kumar Mishra* - 2005 (5) SCC 122, *Secretary, State of Karnataka v. Umadevi* - 2006 (4) SCC 31, *Indian Council of Medical Research vs. K. Rajyalakshmi* - 2007 (2) SCC 332, and *Lal Mohammed vs. Indian Railway Construction Co. Ltd.* - 2007 (2) SCC 513). In view of this settled position, the appellants will not be entitled to regularization."

24. These petitions are squarely covered by the ratio of the Judgment in the case of *Mohd. Abdul Qadir* (supra) and the petitioners are not entitled to their continuance on the post of Assistant Professor with benefits of a regular employee.

25. I do not see any merit in these petitions. The same are dismissed. I take on record the stand of respondent No.1 that it shall advise CFTIs to consider the work experience of the petitioners as Assistant Professors (TEQIP) Faculty and also treat the monthly remuneration of these Assistant Professors equivalent to relevant AICTE pay scale, as stated in the letter dated September 17, 2019. No costs.

26. Registry is directed to place photocopy of this order in all the petitions.

27. Pending application (s), if any are dismissed as infructuous."

8. The learned Single Judge, while dismissing the writ petition has held that the appointment was under a Project i.e. TEQIP-III which started on the basis of funding by the World Bank.

9. The terms of appointment of appellant makes it very clear that it was a temporary appointment for a period of 3 years and the World Bank decided not to fund the project beyond 31.03.2021 and, therefore, as the project unit was required to be disbanded, the very basis of the employment of the appellant ceased to exist. The learned Single Judge has also held that the reliance placed upon by the petitioners/ appellant in the case of Karnataka State Private College

Stop-Gap Lecturers Association v. State of Karnataka (connected with) B.R. Parineeth and Ors. v. State of Karnataka, 1992 4 SCC 29 and Secretary, State of Karnataka and others v. Uma Devi , 2006 (4) SCC 1 is misplaced as the employees in the aforesaid cases were engaged in regular establishment and not in a project and, therefore, no relief has been granted.

10. The learned Single Judge has also placed reliance upon a judgment delivered in the case of Mohd. Abdul Qadir and Ors. v. Director General of Police, Assam and Ors. 2009 6 SCC 611 while dismissing the writ petition.

11. Learned counsel for the appellant has placed reliance upon a letter dated 16.02.2019 issued by the Government of Tripura and his contention is that the recruitment was not done against a project post and it was not funded by an outside agency. It has been stated that even though it was a tenure appointment, the State Government was funding the salary of such employees and the question of discontinuance in the peculiar facts and circumstances does not arise. It has also been vehemently argued that the learned Single Judge has erred in law and on facts relying upon the judgment in Mohd. Abdul Qadir (supra) and the judgment is distinguishable on facts.

12. It has been also argued by learned counsel appearing for the appellant that no direct recruitment has taken place for the post of Assistant Professor and it is the students who are going to suffer and, therefore, in all fairness the appellant should be permitted to continue on the post of Assistant Professor till a fresh recruitment takes place.

13. On the other hand, learned counsel for Union of India has vehemently argued before this Court that the appellants before this Court are serving in Assam, Jharkhand, Odisha, Rajasthan, Uttar Pradesh and Uttarakhand and they were engaged by various institutions under the TEQIP-III. Hence, the petition as well as the LPA deserves to be dismissed on account of territorial jurisdiction.

14. It has also been argued before this Court that by no stretch of imagination the question of continuing the appellants arises as the project itself came to an end on 30.09.2021.

15. It has been stated that the appellants were engaged in a project funded by World Bank. They were recruited in the third phase of the project and the project came to an end and, therefore, the question of engaging/ continuing on the post of Assistant Professor does not arise. Learned counsel has also argued before this Court that the appellant is a back-door-entrant and for appointment to the post of Assistant Professor, the Recruitment Rules are in existence and any appointment in any institution has to be done keeping in view the Recruitment Rules governing the field and, therefore, the action of the respondent in discontinuing the appellant as the Project has come to an end does not warrant any interference and the learned Single Judge was justified in dismissing the writ petition.

16. Lastly, it has also been argued that the appellants were never engaged against any sanctioned post and they were appointed only in the third phase of the Project i.e. TEQIP-III and, therefore, the question of allowing the LPA does not arise and it deserves to be dismissed.

17. Learned counsel appearing for AICTE has argued before this Court that the AICTE does not have any say in the matter. The appointments were not made on the cadre strength of the teaching post. The appellants were engaged purely on temporary basis in a Project which has come to an end and the AICTE has got no role to play in the matter.

18. This Court has carefully gone through the order passed by the learned Single Judge and the facts of the case make it very clear that the appointment of the appellant was in a Project known as TEQIP which was to be implemented in three phases. The present appellant was appointed in the third phase and appointment order was issued on 03.01.2018. The undisputed facts of the case makes it very clear that the World Bank has stopped funding the project. The engagement was in a project on temporary basis and the project came to an end on 30.09.2021.

19. The law on the subject has been crystallized by the Hon'ble Supreme Court and it is a settled proposition of law that an employee appointed for a particular tenure in a project, is not entitled to continue after the project itself is over. In the case of Mohd. Abdul Qadir (*supra*) the appellants were two ex-servicemen employed under the Prevention of Infiltration of Foreigners Additional Scheme, 1987. The scheme was temporary scheme but continued from time to time. The appointment letters of appellants therein made it clear that the appellants were appointed on ad-hoc and temporary basis with a condition that the appointment will not confer any right upon them and they can be re-appointed on contractual basis. The employees in the aforesaid case approached the Court for regularization and the Apex Court in paragraph 15 and 17 of the aforesaid case has held as under:

"15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service. [See *Bhagwan Dass v. State of Haryana* [(1987) 4 SCC 634 : 1988 SCC (L&S) 24 : (1987) 5 ATC 136] , *Delhi Development Horticulture Employees' Union v. Delhi Admn.* [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] , *Hindustan Steel Works Construction Ltd. v. Employees' Union* [(1995) 3 SCC 474 : 1995 SCC (L&S) 702 : (1995) 29 ATC 592] , *U.P. Land Development Corpn. v. Amar Singh* [(2003) 5 SCC 388 : 2003 SCC (L&S) 690] , *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra* [(2005) 5 SCC 122 : 2005 SCC (L&S) 628] , *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , *Indian Council of Medical Research v. K. Rajyalakshmi* [(2007) 2 SCC 332 : (2007) 1 SCC (L&S) 627] and *Lal Mohammad v. Indian Railway Construction Co. Ltd.* [(2007) 2 SCC 513 : (2007) 1 SCC (L&S) 725]] In

view of this settled position, the appellants will not be entitled to regularisation.

17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularisation nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments."

20. In the light of the aforesaid judgment, as the appointment itself in the present case was under a Scheme and the selection was in consonance with the provisions as contained in the scheme, the scheme has come to an end, the funding has come to an end by the World Bank, therefore, the question of continuing the appellant in the peculiar facts and circumstances of the case does not arise and the learned Single Judge was justified in dismissing the writ petition.

21. The Hon'ble Supreme Court in the landmark judgment Umadevi (supra) has dealt with the issue of regularization/ continuation of employees as well as various other contingencies relating to temporary employees, ad hoc employees, their regularization. The Hon'ble Supreme Court in the aforesaid case in paragraphs 4,43 and 47 has held as under:

"4. But, sometimes this process is not adhered to and the constitutional scheme of public employment is bypassed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a

phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time, that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

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. 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. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be

absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

22. In the considered opinion of this Court, the petitioners in the writ petition were appointed purely on contractual basis in a project for three years, which was having a life and the life of the project has come to an end and, therefore, the question of continuing the appellant after the expiry of the project which was funded by the World Bank does not arise. This Court does not find any reason to allow the LPA.

23. This Court is of the considered opinion that, in case, such a writ petition/ LPA is allowed, it would amount in granting premium to back door entrants and the policy of regularization of back door entrants has already been deprecated while delivering the landmark judgment in the case of Umadevi (supra).

24. Resultantly, this Court does not find any reason to interfere with the judgment delivered by the learned Single Judge and, accordingly, the LPA is dismissed.