
(2014) 05 AHC CK 0166
In the Allahabad High Court
Case No : Special Appeal No. 611 of 2013

Rajesh Kumar Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Police Act, 1861 — Section 17

Citation : (2014) 5 ADJ 750 : (2014) 105 ALR 557 : (2015) 1 AWC 191 : (2014) 3 ESC 1707 : (2014) 143 FLR 178 : (2014) 3 UPLBEC 2301

Hon'ble Judges : Vivek Kumar Birla, J; Sunil Ambwani, J

Bench : Division Bench

Advocate : Om Prakash Mishra, Advocate for the Appellant; R.B. Singhal, A.S.G.I. and Krishna Agrawal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri Om Prakash Mishra, learned counsel for the petitioner-appellants. Shri R.B. Singhal, Assistant Solicitor General of India assisted by Shri Krishna Agrawal appear for the respondents. This special appeal under Chapter VIII Rule 5 of the Rules of the Court, 1952 is directed against the judgment of learned Single Judge dated 8.3.2013 by which he has dismissed the writ petition filed by the petitioners seeking directions to the respondents to take work from them in their respective trade of cooks, barbers, dhobis and safai karmcharies at the Central Reserve Police Force, Group Centre, Allahabad; to pay to them regular monthly emoluments, and to consider them for absorption in the permanent capacity. The petitioners had also challenged the order dated 4.9.2012 by which their services were extended from 28.7.2012 to 20.9.2012.

2. Learned Single Judge held that the petitioners were not appointed as regular employees on permanent basis. They were selected and appointed in pursuance to the publication of an advertisement dated 5.4.2010 in the newspapers, which clearly declared that the nature of appointment on CN basis (casual nature paid).

Applications were invited by the publication for appointment of 40 cooks and barbers, 10 dhobis and 15 safai karmcharies to cater to the requirement of recruits undergoing training at the Central Reserve Police Force, Group Centre, Allahabad, The petitioners were appointed on C.N. Basis at the rate of Rs. 192/- per day to be paid to cooks/barbers/dhobies, and Rs. 169/- per day to Safai Karmcharies. The applicants were required to be registered with the employment exchange.

3. In the selections held in pursuance to the advertisement the petitioner-appellant Nos. 1 to 13 were selected for appointment as cooks; petitioner Nos. 31 to 43 were selected for appointment as barbers; petitioner-appellant No. 44 to 54 were selected for appointment as dhobies and petitioner Nos. 55 to 61 were selected for appointment as Safai Karmcharies all on CN basis. The appointment letters were issued to them between 10.5.2010 to 23.11.2010. All the appointment letters were issued with the same terms and conditions except for different emoluments i.e. Rs. 192/- for cooks, barbers and dhobies and Rs. 169/- per day for safai karmcharies. In the appointment letters issued between 10th May, 2010 to 23rd November, 2010 the terms and conditions of the appointment were set out as follows:

- (1) You are appointed on day to day basis;
- (2) You will be required to work eight hours in a day;
- (3) Your appointment is purely temporary and that you can be relieved from work at any time without giving any notice;
- (4) You will not be allowed to go out during the working hours;
- (5) if you eat and mess, you will be required to obtain a separate permission for that purpose from the Mess Officer;
- (6) You will not be entitled to get any goods from the Government.

4. The appointment letters were signed for and on behalf of the Deputy Inspector General of Police, Group Centre, CRPF, Allahabad. The initial appointment upto 6.8.2010 was extended from 28.7.2012 to 20.9.2012.

5. Learned Single Judge did not accept the contention of the counsel appearing for the petitioners that the petitioners were appointed regularly for which the posts were available. The petitioners were relieved to fill up the posts for regular employees. It was held that the petitioners appointed as "Casual Nature Paid Employees" were appointed on fixed tenure, which was extended upto 20.9.2012, and that they have not acquired any right to either hold or claim the post.

6. Learned Single Judge relied upon the judgments of the Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, ; State of Rajasthan and Others Vs. Daya Lal and Others, ; Union of India (UOI) and Another Vs. Arulmozhi Iniarasu and Others,

and Constitution Bench judgment of the Supreme Court in Secretary, State of Karnataka and others v. Uma Devi , 2006(2) ESC 192 (SC) He also relied on one of the judgments of this Court in Udai Pratap Singh Vs. State of Uttar Pradesh, Basic Shiksha Adhikari and Regional Deputy Director of Education, to dismiss the writ petitions.

7. Learned counsel for the petitioner-appellant submits that the petitioners were appointed in pursuance to the advertisement carried out in the newspapers on permanent posts after following a procedure for appointment. Their services could not have been restricted to any tenure, They were appointed in respective trades to carry out the duties, which were not temporary in nature. The extension of their services on every 89 days was arbitrary and illegal. The petitioners' services could not have been dispensed with either to be filled them up from different units or from open market by making a fresh advertisement. The respondent as State acted arbitrarily and in violation of Articles 14 and 16 of the Constitution of India in dispensing with the petitioner-appellants' services and in replacing them with permanent employees of the other units and thereafter by making an advertisement for filling up the posts permanently. Once the petitioners were selected, even if their appointment was treated to be casual and for a specific period, since their services were required and there were permanent posts, the dispensation of petitioners' service was violative of the circular and the Constitution of India.

8. Learned counsel for the petitioner-appellant has relied upon Nihal Singh, Bhupinder Singh and others v. State of Punjab and others, Civil Appeal No. 1059 of 2005 decided by the Supreme Court on 7.8.2013 (Laws (SC) 2013-8-9) and in which the Supreme Court allowed the Civil Appeal and while setting aside the judgment of Punjab High Court directed the State of Punjab to regularise the services of the appellants by creating necessary posts within three months. The appellants in Nihal Singh's case (Supra) were appointed as Special Police Officers between 1986 to 1994, on daily wages u/s 17 of the Police Act, 1861, to protect the banks in the period, when there was disturbance in the State of Punjab and the State was not in a position to handle law and order situation prevalent at that time with the available police personnel. The Special Police Officers were appointed on honorarium of Rs. 15/- per day, which was later on increased to Rs. 30/- and thereafter to Rs. 35/- per day. The Supreme Court held that the appellants were appointed in extraordinary situation in exercise of the statutory powers of the State u/s 17 of the Police Act. The appointments were made by the State. The disciplinary control over the Special Police Officers vested in the State and their existed relationship of master and servant between the State and appellants. The rejection of their claim for regularisation by Senior Superintendent of Police only on the ground that the petitioners were paid daily wages was thus untenable. It was also held that Punjab High Court did not appreciate that the State may not have chosen to create a cadre but had chosen to make appointments creating contractual relationship under the power available in Section 17 of the Act.

9. The Supreme Court in Nihal Singh's case examined the legal position explained in Uma Devi's case and held that the appointments were not made de hors to any rationale procedure. The Supreme Court had in Uma Devi's case while recognising authority of the State to make temporary appointment, engaging workers on daily wages declared that the regularisation of the employment of such persons, which was made without following the procedure confirming to the requirement of the scheme of the Constitution cannot become an alternate mode of recruitment through public appointment. The initial appointment of the appellants could not be categorised as irregular appointment. The decision to refer to such procedure was taken at the higher level of the State by conscious choice.

10. In the present case we find that though the petitioners were appointed after making an advertisement and following procedure of selection by the competent authority, the appointment as advertised and in terms with the appointment letter was casual in nature. The appointments were not made in any exceptional circumstances. The appointments were clearly made in the exigency of services in which the Central Reserve Police Force, Group Centre, Allahabad did not have employees in the trade of cooks, barbers, dhobies and safai karmcharies to carry out the urgent sundry work required for the battalion. The ATC is now sanctioned as a 214 Battalion stationed at Allahabad. Even if the work was of permanent in nature, the appointment was made as casual nature paid, for temporary need of the battalion. The petitioners' services were ceased within 2 and 1/2 years, before they could complete 3 years of service from the other units of CRPF. The appointing authority has now advertised the vacancies to be filled up regularly by making an All India open advertisement in the newspapers.

11. The appointments in the present case were made, by making advertisement for appointment as casual nature paid, by carrying out local advertisement in a newspaper having circulation only in Allahabad and in neighbouring areas. The advertisement clearly stated that the appointments will be made as casual nature paid, to meet the temporary requirement. The appointment letter also stated that the petitioners were selected as CN Paid on temporary basis and that they have been appointed on day to day basis for working for 3 hours in a day. The appointment letters further clarified that these appointment is purely temporary and that the petitioners can be removed at any time without protest. The conditions attached to appointment do not show that the petitioners were required to be taken in employment permanently.

12. Any permanent appointment in the Central Reserve Police Force under the Central Reserve Police Force Act is to be made by carrying out a clear advertisement in the newspapers circulating all over the country. The regular appointment on permanent basis has to be made with open source inviting applications from across the country. The facts of this case are different than that of Nihal Singh's case in which Special Police Officers were appointed u/s 17 of the Police Act, 1861 to meet the circumstances on which decision was taken by

the high officers of the State Government and that Nihal Singh and others continued as Special Police Officers for guarding banks from the year 1986 to the year 1994 within which the daily wages were increased from time to time.

13. Learned Single Judge has rightly applied the judgments cited by him and in relying upon the judgment in *Secretary, State of Karnataka and others v. Uma Devi*, in which it is held in paragraph 43 that 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 of permanent employment. The High Court under Article 226 of the Constitution of India, do not ordinarily issue directions for absorption regularisation or permanent continuance unless recruitment itself was made regular and in terms of the statutory provisions under the constitutional scheme.

14. We do not find any error in law in the judgment of learned Single Judge to interfere. It is always open to the petitioners to apply in pursuance to the open advertisement made in newspapers circulating around the country for regular appointment after undergoing procedure of selection provided under the Central Reserve Police Force Rules. The special appeal is dismissed.