
(2014) 05 RAJ CK 0185

In the Rajasthan High Court

Case No : Civil Special Appeal No. 440 of 2014

Registrar, Mohanlal Sukhadia University

APPELLANT

Vs

Vijay Pareek

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2014) LabIC 4076

Hon'ble Judges : Gopal Krishan Vyas, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : G.R. Punia, Sr. Counsel assisted by Yashpal Khileree, Advocate for the Appellant; Manoj Bhandari, Advocate for the Respondent

Judgement

Gopal Krishan Vyas, J.—The instant appeal is directed against the judgment rendered by the learned single Judge in Vijay Pareek Vs. State of Rajasthan, whereby the learned single Judge allowed the writ petition filed by the respondent petitioner and issued direction to the appellant University to regularize the services of the respondent petitioner on the post of Project Officer with effect from 11.1.1985 with all consequential benefits including the grant of Selection Scale, computation of pensionary period and other benefits arising out of the regularization within a period of six months from today. Learned counsel for the appellant University vehemently argued that the learned single Judge has failed to consider important aspect of the matter that the respondent petitioner was appointed without following the procedure laid down in the Rules in the year 1981 on a fixed pay of Rs. 1000/- and further failed to appreciate the fact that regular pay scale of Rs. 700-1300 was granted to the respondent petitioner vide order dated 5.11.1985 on the post of Project Officer in the scheme sanctioned by the U.G.C., therefore, no benefit of regularization can be given on the post, created in scheme. The regular appointment is to be made after following the procedure laid down, in the Rules on the sanctioned post and appointment of respondent petitioner was not in consonance with law, therefore, the order of regularization is erroneous. It is further argued that although the respondent

petitioner was allowed revised pay scale upon the post of Project Officer in the Adult Education Programme sanctioned by the U.G.C., but the direction issued by the learned single Judge to regularize the services of the respondent petitioner with effect from 11.1.1985 on the post of Project Officer is not sustainable in law. It is also submitted that in the writ petition, no such prayer for regularization on the post of Project Officer is made by the respondent petitioner. More so, a specific prayer is made for absorption under the Ordinance, 2008 on the post of Teacher-cum-Asstt. Professor with all consequential benefits, therefore, order of regularization on the post of Project Officer is bad.

2. Learned counsel for the appellant argued that financial sanction for the post in question is to be given by the State Government and no such sanction is given by the State Government to grant benefit of regularization with effect from 11.1.1985 to the petitioner, therefore, there is no question of granting benefit of regularization on the post of Project Officer. In view of above arguments, it is submitted that the judgment impugned may be quashed.

3. Per contra, learned counsel for the respondent petitioner submits that in the whole of the service tenure of the respondent petitioner, his services were not regularized, therefore, a writ petition was preferred by him for seeking direction to the respondents to consider his case for absorption on the post of Teacher-cum-Asstt. Professor in view of the Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974. The learned single Judge after taking into consideration the entire facts of the case and that the fact that the regular pay scale for the post of Project Officer has already been granted to the respondent petitioner with effect from 5.11.1985, which is sanctioned by the U.G.C. and the State Government has also sanctioned the post of Project Officer with effect from 1.4.1997, therefore obviously the appellant University is under obligation to grant benefit of regularization to the respondent petitioner. Learned counsel for the respondent petitioner further argued that the similar controversy has already been decided by this court in case of Sudhanshu Roy Bhatt v. Maharana Pratap University decided vide judgment dated 5.7.2011 by the learned single Judge of this court in SBCWP No. 8358/2009, which was further affirmed by the Division Bench of this court in DBCSA No. 927/2011, decided on 26.8.2011, and later upheld by the Hon''ble Supreme Court in Special Leave to Appeal (Civil) Nos. 33784-33785/2011 "Maharana Pratap University v. Sudhanshu Roy Bhatt decided on 20.7.2012. Therefore, no interference is called for in the judgment impugned in this appeal. The directions given by the learned Single Judge are in consonance with the adjudication made by the Hon''ble Supreme Court in the aforesaid judgment of Sudhanshu Roy Bhatt (supra) in which the Constitution Bench judgment rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, was considered. In view of above, it is prayed that this appeal may be dismissed.

4. After hearing learned counsel for the parties, we have examined the entire record of the case. Moreso, we have perused the judgment impugned.

Undisputedly, the respondent petitioner was appointed on a fixed pay of Rs. 1000/- on 10.3.1981 and later on, he was given regular pay scale of Rs. 700-1300 and his services were transferred by the Vice Chancellor of the University in the Adult Education Programme against the post of Project Officer vide order dated 11.1.1985 and his pay scale was further revised on 27.6.1990 and later on, the State Government sanctioned the post of Project Officer with effect from 1.4.1997. In view of above fact, obviously, the respondent petitioner is working in the University since 1981 but his services are not regularized till 2008. On the basis of above facts, when the services were not regularized then there was no option left with the respondent petitioner but to file writ petition before this court for seeking direction to regularize his services. The learned single Judge of this court while following the judgment rendered in Sudhanshu Roy Bhatt's case (supra) so also the case of Uma Devi (supra) held that the respondent petitioner is entitled for regularization on the post of Project Officer with effect from 11.1.1985, the day on which the Vice Chancellor transferred him from the Population Studies Cell to the Adult Education Programme against the post of Project Officer, which was duly sanctioned by the U.G.C. In our opinion, no error has been committed by the learned single Judge of this court because in identical situation, the Division Bench of this Court in DBCSA No. 927/2011 filed by the Maharana Pratap University of Agriculture and Technology, Udaipur against the judgment of learned single Judge of this Court in SBCWP No. 8358/2009 dated 5.7.2011, gave the following directions while affirming the judgment of the learned single Judge, which reads as under:

"We have perused the appeals as also the impugned order dated 5.7.2011 and heard counsel for the appellant (s).

In appeals, the grounds of challenge are that the predecessor university of the appellant university, i.e. the Rajasthan Agriculture University, Bikaner, had not been made a party in the writ petitions and that in any event of the matter, the suitability of the respondent had not been considered by the university. It was further submitted that in any event, appointment was to be regularized under the Rules of appellant university and that no sanctioned post being available, the respondent was not entitled to the benefit of regularization with effect from the initial date of entry in service with consequent benefits, as allowed by the learned single Judge.

We find that the preliminary objection with regard to non-impleadment of Rajasthan Agriculture University, Bikaner being fatal to whole case of the respondent herein, is without substance inasmuch as that the respondent had not sought any relief against the Rajasthan Agriculture University, Bikaner and mere reliance on the Resolution of Board of Management of Rajasthan Agriculture University, Bikaner passed on 22.1.1998, which had been adopted by the appellant University under its notification dated 4/6th January, 2000, did not make the Rajasthan Agriculture University, Bikaner either a necessary or even a proper party.

So far as the question of regularization of ad hoc employee is concerned, the respondent Sudhanshu Roy Bhatt had admittedly been working on the post of Assistant Agriculture Officer with the appellant University and its predecessor university i.e. Rajasthan Agriculture University, Bikaner, for the last about 32 years and the appellant University had itself, in terms of the order dated 20.4.2011, found the respondent to be entitled for regularization. The question of suitability of the respondent, thus, cannot be a subject-matter of any argument in this appeal and only question which remains is: whether the respondent was entitled to regularization effective from the date of his initial entry into service?

On the above issue, we are of the view that a plain reading of the resolution dated 22.2.1998 passed by the Board of Management of erstwhile Rajasthan Agriculture University, Bikaner, as adopted by the appellant University under its notification dated 4/6th January, 2000, entitles the respondent to the directions issued by the learned single Judge.

We are also of the view that the argument of the appellant in the present appeals that there was no sanctioned post of Assistant Agriculture Officer with the appellant university, is of no consequence as a bare look at the reply filed in SBCWP No. 8358/2009 indicates that no such ground had been taken therein. Further the case before the learned single Judge was with regard to the right of regularization of an employee having worked for about 33 years in the context of the resolution/notifications referred above.

Thus, to our mind, in the facts of the case, it was incumbent upon the appellant university to have acted post-haste and taken proceedings for regularization of service of the respondent. Admittedly, no such proceedings were taken for several years until the respondent approached this court, first time in the year 2009 aggrieved of his non-consideration for regularisation. It is trite that no party can take advantage of its own wrong. Reference in this regard be made to the case in M.D., H.S.I.D.C. and Others Vs. Hari Om Enterprises and Another, as also M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others, wherein the Hon"ble Supreme Court has reiterated this equitable proposition. It is apparent from the facts of the case that the appellant University had failed to take action on the resolution of the Board of Management of Rajasthan Agriculture University, Bikaner dated 22.1.1998 as adopted by it vide notification dated 4/6th January 2000 where under the respondent was entitled for consideration for regularization relating back to his initial entry into service.

We are, therefore, of the view that the learned single Judge was absolutely correct in placing reliance on the resolution and the notification referred above and in directing that on being found suitable for regularisation, the respondent was entitled to regularisation with reference to his initial date of entry into service with the department as Assistant Agriculture Officer on or about 06.3.1978 with all consequential benefits.

On the issue of regularisation of ad hoc employee, the issue stands resolved in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, , wherein following the judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Hon''ble Supreme Court held that "Uma Devi" casts a duty upon the government and its instrumentalities concerned to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit of protection of any interim order of the court/tribunal. In para 11 of the Kesri judgment, the Hon''ble Supreme Court has also reiterated that the object behind directions in Uma Devi's case (supra) was to ensure that those who have put in more than ten years continuous service without protection of any interim order of court or tribunal before the date of decision in Uma Devi's case, are entitled to be considered for regularisation in view of long service.

To our mind, these directions were apparently on very exceptional and strong equitable considerations, which also obtain in the present case. It is not in dispute that respondent had worked for more than ten years (about 32 years) without protection of any interim order or direction of any court or tribunal prior to Uma Devi's case. For this reason also, we are of the view that the order passed by the learned single Judge is absolutely legal and liable to be sustained.

Consequently, having considered the matter, we find that the appeals are without merit and are dismissed accordingly."

Similarly, while upholding the aforesaid judgment by the Hon''ble Supreme Court in Special Leave to Appeal (Civil) Nos. 33784-33785/2011 "Mahajana Pratap University v. Sudhanshu Roy Bhatt and dismissing the SLP of the University on 20.7.2012, the Hon''ble Supreme Court held as under:

"In our view, the impugned judgment does not suffer from any patent legal infirmity requiring interference under Article 136 of the Constitution. It is not in dispute that the respondent had continuously worked as an ad hoc Assistant Agriculture Officer for almost 32 years before his case was considered for regularization and that too in compliance of the direction given by the High Court. During this period, he was given regular pay scale as revised from time to time. Therefore, there was no impediment in the regularization of his service with retrospective effect.

With the above observations, the special leave petitions are accordingly dismissed."

5. We have considered the entire case from every angle. In our opinion, the employer cannot refuse regularization for years together and in case of Sudhanshu Roy Bhatt (supra), the Hon''ble Supreme Court took note of the fact that the employer cannot withhold the benefit of regularization without any reason. In the present case, the appellant University is not disputing that the post of Project Officer was sanctioned with effect from 11.1.1985 by the UGC and thereafter by the State Government but in spite of the fact that the sanction was

issued by the UGC earlier and subsequently by the State Government, the University did not consider the case of the petitioner for regularization of the petitioner on the post of Project Officer. The learned single Judge considered the aforesaid judgment of the Hon''ble Supreme Court and gave clear cut finding that even if the petitioner is not entitled for regularization on the post of teacher but entitled for regularization on the post of Project Officer upon which he was granted appointment under the orders of the Vice Chancellor of the University, therefore, in our opinion, the direction issued by the leaded single Judge for regularization of the services of the petitioner on the post of Project Officer with effect from 11.1.1985 with all consequential benefits, does not require any interference because the petitioner is going to be retired from service and still, his services are not regularized. In view of the above, this special appeal is hereby dismissed. Likewise, the stay petition is also dismissed.