

(2006) 09 UK CK 0014

In the Uttarakhand High Court

Case No : Civil Miscellaneous Writ Petition No. 811 (S/S) of 2001

Sadhan Sahakari Samiti Sachiv, Pauri Garhwal, Uttaranchal,
Uttam Prasad and Others

APPELLANT

Vs

State of Uttaranchal and others

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Constitution of India, 1950 — Article 162, 226

Citation : (2007) 1 UC 404

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Advocate : Sri v. K. Bist and Sri Sushil Vashisth, for the Appellant; Sri V.B.S. Negi for Respondent No. 5 and Sri N.P. Singh for Respondent Nos. 1, 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—By means of this Writ Petition, moved under Article 226 of the Constitution of India, the Petitioners have sought the following reliefs:

(i) To issue a writ or direction in the nature of mandamus directing the Respondents to consider the Petitioners for regularization and regularized their services as has been done in the case of other adhoc Sachivs who are junior to the Petitioners.

(ii) To issue a writ, order or direction in the nature of mandamus directing the Respondents to pay regular pay scale to the Petitioners with effect from 01-11-1993 as in the case of other Cooperative Sachivs, who have been assigned with the same work.

(iii) To issue a writ, order or direction in the nature of mandamus directing the Respondents to make payment of the salary of the Petitioners by District Cooperative Bank Pauri Garhwal as is being done in the case of regular employees and other Adhoc employees.

iv) To issue a writ, order or direction in the nature of mandamus directing the Respondents to make payment of salary to the Petitioners regularly.

(v) To issue any suitable writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper in the circumstances of the case.

vi) To award the cost of the writ petition to the Petitioners.

2. The Petitioners were appointed on the adhoc basis as Sachiv of different Cooperative Societies in the District of Pauri Garhwal. They were being paid their salaries by the District Cooperative Bank, Pauri Garhwal. From the month of November, 1993 onwards the Petitioners were paid lumpsum amount of salary based on the principle of minimum wages by the Cooperative Societies and the Cooperative Societies also directed by the District Management to pay salary to the Sachiv only out of the profit earned by the society. It was further directed that no salary would be paid to Petitioners from the capital fund of the society. The Petitioners were denied the equal pay and equal work. The said action of the Respondents were objected by the Petitioners and made a representation to the Respondents. The Petitioners also requested to the Respondents to regularize their services as they had been working for the last several years in said institutions and they also claimed their regularization on the basis of Uttar Pradesh [Sahkari Samiti Kendriya Sewaon Ke Padon Par Tadarth Niyuktiyon Ka Viniyamitikan Niyamawali, 1985] (hereinafter referred as the Rules, 1985). When the services of the Petitioners were not regularized and salary were not paid to them, a petition was filed before the Allahabad High Court bearing No. 33267 of 1997, Rajesh Bhandari and Ors. v. Member Secretary, District Administrative Committee and Ors. in which the Court directed while disposing of the petition of the Petitioner to consider the representation of the Petitioner in accordance with the law and pass a reasoned order within three months from the date of the order filed before the competent authority. In spite of the service of the said order, the services of the Petitioners were not regularized and the Respondent did not pass any order with regard to the regularization and to pay the salary to the Petitioner. It was further alleged that the Respondents had regularized the services of the other persons working in Tehri District Cooperative Society and they had been paid regular salary whereas the Petitioners had not been considered by the Respondents. When the Petitioners services were not regularized, hence this petition.

3. The Respondents filed counter affidavit and pleaded in the counter affidavit that the regularization of the Petitioners could not have been done on the basis of the Niyamawali, 1985. The Petitioners were appointed after 01-05-1983, as such, their services could not be regularized. It was further pleaded that the Petitioners have no right to claim the parity with the other Districts. It was also pleaded in the affidavit that the Petitioners had no right to be regularized because the Government had not framed any Niyamawali after the year 1985, as such, the Respondents were not competent to regularize the services of the Petitioners. Ultimately, it was prayed that the petition may be dismissed.

4. I have heard Mr. V.K. Bist, Sr. Advocate assisted by Sri Sushil Vashisth, Learned Counsel for the Petitioner, Mr. V.B.S. Negi, Sr. Advocate for the Respondent No. 5 and learned Standing Counsel for the Respondent Nos. 1, 2, 3 and 4.

5. Learned Counsel for the Petitioners contended that when the services of the Petitioner were not regularized, they filed a writ petition before the Allahabad High Court bearing No. 33267 of 1997 and the Respondents were directed to consider their case for the regularization. It was further contended that in the identical circumstances, in an another writ petition No. 28606 of 1996, Gopal Dutt Saklani and Ors. v. Member Secretary-District Administrative Committee and Ors. was filed in which it was also directed to dispose of the representation of the Petitioners of that writ petition for their regularization as well as for their salary; It was contended that the Petitioners of that writ petition belonged to other district Tehri Garhwal and their services were regularized and they were paid the salary by the Principal Secretary of that Committee (District Administrative Committee) whereas in case of the Petitioners belonging to the Tehri District were considered by the same Registrar and they were not regularized till today. It was further contended that the case of the Petitioners were also recommended by the District Administrative Committee on the basis of the resolution to regularize the services of the Petitioners. The resolution has been annexed with the writ petition as annexure 9. It was further contended that inspite of the resolution of the Administrative Committee, the services were not regularized by the Respondents. It was further contended that the State Government had not framed any rules after 1985 though in cases of other employees, the rules were framed subsequently but the Petitioners have been prejudiced by not framing the rules after 1985. Learned Counsel for the Respondents refuted the contention.

6. The first and foremost question to be dealt with is whether the Petitioners have got a right to get the regularization. The Petitioners' cases were recommended by the Administrative Committee but the competent authority has not regularized the services of the Petitioners. It is admitted case of the Petitioners that they were appointed after 1st May, 1983. They were appointed during the period 1987 to 1991. Rule 4 Sub-clause (1) of the Uttar Pradesh Regularisation of ad hoc Appointments (On posts Belonging to Co-operative Societies Centralised Services), Rules 1985 provides as under:

Regularisation of ad hoc appointment- (1) Any employee who-

(i) was directly appointed in a Centralized Services on any post on ad hoc basis on or before May 1, 1983 and is continuing in service, as such, on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years

continuous service;

shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

7. The benefit of the regularization was to be provided to those ad hoc employees who had been appointed on ad hoc on or before May, 1983. Admittedly, the Petitioners have been appointed after May, 1983 so they are not entitled to get the benefit of said Rule and they are not entitled for regularization under Rule 4 Niyamawali, 1985. It is clear from the perusal of the record that thereafter no subsequent rule had been framed with regard to the regularization of the employees of Centralized Services. It is admitted that the original appointment was not made by following due process of selection as emphasized under the relevant rules. The appointment was made on the purely adhoc basis without following due process of selection. In the case of Secretary, State of Karnataka and Ors. v. Umadevi and Ors. reported in AIR 2006 SCW 1991, it has been clearly held that if an employee had been working since long, he would not be entitled to any right to be absorbed or made permanent in the service. It has been held in para 34 of the judgment as under:

34. 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.

8. It has further been held that 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 recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual, contractual or ad hoc 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. When such appointee enters into the services, he accepts appointment with open eyes and knowing the consequences of the fact that his services could be terminated at any time. Thus it cannot be said that he had been continuously working for a long period and he should be regularized and he had got the right upon the post to get the confirmed by way of regularization.

9. Three Judges Bench of the Apex Court taking into considerations a large number of decisions in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, had held that illegal appointments cannot be regularized and further held in para 45 "No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules". In the case of *Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, , it has been held in para 19 of the said judgment as under:

The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularization of their services. The answer thereto must be rendered in the negative. Regularization cannot be claimed as a matter of right. An illegal appointment cannot be legalized by taking recourse to regularization. What can be regularized is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A state before offering public service to a person must comply with the constitutional requirements of Article 14 and 16 of the Constitution. All actions of the State must conform to the constitutional

requirements. A daily-wager in the absence of a statutory provisions in this behalf would not be entitled to regularization. [See State of U.P. and Others Vs. Ajay Kumar, and Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others, .

10. Considering the above dictum of the court, it has clearly been held 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. The High Courts acting under Article 226 of the Constitution, should not issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Thus, I am of the view that the continuance of the services by way of ad hoc appointment does not confer any right upon the Petitioners to claim the regularization.

11. It was pointed out that similarly situated persons in the other districts have been regularized and the claim of the Petitioners had not been considered inspite of the direction of the court. It is clear that if any illegality has been committed that does not confer any title or right upon the Petitioners to get the regularization and to get the salary on that basis. The concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. Even if the pay scales have been given to the other persons that would not confer any right upon the Petitioners. It has been held in Para 75 in State of U.P. Vs. Neeraj Awasthi and Others, as under:

The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well settled.

12. Further it has been held in the case of Umadevi (Supra) at para 39 and 41 as follows:

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no

case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, can not be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

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41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the Respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

13. It was further pointed out by the Learned Counsel for the Petitioners that the

Management Committee has recommended the Petitioners for regularization. Mere recommendations are not sufficient to regularize the Petitioners if any recommendation is against the statute and that would not be binding upon the competent authority.

14. In view of the foregoing discussion, the writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. Cost easy.

15. All applications pending in this case are stand disposed of in terms of the judgment.