

(2002) 03 DEL CK 0026
In the Delhi High Court
Case No : CWP No. 2075 of 1999

Sanjay and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Citation : (2002) 03 DEL CK 0026

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Non, for the Appellant; Nemo, for the Respondent

Judgement

Vikramajit Sen, J.—In this Writ Petition under Article 226 of the Constitution the Petitioners, who are three in number, have prayed for the issuance of an appropriate writ for quashing and setting aside the impugned Letters dated 8th January/15th March, 1999, as well as the entire selection process, D1.30/31Aug./27 Sept. 98 with regard to the filling of the posts of library/laboratory attendants and to direct the Respondents 1 and 2 to regularise the services of the Petitioners/deem the Petitioners to have been appointed regularly with no break in their service with all consequential benefits of pay, seniority and considerations for future promotion in accordance with law. It is not in dispute that the services of the Petitioners have already been terminated as is evident, inter alia, from a reading of paragraph 4 of C.M. No. 5011/1999 u/s 151 of the Code of Civil Procedure.

2. The facts of the case are that the Petitioners were appointed by Respondent No. 2, namely Deshbandhu College, Kalkaji, Delhi between 1990-91 through their Principal on ad hoc basis in Group "D" as Library/laboratory attendants respectively. It is asserted that this appointment took place in accordance with the rules and regulations of the College. The Petitioners have further submitted that they have more than the basic minimum qualification required for the posts to which they were appointed and have been working to the fullest satisfaction of the College. They had made a number of unsuccessful representations for their

regularisation. Eventually Writ Petition No. 1710/1997 was filed which was dismissed by Order dated 1.5.1998 in the following terms:

"The petitioner had been appointed on adhoc basis and being continued. In the counter affidavit it has been stated that the principal Dr. Balbir Singh, (now under suspension) who was functioning in 1990, made these appointments and he had not resorted to any proper method of recruitment. Therefore the petitioners have no right to ask for regularisation of their services.

The writ petition is dismissed.

The respondents, college, shall be at liberty to respondent to proper method of recruitment by giving and advertisement, and the petitioner shall be at liberty to apply for the same and if found fit, they shall be selected. dusty.

Sd/-

K. Ramamourthy J."

3. The above Order was challenged before the Division Bench in L.P.A. 196/1998 and was duly affirmed in the following terms:

"We find no infirmity in the impugned order dated 1st May, 1998. However, we have been told that the appellants have been called for interviews by the college. If the appellants are aggrieved by the ultimate selections made by the college, they can agitate their grievance, if permissible in law before an appropriate forum and in accordance with law learned counsel appearing for the college has brought to our notice, the notice dated 29th August, 1998, sent by counsel for the appellant to Dr. Gurmeet Singh, Officer- On Special Duty, Deshbandhu College, New Delhi, in particular para 7 thereof. We are constrained to note that the said notice is in bad taste more so when this appeal was pending in this court. We say no more at this juncture. Be that as it may, the college would consider the candidature of all candidates on merits. Mr. Malhotra expresses his regrets for the notice dated 29th August, 1998. Ms. Shymala Pappu states that all the appellants have been called for interviews and their candidature would be considered purely on merits.

The appeal is disposed of in the above terms.

Y.K. Sabharwal J.

K.S. Gupta. J."

4. During the pendency of the Letters Patent Appeal applications for appointment as Library/Laboratory Attendants were invited in terms Letter dated 27.7.1998. It was in respect of this Writ Petition that counsel appearing for the College had stated that the Petitioners had been called for interview and the Court had been assured that their candidature would be considered purely on merits. The Petitioners were not successful and their services were terminated with effect from 11/19th January, 1999 respectively. On 25.2.1999 these Petitioners moved

an application for amendment of the previous Writ Petition under Order VI Rule 17 which was, however, dismissed. The present Writ Petition was filed on 7.4.1999 by which time the Petitioners were undisputably not in the employment of the College.

5. Reliance is placed by the Petitioners on Circular No. Estab.III/Temp.Status/98 issued by the Registrar of the University of Delhi, informing all constituent bodies of the Vice Chancellor's approval of the implementation of the Scheme regarding temporary status and regularisation of casual Labourers as conveyed by the U.G.C.'s Letter No. F.6-2/97 (CU) dated 22nd April, 1998. The Petitioners are aggrieved with the fact that their case was not favorably considered despite the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 which intended to ameliorate the plight of daily wagers in Group "D". Such persons were to be conferred temporary status. It is alleged that although Clause 4 of the said letter stipulates that whenever vacancies arise, the University should absorb the employees granted temporary status, their case was ignored and three outsiders were taken in their place. This letter further contained a Clause which prohibited casual workers being kept beyond 89 days.

6. After notice was issued a last opportunity to file Counter Affidavit within six weeks was granted by Orders dated 3.3.2000. Regretfully, after this date, there has been no appearance on behalf of the Respondents even though the matter was listed on 18.7.2000 and 14.3.2001 on which date they were set ex parte. Despite the case been listed on 24.5.2001, 9.7.2001, 11.7.2001, 18.7.2001, 23.7.2001, 24.7.2001, 1.8.2001, 3.8.2001, 7.8.2001, 10.8.2001, 14.8.2001, 1.3.2002, 8.3.2002 and 15.3.2002. No assistance has been available from the side of the Respondents.

7. The first contention is that because of the continuity of services between 1990-91 and January, 1999, which artificial/notional break of a day or two, and since the Petitioners possess requisite qualifications and have worked to the fullest satisfaction of the College, an indefeasible right to employment has come into effect. Reliance is placed on the decision of the Hon"ble Supreme Court in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, . In circumstances almost identical to the present case, it was directed by the Hon"ble Supreme Court that the services of the teachers appointed temporarily should be continued till the purpose for which they had been appointed stood exhausted. It was further directed that the Management should take steps to fill up permanent vacancies in accordance with rules. Reliance was also been placed on behalf of the Petitioners on Arun Kumar Rout and Others Vs. State of Bihar and Others, , where the Court observed that a sympathetic approach was called for on the question of regularisation in cases of temporary and ad hoc appointments, even made improperly if the incumbents had been allowed to continue for a long time provided they possess the requisite qualifications and their services were satisfactory. These observations were made even though the appointment had been made without following the prescribed

procedure for appointment.

8. In *State of Haryana and others Vs. Piara Singh and others etc. etc.*, in which Apex Court had observed the normal rule for regular recruitment was through the prescribed agency. It was observed that efforts should always be made to replace ad hoc/temporary employees by regularly selected employees as early as possible, although the temporary employee may also compete with the others for such regular selection. If he get selected, well and good, but if he does not, he must give way to regularly selected candidates. The appointment of regularly selected candidates cannot be withheld or kept in abeyance for the sake of any ad hoc employee. If, for any reason, and ad hoc or temporary employee is continuing in service for a fairly long spell, then the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the Reservation Policy of the State. Where a casual labourer is continued for two or three years, the presumption may arise that there is a regular need for his services and in such a situation it becomes obligatory on the authority to examine the feasibility of his regularisation. The following observations in *Piara Singh's* case (supra) should also be borne in mind.

"12. As would be evident from the observations made and directions given in the above two cases, the court must, while giving such directions, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. Now, take the directions given in the judgment under appeal. Apart from the fact the High Court was not right -- as we shall presently demonstrate in holding that the several conditions imposed by the two Governments in their respective orders relating to regularisation are arbitrary not valid and justified -- the High Court acted rather hastily in directing wholesome regularisation of all such persons who have put in one year's service, and that too unconditionally. We may venture to point out the several problems that will arise if such directions become the norm:

(a) Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalising the selections and making the appointments. Very often the process of selection is stayed or has to be re-done for one or the other reason. Meanwhile the exigencies of administration may require appointment of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalised. Now according to the impugned direction the temporary hands completing one year's service will have to be regularised in those posts which means frustrating the regular selection. There would be no post left for

regularly selected persons even if they are selected. Such cases have indeed come to this court from these very two States.

(b) In some situations, the permanent incumbent of a post may be absent for more than a year. Examples of this are not wanting. He may go on deputation, he may go on Faculty Improvement Programme (F.I.P.), or he may be suspended pending enquiry into charges against him and so on. There may be any number of such situations. If a person is appointed temporarily in his place and after one year he is made permanent where will the permanent incumbent be placed on his return? Two persons cannot hold the same post on a regular or permanent basis.

(c) It may also happen that for a particular post a qualified person is not available at a given point of time. Pending another attempt at selection later on an unqualified person is appointed temporarily. He may continue for more than one year. If he is to be regularised, it would not only mean foreclosing of appointment of a regular qualified person, it would also mean appointment of an unqualified person.

(d) Such directions have also the effect of disregarding and violating the rule relating to reservation in favor of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner.

(e) Many appointments may have been made irregularly - as in this case - in the sense that the candidates were neither sponsored by the Employment Exchange nor were they appointed after issuing a proper advertisement calling for applications. In short, it may be a back door entry. A direction to regularise such appointments would only result in encouragement to such unhealthy practices.

These are but a few problems that may arise, if such directions become the norm. There may be many such and other problems that may arise. All this only emphasises the need for a fuller consideration and due circumspection while giving such directions.

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17. Now coming to the direction that all those ad hoc/temporary employees who have continued for more than an year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc-temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him -- which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and-or qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are in addition to some of the problems indicated by us in para 12, which

would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no "rule of thumb" in such matters. Conditions and circumstances of one unit may not be the same as the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this standpoint, the impugned directions must be held to be totally untenable and unsustainable."

9. In the above case the employees were continuing in service at the time when they approached the Court and till when the final verdict was given. No third party interests had been created. In the present case, however, it is the admitted position that the services of the Petitioners had been terminated. The Court has been approached several months thereafter by which time other persons had already started working in the College. It would, Therefore, be inequitable to remove such persons and reinstate the Petitioners who, at best have rights to be favorably considered for appointment. It has been repeatedly emphasised that all the Petitioners have the requisite qualifications. Even assuming that to be so, if the fresh appointees also possess all requisite qualifications, and have been appointed by adherence to the established recruitment rules and regulations, they ought not to be removed from service. The only question which now remains for consideration is whether there was any illegality in the appointment of any of the Respondents.

10. On behalf of the Respondents there is an averment that neither 40 point roster was followed prior to September 1993 while making initial appointment or while regularising ad hoc appointment, nor was the 200 point roster followed in the matter of the renewal of these ad hoc appointments after September, 1993. The Principal has the powers to make appointments of Class IV staff, but subject to the control of the Governing Body of the College, and on a review of the appointment carried out it would be evident that the Principal had usurped the appointing power.

11. Reliance has been placed by the Petitioners on a Letter dated 8.1.1999 authored by Sunita Kumar, Librarian to the President, Teachers Association regarding the short listing of the candidates appearing in the interview. It is further contended that the persons selected are only metric with science whereas the Petitioners No. 1 is B.A.(Lib.) and Diploma in Computer and with the Certificate in Library Science which is stated to be a desirable qualification for the

post of Library Assistant. It is also asserted that three outsiders have been employed but not because of the roster system. There is an allegation that in the case of Anand Singh Dahiya, who is a party to these proceedings, relaxation was given although he was only a matriculate. However, after due consideration of all the objections raised by the Petitioners, (in fact Petitioner No. 1 only), apart from stating that he is better qualified for the post, no grounds have been shown which would invalidate or render irregular the selection of any of the other persons. This is not sufficient reason to set aside the selection and appoint the Petitioners whose services have already been terminated.

12. However, since it is highly regrettable that the Petitioners' services have been discontinued after several years of their working as ad hoc-temporary employees, the Respondents should favorably consider their candidature as and when regular vacancies occur in respect of the posts in which they were serving. The Respondents are further directed to consider the Petitioners for temporary/ad hoc engagement in case a need/requirement is felt in the future. However, since the Petitioners have not been able to show any irregularity in the appointments made to the posts in which they were serving, the grant of the payers contained in the writ petition, given their greatest amplitude, would run counter to the observations made by the Hon'ble Supreme Court in Piara Singh's case (supra) The writ petition is disposed of with these observations.