
(2014) 10 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : CWP Nos. 6275 and 1497 of 2012

Sanjay Gharu

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 32
Himachal Pradesh Police Act, 2007 — Section 17

Citation : (2014) 10 SHI CK 0008

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ramakant Sharma, Advocate for the Appellant; P.M. Negi and Parul Negi, Deputy Advocate Generals, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The petitioners have prayed the following substantive reliefs in these writ petitions:-

"i) That the Respondents may kindly be directed to regularize the services of the Petitioners w.e.f. date of completion of 8 years of services i.e. 31.03.2005, with all consequential benefits.

ii) That the Petitioners may be held entitled for equal pay for equal work during the period he has served with the Respondents on contract basis, as paid to those appointed on deputation basis and arrears accrued there under be paid with interest."

2. The petitioners claimed to be worked in Sarv Shiksha Abhiyan (for short "SSA") on contract basis and have rendered continuous and uninterrupted service of more than 8 years. It is submitted that SSA is a Central Government sponsored scheme entrusted to the Government of Himachal Pradesh, Department of Education and the same is to be executed through the H.P. School Education Society (for short "Society"). The Executive Committee of the Society consists of Principal Secretary (Education), H.P., who happens to be the

Chairman, Principal Secretary (Finance), H.P., Secretary Rural Development, Secretary HPPWD, Under Secretary, Department of Education, MHRD Govt. of India, Secretary (Social Justice & Empowerment), Advisor Planning, Director, Higher Education, Director, Elementary Education and Principal, State Council of Education, Research & Training, Solan. The Chairman of Governing body of the Society is the Hon''ble Chief Minister. The Society has promulgated its byelaws, rules and regulations. It is also claimed that the Society has been created to execute the policy of the government of achieving the goal of complete literacy through SSA and for this purpose funds are provided by the Central Government.

3. Petitioners have averred that even since their appointment on contract basis, they have been discharging their duties to the entire satisfaction of their superiors and nothing adverse has been conveyed against them regarding performance of the duties. It is claimed that in so far as the contract employees engaged by the Government in other Departments is concerned, their services have been regularized on completion of eight years of service while in case of the petitioners they have been discriminated by not regularizing their services.

4. In the meeting of the Executive Committee of the respondent Society held on 23.2.2012 under the chairmanship of the Principal Secretary (Education), it was resolved to grant regular pay scale to the contractual employees. Vide office order dated April, 2011, the employees who had completed eight years of service as on 31.3.2010 and 31.3.2011 respectively, have been granted revised contractual remuneration at par with the Government employees in the other departments.

5. Vide letter dated 24.10.2011 the State Project Director has also apprised the Chairman of the Governing body of the Society, i.e. the Hon''ble Chief Minister that the services of the contractual employees can be considered for regularization since the respondent Society was a sister wing of the Education Department.

6. It is then alleged that EGS Instructors (Teachers) who were appointed under the Education Guarantee Scheme in SSA, have been permanently absorbed in the Education Department as Gramin Vidya Upasaks i.e. teachers in the Government Primary Schools after having worked there for only four years. The Government of India has also granted full pay and allowances to the staff of DPEP/SSA, but the respondents have not granted this benefit to the petitioners. The action of the respondents in not regularizing the services of the petitioner even after completion of eight years of service has been termed to be highly unauthorized, illegal and arbitrary.

7. The respondents filed reply to the writ petition, wherein the main thrust of the respondents is that the SSA is a Central Government sponsored scheme being implemented through the Society. Government of India vide letter dated 7.8.1996 has instructed that staff under SSA may be taken only on deputation or short term contract for one year renewable from year to year basis. Therefore,

the appointments are being made on deputation or contract and separate regulation were never finalized for the Society. Moreover, as per the Financial Norms of India para 37.1 of the manual of Financial Management procurement, new permanent posts can be created under SSA Project and the posts can be filled up only through contract or through deputation. No permanent liability should accrue on the society or the State Government due to filling up of these posts. It has also been submitted that the petitioners are serving as project based contractual employees on year to year basis and as per the SSA financial regulations there is no provision for their regularization. However, taking a lenient view the contractual remuneration of the petitioners and others who have completed 8 years of service as on 31.3.2010 and 31.3.2011 have been enhanced at par with the other regular Government employees. Therefore, the petitioners have no cause of action, since they have been paid remuneration as per the contract.

I have heard Mr. Ramakant Sharma, Advocate for the petitioners and Mr. P.M. Negi, and Ms. Parul Negi, Deputy Advocate Generals for the respondents.

8. It is not disputed that the SAS has been implemented in the State since the year 1996 when the Himachal Pradesh School Education Society Service Regulation, 1996 was promulgated and thereafter the services of the petitioner were engaged in different years ranging from 1996 to the year 2000. This clearly establishes that the project in no manner can be said to be temporary, since some of the petitioners have worked on contractual basis for nearly 18 years. Therefore, they are required to be afforded minimal guarantee of security of tenure. The respondents cannot deny the petitioners the benefits arising out of continuous service like pay scale and other service benefits. The action of the respondents in not regularizing the service of the petitioners, who have rendered service ranging from 12 to 18 years is not only arbitrary, but amounts to exploitation. It is, therefore, violative of Articles 14 and 16 of the Constitution of India. It also amounts to unfair labour practice. The respondents-State cannot be permitted to exploit the petitioners and similarly situated persons by keeping them on contract basis for more than a decade. Indisputably, the respondents themselves have notified its policies from time to time providing for regularization of not only its daily waged, contractual, but even part time employees, such benefit cannot, therefore, legitimately be denied to the petitioners.

9. It is amply proved on record that there was a master and servant relationship between the respondents and petitioners. The Hon''ble Supreme Court in Nihal Singh and Others Vs. State of Punjab and Others, has held as under:-

"17. It is obvious both from the said section and also the appointment orders, the appellants are appointed by the State in exercise of the statutory power under section 17 of the Act. The appellants are amenable to the disciplinary control of the State as in the case of any other regular police officers. The only distinction is that they are to be paid daily wages of Rs. 35 (which came to be

revised from time to time). Further, such payment was to be made by the bank to whom the services of each one of the appellants is made available.

18. From the mere fact that the payment of wages came from the bank at whose disposal the services of each of the appellants was kept did not render the appellants employees of those banks. The appointment is made by the State. The disciplinary control vests with the State. The two factors which conclusively establish that the relationship of master and servant exists between the State and the appellants. A fact which is clearly recognized by the division bench of the High Court in LPA No. 209 of 1992. It may be worthwhile mentioning here that under the law of contracts in this country the consideration for a contract need not always necessarily flow from the parties to a contract. The decision of the SSP to reject the claim of the appellants only on the basis that the payment of wages to the appellants herein was being made by the concerned banks rendering them disentitled to seek regularization of their services from the State is clearly untenable.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution. "4. ... 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."

(emphasis supplied)

23. It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment. It was further declared that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No. 209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such

additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent nos. 1 to 3 through the Assistant Inspector General of Police (Welfare & Litigation) is necessary to be noticed. It is stated in the said affidavit:

"2. That in meeting of higher officers held on 27.3.1984 in Governor House Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-

i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for their biggest branches located at the Distt. and Sub Divisional towns. They should place the requisition with the Distt. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police Deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Distt. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licence weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

26. It can be seen from the above that a selection process was designed under which the District Senior Superintendent of Police is required to choose suitable ex-servicemen or other able bodied persons for being appointed as Special Police Officers in terms of section 17 of the Act. It is indicated that the persons who are already in possession of a licensed weapon are to be given priority.

28. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India (UOI) and Others Vs. N. Hargopal and Others, .[4]

29. The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

30. Such a process of selection is sanctioned by law under section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the services of persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants."

10. Accordingly, in view of the observations and analysis made herein above, both the writ petitions are allowed and the respondents are directed to regularize the services of the petitioners from the date when they have completed eight years of service with all consequential benefits within a period of three months from today. Pending application(s), if any, also stand disposed of. No orders as to costs.