

(2009) 02 DEL CK 0303

In the Delhi High Court

Case No : Writ Petition (C) No's. 2555 of 1999 and 20681 of 2005

Smt. Susheel Kumari and Others

APPELLANT

Vs

Dr. Ambedkar Foundation and Another
 Ms. Gurmeet
Kaur Gill Vs Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2009) 02 DEL CK 0303

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Atul Bandhu, for the Appellant; Dalip Mehra, for UOI and Rajiv Ranjan Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—This order shall dispose of the Writ petitions bearing Nos. 2555/1999 and 20681/2005.

2. By way of these petitions, the petitioners seek issue of writ of mandamus directing reinstatement and regularization of the services of the petitioners on the post and in the pay scale and grade applicable to the said posts of computer operator in writ petition No. 20681/2005 and on the posts of stenographer (hindi), chowkidar, safaiwala-cum-farash and watch and ward maintenance and safai work in writ petition No. 2555/1999.

3. The brief conspectus of the facts in writ petition No. 20681/2005, relevant for deciding the present petition is as under:

The petitioner while working in the Ministry of health came to know about a vacancy with the respondent No. 2 for a "computer operator" on contract basis for a project in the name of "Dr. Ambedkar?". The petitioner sent an application along with the bio-data for the said post. The petitioner took an interview and performance test and on her doing well was employed from 10/10/1997 for a

period of three months. After the said period she was again called for an interview and performance test on 24/12/1997, which she undertook with an impression that the same was an exercise to regularize the post on which she was working. She continued her services without break till April 2002, when she left for UK to donate her kidney to her sister who was suffering from kidney failure. Later after coming back from UK, she joined back with the respondent No. 2 till her termination dated 20/9/2005, which came into force on 31/3/2005. Aggrieved with the said termination order, the petitioner preferred the present petition.

4. The brief conspectus of the facts in writ petition No. 2555/1999, relevant for deciding the present petition is as under:

The petitioners were appointed on contractual basis for performance of various works like stenographer (hindi), chowkidar, safaiwala-cum-farash and watch and ward maintenance and safai work. their services were terminated by respondent No. 2 w.e.f. 16/4/1999 (afternoon) vide office order No. 1-5/92-AF dated 16/4/1999. Aggrieved with the said termination order, the petitioners preferred the present petition.

5. Mr. Atul Bandhu counsel for the petitioners contends that the petitioners were appointed against the regular vacancy on regular basis after due process although were not being given wages of the regular employees. The counsel urges that the petitioners availed all the facilities available to the regular employees, viz. leave and other benefits, which clearly show that the petitioners had features of regular appointment. The counsel also maintains that the project for which the petitioners were appointed is still continuing and therefore, they cannot be removed. The counsel also submits that in view of the decision of the Apex Court in State of Haryana and others Vs. Piara Singh and others etc. etc., , the petitioner?s services should be regularized. The counsel for the petitioners also contends that after terminating services of the petitioners, the respondent has taken into employment some other candidates on the same posts and in the same project. The counsel also relied upon the decision of the Apex court in Div. Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam,

6. Per contra, Mr. Dalip Mehra standing counsel for UOI while refuting the contentions of the counsel for the petitioners submits that the issue of regularization of a contractual; employee has been put at rest by the decision of the Apex court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , therefore, the writ petition is liable to be dismissed.

7. I have heard learned Counsel for the parties and perused the record.

8. It is now well-settled principle of law that the appointment made on ad hoc basis or contractual basis for a specific period of time comes to end on the expiry of Contract period and the person holding such post can not claim any vested right to continue on the post or raise legitimate expectation to continue on the post. In the instant case as noticed above, the petitioner accepted the

appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The petitioners having accepted the terms and conditions stipulated in their appointment order and allowed the period for which they were appointed to have elapsed by efflux of time, therefore, they cannot now be permitted to say that their appointments could not be terminated on the basis of the appointment letters or they could be treated as temporary employee after the expiry of contract period. The submission made by the learned Counsel for the petitioner to the said effect has no merit and is, therefore, liable to be rejected. The said view that no temporary, contractual or ad-hoc employee can seek regularization merely on the basis of their being employed for a long time in the said capacity has been explained in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, . The relevant paras of the said decision are reproduced below:

43. 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.

47. 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 recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual 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 and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. 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, cannot 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.

9. As regards the contention of the counsel for the petitioners that the respondent has taken other persons into employment on the same post on which petitioners were working, the said plea has neither been taken in the writ petition nor in the rejoinder, therefore, same is also of no assistance to the petitioners. The decision in the Piara Singh's case (supra) has been overruled and denuded as precedence in view of the judgment of the Hon'ble Supreme court in Umadevi's decision (supra) and the decision in A. Shankaralingam (supra) is on completely different facts. Therefore the said decisions are of no assistance to the petitioners.

10. In view of the above discussion, both the writ petitions are dismissed being devoid of any merit.