

(2010) 03 GAU CK 0061

In the Gauhati High Court

Case No : Writ Appeal No. 38 (AP) of 2008 and Ref: WP (C) No. 175 (AP) of 2007 & Writ Appeal No. 38 (AP) of 2008/in WP (C) No. 175 (AP) of 2007

Tana Anil Tara and Others

APPELLANT

Vs

Manglong Ralongham and Others

RESPONDENT

Date of Decision : 24-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 226, 309

Citation : (2006) 1 GLT 585

Hon'ble Judges : I.A. Ansari, J;A.C. Upadhyay, J

Bench : Division Bench

Advocate : P.K. Tiwari, for the Appellant; R.H. Nabam and K. Ete., for the Respondent

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—We have heard Mr. P.K. Tiwari, learned Counsel appealing on behalf of the Appellants, Mr. Ril. Nabam, learned senior Government Advocate of Arunachal Pradesh, and Mr. R.H. learned Counsel representing the private Respondents.

2. This writ appeal is directed against the Judgment and order passed in WP (C) 175(AP) of 2007, whereby the learned single Judge directed regularisation of the contractual service of Petitioners as teachers in the Education Department of Arunachal Pradesh. The facts leading to filing of this writ appeal may be summarised as follows:

The writ Petitioners in WP(C) No. 175 (AP)/07 (hereinafter referred to as the "private Respondents"), are working as Junior Teachers and Assistant Teachers on contract basis, under Sarva Shiksha Aviyan (S.S.A.), a centrally sponsored scheme, which was launched, in the State of Arunachal Pradesh, in the year 2000-2001, in order to spread elementary education among all children, in the age group of 6-14 years, by the year 2010. The private Respondents were

appointed on contract basis by signing of deeds of contract agreements, as Teachers and Assistant Teachers, pursuant to advertisements issued, from time to time, since 2002, unconditionally agreeing therein that they shall have no right to claim regularisation of their service in future.

3. The appointments to the posts of Assistant and Junior Teachers, under the Education Department of the Government of Arunachal Pradesh, are governed by recruitment rules, namely, the Assistant and Junior Teachers, (Grade : A) Recruitment Rules, 2001 (hereinafter referred to as "the 2001 Recruitment Rules").

4. It has been alleged by the Appellants that in the year 2007, the State Government started regularizing the services of officiating/leave/substitute teachers against regular vacancies in the substantive posts of Assistant Teachers in the Education Department and such a process of regularisation was initiated in an arbitrary manner contrary to the 2001 recruitment Rules.

Challenging the aforesaid action of the Government, a writ petition, namely, WP(C) No. 175 (AP)/07, came to be filed by a group of Sarva Shiksha Aviyan teachers, working on contractual basis, praying for regularisation of their services on preferential basis against the regular vacancies of Assistant and Junior Teachers in the Education Department of the Government of Arunachal Pradesh. At the same time, another writ petition, namely, WP(C) No. 230 (AP)/07 was also filed by another group of unemployed Arunachal Pradesh Scheduled Tribe candidates (in short, "APST"), having requisite qualifications under the 2001 Recruitment Rules, seeking appointment in the regular vacancies of Assistant Teachers in the Education Department of the Government of Arunachal Pradesh strictly in conformity with the 2001 Recruitment Rules.

5. The Writ Petition (C) No. 230 (AP)/07, filed by the unemployed APST aspirants, was disposed of by a single Bench of this Court with a direction to the State Respondents to fill up the vacancies in the posts of Assistant Teacher (Grade A) in due conformity with the 2001 Recruitment Rules. Accordingly, in compliance with the judgment and order of the High Court passed in WP(C) No. 230 (AP)/07, the Director of School Education, Government of Arunachal Pradesh, published an advertisement, dated 15.07.2008, inviting applications from eligible General and APST candidates, against regular vacancies in the posts of Assistant and Junior Teachers, in the Education Department of the Government of Arunachal Pradesh, for the purpose of making regular appointments.

6. In response to the above advertisement, dated 15.07.2008, the Appellants, many of whom were Petitioners in WP(C) No. 230(AP)/07, submitted their applications seeking selection to the posts so advertised. During the pendency of the said selection process, WP(C) No. 175(AP)/2007 aforesaid, filed by the private Respondents herein, was disposed of by a learned single Bench by judgment and order, dated 06.08.2008, which stands impugned in this appeal.

7. The learned single Judge, in the impugned judgment and order, dated 06.08.08. passed in WP(C) No. 175 (AP)/07, observed that the contractual employees are governed by the terms and conditions of contract; and as such, they do not have any legal or fundamental right to claim regularisation of their services. However, in spite of the observation, so made, the learned Single Judge subscribed to the view, expressed in the common judgment and order, dated 11.06.05, passed in a batch of writ petitions in WP(C) No. 135(AP) of 2004, WP(C) No. 296(AP) of 2004 and judgment and order, dated 04.05.2006, passed in WP(C) No. 479(AP)/05, that the State, being a model employer, is constitutionally obliged to explore all possible avenues for giving regular employment to the contractual employees. The learned single Judge, thus, placing reliance on the aforesaid judgments held that the Petitioners are entitled to a direction requiring the State Respondents to take necessary steps for considering their cases for regularisation of their services. The operative part of the impugned order, passed by the learned Single Judge, reads as follows:

18. Having outlined the duty of the State as an model employer in the Constitutional scheme of things, I am of the view that the petitioners are entitled to a direction requiring the Respondents to take necessary steps for considering their cases for regularization of service. Bearing in mind the number of posts that would be necessary to accommodate the petitioners on regular basis, this Court, therefore orders the State Respondents to initiate a process in this regard and chart out an appropriate policy or Scheme to adjust the petitioners in the service of the Department as has been done for the Petitioners in WP(C) 135(AP) 2004, WP(C) 291 (AP) 2004 & WP(C) 296(AP) 2004 and also in WP(C) 479(AP) 2005.

19. Having regard to the solemn duty of the State also outlined in the Centrally Sponsored Scheme as noticed hereinabove, it is further directed that till the process for regularization is complete, the service conditions of the petitioners as on today, would not be altered to their prejudice. Further, if any new recruitment process is initiated comprehending posts of Ats/JTs, the same would not be filled up without first considering the cases of the writ petitioners.

8. In view of the conflicting decisions, in the two writ petitions, namely, WP(C) No. 230(AP)/2007, and the impugned judgment and order, dated 06.08.2008, passed in WP(C) 175(AP)/07, the State Respondents have kept the process of recruitment of Teachers and Assistant Teachers, initiated by the advertisement, dated 15.07.2008, aforesaid, on hold.

9. It is contended, on behalf of the writ Appellants, that preferential right, conferred on the private Respondents by the impugned order of the Court, has prejudiced the rights of the Appellants to be considered for appointment to the regular posts of Assistant and Junior teachers, in the Education Department of Arunachal Pradesh, in terms of the 2001 Recruitment Rules and that the private Respondents, having been appointed under Sarva Shiksha Aviyan scheme of the Government of India, cannot claim regularisation as the scheme will continue only up to 2010 and, thereafter, it is up to the Government of India to either

extend the said scheme for some more years or close it. The S.S.A. Scheme, where under the private Respondents are/were appointed, being a centrally sponsored scheme, was intended to continue only for a limited period and the private Respondents are/were temporarily appointed on contractual basis and the contract period is/was extended year wise during the continuation of the scheme. Therefore, apparently, the State Government has no jurisdiction to regularise the services of the private Respondents appointed under such a scheme by disregarding the relevant recruitment rules, framed, under Article 309 of the Constitution in this regard. Since the private Respondents have accepted the terms and conditions of the contract under S.S.A Scheme by signing Deeds of Agreement agreeing therein that the private Respondents shall have no right to claim the regularisation of their services, cannot turn around and claim regularisation of their services.

10. Expressing helplessness to adjust the contractual teachers, serving under the SSA scheme, against the regular vacancies of teachers in the Department of Education, it is pleaded by the State Respondents that the total number of such contractual teachers is approximately 3,500 and the State Government is not in a position to adjust such a large number of contractual teachers in the Education Department of the Government of Arunachal Pradesh.

It has been pointed out by the state Respondent that Pursuant to the judgment and order of a learned Single Judge passed in group of cases in WP(C) No. 135 (AP)/05 (supra), wherein direction was given for consideration of adjustment of such cases of teachers appointed under the centrally sponsored scheme called "Operation Black Board", on the completion of the scheme against the resultant it vacancies of the teachers, in the Department of Education.

11. It has been further contended, on behalf of the private Respondents, that they have the requisite qualifications, as prescribed under the 2001 Recruitment Rules, for appointment as Assistant Teachers and Junior Teachers and also have reasonable experience, they having worked as teachers, under the SSA scheme, for many years on contractual basis, and, therefore, they are entitled to be given preference in appointment against the substantive vacancies of Junior and Assistant Teachers in the Department of Education, Government of Arunachal Pradesh.

12. Mr. P.K. Tiwari, learned Counsel appearing for the, Appellants, contends that a serious error of law was committed by the learned single Judge in applying, even in WP(C) 175(AP)/2007, the principle laid in WP(C) No. 479 AP)/05(supra), wherein temporary services of the Junior Teacher(Hindi) were regularised against the vacancies of the sanctioned posts of Assistant teachers. Learned Counsel pointed out that the facts, in the ca se under reference, are not similar to the present one. Learned Counsel further contended t hat the impugned judgment and order of the learned Single Bench is contrary to the decision rendered by the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein regularisation of contractual employment has been discouraged

and held to be illegal in the eyes of law.

13. The learned Counsel for the Appellants, drawing our attention to the decision of the Supreme Court in Uma Devi's case (supra), emphasised that the judgment of the Constitution Bench of the Supreme Court, in Uma Devi's case(supra), is a law declared within the meaning of Article 141 of the Constitution of India and is, thus, binding on all courts within the territory of India, therefore. the learned single Judge could not have issued any direction for regularisation or appointment of the private Respondents against regular vacancies of teachers under the Department of Education Government of Arunachal Pradesh, in violation of the 2001 Recruitment Rules, by referring to, and relying upon, the decision in WP(C) No. 497(AP)/05 (supra).

14. Mr. K. Ete, learned Counsel appearing on behalf of the private Respondents, submitted that the State, as a model employer, has to rule out any discriminatory and/or arbitrary treatment and must provide meaningful opportunities to the employees to make advancement in their career for growth and excellence in the administration. Learned Counsel further contended that the benefit of regularisation, which has been already extended to similarly situated candidates, in terms of the order passed by this Court, in the writ petition filed earlier, namely, WP(C) No. 479(AP)/2007, cannot be denied to the private Respondents.

15. On the basis of the rival submissions made on behalf of the respective parties, it is now, required to be determined if the private Respondents, as teachers on contractual employment, had any legally enforceable right of regularisation against regular vacancies by invoking the doctrine of legitimate expectation.

16. On careful perusal of the entire facts and circumstances leading to the filing of the present writ appeal and on evaluating the rival stand of the parties made through their respective learned counsel, we are of the considered view that the issue, raised by the Appellant, is no longer res integra in view of the law laid down by the Supreme Court in Uma Devi's case (supra). Employees of the Government Department, engaged on temporary, casual, ad hoc or contract basis, have no legal right to claim for their regularisation, absorption or continuance of such post on permanent basis. A regular process of recruitment or appointment has to be resorted to in order to fill up regular vacancies in the posts available at a particular point of time. The process of filling up of these regular vacancies of teachers cannot be carried out by regularising contractual employees, who are in employment for a specified period under certain scheme or on some other consideration.

17. The recruitment process can be initiated only in terms of the relevant recruitment rules, and, therefore, any regularisation of the service of contractual employees without adhering to the 2001 Recruitment Rules, as in the present case, is opposed to the constitutional scheme of recruitment of public servants as

envisaged under Article 309 of the Constitution of India. The regularisation of the services of the contractual appointees shall be violative of the fundamental rights enshrined under Articles 14 and 16 of the Constitution of India; more so such irregular process of recruitment by regularisation of the services of the contractual employees would obviously take away the legitimate rights of the Appellants.

18. Now, the question, which arises for consideration is as to whether the Respondents can claim the right of regularization on the basis of the doctrine of legitimate expectation in view of the fact that the State Respondents extended such regularization in other category of employment in view of the judgment delivered in WP(C)479(AP) of 05 In Secy., Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Supreme Court, pithily explained the "doctrine of legitimate expectation", as follows:

46. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. See Lord Diplock in *Council for Civil Services Union v. Minister of Civil Service* : 1985 AC 374 : (1984)3 ALLER 935 : (1984)3 WLR 1174(HL) *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, and *Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan*, There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision. Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employee to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf is therefore to be

rejected.

(Emphasis supplied)

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.

19. In yet another decision in *Union of India and others Vs. Hindustan Development Corpn. and others*, the Supreme Court considered the doctrine of legitimate expectation and held:

28. ...For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

(Emphasis supplied)

20. In the facts and circumstances discussed above the private Respondents cannot be said to have a "legitimate expectation" of a particular treatment consistent with past practice of the authority. Temporary, contractual or casual employees cannot successfully advance the theory of legitimate expectation. It cannot also be said that the State Respondent had given any assurance to regularize the service of the private Respondents, while engaging them as teachers in S.S.A. scheme; rather, it was the other way round, where the private Respondents had agreed not to claim regularization. The State cannot constitutionally make such a promise. It is also obvious that the doctrine of

legitimate expectation cannot be invoked to seek a positive relief of being made permanent in the post.

21. In *Secy., State of Karnataka v. Umadevi (3)*, (supra), the Supreme Court emphasized that in a contractual service, the appointment comes to an end at the end of the tenure indicated in the contract and, in such a situation, the Courts should not, ordinarily, issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. The relevant observations read as follows:

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 appointments 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.

22. Even though the learned single Judge in the impugned order relied on a common judgment and order rendered in WP(C) No. 479 (AP)/05, WP(C) No. 296 (AP)/04, WP(C) No. 291 (AP)/04 and WP(C) No. 135 (AP)/04(supra), we are afraid if at all the aforesaid decisions, which apparently were rendered in a different context, prior to the decision in Umadevi's case (supra), which were also contrary to the law laid down in Umadevi (supra), could have been relied on and applied in the fact situation of the present case. Over and above, the Apex Court has held that any decision running counter to what has been held in Umadevi (supra) will stand denuded of their status as precedents. Therefore the decision aforesaid in WP(C) No. 479 (AP)/05, etc. could not have been applied to the facts of the present case, when the said decision runs contrary to the decision in Umadevi (supra), inasmuch as the Apex Court, in Umadevi (supra), laid down the law as follows:

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

23. The Supreme Court in Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, which arose out of a refusal to promote the writ petitioner therein as the Principal of a college, held that mandamus may be issued to compel the authorities to do something, but it must be shown that the statute imposed a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and no mandamus can be issued in favour of the contractual employees directing the Government to make them permanent since the employees could not show that they had enforceable legal right to be permanently absorbed or that the State had a legal duty to make them permanent.

24. As a matter of fact, statutory rules are framed under the authority of law governing the recruitment and conditions of service of persons serving the union or a state in terms of the provision of Art 309 of the Constitution. It is also recognised that no Government order, notification or circular can replace the statutory rules framed under the authority of law.

25. The authority of law will equally restrain a Court of law from exercising jurisdiction not vested with it. This is because following any other option in public service could be devastating inasmuch as it will take away protection, permanent status and fairness present in the system of functioning under the Constitutional scheme.

26. The law is well settled that the recruitment of employees in Government service has to be in conformity with the provisions of the relevant Recruitment rules and norms laid down therein. If statutory rules do not provide for giving any weightage to experience, then, no preferential right can be conferred on

anyone by the order of this Court. In our view, the impugned judgment and order has overlooked the fact that the teachers in the Department of Education, Government of Arunachal Pradesh, can be appointed only in conformity with the provisions of Assistant Teachers (Grade-A) Recruitment Rules, 2001. On the top of it, in our view, the impugned order does not protect the rights of the Appellants, enshrined under Article 14 and 16 of the Constitution, as it discriminates against the eligible candidates.

27. In view of the law laid down by the Supreme Court in Uma Devi (supra), we hold that the writ petitioners/private Respondents, who have been engaged initially under Sarva Shiksha Axiyan Mission on contract basis, have no right to claim regularisation, absorption and/or continuance in the posts of teachers on permanent basis. It is obligatory, on the part of the State Respondents, to resort to regular process of selection, in terms of 2001 Recruitment Rules, for recruitment and appointment of Asstt. Teachers in the education Department, as and when regular vacancies are required to be filled up. Accordingly, we direct the State Respondents to proceed expeditiously and in accordance with the relevant recruitment rules, for the purpose of making recruitment to the sanctioned posts of Asstt. Teachers in terms of the advertisement issued on 15.07.2008.

The private Respondents could not, therefore, be favoured with any order of mandamus for conversion of their contractual appointments to regular teachers in violation of the scheme of law.

28. With the above observations and directions, this writ appeal is allowed and, accordingly, the impugned order passed by the learned single Judge is set aside. However, we pass no order as to costs.