

(2009) 04 CAL CK 0026
In the Calcutta High Court
Case No : W.P.C.T. No. 077 of 2009

The Union of India and Others

APPELLANT

Vs

Shri Samir Lal Das

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 04 CAL CK 0026

Hon'ble Judges : Sanjib Banerjee, J; Amit Talukdar, J

Bench : Division Bench

Advocate : H.R. Bahadur in WPCT Nos. 077 of 2009 and H.R. Bahadur in WPCT No. 078 of 2009, for the Appellant; Anjili Nag in WPCT No. 077 of 2009 M.P. Kamraj for in WPCT No. 078 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—The writ petitioners challenge a common order of the Central Administrative Tribunal in these two petitions by which the services of two employees have been directed to be regularized with effect from the respective dates they were appointed as primary school teachers against the post of graduate trained teachers. The Tribunal's order of December 12, 2008 is based on a judgment of this Court rendered in WPCT No. 25 of 2006 and followed in WPCT No. 26 of 2006 arising out of claims made by some other teachers. The Tribunal held that the respondents herein were similarly placed as the teachers in those earlier proceedings before this Court and the matters in issue were covered by the judgment of this Court passed on March 21, 2006.

2. The sheet-anchor of the petitioners' challenge to the Tribunal's order is the judgment reported at Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the reiteration of the principles by the subsequent decision reported at Official Liquidator Vs. Dayanand and Others, . The petitioners have referred copiously to the Dayanand case and particularly to paragraphs 66, 67 and 68 of the report :

66. The judgments of 1980s and early 1990s - *Dhirendra Chamoli vs. State of U.P.*, *Surinder Singh vs. CPWD*, *Daily Rated Casual Labour vs. Union of India*, *Dharwad. Distt. PWD Literate Daily Wage Employees Assn. vs. State of Karnataka*, *Bhagwati Prasad vs. Delhi State Mineral Development Corpn.* and *State of Haryana vs. Piara Singh* are representative of an era when this Court enthusiastically endeavored to expand the meaning of the equality clause enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily-wage basis should be treated on a par with regular employees in the matter of payment of salaries and allowances and that their services be regularized. In several cases, the schemes framed by the Governments and public employer for regularisation of temporary/ad hoc/daily-wage/casual employees irrespective of the source and mode of their appointment/engagement were also approved. In some cases, the Courts also directed the State and its instrumentalities/agencies to frame schemes for regularisation of the services of such employees.

67. In *State of Haryana vs. Piara Singh* this Court while reiterating that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored with the employment exchange, some method consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner for calling for applications and all those who apply in response thereto should be considered fairly, proceeded to observe that if an ad hoc or temporary employee is continued for a fairly long spell, the authorities are duty-bound to consider his case for regularisation subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service. The propositions laid down in *Piara Singh* case were followed by almost all the High Courts for directing the State Governments and public authorities concerned to regularise the services of ad hoc/temporary/daily-wage employees only on the ground that they have continued for a particular length of time. In some cases, the schemes framed for regularisation of the services of the backdoor entrants were also approved.

68. The above noted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and

rampant corruption afflicted the whole system. This was recognised by the Court in *Delhi Development Horticulture Employees' Union vs. Delhi Admn.* in the following words (SCC pp. 111-12, para 23).

23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the employment exchange, it has become a common practice to ignore the employment exchange and the persons registered in the employment exchanges, and to employ and get employed directly those who are either not registered with the employment exchange or who though registered are lower in the long waiting list in the employment register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts.

3. The petitioners suggest that whatever may have been the basis for judicial orders in matters pertaining to regularization of service and conferment of benefits upon regularization prior to *Umadevi*, the law has now been re-written and it is by such new benchmark that matters post *Umadevi* have to be assessed. It is such legal question that falls for consideration in these proceedings.

4. The respondent in WPCT No. 077 of 2009 was appointed as a laboratory assistant in 1985 but he discharged the duties of a graduate trained teacher as he was qualified in that regard. He was appointed as a primary school teacher on September 16, 1988 against a post of graduate trained teacher on ad hoc basis

and was subsequently regularized as a graduate trained teacher. He sought regularization as a graduate trained teacher with effect from his date of appointment on November 15, 1985. This respondent had instituted OA 126(AN) of 2007 before the Tribunal, claiming that he be accorded the same benefits that had been conferred by this Court on the employees in WPCT No. 25 of 2006 and WPCT No. 26 of 2006 as he was similarly placed as the employees in those proceedings. This Court had directed that the services of the employees in those proceedings be regularized as graduate trained teachers with effect from the dates of their respective appointments as primary school teachers. On the strength of such order of this Court, OA 126(AN) of 2007 was disposed of by directing the employer to consider this respondent's case and to grant him the benefits if he was similarly placed as the employees in the earlier proceedings before this Court. The employer rejected this respondent's claim on April 25, 2008 stating that this respondent's case was different from those of Anil Kumar Jha and Ganesh Kumar Singh who were the beneficiaries of the earlier High Court order. It is such speaking order of April 25, 2008 that was assailed before the Tribunal which culminated in the order that has been carried for judicial review in WPCT No. 077 of 2009.

5. The respondent in WPCT No. 078 of 2009 was appointed as a primary school teacher on ad hoc basis against a post of graduate trained teacher by an order of July 30, 1985. He performed the duties of a graduate trained teacher without any additional payment. This respondent's services were regularized as a graduate trained teacher with effect from August 9, 1999. This respondent cited the cases of other similarly circumstanced teachers who had obtained benefits due to a graduate trained teacher from the dates of their respective appointments as primary school teachers on ad hoc basis. His representation for his services being regularized as a graduate trained teacher with all attendant benefits from the date of his appointment as a primary school teacher on August 8, 1985 stood rejected. He applied before the Tribunal and is the other beneficiary of the common order now under challenge.

6. The scope of the present proceedings is limited. In judicial review, the writ Court is not ordinarily called upon to reassess the merits of the matter as in an appeal. The petitioners suggest that the Tribunal abdicated its authority to adjudicate by mechanically following an earlier judgment of this Court without applying its mind to the changed legal scenario. The petitioners question the Tribunal's assessment that these two respondents were similarly placed as the petitioners in WPCT.No.25 of 2006 and WPCT No. 26 of 2006. The petitioners assert that even if it be assumed that these respondents were so situated, the Umadevi dictum precluded these respondents from being sanctioned the additional benefits that had been denied by the employer. It is the decision-making process that has been called into question.

7. The parties agree that, shorn of the unnecessary details, the legal issues involved in the two petitions are identical and a decision on the one will cover the

other. The employer has referred to the details relating to the service of the respondent in WPCT No. 077 of 2009. Accordingly, the facts in such petition are referred to herein to appreciate the context of the legal issues raised. But before getting into the essential facts relevant for the present, purpose, the scope of the earlier judgment of this Court needs to be ascertained.

8. Ganesh Shankar Singh had brought WPCT No. 25 of 2006 to this Court questioning an order dated December 23, 2005 passed by the Tribunal. Singh was appointed as a primary school teacher with effect from August 28, 1985 on ad hoc basis. At the time of his appointment, Singh was a qualified graduate and he subsequently acquired a B.Ed, degree in the year 1995. Long prior to Singh obtaining the B.Ed. degree, his services were utilized for teaching mathematics against the sanctioned post of a graduate trained teacher even though his appointment was only as a primary school teacher. His appointment as a primary school teacher was regularized in 1989. Singh and three other similarly situated teachers applied to the Tribunal in 1990 seeking a direction on the employer to regularize their services from the dates of their initial appointments as graduate trained teachers will all consequential benefits. The Tribunal noticed that the services of local candidates, who were similarly placed as Singh and the three others, had been regularized but non-islanders had been discriminated against in the matter of regularization of their services. The employer failed to regularize the services of Singh despite the Tribunal finding, resulting in a second round of proceedings being launched by Singh before the Tribunal with a specific prayer for his services being regularized as a graduate trained teacher from the date that he had begun discharging the duties of a graduate trained teacher upon his appointment as a primary school teacher. The Tribunal disposed of the matter by requiring the employer to treat the petition before the Tribunal as a fresh representation and to take such decision as the merits of Singh's claim deserved.

9. Singh's services were regularized but only with effect from the date of his regular appointment as a primary school teacher in 1995. Such decision of bestowing abridged benefits on him was carried by Singh to the Tribunal on the ground that the services of two other teachers, Ramchander Sahu and Arun Kumar Rath, who were similarly placed as Singh and had been appointed as primary school teachers on ad hoc basis without requisite qualifications as graduate trained teachers", had been regularized with effect from the respective dates of their appointments as ad hoc primary school teachers. The Tribunal disposed of the petition by directing the regularization of the Singh's service as graduate trained teacher with effect from the date of his appointment as a regular primary school teacher, with consequential benefits. This order of March 13, 2003 was challenged by both sets of parties. Such writ petitions were disposed of by a common judgment of this Court of September 2, 2003 by remanding the matter to the Tribunal for consideration afresh with the observation that Sahu and Rath were similarly placed as Singh and the three others. On a reconsideration of the matter, the Tribunal rejected the employees' plea on the grounds that the claims were barred by the laws of limitation, that

the claims could not be considered in view of the principles of res judicata and that the claims were contrary to the Recruitment Rules. The Tribunal's decision of December 23, 2005 was carried by Singh in WPCT No. 25 of 2006 before this Court and by Jha in WPCT No. 026 of 2006.

10. By an order of March 21, 2006 on Singh's petition, this Court posed a question and answered the same as follows:

We are "therefore, at this stage concerned with the only question as to whether the petitioner could be denied such regularization on the face of the clear fact that Ramchander Sahu and Arun Kumar Rath who were similarly given ad hoc appointments as primary school teachers having no requisite qualifications for being appointed as graduate trained teachers and were entrusted with the duties of graduate trained teachers while their pay was fixed in the scale of primary school teachers, were regularized as graduate trained teachers with effect from the date of their initial appointments as above." (Page 99-100 of the Petition in WPCT 077 of 2009).

....

The respondent authorities having adopted a particular policy and/or decision in the cases of two teachers who are similarly situated as that of the writ petitioner, cannot discriminate the writ petitioner without any change of the facts and circumstances of his case and also without disclosing any reasonable cause for making such discrimination.

The actions taken by the respondents authorities in the case of the writ petitioner is, therefore, clearly violative of the principles laid down in Articles 14 and 16 of the Constitution of India. (Page 101 of the petition in WPCT 077 of 2009).

11. On the basis of the reasoning found in the order of March 21, 2006 in WPCT No. 025 of 2005, Jha's claim in WPCT No. 026 of 2006 stood allowed by an order of March 22, 2006.

12. It has been necessary to go into the details of the claims brought by Singh and Jha to assess whether the judgments rendered thereon were rationally applied by the Tribunal to the claims of the two teachers covered in these proceedings. The petitioners herein have sought to distinguish the earlier decisions on the ground that the reasoning therein hinged on the discrimination against non-islanders in the matter of regularization of service as school teachers. The petitioners say that these respondents are not similarly placed as Sahu and Rath. The contention of the petitioners herein on either count is flawed and without basis. There can be no manner of doubt, given the service records of both the respondents herein, that they are similarly placed as Singh and Jha and, thus, likewise circumstanced as Sahu and Rath, who had originally been singled out by the petitioners herein for conferment of benefits as graduate trained teachers from the dates of their appointments as ad hoc primary school teachers. The difference is only as to the dates and there is no other discernible distinction.

The petitioners, who are governed by Articles 14 and 16 of the Constitution, have scarcely any room to maneuver, given their treatment of Sahu and Rath. The ratio in the judgments rendered in WPCT No. 025 of 2006 and WPCT No. 026 of 2006 was based not on the appreciation of the discrimination meted out to non-islanders, but on Singh and Jha having been treated as children of a lesser god by the Administration when compared to the lollies and candies doled out to Sahu and Rath.

13. Since Umadevi and Dayanand have been referred to at length, it calls for an appreciation of the law as enunciated therein. The essence of Umadevi is captured at paragraphs 47 to 49 of the report which has been quoted in the Dayanand, case. In substance, the two judgments held that when a person obtained a temporary or casual employment under the State in its various forms, such person could not 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 prescribed procedure. The Supreme Court, concluded, in Umadevi, that daily wage-earners formed a class by themselves and could not claim discrimination as against those who had been regularly recruited on the basis of the relevant rules. The Supreme Court opined that accepting an argument that such irregular appointees were entitled to be given permanent employment would amount to perpetuating an illegality in the matter of public employment which would be a negation of the constitutional scheme of things.

14. The issue before the Tribunal was not as to whether the services of the respondents herein were to be regularized. That part of the exercise had already been completed before these respondents traveled to the Tribunal for the present cause. These respondents alleged discrimination in the dissimilar treatment of them by the employer despite their being similarly placed as Sahu and Rath and Singh and Jha. It is only such matter that the Tribunal addressed in the order which is the subject matter of these proceedings. The Tribunal reasoned that if Singh and Jha could obtain the benefits that Sahu and Rath had been conferred earlier, the respondents here were deserving of the same. The Tribunal merely righted a wrong that had been committed by the employer.

15. The Tribunal may have expended a few more lines in support of its finding that these respondents were similarly placed as the other teachers referred to or covered by the orders made on WPCT No. 25 of 2006 and WPCT No. 26 of 2006. But considering that the employer was the same and the employer ought reasonably to have comprehended the parity of the reasoning, there may be virtue in the parsimony evident in the order.

16. Article 14 of the Constitution is negative in its language. There is an injunction in-built therein that the State shall not deny to any person equality before the law or equal protection of the laws. The emphasis is on the negative character of the duty of the State. The Administration could not have reasonably refused the benefits that these respondents claimed if only it had been alive to the duty enjoined on it by Article 14 of the Constitution.

17. WPCT No. 077 of 2009 and WPCT No. 078 of 2009 stand dismissed. For the Administration's untiring effort in waving the bogey of Umadevi in its attempt to deflect attention from its palpable discrimination of the respondents herein, it shall pay costs assessed at 300 GM to either respondent.

18. Urgent certified Photostat copies of this judgment be supplied to the parties, if applied for, subject to compliance with requisite formalities.

Amit Talukdar, J.

19. I agree.