
(2009) 12 AHC CK 0331
In the Allahabad High Court

Union of India (UOI) and Another	APPELLANT
Vs	
Central Administrative Tribunal, Allahabad Bench and Another	RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 311(2)

Citation : (2010) 2 AWC 1784 : (2009) 123 FLR 836

Hon'ble Judges : Ashok Bhushan, J; Abhinava Upadhyaya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhinava Upadhyaya, J.—By this petition the Union of India and the Commissioner, Income Tax, Allahabad have prayed for setting aside the order of the Central Administrative Tribunal, Allahabad dated 28.2.2006 passed in favour of Rakesh Kumar, respondent No. 2.

2. We have heard Sri R.K. Upadhyaya, learned Counsel for the petitioner and Sri Bipin Behari, learned Counsel for the respondent No. 2.

3. The brief facts of the case are that the respondent No. 2 Sri Rakesh Kumar was engaged on daily rate as contingent paid employee in the office of the Commissioner of Income Tax, Allahabad in July 1994. He continued intermittently as a daily wager until his disengagement on 13.2.1997. He was disengaged by oral order on 13.2.1997. Aggrieved by such disengagement he filed an Original Application No. 502 of 1997 before the Central Administrative Tribunal seeking a direction to the respondent Assistant Commissioner to re-engage him as casual labour (Generator Operator) with all consequential benefits. The Tribunal vide its order dated 20.3.2001 granted relief to him in the following terms which is quoted below:

I find in the case before me that the applicant was thrown out from the service without being given order of termination. Although he worked as casual labour but he worked continuously from 1.7.1994 to 13.2.1997 barring artificial breaks.

Such termination is clearly unlawful and cannot be upheld. The respondents are, therefore, directed to take back the applicant in service and in case after assessment of his past services, it is not found that his services were satisfactory, he should be given notice before giving the termination order. The applicant is, however, not entitled to any back wages on account of his re-engagement. The respondents shall comply with this order within a period of three months from the date of receipt of a copy of this order.

There will be no order as to costs.

4. Pursuant to the aforesaid direction of the Tribunal the respondent was allowed to join on daily wage basis where he continued in the same status, however, on 14.2.2002 he was served with a show cause notice on the ground that his work has not been found satisfactory, he does not take interest in performing his duty and does not follow any time schedule. Upon the reply submitted by the petitioner which was found unsatisfactory thereby vide order dated 4.3.2002 he was disengaged on the ground mentioned in the show cause notice.

5. Respondent No. 2 aggrieved by the order dated 4.3.2002 again approached the Tribunal by filing Original Application No. 364 of 2002. The Central Administrative Tribunal again allowed the claim of the respondent by issuing direction of his reinstatement with all consequential benefits including payment of back wages and direction for regularization vide its impugned order dated 28.2.2006. The Tribunal also awarded cost of Rs. 3,000 upon the petitioner.

6. The petitioner respondents aggrieved by the aforesaid judgment of the Tribunal have preferred this writ petition. This Court by its order dated 19.10.2006 stayed the operation of the judgment of the Tribunal pending filing of pleadings.

7. We have gone through the pleadings and have considered the submissions made by the counsel for the parties. Sri R.K. Upadhyaya, learned Counsel submits that the respondent's engagement was as a daily wager which was not made in compliance of any rules and regulation or after following any selection process. He further submits that his engagement was purely temporary, upon contingency of work and not against any post in the cadre and, therefore, the Tribunal erred in law in allowing the respondent to continue in service. It is further submitted that there was no requirement in law for issuing any show cause notice or passing any written termination order for disengaging a daily wager whose appointment is not against any civil post covered by Article 311(2) of the Constitution of India. He further states that earlier the order of the Tribunal dated 20.3.2001 was also not sustainable in the eyes of law but since the department did not want to litigate over the issue, allowed the respondent to join without challenging the said order of the Tribunal before this Court. But now that the Tribunal has again directed to continue the respondent in service by awarding back wages and issued directions for his regularization, the department has no other option but to challenge the same before this Court as order of the Tribunal

is totally illegal and unsustainable. The main ground of challenge that appears from the pleadings and the arguments raised by the petitioner is that the impugned judgment of the Tribunal is contrary to the law laid down by the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

8. On the other hand Sri Bipin Behari, learned Counsel appearing for the respondent No. 2 has forcefully submitted that juniors to him have been retained in employment whereas the petitioner has been disengaged in a very illegal and arbitrary manner. The respondent No. 2 has put in a long period of service and his disengagement on the ground as observed by the Tribunal, was unsustainable and the order of termination was rightly quashed. The Tribunal was also justified in directing the order for reinstatement with full back wages and other benefits by awarding cost to the respondent. Learned Counsel for the respondent submits that the action of the petitioner is in contravention of the provisions of Article 14 of the Constitution of India and states that upon the facts of this case the proposition of law as enumerated in the case of Umadevi (3) (supra) are distinguishable and is not applicable. For extending such a proposition he has solely relied upon the decision rendered by the Hon"ble Supreme Court in the case of U.P. State Electricity Board v. Pooran Chandra Pandey and Ors. (2007) 11 SCC 92 : 2008 (1) AWC 331 (SC).

9. The facts of Pooran Chandra Pandey's case (supra), was that by means of a writ petition certain employees who were daily wagers of Cooperative Electric Supply Society had prayed for regularization of their services in the U.P. State Electricity Board because in an earlier point of time the U.P. State Electricity Board had taken over the daily wage employee of the said society "in the same manner and position". A decision was taken by the Board to regularize the services of its own employees who were working on daily wage basis from a specified date on the existing vacant post through an examination to be held for the purpose. Since the daily wage employees of the society were not being considered, they filed writ petition before the High Court and the Hon"ble single Judge held that the original employees of the Electricity Board and the employees of the society who subsequently became employees of the Electricity Board were one and the same and the two sets of employees cannot be discriminated with and directed for their regularization. The matter was carried to the Hon"ble Supreme Court where it was argued on behalf of the Board that Court cannot direct for regularization of daily wage employees of the society, in view of the decision rendered by the Constitution Bench in the case of Umadevi (3) (supra).

10. The Hon"ble Supreme Court in the case of Pooran Chandra Pandey (supra) has opined thus:

16. ...we find that often Umadevi (3) case is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat

Petroleum Corpn. Ltd., a little difference in facts or even one additional fact may make a lot of differences in the precedential value of a decision. Hence, in our opinion, Umadevi (3) case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case inapplicable to the facts of that case.

17. In the present case the writ petitioners (the respondents herein) only wish that they should not be discriminated against vis-a-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board "in the same manner and position". Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the Society before 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularisation of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Umadevi (3) case in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution.

18. We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi v. Union of India*, has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi* case is a decision of a seven-Judge Bench, whereas Umadevi (3) case is a decision of a five Judge Bench of this Court. It is well-settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, *Maneka Gandhi*'s case does not specifically deal with the question of regularisation of Government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

11. On the strength of the aforesaid view of the Hon'ble Supreme Court in the case of *Pooran Chandra Pandey* (supra) Sri Bipin Behari has tried to distinguish Umadevi (supra) and submits that action of the respondent are hit by Article 14 and therefore, the case of Umadevi (supra) would not apply and respondents is entitled for regularization and, therefore, the order of the Tribunal cannot be faulted and the writ petition deserves to be dismissed.

12. Unfortunately for the respondent the aforesaid case of *Pooran Chandra Pandey* (supra) relied so strongly by learned Counsel for the respondent has been overruled by a three Judge Bench of the Hon'ble Supreme Court in the case of *Official Liquidator Vs. Dayanand and Others*, of the aforesaid judgment are quoted hereinbelow:

90. We are distressed to note that despite several pronouncements on the

subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that; predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the Courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down law.

92. In the light of what has been stated, above, we deem it proper to clarify that the comments and observations made by the two Judge Bench in *U.P.S.E.B. v. Pooran Chandra Pandey*, should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial forums nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

13. We have gone through the pleadings exchanged between the parties and the submission made by learned Counsels. The undisputed fact that emerges is that as per own case of the respondent before the Tribunal in the earlier proceedings was for seeking a direction to the authorities to re-engage the applicant as casual labour (Generator Operator) with all consequential benefits. The Tribunal issued direction for re-engagement of the respondent on the ground that there was no written order of termination, however, liberty was granted to the authorities to pass an order of termination against the petitioner after issuing a show cause notice. The undisputed fact is that in compliance of the aforesaid order of the Tribunal the petitioner was reengaged and upon finding his service unsatisfactory was issued a show cause notice and thereafter by a written order

his services were terminated with effect from 4.3.2002. The undisputed fact is that the respondent continues to be a daily wager. The undisputed fact is that he was not appointed on any duly sanctioned post after following due process of selection as prescribed by the statutory rules made in that behalf.

14. Upon these undisputed fact learned Counsel for the respondents submits that the order of removal is hit by Articles 14 and 16 of the Constitution as other daily wagers have been retained in service whereas the respondent has been shown the door on absolutely vague charges without holding any enquiry in a very arbitrary manner.

15. We are not impressed by this argument. It is settled principle of law that any appointment or entry into service, under the State or its instrumentality, if allowed without complying the constitutional scheme of appointment will be ipso-facto illegal and in direct conflict with Article 16 of the Constitution. Such appointees do not have any legal enforceable right to continue on or to hold such post. Merely because some others may have been retained will not give right to the removed workmen to claim protection of Article 14 of the Constitution.

16. In the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, the Hon''ble Supreme Court has held that the concept of equality as envisaged under Article 14 is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any one individuals or group of individuals others cannot claim the same illegality or irregularity on ground of denial to them.

17. The case of Umadevi (supra) has brought about a major shift in the view that was earlier held by the Court regarding the status of casual or daily rated employee who have put in a considerably long period of service. The main thrust of the Constitution Bench is that the person who have been engaged without following the procedure prescribed by law and without adhering to the constitutional scheme of engagement on a public post would not be entitled to be absorbed in regular service or made permanent merely on the strength of such engagement and continuance thereon for a fairly long period. It was further observed that if the original appointment was not made by following the due process of selection as envisaged by the relevant rule, merely by continuing on the post will not have equity working in their favour. On the contrary the Hon''ble Supreme Court held that equity to the persons who are working for regularization is running counter to the equity for the millions of this country seeking fair opportunity of employment. The Constitution Bench in the case of Umadevi (supra) has held as under:

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....

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.

18. In view of the observations made hereinabove and the law as laid down by the Constitution Bench, we are of the view that the order of the Tribunal is unsustainable and deserves to be set aside and is, accordingly, quashed.

19. In the result, the writ petition succeeds and is allowed.

The parties to bear their own cost.