
(2014) 01 RAJ CK 0144
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9889 of 2008

Vijay Pareek

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16, 309

Citation : (2014) 3 CDR 1380 : (2014) LabIC 1770 : (2014) 3 RLW 2134

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Manoj Bhandari, Advocate for the Appellant; G.R. Punia, Sr. Advocate and Tribhuwan Gupta, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The petitioner, Dr. Vijay Pareek, at the fag end of his career when he is about to reach the superannuation age while serving the respondent-Mohan Lal Sukhadia University, Udaipur for last 32 years claims regularisation of his services in the present writ petition. The facts leading to the present writ petition in brief nut-shell are like this.

2. The petitioner was appointed as "Population Education Specialist" on monthly fixed pay of Rs. 1000/- vide order Annex. 1 dated 10.3.1981 along with four other persons, who were appointed in regular pay scale as Research Assistant/Officer. The petitioner was appointed after due selection process held by the prescribed Selection Committee comprising of Vice Chancellor, External Expert and nominee from the Ministry of Health and Family Welfare and Member and Director of PRC.

3. On 16.11.1985, he was given regular pay scale of Rs. 700-1300 vide order dtd. 5.11.1985, which is placed on record by the respondents as Annex. R/2. The Vice-Chancellor of the respondent-University transferred the petitioner from Population Studies Cell to the Adult Education Programme against the post of

Project Officer vide order Annex. R/1 dtd. 11.1.1985. The respondent-University revised the pay scale vide order Annex. 3 dtd. 27.6.1990 from the pay scale of Rs. 700-1300 to Rs. 2200-4000 with effect from 10.2.1986 as UGC sanctioned the said pay scale of Project Officer. Vide Annex. 4 dtd. 10.7.1997, the State Government sanctioned the post of Project Officer w.e.f. 1.4.1997 at the request of respondent-University.

4. Thereafter according to the averments made in the writ petition, the pay scales were revised for the petitioner in the same manner as Assistant Professors working in the same University. The petitioner's case was recommended for regularisation by the respondent-University itself vide Annex. 7 dtd. 18.2.2008 in which appointment of the petitioner as Population Education Specialist after due selection and interview was also admitted and grant of regular pay scale as Project Officer in the Centre for Adult Education was also admitted and the Registrar of the respondent-University recommended to the Government of Rajasthan, Higher Education Department that since the petitioner has worked for more than 10 years and is presently getting pay scale of Assistant Professor of Rs. 2200-4000, which was revised to Rs. 8000-13500 in view of the judgment of Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the University may be permitted to regularize the services of the petitioner as such. The Rajasthan Universities' Teachers (Absorption of Temporary Teachers) Ordinance, 2008 was promulgated, a copy of which is placed on record as Annex. 8 for regularisation of ad hoc teachers. However, since the petitioner's case was not considered and his services were not regularized after serving the notice for demand of justice vide Annex. 11 dtd. 30.11.2008, the petitioner preferred this writ petition in this Court, which was filed on 6.1.2008.

5. After issuing notices, the respondent-University has filed a reply to the writ petition to which a rejoinder has been filed by the petitioner.

6. I have heard both the learned counsel at length, perused the judgments cited at Bar and the record of the case.

7. Mr. Manoj Bhandari, learned counsel appearing for the petitioner vehemently argued that the petitioner has been working since 1981 for about 33 years as Project Officer and his services deserve to be regularized w.e.f. the date of his initial appointment in the year 1981, since his appointment was regular and was made after due selection by the prescribed Selection Committee as admitted by the respondent-University itself and even though the order Annex. 1 dtd. 10.3.1981 appointing the petitioner on fixed monthly honorarium uses the word "temporarily appointed" but since the petitioner was given the regular pay scale vide order Annex. R/1 dated 11.1.1985 and he was transferred to Adult Education Programme of respondent-University against the vacant post of Project Officer vide Annex. R/2 dtd. 5.11.1985, therefore, his services deserve to be regularized atleast from the date of 11.1.1985. He also drew the attention of the Court towards Annex. 4 dtd. 10.7.1997 whereby the State Government on the

request of the respondent-University itself vide its letter dtd. 26.5.1997 sanctioned the said post of Project Officer maintaining its continuity ("Vernacular matter omitted... Ed.") w.e.f. 1.4.1997 and the Project and posts thereof which were financed by the University Grant Commission upto 1.4.1997 was sanctioned to be the post of State Government in continuity vide communication Annex. 4 dtd. 10.7.1997. However, he submitted that the respondents cannot be allowed to say that the regularisation will be done only w.e.f. 1.4.1997 and not from the date of initial appointment or at least from 11.1.1985 when the petitioner was transferred against the vacant post of Project Officer in the Adult Education Programme vide Annex. R/1 dated 11.1.1985.

8. Mr. Manoj Bhandari relied upon the following judgments in support of his contention which will be dealt with hereinafter:

1. Maharana Pratap University of Agriculture and Technology v. Sudhansu Roy Bhatt-DBSAW No. 927/2011 decided on 26.8.2011 upheld by the Hon"ble Supreme Court in Special Leave to Appeal (Civil) No. 33784-33785/2011- Maharana Pratap University of Agricultural and Technology v. Sudhanshu Roy Bhatt decided on 20.7.2012.

2. Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, .

3. Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

4. Parvat Singh Vs. State of Rajasthan, .

9. On the other hand, Mr. G.R. Poonia, Sr. Advocate assisted by Mr. Tribhuwan Gupta appearing for the respondent-University submitted that since the post of Project Officer was sanctioned by the State Government at the instance of respondent-University only with effect from 1.4.1997 vide Annex. 4 dtd. 10.7.1997, therefore prior to that date, the petitioner who worked only in specified project, his services can be regularized only with effect from 1.4.1997 and not prior to that date. They also justified the non-regularisation of petitioner"s services under the 2008 Ordinance, Annex. 8 because the petitioner was not appointed as a "Teacher" in terms of 1974 Act and therefore, the Ordinance of 2008 which applied only to "temporary teachers" would not apply to the present petitioner. Mr. G.R. Punia also submitted that the benefit of past period from 1981 till 1997 even for the purposes of computation of pensionary benefits and grant of selection grade etc. to the petitioner cannot be considered and even in view of decision of Hon"ble Supreme Court in the case of State of Karnataka v. Uma Devi (supra), the petitioner"s services can be regularized only with effect from 1.4.1997. He relied upon the following decision of Hon"ble Supreme Court in the case of State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, .

10. This Court having heard the learned counsel at length and in view of legal position culled from the judgments cited at the Bar, is of the considered opinion that the petitioner deserves to be regularized in service of the respondent-

University as Project Officer from 11.1.1985 when he was transferred against the vacant post of Project Officer to the Adult Education Programme by the respondent-University albeit on fixed emoluments of Rs. 1200/- per month. The award of regular pay scale of Rs. 700-1300 vide order Annex. R/2 dtd. 5.11.1985 clearly shows that the petitioner was working against the vacant post even though in a project of the University Grant Commission being implemented by the respondent-Mohan Lal Sukhadia University, Udaipur. The appointment of the petitioner cannot be said to be irregular or back-door entry in any manner. On the other hand, the admission of the respondent-University clearly shows that the petitioner was appointed initially as Population Education Specialist after due selection process held by the prescribed Selection committee comprising of Vice Chancellor and three other members. This Court finds little force in the contention of the learned counsel Mr. G.R. Punia, Sr. Advocate appearing on behalf of the respondent-University that since regular sanctioned post of the State Government became available only w.e.f. 1.4.1997 vide order Annex. 4 dtd. 10.7.1997, therefore, the petitioner's services cannot be regularized from the period prior to 1.4.1997. A closer scrutiny of the said letter dtd. 10.7.1997 Annex. 4 clearly shows that the said sanctioned post was made with a view to maintain the continuity of the said post in the project, which were earlier maintained and financed by the University Grant Commission and w.e.f. 1.4.1997 by the State Government. The petitioner cannot be said to be working in vacuum or without a post since his initial appointment w.e.f. 10.3.1981. As stated above, when the petitioner was transferred from the Population Studies Cell of the respondent-University to, the Adult Education Programme vide order Annex. 1 dtd. 11.1.1985, he was so transferred against the vacant post of Project Officer. Thus, the respondent-University cannot deny the regularisation of the petitioner after 33 years of his service from the date when he was so transferred against the sanctioned and vacant post of Project Officer even though in the project of Adult Education Programme in the same University.

11. This Court also finds considerable force in the contention raised by the learned counsel for the petitioner, Mr. Manoj Bhandari that the petitioner ought to be treated as a "Teacher" as defined in Section 2(ix) of the Rajasthan Universities' Teachers and Officers (Selection for Appointment) Act, 1974 which reads as under:--

2(ix) "Teacher" means a Professor, a Reader or a Lecturer of any faculty of a University and such other person by whatever name designated by or under the relevant law, imparting instructions or conducting and guiding research or extension programmes in a University.

12. Section 3 of the said Act of 1974 is also reproduced hereinbelow for ready reference:

3. Restrictions on appointments of teachers and officers.-- 1. Notwithstanding anything contained in the relevant law, as from the commencement of this Act, no teacher and no officer in any University in Rajasthan shall be appointed

except on the recommendations of the Selection Committee constituted u/s 5.

2. Save as otherwise provided in sub-section (3), every appointment of a teacher or of an officer in any University made in contravention of sub-section (1) shall be null and void.

3. Nothing herein contained shall apply to the appointment of a teacher or an officer as a stop-gap arrangement for a period not exceeding one year or to the appointment of a part-time teacher or of a teacher or officer in the pay scale lower than that of Lecturer or Assistant Registrar respectively.

Explanation: The expression "appointed" in sub-section (1) shall mean appointed initially and not appointed by way of promotion.

13. From the aforesaid definition also, it is clear that such other persons by whatever name designated (obviously including Population Education Specialist also) for imparting or conducting and guiding research or extension programmes in a University. The restriction of Section 3 of the said Act which makes an exception in sub-section (3) clearly covers the case of the petitioner and therefore, this Court finds no force in the contention of the learned counsel for the respondents, Mr. G.R. Punia that the petitioner could not be regularized when the Ordinance of 2008 was issued by the respondent-University for this purpose. The words "Temporary Teachers" in Ordinance of 2008 as defined in Section 2(ix) would clearly cover the case of the petitioner. The said definition of "temporary teachers" in Ordinance of 2008 is also reproduced below for ready reference:

(iv) "temporary teacher" means a teacher appointed in accordance with the provisions of sub-section (3) of section 3 of the Rajasthan Universities' Teachers and Officers (Selection for Appointment) Act, 1974 (Act No. 18 of 1974) in the pay scale prescribed by the University concerned from time to time on temporary basis as stop-gap arrangement, after due public advertisement of vacancies, or teacher appointed on part time basis and continuing in the pay scale prescribed by the Universities but shall not include a teacher appointed on contract basis or those in the foreign service and service the University concerned on deputation.

14. The contention of the learned counsel for the petitioner is also supported by the Division Bench judgment of this Court in the case of Maharana Pratap University v. Sudhanshu Roy (supra), in which Division Bench of this Court in almost similar circumstances negated the contention of the University and directed that even though the sanctioned post was not available, the grant of such regularisation from the date of initial appointment was valid. The relevant extract of the judgment relying upon the judgment of Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, is quoted below for ready reference:

We are also of the view that the argument of the appellant in the present appeals that there was no sanctioned post of Assistant Agriculture Officer with the appellant-University, is of no consequence as a bare look at the reply filed in

SBCWP No. 8358/2009 indicates that no such ground had been taken therein. Further the case before the learned single Judge was with regard to the right of regularisation of an employee having worked for about 33 years in the context of the resolution/notifications referred above.

Thus, to our mind, in the facts of the case, it was incumbent upon the appellant-University to have acted post-haste and taken proceedings for regularisation of service of the respondent. Admittedly, no such proceedings were taken for several years until the respondent approached this Court, first time in the year 2009 aggrieved of his non-consideration for regularisation. It is trite that no party can take advantage of its own wrong. Reference in this regard be made to the case in M.D., H.S.I.D.C. and Others Vs. Hari Om Enterprises and Another, as also M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others, , wherein the Hon''ble Supreme Court has reiterated this equitable proposition. It is apparent from the facts of the case that the appellant university had failed to take action on the resolution of the Board of Management of Rajasthan Agriculture University, Bikaner dated 22.1.1998 as adopted by it vide notification dated 4/6 January, 2000 whereunder the respondent was entitled for consideration for regularisation relating back to his initial entry into service.

We are, therefore, of the view that the learned single Judge was absolutely correct in placing reliance on the resolution and the notification referred above and in directing that on being found suitable for regularisation, the respondent was entitled to regularisation with reference to his initial date of entry into service with the department as Assistant Agriculture Officer on or about 06.3.1978 with all consequential benefits.

On the issue of regularisation of ad hoc employee, the issue stands resolved in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, , wherein following the judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Hon''ble Supreme Court held that "Uma Devi" casts a duty upon the government and its instrumentalities concerned to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit of protection of any interim order of the court/tribunal. In para 11 of the Kesri judgment, the Hon''ble Supreme Court has also reiterated that the object behind directions in Uma Devi's case (supra) was to ensure that those who have put-in more than ten years continuous service without protection of any interim order of court or tribunal before the date of decision in Uma Devi's case, are entitled to be considered for regularisation in view of long service.

To our mind, these directions were apparently on a very exceptional and strong equitable considerations, which also obtain in the present case. It is not in dispute that respondent had worked for more than ten years (about 32 years) without protection of any interim order or direction of any court or tribunal prior to Uma Devi's case. For this reason also, we are of the view that the order passed by the learned single Judge is absolutely legal and liable to be sustained.

Consequently, having considered the matter, we find that the appeals are without merit and are dismissed accordingly.

Sd/-

(Alok Sharma), J.

Sd/-

(Arun Mishra), C.J.

15. The said Division Bench judgment was upheld by the Hon''ble Supreme Court in Special Leave to Appeal (Civil) No. 33784-33785/2011-Maharana Pratap University of Agriculture and Technology v. Sudhanshu Roy Bhatt and while dismissing the SLP of the University on 20.7.2012, the Hon''ble Supreme Court held as under:

In our view, the impugned judgment does not suffer from any patent legal infirmity requiring interference under Article 136 of the Constitution. It is not in dispute that the respondent had continuously worked as an ad hoc Assistant Agriculture Officer for almost 32 years before his case was considered for regularisation and that too in compliance of the direction given by the High Court. During this period, he was given regular pay scale as revised from time to time. Therefore, there was no impediment in the regularisation of his service with retrospective effect.

With the above observations, the special leave petitions are accordingly dismissed.

16. The Hon''ble Supreme Court in the case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, way back in the year 1981 held that officiating services in a post is for all practical purposes of seniority as service on a regular basis. The relevant extract of the said judgment is quoted below for ready reference:

It is irrational to reject the claim of the "temporary" appointee on the nominal score of the terminology of the post. Officiating service in a post is for all practical purposes of seniority as good as service on a regular basis. It may be permissible, within limits, for Government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categories and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts. While rules regulating conditions of service are within the executive power of the State or its legislative power under proviso to Article 309, even so, such rules have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 & 16.

17. In the oft quoted para 44 and 53 from the judgment of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , which dealt with the case of

irregular appointment while making an exception for the persons even though irregularly appointed, who had served for more than 10 years, the Hon''ble Supreme Court held as under:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore and Another Vs. S.V. Narayanappa, , R.N. Nanjundappa (supra)*, and *B.N. Nagarajan and Others Vs. State of Karnataka and Others, ,* and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

18. On the other hand, the judgment relied upon by the learned counsel for the respondent-University in the case of *State of Rajasthan v. Jagdish Narain Chaturvedi (supra)* does not help the respondent-University in any manner. The said case dealt with ad hoc appointment on daily wages or work charge basis and the question was whether the appointment was made to the cadre/service or against the post and the Court held that such appointments are always to a post and not to the cadre/service. The emphasis given by the learned counsel for the respondent-University that since sanctioned post was available in the present case from 1.4.1997 and therefore, regularisation cannot be made from the date prior to 1.4.1997 is not an issue which is decided in the said judgment of *State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi*, and therefore, the same is of little help to the learned counsel for the respondent, Mr. G.R. Punia. In the present case, the appointment of the petitioner was made after due selection by the prescribed Selection Committee and he was transferred against the vacant post vide order Annex. R/1 dtd. 11.1.1985 and since then he is continuously working against such post which was regularized to maintain the continuity and sanctioned w.e.f. 1.4.1997 and funding of the said post was transferred from UGC to the State of Rajasthan under order Annex. 4 dtd. 10.7.1997. This change did not materially affect the position of the petitioner and therefore, he deserves to be regularized w.e.f. 11.1.1985. Accordingly, this writ petition deserves to be

accepted and the same is accordingly allowed and the respondent-University is directed to regularize the petitioner in service as Project Officer w.e.f. 11.1.1985 with all consequential benefits including grant of selection scale, computation of pensionary period accordingly and computation of pension and other benefits which such regularization may give to the petitioner. The same may be given within a period of six months from today. No order as to costs. A copy of this order be sent to the parties concerned forthwith.