

(2006) 03 AHC CK 0111

In the Allahabad High Court

Case No : Special Appeal No's. 1086 and 1088 of 2005

Vinita Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 10

Uttar Pradesh Regularization of Ad hoc Appointments (On Posts outside the purview of the Public Service Commission) (Amendment) Rules, 2001 — Rule 4

Uttar Pradesh Regularization of Ad hoc Appointments (On posts within the purview of Uttar Pradesh Cooperative Institutional Service Board) (Amendment) Regulations, 1985 — Regulation 8

Citation : (2006) 2 AWC 1738 : (2006) 2 UPLBEC 1270

Hon'ble Judges : Ajoy Nath Ray, C.J.;Ashok Bhushan, J

Bench : Division Bench

Advocate : Ashok Khare, S.D. Shukla and H.R. Mishra, for the Appellant; S.M.A, Kazmi, ADDL. A.G., Vijendra Singh, G.K. Tewari, O.P. Singh and H.N. Tripathi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, C.J. and Ashok Bhushan, J.—This is an appeal from an order of an Hon'ble Single Judge dated the 6th of September, 2005 whereby the case of the appellant-writ petitioners has been dismissed.

2. Before giving my judgment I must make it clear that I was within a hair's breadth of allowing the appeal and granting relief to the writ petitioners, or, at least, referring the matter to a full Bench. However, I ultimately decided to dismiss the appeal and I do so with the utmost lack of confidence.

3. The facts are very simple. The appellants are all daily wagers with the Co-operative Bank, and they were all appointed after 30th June, 1998; they all have appointment letters in their favour; their appointments were all terminable with

just a simple notice, like those of employees who are not permanent public employees. Although their wages were calculated on the basis of a daily rate, it was multiplied by 30 or 31, and they were paid not on a daily basis, but on a monthly basis. Their appointment terms specifically mentioned that they were transferable and that they would be entrusted with serious responsibilities including ones which would require financial honesty.

4. On the 24th of March, 2003 a notification was issued by the U.P. Co-operative Institutional Service Board, which would cover persons identically situated as the appellants excepting for one and only one factor, i.e., they had all been appointed before 30th June, 1998.

5. There is no difference (at least, none was shown to us) in the terms and the appointment letters of those persons who were appointed before the 30th of June, 1998 and those of the appellants, and yet, those earlier appointees have had the benefit of being considered for regularization, before start of the regular selection process by issuance of advertisements.

6. They have had the benefit, and regular appointments on permanent basis.

7. Not only have the appellants lost the benefit of prior consideration, but under Regulation-8, they were to be terminated, and they have been so terminated. So one set has become permanent employees, and another set is out of job, having lost even the temporary one which they had previously.

8. They claimed in the Court below for relief and they have raised the issue of discrimination.

9. The issue arises in this way. Ad-hoc appointment seems to be a sort of way of public life in U.P. We have before us no fewer than seven notifications, four of the State Government and three applying to the Cooperatives, whereby, from time to time ad-hoc employees have been regularized in the manner mentioned above. The State Government's notifications are dated 14.5.1979, 22.3.1984, 7.8.1989 and 20.12.2001, and the cut off dates in respect of those notifications were respectively fixed at 1.1.1977, 1.5.1983, 1.10.1986 and 30.6.1998. Only those who were appointed before the date of cut-off are to get the regularization consideration, not any of the others.

10. In regard to the Co-operatives, the three notifications are respectively dated 30.7.1985, 25.8.1990 and 24.3.2003, which last is the one before us, and the respective corresponding cut off dates are 1.5.1983, 1.10.1980 and 30.6.1998.

11. In so far as the fixation of a cut off date is concerned, we have no doubt, that generally speaking, a cut off date does not violate Article 14 simply because one person is distant from another by a single day. That might often happen, and that by itself is not discriminatory. The problem of discrimination which is present here is not really the problem of the cut off date, but something quite different.

12. In all these above notifications there were two basic criteria for qualifying the

employees for consideration for regularization:-

(i) That the ad-hoc employee should be in service, although only as an ad-hoc employee, on the date of the notification;

(ii) That regularization will be considered after the employee has completed at least three years of continuous service.

13. If the cut off date is fixed at a distance of less than three years from the date of the notification, then, there will be some employees, who come within the zone, but who cannot say. that on the date of the notification they have already fulfilled the two above basic requirements and therefore they should be considered for regularization on the date of the notification itself; they have first to serve out their three year term.

14. But a special type of problem will arise if and only if, as in this case, the time gap between the cut off date and the date of the notification is more than three years.

15. In such a case, as here, there will be a handful of ad-hoc employees, like the appellants before us, who will be able to argue that they are already qualified for regularization in accordance with the two basic criteria, which are the twin rationale fixed year after year, and time after time, by the State Government and the Co-operatives; we were, these excluded employees say. ad-hoc employees on the date of the notification and we had completed the three year period, which has been the sort of constant probationary period necessary for consideration for regularization of an ad-hoc employee in Uttar Pradesh public service. Yet, they argue. we have been discriminated against by fixation of too distant a cut off date, which is contrary to the above two continuing criteria, which are present in all seven notifications, and this is illogical, arbitrary and discriminatory.

16. The illogic arises in this way. The cut off date requires a length of service from an ad-hoc employer to come into the zone for consideration, which is more than three years; for example, in this case the requirement would be about four years nine months, since the cut off date was 30.6.1998 and the date of the notification was 24.3.2003. If the period for regularization had been fixed, instead of at the usual three year period, at four years 9 months unequivocally and expressly this time, there would be no illogic; may be, the Co-operative thought the "probationary" period should be longer now; but that is not done. The notification expressly maintains the criterion of three years" continuous service also. This is wholly illogical, like, say, somebody asking another in this way, give me four boxes; give me three boxes; all boxes should be coloured blue.

17. Any person with this request would simply ask, how many boxes do you want, three or four? Please specify.

18. But when the Court is faced with a problem similar to this, the Court cannot ask for the exact specification, (three or four?), but the Court has to take a

decision on the applicability of Article 14. The way which I first thought, very strongly, the matter should be decided was, that the three year criterion is to be given extreme weight and importance. Such weight should be given because of the maintenance of the criterion from 1979 until 2003. Once that criterion of three years continuous service is seen as the steadily running requirement, I would have no hesitation in pronouncing, that while maintaining the same as one of the two principal requirements, the authorities acted irrationally, and without application of mind in asking for a yet higher requirement, which is qualitatively absolutely of the same type and class. They were not asking for two different things, but the same thing differing only in number. It is illogical and it is contrary to the avowed policy of giving due consideration, from time to time, to ad-hoc employees who have completed more than three years of service.

19. On this basis, I would have no hesitation in compelling the respondents to extend the benefits to the appellants also, and those similarly situated as the appellants, in regard to the notification of 24.3.2001. Since the regular posts have allegedly been filled up, I would have ordered creation of posts for these few employees, who have been left out unreasonably.

20. This would not be striking out the cut off date directly, but it would certainly indirectly mean, that while the three years period was still being maintained in the regularization notification, the public authorities would be restrained, at the same time, to fix a cut off date beyond three years so as to avoid absolute irrationality and illogic.

21. I would have opined to this effect but the decided authorities of this Court (which are discussed below) stop me from pronouncing in this manner. We would, no doubt, be supported in our reasoning by the dicta in paragraph 6 in the case of State Bank of India Vs. L. Kannaiah and Others, which case is further discussed below, but on the basis of these Supreme Court dicta, perhaps one might not, sitting in the same High Court, decide differently from what has already been decided by two co-ordinate Division Benches already. One of the two Division Bench judgments (Subedar's case) has been affirmed by the Supreme Court also (see below). But the great difference between Subedar's case and our case is that there, the cut off date was challenged itself, but here there is only an attack on the exclusion of those employees who are classified out discriminatorily, by placing no importance on their three year period already completed.

22. The issue in Kannaiah case was whether the 20 year criterion for pensioners was irrationally superadded to by a further date of retirement for qualifying employees in regard to their pension.

What was 20 years in that case is parallel to the three" years qualifying service in our case. What was the date of retirement in that case is parallel in our case to the cut-off date, prior to which an ad hoc employee had to be employed.

In that case the 20 years qualifying service period was held to be of primary

importance and the superadded date of retirement was ruled as irrational and a discriminatory superaddition. The issue in our case is, whether here also, the three year qualifying service is an equally important criterion, and the superaddition of the cut off date is irrational. This assessment is to be made on an understanding of Article 14 of our Constitution. It is in the making of this assessment that we found this case to be absolutely a borderline one. If we had thought that the binding authority in the Kannaiah case was more appropriately, on a doctrine of precedent, to rule the decision in our case than the decision given in the case of Subedar Singh, then we might have not merely referred the matter to the Full Bench, but even have decided in favour of appellants straightaway.

If the authority of the Kannaiah case and the authority of Subedar's case as approved by the Supreme Court stood equal in our assessment, we would, in all ordinary cases, have to make a reference to the Full Bench for a fresh decision, the decisions in the two cases, so to speak, on a matter of authority, cancelling each other out.

If we thought, as we do, that Subedar is still good law and it is neither evenly balanced nor even more than more than evenly balanced by the Kannaiah case, even if we thought, as we do that the balance is just that little bit tilted in favour of Subedar, we would still have to dismiss the appeal, as we have done.

The Division Bench in Subedar and even more clearly in Shiva Ji Singh held that the qualification for ad hoc employees were three in number, namely, (i) the cut off date, (ii) continuous service for three years and (iii) continuance in employment on the date of notification.

The problem is, that if the cut off date is more than three years removed from the date of notification condition (i) is a superaddition to condition (ii), The Division Benches did not think it to be so, but the argument was not pointedly made. But this very argument was made before us as the central point in this appeal.

The two Division Benches by which we feel ourselves bound are 1997(1) E.S.C. 655 Subedar Singh and Ors. v. D.J. Mirzapur and Ors. and judgment in Special Appeal No. 705 of 2003; Shri Shiva Ji Singh and Ors. v. High Court of Judicature at Allahabad (Annexure-15 to the affidavit in this appeal).

In Subedar Singh's case (*supra*), the Division Bench had occasion to consider the validity of the cut off date fixed for regularization in U.P. Regularization of Ad hoc Appointments (On Posts outside the purview of the Public Service Commission) Rules, 1979 as amended by Second Amendment Rules, 1989. The 1979 and the 1989 Rules are similar to the present Uttar Pradesh Regularization of Ad hoc Appointments (On posts within the purview of Uttar Pradesh Cooperative Institutional Service Board) Regulations, 1985, as amended by the 2003 regulations, which we are considering, and which were framed for regularization of the employees working under the Co-operative Institutional

Service Board.

In Subedar Singh's case (supra) the ad hoc employees challenged the cut off date fixed as 1.10.1986 by the Second Amendment Rules. The Division Bench considered the submissions of the ad-hoc employees challenging the cut off date fixed at 1.10.1986 as arbitrary, irrational and unreasonable. It was held by Division Bench :-

...One of the relevant consideration for regularisation is the length of the service rendered by the ad hoc employee. ...but we see no rationale behind the view that all the employees, even if they had put in only one day of service as ad hoc employee should have been made eligible to be considered and, therefore, the cut off date specified in Rule 10 is irrational. ...What should be the length of service is a matter of policy to be decided by the Rule making authority. Further, length of service is not the only criterion to be taken into consideration while making such decision. There can be no rule of thumb in such matters. It is not beyond the competence of the Rule making authority to limit eligibility to the employees who joined service as ad hoc employees upto a specified date...

[Our underlining).

From the Division Bench judgment in Subedar Singh's case (supra) an appeal was filed in the Supreme Court which was dismissed, vide its judgment dated 14th November, 2000 reported in 2001(1) A.W.C. 287 S.C Subedar Singh and Ors. v. District Judge, Mirzapur and Anr. The Supreme Court approved the judgment of the Division Bench of this Court and made following observations in paragraph of the judgment:-

...The High Court has examined all the contentions by a detailed discussion of the relevant provisions of the Rules and we do not find any infirmities with the reasoning and conclusions of the High Court in the impugned judgment. No rule, law or regulation, nor even any administrative order had been shown to us on the basis of which the appellants could claim the right of regularisation. In the aforesaid premises, we do not find any merit in any of these appeals which accordingly stands dismissed but in the circumstances, there will be no order as to costs.

The second Division Bench judgment, which holds the field is in Shiva Ji Singh's case (supra). The Hon'ble Single Judge made the following observations in his lordship's judgment dated 8th August, 2003 dismissing Writ Petition No. 52755 of 2002 (Shiva Ji Singh and Ors. v. High Court of Judicature at Allahabad and Anr.):-

... It is true that some of the persons may have been appointed after 30th June, 1998 and are eligible and have completed three years of service before the date of notification of the third amendment to the Rules but that by itself does not give them a right to be considered for regularisation in the present case, as against the persons who were appointed on ad hoc basis before 30.6.1998. In

the present case all the ad hoc appointments were made after 30.6.1998 and thus there is no discrimination inter se between ad hoc appointees in the Judges/Up at Chandauli.

Rule (4) cannot be interpreted in a manner as suggested by the counsel for petitioners. It does not create two classes of persons. It creates only one class of person who possess requisite qualifications for regular appointments at the time of ad hoc appointments; was directly appointed on ad hoc basis on or before 30.6.1998, and is continuing in service as such on 20th December, 2001, and has completed three years of service. His appointment has to be given with effect from the date when a permanent or temporary post becomes available. Thus only one class of person has been visualized for consideration for regularisation and i.e. a person who fulfils all three conditions given in Rule 4.

[Our underlining]

Against the judgment dated 8th August, 2003 a special appeal was filed before the Division Bench. The same argument was repeated before the Division Bench. The Division Bench approved the view taken by the learned Single Judge. The following observations were made by the Division Bench:-

It was further observed that the proposed amendment substituting the cut off date did not create two classes of persons. It created only one class of persons who possessed requisite qualification for regular appointment at the time of ad hoc appointment and had been directly appointed on ad hoc basis on or before 30.6.1998 and was continuing in service as such on 20.12.2001 and had further completed 3 years of service. From the scheme, underlying the amendment only one class of person had been taken up for consideration for regularisation i.e. a person who fulfilled all the 3 conditions given in Rule 4 of the Rules of 2001.

[Our underlining]

The Division Bench relying on the earlier Division Bench judgment in Subedar Singh's case (supra) repelled the contentions of the appellants that the cut off date 30th June. 1998 is arbitrary and irrational.

In the above two Division Bench judgments there was wholesale challenge to the fixation of the cut off dates in regularisation rules, and the challenge has been/ unsuccessful. The issue before us is a little different, as we have already said. However, in one Division Bench judgment, not approved though like Subedar's judgment by the Supreme Court, even the cut off date itself was declared as irrational; this was in regard to the Co-operative regulations dated 30.7.1985, the cut off date in which was given as 1.5.1983. The case is Jai Kishan's case, reported at (1989) 2 UPLBEC 144 . On the whole, we feel ourselves bound by the above Division Benches, one of which was approved by the Supreme Court, and we are unable to take a different, view although we felt great sympathy for the appellants on account of their having completed the critical working period of three years each. It is the Supreme Court's own dicta in the L. Kannaiah case,

which we have mentioned above State Bank of India Vs. L. Kannaiah and Others, which made us vacillate, doubting whether to refer the matter to a Full Bench or to follow the earlier Division Benches, or to allow the appeal straightaway.

With the greatest of hesitation, the appeal is dismissed.