
(2016) 03 AHC CK 0200

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42688 of 2001

Vinod Kumar & Others

APPELLANT

Vs

Central Administrative Tribunal Allahabad and Others

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Citation : (2016) 6 ADJ 37 : (2016) 2 UPLBEC 1563

Hon'ble Judges : Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : Dr. R.G. Padia and H.R. Mishra, Advocates, for the Appellant; Tarun Verma, S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri H.R. Mishra, learned Senior Advocate, for petitioners and Sri Tarun Verma for respondents.
2. These two writ petitions have arisen from a common judgment dated 21.11.2001 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as "Tribunal"), hence as requested, have been taken together and are being decided by this common judgment.
3. Petitioners claim is for regularisation and absorption on the post of "Accounts Clerk" and also a direction to respondents not to revert them to their substantive Group-D posts on which they were recruited substantively. It is not in dispute that all the petitioners were working in Group-D posts and had completed three years of service.
4. Divisional Accounts Officer, Izatnagar, Bareilly sought to make recruitment by promotion on the post of Accounts Clerk by publishing six vacancies on 21.02.1991 pursuant where to petitioners applied. They were subjected to written and viva-voice tests. Thereafter they were selected and promoted as "Accounts Clerk" in the Grade of 950- 1500, on temporary basis. The appointment/promotion order dated 24.05.1991 reads as under:-

"fdlh Hkh fyfid dks dHkh Hkh mlds foHkx esa inkour dj okil Hkstk tk ldrk gS vFkok jsy HkrhZ cksMZ ls fyfid miyC/k gksus ij inkour fd;k tk ldrk gSA mijksDr O;oLFkk iw.kZr;k vLFkkbZ gS rFkk bl O;oLFkk ds QyLo:i deZpkfj;ksa dks bl in ij cus jgus rFkk ojh;rk ikus dk vf/kdkjh ugha gksxA dk;Z dh lekfiR ij bu deZpkfj;ksa dks buds ewy inksa ij okil dj fn;k tk;sxA"

"Any clerk may, at any time, be reverted to his department after demotion or he may be demoted on availability of clerk from the Railway Recruitment Board. The aforesaid arrangement is purely temporary; and by virtue of this provision, employees shall not be entitled to continue on these posts and attain seniority. On cessation of work, these employees shall be reverted to their substantive posts."

(English translation by Court)

5. The petitioners after working for sometime, claimed regularisation as "Accounts Clerk". The respondent No. 5 referred their matter for regularization/substantive appointment on Group-C post which has not been accepted by higher authorities of Railway Department.

6. The petitioners approached Tribunal in Original Applications No. 376 of 1999 and 375 of 1999 seeking regularisation and absorption on the post of Accounts Clerk with all consequential benefits, which has been negated vide impugned judgment dated 24.11.2001.

7. Learned Senior Counsel for petitioners submitted, even if appointments of posts were not made strictly in accordance with Rules and procedure prescribed under the Rules, still petitioners having been subjected to written and viva-voice examination for the post of Accounts Clerk, cannot be said to have been appointed illegally and their appointments on Group-C post, at the best would be irregular, hence they are protected by observations made by Constitution Bench of Apex Court in paragraph 53 of the judgment in *Secretary, State of Karnataka and Others v. Umadevi and Others*, 2006 (4) SCC 1.

53. "One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* (supra), *R.N. Nanjundappa* (supra), and *B.N. Nagarajan* (supra), 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 regularisation 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 regularise 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 recruitment's 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 sub-judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

8. He has also placed reliance on *Amarkant Rai v. State of Bihar and Others*, (2015) 8 SCC 265, *Amarendra Kumar Mohapatra and Others v. State of Orissa and Others*, (2014) 4 SCC 583.

9. Sri Tarun Verma, on the contrary submitted that petitioners were actually employed as a clerk under a scheme and not against regular cadre. For this reason recruitment was not made in accordance with Rules and appointment letter clearly mention that the incumbent can be reverted at any point of time and arrangement is purely temporary. The employee concerned therefore, neither had any right to hold post or claim absorption or regularization. He further states after the work is over employee are liable to be reverted to their parent cadre.

10. We have heard counsel for parties and perused the record.

11. Annexure 1 to the writ petition which is the alleged requisition/notice pursuant where to petitioners applied shows that a request was made for appointing a P.F. Arrear Cell constituting 6 Clerks in the scale of 950-1500. These Clerks would be required to complete monthly and annual posting in fund accounts and also correlate the entries. The post shall be sanctioned against work charge and incumbents shall hold post till completion of work. These post shall be treated Ex-cadre and administration shall be entitled to revert any clerk to his parent department any time. It was proposed to fill in the aforesaid posts from Class IV employees having three years of service experience, with further condition that those having educational qualification of graduation in Maths and Commerce, shall be given preference.

12. Petitioners were selected and appointed against these Ex-cadre post of clerks.

13. Under Indian Railway Establishment Manual (hereinafter referred to as "IREM") there two types of regular cadres in the pay scale of 950-1500, one is "Cash and Pay Officer in Accounts Department" and another is "Accounts Clerk".

14. The Cash Pay Officer cadre has two sources of recruitment i.e. 66.67% by direct recruitment through Railway Recruitment Board and 33.33% by promotion by selection of specific Group-D Staff.

15. Similarly, Accounts Clerk is liable to be filled in 75% by direct recruitment by Railway Recruitment Board and 25% by selection from Group-D staff.

16. Railway Board's circular dated 30.04.1992 lays down procedure for promotion of Group-D employees to Group-C stating that selection shall consists

of written test and record of service of 85 and 15 marks respectively. The staff having three years of railway service would be eligible.

17. Sri Mishra, has rightly said that the petitioners have been selected in accordance with procedure prescribed under Rules but we find it difficult to accept it that the nature of posts/vacancies in which petitioners were considered for appointment are either regular or substantive. It was under a scheme. Admittedly, they have been recruited against ex-cadre post for a particular purpose and for limited duration which is evident from Annexure 1.

18. This fact is evident from conditions mentioned in requisition/notice and also from conditions mentioned in letter of appointment of petitioners in which it was clearly stated that petitioners shall be liable to be reverted to their parent cadre at any time and arrangement is purely temporary. Appointment letters also provide that employees shall not be entitled to continue on the post and claim seniority. Lastly, it has provided that employees on secession of work would be reverted to their substantive post. The conditions whereupon petitioners have been specifically appointed i.e. under a scheme, cannot be ignored together so as to confer upon petitioners and additional right to claim over and above those conditions, requisition/substantive appointment which is directly in the teeth of conditions of appointment of petitioners as Accounts Clerk.

19. Moreover the post of Accounts Clerks on which petitioners have been appointed are Ex-cadre posts (Annexure-1). The requisition/notice and appointment letters issued to petitioners leave no manner of doubt that not only nature of post and purpose of appointment was purely temporary and stop-gap but even appointment pursuant thereto was also temporary and for limited duration i.e. completion of required work.

20. The Constitution Bench in Uma Devi (supra) has considered in para 45 of judgment, if temporary or casual appointments are made they are not to be directed to be regularised or made permanent respectively. It would be appropriate to reproduce relevant observations made in the judgment, in Para 45 as under:-

"While directing that appointments, temporary or casual, be regularised or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were

to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State."

(emphasis added)

21. In para 47 of judgment Court also observed that the person who enters in temporary employment or engaged as a contractual or casual worker cannot claim regularisation by invoking theory of legitimate expectation since theory is not attracted in the case of temporary contractual or casual employment. Court said in para 47 as under:-

"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."

22. However, in para 48 of judgment the Court said "There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis; to claim that they have a right to be absorbed in service."

23. Regularization has never been held to be a valid mode of recruitment ordinarily. In the past, sometimes on account of large scale engagements continuing for long period, it has been taken a relevant consideration by the authorities for enacting statutory provisions for regularisation of the persons engaged without following statutory procedure for recruitment. Besides, sometimes the Courts have also issued directions to the authorities to regularise such appointees depending upon the facts and circumstances of the individual cases. However, time and again on judicial review, the Courts have largely deprecated practise of engagement of some persons without following the recruitment procedure and, thereafter, continue them for considerable length of

time and then confer permanence upon them by way of regularisation since it has generated a different kind of litigation and a regular channel of such appointees. Fortunately, the diversion expressed in various judicial pronouncements drew attention of Apex Court and the issue came to be considered before a Constitution Bench in Uma Devi (supra). The Court reviewed entire law on this aspect and after discussing the issue at great length, overruling all the earlier judgements taking a different view, has held that a sovereign Government or its instrumentality, considering economic situation in the Country and the work got to be done, is not precluded from making temporary appointments or engaging workers on daily wages, but whenever a regular vacancy occur, it has to be filled in as per Constitutional scheme by giving equal opportunity of employment to all concerned persons. Court has rejected the approach of taking a lenient view and termed it as a misplaced equity against teeming millions of the country seeking employment and a fair opportunity for competing for employment. The Court categorically held that adherence to Article 14 and 16 of the Constitution is a must in the process of public employment and also stressed that adherence to the rule of equality in public employment is a basic feature of our constitution. It has held:

"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."

24. It has further held that High Courts, acting under Article 226 of Constitution, should not ordinarily issue directions for absorption/regularization or permanence unless recruitment itself was made in a regular manner consistent with the Constitutional scheme. The Court in Uma Devi (supra), very categorically said:

"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."

25. Apex Court also cautioned Courts that they must be careful in ensuring that they do not interfere unduly with the economic arrangement of the affairs of State or its instrumentalities or lend themselves an instrument to facilitate the bypassing of the constitutional and statutory mandates.

26. Following Uma Devi (supra), in Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad & others, 2006 (7) SCC 684, in paragraphs 35, 37 and 38, it was held :

"35. Equal opportunity is the basic feature of our Constitution. Public employment is repository of the State power. Certain status and powers emanate from public employment.

37. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy. It would be improper for the courts to give directions for regularisation of services of the person who is working either as daily-wager, ad employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

27. Sri H.R. Mishra learned counsel for petitioner contended that there are some diversion in later decisions. It is contended that in some other authorities there is some deviation. Coming to the said authorities I find that in *Workmen of Bhurkunda Colliery of Central Coalfields v. Bhurkunda Colliery of Central Coalfields Ltd.*, (2006) 3 SCC 297, Tribunal gave an award observing that casual workmen of Bhurkunda Colliery deserve the same benefit which was given to workmen of another Colliery and therefore they deserve regularization. The Management challenged award by filing writ petition, which was dismissed by Jharkhand High Court. The management approached Supreme Court in appeal. In the facts and circumstances of the case, Court declined to interfere in appeal, observing that the main object of enacting industrial and labour law is to ensure peace and harmony between employers and employees, in the larger interest of society, since industrial growth leading to economic prosperity largely depends on happy and healthy relationship between employers and employees. The Court did not lay down any principle of law in the said judgment that a person, if has worked for long time, even contrary to the statutory provisions, yet would be entitled for regularization, therefore, the aforesaid judgment lends no support to the petitioners.

28. In *Gujarat Agricultural University v. Rathod Labhu Bechar and others*, (2001) 3 SCC 574 again the issue was raised in an industrial dispute, wherein Industrial Tribunal, Rajkot directed Gujarat Agricultural University to regularise such daily wage employees, who have completed ten years of service as on 1.1.1993. University filed a writ petition, which was partly allowed-modifying the award directing University to make payment of salary at the minimum of the pay scale and also to frame a scheme for regularisation of such daily rated labourers. University filed appeal before Supreme Court but it appears that instead of contesting various issues, during the pendency of appeal, it submitted a scheme

for absorption of daily rated employees and learned counsels for respondents addressed Court with respect to objections raised pertaining to certain part of scheme, as is evident from the following observations in para 9 and 10 of the judgment:-

"9. It seems instead of contesting various issues during pendency of these appeals in this interregnum, learned counsel for the appellant submitted a scheme framed by the University for the absorption of these employees with the approval of the State Government, which is also filed in this case. Learned counsel for the respondents desired to file objections to this scheme, which this Court permitted. The objections accordingly were filed by the respondents.

"10. We heard learned counsel for the parties at length and considered the objections of the respondents with respect to the proposed scheme for the regularisation of daily rated workers."

29. Therefore, in our view, judgment in Gujarat Agricultural University v. Rathod Labhu Bechar and others (supra) is not a precedent on the issue whether a daily rated employee after rendering particular length of service is entitled for regularisation though his engagement was contrary to the statutory provisions. Even otherwise, both the aforesaid judgments would not render any help to the petitioners for the reason that a Constitution Bench has considered the entire aspect pertaining to regularisation in public employment in Uma Devi (supra) and has specifically declared that all earlier judgments laying down principles inconsistent to the law laid down therein stand overruled. In this view of the matter, this Court is bound by the law laid down in Uma Devi (supra) which has already been discussed herein above showing that a person engaged on particular condition cannot claim regularization, so as to defeat those conditions of his appointment.

30. Sri Mishra, at this stage sought to rely on para 53 of the judgment in Uma Devi (supra) and contended that Court has carved out an exception in respect to such employees who have continued to work for ten years or more without intervention of courts and Tribunal, and such persons are entitled to be considered for regularization. In support of above he also placed reliance on a learned Single Judge's decision in Ramveer Singh and others v. Gas Authority of India Ltd. (GAIL) and others, 2007 (1) ESC 483 (All) in which it was held:

"However, the Supreme Court in the case of Uma Devi (3) (supra) has carved out an exception. In paragraph-53 of the said judgment, the Supreme Court held that if the persons appointed on ad hoc, casual or contract basis were duly qualified and were working against a sanctioned post and continued to work for several years without any intervention of an order of the Court, in such an eventuality, the process of regularisation could be made and if it was ultimately found that the employee was entitled for the relief, it would be possible for the Court to accordingly mould the relief."

31. Having given our anxious considerations, we do not find any force there too.

In para 53 of judgment in Uma Devi (supra), carved out by Court is confined to the cases where appointments are "irregular" and not "illegal" as explained in State of Mysore v. S.V. Narayanappa, A.I.R. 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409 and B.N. Nagarajan v. State of Karnataka, 1949 SCC 507.

15. The distinction between "irregular" and "illegal" appointments as referred to in para 53 of the judgment in Uma Devi (supra) has been dealt with in a subsequent decision in State of M.P. And others v. Lalit Kumar Verma, (2007) 1 SCC 575 wherein para 12 it has been held:

"12. The question which, thus, arises for consideration, would be: Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the Constitutional scheme as also the recruitment rules framed by the employer, which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to."

32. Learned counsel for the petitioners at this stage submitted that in Mineral Exploration Corpn. Employees" Union v. Mineral Exploration Corpn. Limited and another, (2006) 6 SCC 310, Court issued some direction for regularisation of workmen who were continuing for a long time, referring to para 53 in Uma Devi (supra), therefore, the petitioners is also entitled.

33. However, it would be useful to notice that relying on Mineral Exploration Corpn. Employees" Union v. Mineral Exploration Corpn. Limited and another (supra), a similar argument was raised in State of M.P. v. Lalit Kumar Verma (supra), but the same has been negated by Supreme Court by referring to para 39 of Mineral Exploration Corpn. Employees" (supra), and observations of in paras 13 to 16 of judgment of Lalit Kumar Verma (supra) are as under:

"13. In National Fertilizers Ltd. v. Somvir Singh(supra) it has been held (SCC pp.500-01) paras 23-25)

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minority had not been given due consideration.

24. The Constitution Bench thought of directing regularisation of the services

only of those employees whose appointments were irregular as explained in *State of Mysore v. S.V. Narayanappa*, *R.N. Najundappa v. T. Thimmiah* and *B.N. Nagarajan v. State of Karnataka* wherein this Court observed: (*Uma Devi* (3) case, SCC p.24, para 16).

"16. In *B.N. Nagarajan v. State of Karnataka*, this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service."

14. In *R.S. Garg V. State of U.P.*, 2006 (6) SCC 430 it has been held by this Court : (SCC p. 448, para 24)

"24. The original appointment of the 3rd respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench. Furthermore, relaxation, if any, could have been accorded only in terms of Rule 28 of the Rules; Rule 28 would be attracted when undue hardship in any particular case is caused. Such relaxation of Rules shall be permissible only in consultation with the Commission. It is not a case where an undue hardship suffered by the 3rd respondent could legitimately be raised being belonging to a particular class of employee. No such case, in law could have been made out. It, in fact, caused hardship to other employees belonging to the same category, who were senior to him; and thus, there was absolutely no reason why an exception should have been made in his case."

(See also *State of Gujarat v. Karshanbhai K. Rabari*, (2006) 6 SCC 21.)

15. Yet, recently, in *Principal, Mehar Chand Polytechnic v. Anu Lamba*, (2006) 7 SCC 161 it was held: (SCC p.171, para 35)

"35. The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus."

16. We may, however, notice that in *Mineral Exploration* the attention of this Court was not drawn to the earlier precedents including a three-judge Bench of

this Court in B.N. Nagarajan v. State of Karnataka."

34. Same view has been reiterated in Municipal Corpn., Jabalpur v. Om Prakash Dubey, (2007) 1 SCC 373 (para 10 to 19) State of U.P. And others v. Deshraj, (2007) 1 SCC 257 (para 9 to 12) and Government of Andhra Pradesh and others v. K. Brahmanandam and others, (2008) 5 SCC 241.

35. Having said so, in the present case, however we find that as a matter of fact claim of regularisation or absorption on the part of petitioners is thoroughly misconceived for the reason that the petitioners were appointed against posts of Accounts Clerks, ex-cadre post created for a limited purpose and duration in a scheme, to meet some extra work. It is for this reason it was mentioned in the notice/advertisement inviting applications that appointments are of temporary nature. It was also mentioned so in appointment letters. That being so question of regularisation does not arise. The petitioners have not been selected or appointed against substantive vacancies in regular cadre. Even order creating posts in the scheme mention that these posts would be ex-cadre. Therefore, also we are clearly of the view that claim of petitioner for absorption or regularisation against permanent and substantive posts in the cadre is thoroughly misconceived.

36. Tribunal has therefore, rightly declined to grant any relief to petitioners and we find no apparent error on the face of record to warrant any interference in this writ petition.

37. Both the writ petitions are accordingly dismissed with costs which we quantify as Rs. 10,000/-.