

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 15.04.2013
Judgment pronounced on : 23.04.2013

+ **LPA 375/2009**

RAJENDER PRASAD Appellant
Through: Mr. Shivanath Mahanta, Advocate.

versus

NATIONAL HUMAN RIGHTS COMMISSION Respondent
Through: Mr. R.V. Sinha and Mr. A.S. Singh,
Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The appellant before us, having taken voluntary retirement from Army, applied to the respondent-National Human Rights Commission ('NHRC') for appointment to the post of Constable. Vide Office Memorandum dated 30th April, 1996 the appellant was offered appointment on contractual basis on the terms and conditions stipulated in the said Office Memorandum. One of the conditions stipulated in the Office Memorandum was that the appointment would be on contractual basis for a period of one year from the date he assumed charge. Pursuant to the said Office Memorandum, the appellant joined NHRC on the same date. The aforesaid employment was followed by subsequent appointment/

extension for the period specified in the order of appointment/extension on the terms and conditions contained in the appointment letter. One of the conditions contained in the appointment letter was that the appointment could be terminated on one month's notice on either side. However, the expression used in the order of appointment was "on re-employment basis". The appellant made representation seeking regularization of his services, but, vide letter dated 31st August, 2006 while regularizing his service till that date, the respondent simultaneously terminated his services with effect from that very date. His request for appointment as Constable was rejected vide letter dated 31st September, 2006 on the ground that he did not fulfill the eligibility criteria for the said post.

2. Being aggrieved from termination of his services, the appellant filed Writ Petition (Civil) No. 17436/2006. The said petition having been dismissed vide the impugned order dated 30th May, 2009, the appellant is before us by way of this appeal.

3. It is not in dispute that at the time the appellant was engaged/appointed for the first time, the recruitment rules did not provide for recruitment by way of direct appointment. The rules provided for appointment only by transfer/transfer on deputation. Therefore, as per the recruitment rules the appellant was not eligible for appointment to the post on which he was engaged on contractual basis.

4. It was contended by learned counsel for the appellant that though initially the appellant was appointed on contractual basis, later on the mode of appointment was altered from contractual basis to re-employment basis. We have perused the appointment/extension orders issued to the appellant from time to time. It is evident from a perusal of these orders that despite use of the expression “on re-employment basis”, the engagement of the appellant continued to be on contractual basis, since a particular term of appointment/extension was fixed in the orders whereby his services were extended from time to time. In case of re-employment, there can be no question of any particular terms of employment/engagement being stipulated in the appointment order, since the regular employment has to expire on the date of superannuation as prescribed in the rules. Therefore, the use of expression “on re-employment basis” was nothing but a misnomer in the appointment/extension orders issued to the appellant from time to time. More importantly, since the recruitment rules envisaged appointment only on transfer/transfer on deputation basis there can be no question of re-employment till the prescribed date of superannuation.

5. Since the appointment of the appellant was on contractual basis, and even otherwise he was not eligible for regular appointment, no legal right accrued to him to continue to occupy the post of a Constable after the terms stipulated in the order

of appointment/engagement expired on 31st August, 2006 and the respondent was entitled, in law, to dispense with his services with effect from that date.

6. In **Vidyavardhaka Sangha and Anr. Vs. Y.D. Deshpande and Ors. (2006) 12 SCC 482**, the Supreme Court observed that the appointment made on probation/*ad hoc* basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. The Court noted that in the case before it, the respondents had continued in employment for some years albeit on the terms and conditions stipulated in the appointment order. The Court was of the view that they cannot now be permitted to turn their back and say that the appointments could not be terminated on the basis of their appointment letters. The Court observed that under Article 141 of the Constitution, the judgment of the Constitution Bench in **Secretary, State of Karnataka and Others, v. Uma Devi and Others: (2006) 4 SCC 1** is binding on all Courts, including the Supreme Court till the same is overruled by a larger Bench.

7. In the case before us, it was clearly stipulated in the very first appointment letter issued to the appellant that his appointment could be terminated “on one month’s notice on either side”. Even otherwise, the appointment being for a specified period, the same came to an end by efflux of time. The case of the appellant, therefore, is squarely covered by the decision of the Supreme Court in

Vidyavardhaka Sangha (supra). Having accepted the condition that the appointment would be for a specified period and could be “terminated by one month’s notice on either side” the appellant cannot seek regularization on the basis of such an appointment. No legal right of the appellant was, therefore, infringed on account of appointment not being extended beyond 31st August, 2006.

8. It was contended by learned counsel for the appellant that since the appellant was otherwise eligible for being appointment as a Constable with the respondent and the Chairperson of NHRC had been authorized (vide order dated 22nd September, 1997) to frame, amend and relax the recruitment rules, the appointment of the appellant is capable of being regularized. We find no merit in the aforesaid contention. Since the recruitment rules, even as on today, do not provide for recruitment by way of direct appointment, no such direction can be given by the Court. As regards relaxation of rules, it would be for the competent authority to take a view on such a request being made to him and no direction for regularization can be given by the Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

9. In *Uma Devi and Others (supra)*, a Constitution Bench of the Supreme Court, while considering absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees who had been in

service for quite some time, inter alia, recognized the power of the State and its instrumentalities to employ persons in posts which are temporary on daily wages as additional hands or taking them in, without following the required procedure to discharge the duties in respect of the posts that are sanctioned and required to be filled in terms of the relevant procedure and noted that there was nothing in Constitution which prohibits such engagements. The Court was of the view that a total embargo on such employments 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 succour to them. The Court observed that innumerable citizens of our vast country are in search of employment, one is not compelled to accept a casual or temporary employment if he is not inclined to go in for such an employment and it is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature and the consequences flowing from it. As regards the argument that since the employee had been working for some time in the post, it will not be just to discontinue him even though he was aware of the nature of the employment, the Court felt that if accepted, this argument would enable the jettisoning of the procedure established by law for public employment and would

have to fail when tested on the touchstone of the constitutionality and equality of opportunity enshrined under Article 14 of the Constitution.

Dealing with the doctrine of legitimate expectation advanced by the employees, the Court observed that 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 recognized by relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature and he cannot invoke the theory of legitimate expectation for being confirmed in the post, where appointment could be made only by following a proper procedure for selection. The Court felt that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees and it cannot be held that the State had held out any promise while engaging these persons either to continue them where they were or to make them permanent. The Court noted that the State cannot constitutionally make such a promise.

It was also noted by the Court that 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. The Court also held that such employees cannot claim a right to be treated at par with those who are regularly employed. The Court also rejected the contention that right to life protected by

Article 21 of the Constitution would include the right to employment since acceptance of such a plea would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment.

The Court, however, noted that there may be cases where irregular appointments of duly qualified persons are made in duly sanctioned vacant posts and the employees continue to work for more than 10 years or more, but without intervention of the order of the Courts or of Tribunals. The Court directed that Union of India, 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 10 years or more in duly sanctioned posts, but not under cover of order of Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that are required to be filled up, in cases where temporary employees or daily wagers are being now employed. The Court directed that the process must be set in motion within six months from the date of its order. The Court clarified that the decisions which run counter to the principles settled in this decision or in which directions run counter to this decision would stand denuded of their status as precedents.

In the case before us, admittedly, the appellant had not completed ten years of service on the date when the decision was rendered in *Uma Devi*

and Others (supra), therefore, no benefit of the said judgment is available to the appellant.

10. In *State of Karnataka and Ors. v. Sri G.V. Chandrashekar*: (2009) SCC 342, the respondent before Supreme Court was appointed as a typist on 05.09.1985 and worked for more than 10 years, without break in service. He sought a direction for regularization of his services with all consequential. The Tribunal directed that the question of regularization of his service be examined with reference to the records. The writ petition filed by the State against the order of the Tribunal having been dismissed, the matter was taken by the State to Supreme Court by way of Special Leave. Some other matters, involving similar issue, were also examined by Supreme Court in this case. Relying upon the decision in the case of *Uma Devi and Others (supra)*, the appeal filed by the State was allowed and the order passed by the High Court was set aside.

11. Dealing with the doctrine of legitimate expectation invoked by the respondents, the Court, after referring to its decision in *Sethi Auto Service Station v. DDA* : (2009) 1 SCC 180 held that since the terms of the letter of appointment of the respondents made it clear that the appointments were temporary and would not confer any right to claim any permanent post in the department and since no promise of absorption as regular employees had been made to them and in fact no

such promise could be held out in view of the Government OA dated 07.06.1988 which banned employment of persons in regular posts.

12. For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed. No orders as to costs.

V.K. JAIN, J.

CHIEF JUSTICE

APRIL 23, 2013

HK