

20.07.2021
SL No.26
Court No.16
(gc)

WPCT 62 of 2020

Union of India & Ors.

Vs.

Subrata Mondal & Anr.

(Via Video Conference)

Mr. Debapriya Gupta,
Mr. Arijit Majumdar,
...for the Petitioners.
Mr. Phatick Chandra Das,
Mrs. Tanusri Maity,
...for the Respondents.

The writ petition is arising out of an order passed by the Central Administrative Tribunal on 15th March, 2019 in OA/350/965/2015 in which the respondent has prayed for quashing of the order dated 8th June, 2015 issued by the Under-Secretary, Central Statistics Office (Industrial Statistics Wing) rejecting the prayer for regularization of the respondent and extending the benefits as had been earlier extended to two persons similarly placed and performing similar kind of duties.

The undisputed facts are that the respondent was appointed to the post of Data Entry Operator, Grade-A on 24th June, 1997 against a sanctioned post on a regular pay of Rs.1150-1500 per month. The said appointment was made after recommendation by the concerned Employment Exchange and by a regular selection process conducted by the respondent authorities. Although appointed on a contract basis to the post of Data Entry Operator, Grade-A against the sanctioned vacant post, the respondent No.1

spent a major part of his service life serving his department and has acquired family which totally depends on him.

As such he made a representation before the appropriate authority on 22nd August, 2014 and again on 17th December, 2014 for regularization of his service to the post of Data Entry Operator, Grade-A, in which post he is continuing for more than 18 years without any break. It is at this stage, the respondent authority vide office order dated 22nd December, 2014 clearly mentioned that after 31st March, 2015, the service of the applicant may be terminated. This decision of the authority concerned together with non-consideration of his prayer for regularization forms the subject matter of challenge in the original application. Before the Tribunal, the applicant has referred to an order passed by the Tribunal in O.A. No.278 of 2012 concerning eighteen Data Entry Operators serving identically on temporary contractual basis in which an order was passed on 18th February, 2013 which reads as follows:-

“Be that as it may, we find that these posts could not have been filled up through the SSC as the initial appointment was on contract basis. They have, however, been selected after being nominated the employment exchange and on fulfilling the procedure laid down in the order governing such appointment. Thus even though the appointment has been described as contract appointment they have continued without break for more than a decade. The decision of Hon’ble Karnataka High Court in Writ Petition No.17545 of 2011 (The Director General, National Sample Survey Organisation & Ors. Vs. Smt. B.V. Chandrika & Ors.) in

respect of similarly situated person is referred to in para-10 above. The above decision is binding on this Tribunal. O.A. is disposed of in terms of the said direction. This exercise be completed within three months of the receipt of the order. ”

The said order upon being challenged before the Division Bench of this Court, this Hon'ble Court by an order dated 9th December, 2013 affirmed the order of the learned Tribunal dated 18th February, 2013 and dismissed the writ petition. This order was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.7686 of 2014.

The Hon'ble Supreme Court by an order dated 4th April, 2014 dismissed the Special Leave Petition. After the proceeding has been concluded, the learned Tribunal allowed regularization of the services of the eighteen Data Entry Operators working on contract basis in the said department alike the present applicant. By relying on the aforesaid decision, the writ petitioner claimed regularization as he was working with the department for more than 18 years and is similarly placed as that of the eighteen Data Entry Operators whose services had since been regularized. The applicant before the Tribunal has also claimed regularization on the basis of the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.** reported at **(2006) 4 SCC 1**. The learned Tribunal noticing that the persons similarly placed

as that of the original applicant had been granted similar relief, allowed the application of the writ petition by directing the authority concerned to extend the benefit of the decision of the eighteen Data Entry Operators by issuing appropriate orders in accordance with law. The basis of the judgment appears to be that once a benefit has been extended to a group of persons, the same benefit may be extended to all the similarly circumstanced persons irrespective of the fact that whether those persons have also applied simultaneously with the other group of persons. The Tribunal has placed reliance upon a decision of the Hon'ble Supreme Court in ***K.C. Sharma Vs. Union of India & Ors.*** reported at ***1998 SCC (L&S) Page 226***. The Tribunal has also taken into consideration the order passed by the Hon'ble High Court of Karnataka on 23rd April, 2014 in Writ Petition No.57382 of 2013 and Writ Petition No.7998-8001 of 2014 against the same department upholding the decision passed by the Central Administrative Tribunal, Bangalore Bench by extending the same benefits to persons similarly placed as that of the eighteen Data Entry Operators whose case was decided on 18th February, 2013 by the Central Administrative Tribunal, Calcutta Bench since affirmed upto the Hon'ble Supreme Court. The Tribunal has also taken note of an order passed in an identical matter being O.A. No.350/198/2015 on 13th February, 2015 by which the respondents were directed to consider the case of the applicants in the said original application in line with the

decisions rendered by the Tribunal in O.A. No.278 of 2012 and by the Hon'ble Supreme Court within a period of three months from the date of communication of that order. It is not in dispute that the authorities concerned have extended the benefits to all the Data Entry Operators who were parties in Calcutta and Karnataka. Two identically circumstanced persons with the original applicant also approached the Tribunal for similar relief in 2015 and the Tribunal directed the authorities to consider their case in view of the decision of the Tribunal upheld by the Hon'ble Supreme Court.

Mr. Debapriya Gupta, learned Counsel appearing on behalf of the Union of India has submitted that in the matter of **O.A. 350/198/2015 (Dipankar Routh Vs. Union of India)**, the Hon'ble Supreme Court while disposing of the Special Leave Petition has observed that the question of law is kept open. Mr. Gupta has produced before us the copy of the Special Leave Petition and specifically drawn our attention to Questions (B) and (H) for our consideration. The said questions are:-

“B. Whether the Respondent has a right to seek regularization?”

H. Whether the contractual appointment of the Respondent to temporary vacancies for more than 18 years can accrue any right to regularize the service as per the judgment in the case of State of Karnataka & Ors. Vs. Uma Devi (3) reported in (2006) 4 SCC 1?”

In consideration of the aforesaid argument, we may say that any of the earlier decisions including the decision

rendered by our Coordinate Bench in WPCT 488 of 2013, the persons similarly placed and/or circumstanced have been extended the same benefit as that of the original applicant. Moreover, in **Paragraph 53** of the **Umadevi (3)** (supra), the Hon'ble Supreme Court has made a distinction between illegal and irregular appointments in the following words:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409 and B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 and referred to in para 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 the 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 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.”

In a subsequent decision in **Narendra Kumar Tiwari & Ors. Vs. State of Jharkhand & Ors.** reported at **2018 (8) SCC 238** the decision of **Uma Devi (3)** (supra) came up for consideration in relation to regularization of employees who had completed 10 years of service on cut-off date of 10th April, 2006 on the ground that the same was not permitted by **Uma Devi (3)** (supra). The Hon’ble Supreme Court in Paragraphs 4 to 8 discussed the said issue and held that the regularization rules must be given a pragmatic interpretation. The relevant observations are:-

“4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have

occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the

handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (See Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those

persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

7. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do

not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.

8. In Civil Appeal Nos.3595-3612 of 1999 the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3.7.1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they have not made out a right either to get wages equal to that of others regularly employed or for regularization. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment

of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularization within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 01.07.1984, a situation covered by the decision of this Court in Dharwad District Public Works Department vs. State of Karnataka (1990 (1) SCR 544) and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularization in their posts.”

We have not been shown of any regularization rules which should have been in place following **Uma Devi (3)**. However, persons similarly placed and situated as that of the writ petitioners having almost same number of years in service as that of the original applicant in the organization have been extended the benefit of regularization.

It is not in dispute that the appointment of the petitioner was against a regular sanctioned post in a regular pay and through the Employment Exchange and, accordingly, the said appointment cannot be said to be illegal or irregular. The person who has offered himself for the post through Employment Exchange and was selected through a regular selection process conducted by the respondent authorities, his appointment cannot be said to be an illegal or irregular one. The qualification of the person

for the sanctioned post in a regular scale of pay is not in dispute. Since on the date of the application the applicant had put in 18 years of service with an unblemished record and a family to look after, in the present pandemic situation we feel that the applicant should be extended the benefit of the decisions rendered in the earlier proceedings and accepted by the respondents. All persons similarly situated and placed should be treated similarly irrespective of the fact that only some of the persons have approached the Court.

On such consideration, we do not find any reason to interfere with the order passed by the Tribunal. The writ petition, being WPCT 62 of 2020, accordingly, stands dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)