

RSA-4484 of 1999

2024:PHHC:063892



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-4484 of 1999

Decided on: 02.05.2024

Dalip Kumar

.....Appellant

Versus

Deputy Commissioner, District Mahendergarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Gobind Dhanda, Advocate, and
Mr. Iqbal Roshan, Advocate,
for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. The plaintiff-appellant has preferred the instant Regular Second Appeal impugning the judgment and decree dated 08.02.1999, passed by learned Additional District Judge, Narnaul, whereby appeal preferred by the defendants-respondents has been accepted and judgment and decree dated 11.03.1995, passed by learned Senior Sub-Judge, Narnaul, has been set aside.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Briefly stated, plaintiff filed a suit for declaration to the effect that he is entitled for appointment as peon on regular basis from the date he was appointed on daily wage basis in the office of Municipal Committee, Ateli mandi, and is entitled for the scale and grade of regular peon, and suit for injunction directing the defendants



to grant the scale and grade of regular peon to the plaintiff and he shall not be removed from the post of peon during the pendency of the suit. The suit filed by the plaintiff was decreed by learned Senior Sub-Judge, Narnaul, vide judgment and decree dated 11.03.1995. The finding recorded by learned Senior Sub-Judge, Narnaul, is as under: -

“17. Concededly, the plaintiff was a daily wager being appointed at the post of peon on 1.4.1989 and he worked as such till November, 1990. He also drawn his salary for the said period. Moreso, his work was not found unsatisfactory in any manner. Consequently, notional breaks given by the authority concerned in his services do not debar him from continuing in the job. In the wake of these glaring facts. I have no hesitation to say that the plaintiff had completed 240 days continuously at the post of peon in Municipal Committee, Ateli Mandi. In other words, it can very well be said that under section 25-B of Industrial Disputes Act, 1947, Municipal Committee is an industry, so the plaintiff being employed therein has completed 240 days, so his services can not be terminated without adopting legal procedure. Consequently, the authorities cited by the plaintiff counsel are applicable on all force to the case of the plaintiff. With these observations, I apparently do find a merit in the contentions raised by Shri R. A.Khandelwal, whereas the contentions made by S/Shri S.N.Sharma Advocate and L.S. Yadav, Government pleader, are manifestly unsustainable and the same hereby stand whittled down.

18. Having regard to the totality of the facts and circumstances as discussed above, I cannot escape from the irresistible conclusion that the plaintiff is entitled to the regular grade of a peon and other necessary service

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benefits. Hence this issue stands decided accordingly in favour of the plaintiff.

x x x x

21. For the foregoing reasons recorded by me in the light of the cumulative effect of the circumstances, I apparently do find a merit in the suit in hand and the same hereby stands decreed with costs. Decree be drawn accordingly. File be consigned to the record room.

*Announced:
11.3.1995*

*Sd/-
Senior Sub Judge
Narnaul.
11.3.95”*

3. Aggrieved against the judgment and decree dated 11.03.1995, defendant-Municipal Committee, Ateli Mandi, filed an appeal before learned Additional District Judge, Narnaul, which has been accepted vide judgment and decree dated 08.02.1999 by holding as under: -

“9. It is worth mentioning here that the appointing Authority of the peon in the Municipal Committee, is the Deputy Commissioner as per the Haryana Municipal Rules (Integration, recruitment and conditions of service) Rules, 1982. But the plaintiff was never given this assignment by him. This is admitted by Dalip Kumar plaintiff (PW4). He stated that the President of the Municipal Committee, Ateli appointed him on this post on daily wages and not the Deputy Commissioner/Sub Divisional Magistrate, Narnaul. Admissions are the best piece of evidence. When the plaintiff himself is admitting that he was appointed on this post by the President of the Municipal Committee, Ateli, then no dispute remains about it. Undoubtedly, the latter is not the appointing authority of the peon and only Deputy Commissioner is competent to appoint any person on this post. Thus, it can

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not be concluded that the plaintiff was appointed by the competent authority on this post and, therefore, he has no right or claim on it.

10. Faced with the situation, it was argued by Sh. Sharma, Advocate that the plaintiff put in more than 240 days continuous service in a calander year on this post so, his services are liable to be regularised. To elaborate his argument, he referred to the copies of Muster-roll from April 1989 to January 1991 (Ex.P1) to Ex. P 20). It can be gathered after going through it that the plaintiff remained in the employment of the Municipal Committee as Peon on daily wages during this spell. He argued that the defendants instead of making him regular on this post dispensed with his services without any rhyme or reasons. The impugned orders of the defendants is illegal, unwarranted, against the principles of natural justice and is liable to be set aside. Reliance in this regard was placed upon Balbir Singh Versus The Kurukshetra Central Co-operative Bank Limited and another, Recent Service Judgements, 1988, page 55, Punjab and Haryana High Court where in relying upon the ratio of the judgment in case Paramjeet Singh versus The Kurukshetra Central Co-operative Bank Limited and another C.W.P. No. 7959 of 87 observed that a workman who had rendered continuous service with notional break for a period of one year under section 25-B(2) of the Act during a period of 12 calander months preceding the date of termination of service of the petitioner who had actually worked with the Bank for not less than 240 days, shall be treated to have been in regular employment of the Bank. The termination of services without complying with the provisions of section 25-F of the Act was held to be illegal."

11. Suffice it to say that the case law referred to above is of least help to the case of the plaintiff. I held above that

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the appointment of the plaintiff on this post was not valid and legal because he was never appointed by the competent authority. He was put on this job by the person who was not eligible or had any authority to appoint him. Had the plaintiff been appointed by the competent authority i.e. Deputy Commissioner, Narnaul, worked on this post for the required period of 240 days continuously in a calendar year then the defendants were liable to regularise his service provided any vacancy of peon existed in their office. The appointment of the plaintiff was made by the President Municipal Committee, Narnaul, who had no right to give him this assignment, so, he cannot claim any benefit for the period he remained serving in it. It could not be understood as to how the learned trial court omitted to take into consideration this vital fact.

12. For the reasons recorded above, this appeal succeeds and is accepted with no orders as to cost. The judgment and decree of the learned trial court is hereby set aside. File be consigned.

Announced:

Sd/-

*Additional District Judge, Narnaul.
8.2.1999."*

4. I have heard learned counsel for the parties and perused the record.

5. Admittedly, the plaintiff was appointed on 01.04.1989 as peon on daily-wage basis and his services were terminated in the month of November, 1990. Ex-facie, he was appointed by the President of the Municipal Committee, who was not competent to make appointment and whereas competent authority was the Deputy Commissioner. Further, completion of 240 days of services does not confer any right

either of regularisation or for grant of regular pay scale/grade.



6. The Hon'ble Supreme Court in ***Indian Drugs & Pharmaceuticals Limited v. Workmen, Indian Drugs & Pharmaceuticals Limited, 2007(1) S.C.T. 214*** has held that a daily rated or casual worker is only a temporary employee and has no right to continue in service. The operative part of the said judgment is reproduced as under:-

*“13. It may be mentioned that a daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post vide **State of Uttar Pradesh & Anr. v. Kaushal Kishore Shukla, 1991(1) SCT 760 (SC) : 1991(1) SCC 691**. The term 'temporary employee' is a general category which has under it several sub-categories e.g. casual employee, daily rated employee, ad hoc employee, etc.*

14. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation.

*15. Similarly, no direction can be given that a daily wage employee should be paid salary of a regular employee vide **State of Haryana v. Tilak Raj, 2003(4) SCT 485 (SC) : 2003(6) SCC 123**.*

16. We are afraid that the Labour Court and High Court have passed their orders on the basis of emotions

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and sympathies, but cases in Court have to be decided on legal principles and not on the basis of emotions and sympathies.

*17. Admittedly, the employees in question in Court had not been appointed by following the regular procedure, and instead they had been appointed only due to the pressure and agitation of the union and on compassionate ground. There were not even vacancies on which they could be appointed. As held in **A. Umarani v. Registrar, Cooperative Societies & Ors., 2004(4) SCT 728 (SC) : 2004(7) SCC 112**, such employees cannot be regularised as regularisation is not a mode of recruitment. In Umarani's case the Supreme Court observed that the compassionate appointment of a woman whose husband deserted her would be illegal in view of the absence of any scheme providing for such appointment of deserted women.*

*18. In **State of M.P. and others v. Yogesh Chandra Dubey and others, 2006(4) SCT 265 (SC) : 2006(8) SCC 67**, this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.*

*19. In **M/s. Indian Drugs and Pharmaceuticals Ltd. v. Devki Devi & Ors., 2006(3) SCT 478 (SC) : AIR 2006 Supreme Court 2691**, which is a case relating to the appellant's Rishikesh unit, it has been held in paragraph 10 that "The undisputed position is that appellant company does not have any rule for compassionate appointment". In that decision it has also been noted that the appellant is a sick company which is before the BIFR and the bleak financial position of the company has been considered by this Court in **Officers & Supervisors of***

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IDPL v. Chairman & M.D., IDPL and Ors., 2003(3) SCT 1020 (SC) : 2003(6) SCC 490. Originally more than 6500 employees were employed by the appellant but out of them 6171 have taken retirement and only 421 employees are now working throughout the country. The appellant company is not functional and is trying to further reduce the number of employees. In paragraph 15 of the said judgment it has also been noted that no production is going on in the company since 1994. These facts have been completely lost sight of by the Labour Court and the High Court.

Thus, it appears that in the present case the appellant is trying to reagitate the issues which have been already decided by this Court in ***M/s. Indian Drugs and Pharmaceuticals Ltd. v. Devki Devi & Ors., AIR 2006 Supreme Court 2691.***

20. In a recent Constitution Bench decision of this Court in ***Secretary, State of Karnataka and others v. Umadevi & others, 2006(2) SCT 462 (SC) : 2006(4) SCC 1,*** this Court has exhaustively dealt with a matter similar to that under consideration in the present case, and we may refer to some of the observations made therein.

In paragraphs 4 and 5 of the said judgment, the Constitution Bench of this Court observed :

"The Union, the States, their departments and instrumentalities have resorted to irregular appoints, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions 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

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backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The 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. Whether the wide powers under Article 226 of the Constitution are 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 recognised by our Constitution, has to be seriously pondered over. It is time, that the 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 emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution 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.

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

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law as laid down by the Constitution and not the 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".

We have underlined the observations made above to emphasise that the Court cannot direct continuation in service of a non-regular appointee. The High Court's direction is hence contrary to the said decision.

Thereafter in paragraph 33 it was observed :

"It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment".

31. The underlined observation in the above passage makes it clear that even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case.

In paragraph 43, the Court observed :

"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. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract,



if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme".

The underlined observations above clearly indicate that the casual, daily rated, or ad hoc employees, like the respondents in the present appeal, have no right to be continued in service, far less of being regularised and get regular pay.

In paragraph 45 this Court observed :

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned 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 open eyes. It may be true that he is not in a position to bargain - not at arm's 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

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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 succour 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 magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has 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 when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution".

The underlined part of the above passage clearly negates the claim of the respondents."

7. Further reference may be made to the judgment of the Hon'ble Supreme Court passed in ***Secretary, State of Karnataka and others Vs. Umadevi and others, 2006(2) S.C.T. 462***. The relevant portion from the said judgment is as under:-

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“34.Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35 to 37. XXXX XXXX XXXX

38. 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 the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. 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.”

8. The Hon’ble Supreme Court in ***Union of India and others v. Ilmo Devi & another, 2021 (4) SCT 312***, has held as under:-

“8.6 In the case of Daya Lal & Ors. (supra) in paragraph 12, it is observed and held as under:-

"12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any

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right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636], S.C. Chandra v. State of Jharkhand



[(2007) 8 SCC 279], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680] and Official Liquidator v. Dayanand [(2008) 10 SCC 1].”

9. The plea taken by the plaintiff that since he has completed 240 days of service, therefore, under Section 25-B of the Industrial Disputes Act, 1947, the Municipal Committee being an industry, his services cannot be terminated without adopting the legal procedure, is totally untenable as the remedy in that case lies before the Labour Court and not before the Civil Court.
10. No question of law, muchless substantial question of law arises for consideration in the present appeal.
11. In view of the above, finding no merit in the appeal, same is dismissed.
12. Pending application(s), if any, stands disposed of accordingly.

02.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No