

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-20777-2022

Date of decision: 15.01.2024

BHUPINDER SINGH AND ANOTHER

...PETITIONERS

Vs.

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.S. Manhas, Advocate
for the petitioners.

Mr. Sunil Kumar Sharma, Senior Panel Counsel
for the respondent-Union of India.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioners through the instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication dated 26.08.2022 (Annexure P-4) whereby respondents have rejected claim of the petitioners seeking continuation and regularization of their service.

2. The petitioners with effect from June' 2008 came to be appointed as bus conductor/attendant on consolidated pay of Rs. 7,000/-. The appointment of petitioners was neither made against any regular/permanent post nor after following the procedure prescribed for appointment of regular employees. The salary of the petitioners was not paid from consolidated fund of India and it was arranged from regimental fund i.e. service institute account of the respondent.

3. Counsel for the petitioners submits that petitioners continued to work from 2008 to 2022 and all of sudden they have been replaced by another set of employees. The petitioners deserve to be continued as well as regularized in view of judgment of Supreme Court in *Secretary, State of Karnataka and others v. Uma Devi and others, (2006) 4 SCC 1*. He further relies upon

judgment of Supreme Court in ***Hargurpratap Singh Vs. State of Punjab and others, (2007) 13 SCC 292***, wherein it has been held that one set of contractual employees cannot be substituted by another set of contractual employees.

4. Per contract, learned counsel for the respondents submits that petitioners were appointed on contractual basis, thus, they were neither having vested nor fundamental right to continue. The petitioners were not appointed by following the prescribed procedure. The petitioners were not working against a regular post. In view of judgment of Constitution Bench in ***Secretary, State of Karnataka and others v. Uma Devi and others, (2006) 4 SCC 1***; a three Judge Bench judgment of Hon'ble Supreme Court in ***Official Liquidator v. Dayanand and others, (2008) 10 SCC 1***, a two Judge Bench judgment of Hon'ble Supreme Court in ***Union of India and others v. Vartak Labour Union, (2011) 4 SCC 200***; a two Judge Bench judgment of Hon'ble Supreme Court in ***Union of India and others v. All India Trade Union Congress and others, (2019) 5 SCC 773***; a Division Bench judgment dated 04.07.2022 of this Court in ***Lokesh Rana and another v. Union of India and others, LPA No.513 of 2022***, the petitioner cannot claim absorption or continuation or regularization of service.

5. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

6. It is conceded fact that petitioners were engaged by respondent in 2008, however, they were not appointed against a permanent/regular post. The petitioners were never paid salary as payable to a regular employee. As held by Division Bench of this Court in ***Lokesh Rana (supra)***, the petitioners are neither having vested nor fundamental right to hold the post.

7. A Constitution Bench in ***Uma Devi (supra)***, has adverted with question of regularization of temporary/part time/adhoc employees. The Court has deprecated practice of employing temporary/part time or contractual

employees though Court has held that in exigency, State can make appointment on contract basis. The Court has held that regularization of contractual or part time employees would amount to legalization of back door entry. The regularization of part time employees is violative of Articles 14, 16 & 309 of Constitution of India. The High Court should not ordinarily issue directions for absorption, regularization or continuance unless the recruitment itself was regular and in terms of the constitutional scheme. High Court is not justified in issuing interim orders in such cases. There is no fundamental or vested right in those who have been employed on daily wages or temporary or contractual to claim that they have a right to be absorbed in service.

8. A three Judge Bench of Hon'ble Supreme Court in ***Official Liquidator (supra)*** has reiterated opinion of Constitution Bench in ***Uma Devi (supra)***.

9. A Division Bench of this Court in ***Lokesh Rana (supra)*** has held that a contractual employee has no right to get his contract renewed which was for a limited period. The relevant extracts of the said judgment read as:-

“The facts of the present case undisputedly establish that the contractual appointment of the appellants has come to an end in 2019 and that fresh appointments have also been made pursuant to the impugned advertisement in which the appellants had also participated and two of them have also been selected and appointed. In the backdrop of the aforesaid admitted facts, the law is settled that once the period of contractual appointment is over, the High Court, in exercise of its extra ordinary power under Article 226 of the Constitution of India, cannot direct continuance of service beyond the contractual period as that would amount to grant of an open ended permanent appointment by the High Court

even in the absence of any order of appointment or engagement on the part of the employer. The direction seeking continuation after the contractual period is over, therefore, cannot be granted and has rightly been rejected. In view of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed.”

10. The petitioners are relying upon judgment of Hon’ble Supreme Court in *Hargurpratap Singh (supra), Uma Devi (supra)*. The aforesaid judgment has been delivered in the peculiar facts and circumstances involved therein.
11. In the wake of judgment of Hon’ble Supreme Court in *Uma Devi (supra), Official Liquidator (supra)* and judgment of this Court in *Lokesh Rana (supra)*, this Court finds that the petitioners have neither legal nor vested nor fundamental right to claim regularization or absorption or continuation. This Court cannot ask the respondent to continue or regularize the service of the petitioners especially when they have already been replaced by another set of employees.
12. In view of above discussions and findings, this Court is of the considered opinion that the present petition, being bereft of merits, deserves to be dismissed and accordingly dismissed.
13. It is made clear that dismissal of present petition would not inhibit the respondents to avail service of the petitioners at a subsequent stage.

15.01.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No