RAJASTHAN KRISHI VISHVA VIDHYALAYA, BIKANER

v.

DEVI SINGH

(Civil Appeal No. 4327 of 2003)

FEBRUARY 14, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Service Law:

Regularisation – Claim for, by casual workers – On the ground of long rendition of service – High Court directed the employer to consider their case for regularization – On appeal, Held: Matter needs consideration in the light of decision in Uma Devi's case – Remitted to High Court – Rajasthan Regulation of Appointments to Public Service and Rationalisation of Staff Act, 1999 – ss.7, 9, 11 and 19 – Constitution of India, 1950 – Article 14 – Public appointment.

Respondents were appointed on daily wage basis. Their services were terminated as there was no further work in the research centre where they were appointed. They filed writ petitions praying for a direction to the employer-appellant to give benefit of regularization on the post of Class IV employees and to give regular scale of pay with effect from the date from which persons junior to him were given benefit of regularization and regular pay scale. A prayer was also made to declare ss.7, 9, 11 and 19 of the Rajasthan Regulation of Appointments to Public Service and Rationalisation of Staff Act, 1999 to be ultra vires to the Constitution of India, 1950. High Court declared ss. 9, 11 and 19 as ultra vires and directed the appellant to consider the case of the respondents-writ petitioners.

In appeal to this Court, appellant contended that since none of the respondents was in employment of the

A University from 1992 to 1995, the question of extending the benefit of regularization from the date when his junior, if any, was regularized does not arise.

Respondents contended that they were entitled to regularization because of long rendition of service.

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Allowing the appeals and remitting the matter to the High Court, the Court

HELD: 1. While directing that appointments, temporary or casual, be regularized or made permanent, C 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 D accepts the employment with open eyes. 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 E 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 F permissible. [Para 6] [857-D, E, F & G]

1.2. 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 one that G 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. It cannot also be held that the State has held out any H 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. [Para 6] [858-E & F; 859-B]

Bhawani Singh and Ors. v. State and Ors. **(2002) 3** *Western Law cases* **728;** *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.* **(2006) 4 SCC 1 – relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4327 of 2003.

From the Judgment and Order dated 06.02.2003 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 849 of 2002.

WITH

Civil Appeal Nos. 712/2004, 1053, 4309, 4310, 4311, 4312, 4313 & 4314 of 2006.

Aruneshwar Gutpa, A.A.G., Puneet Jain, Christi Jain, H.D. Thanvi, Sarad Kr. Singhania, Sushil Kumar Jain, Naveen Kumar Singh, Shashwat Gupta, Syed Ali Ahmad, Syed Tanweer Ahmad, Girdhar G. Upadhyay, Vinita G. Upadhyay, Asha Upadhyay, U.K. Shandilya, Vijay Kumar Pandita, Awadhesh Kr. Singh, S.S. Bandhopadhyay, R.D. Upadhyay, B.D. Sharma, R.C. Kohli, Surya Kant, A. Mariarputhan, Aruna Mathur, (for M/s. Arputham, Aruna & Co.), Sushil Balwada, Rameshwar Prasad Goyal for the appearing parties.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the orders passed by a Division Bench of the Rajasthan High Court, Jodhpur directing consideration of the case of respondent in each case under the Rajasthan (Regulation of Appointments to Public Service and Rationalisation of Staff) Act, 1999 (in short the 'Act').

2. Background facts in a nutshell are as follows:

A Respondents were appointed on daily wage basis. Their services were terminated as there was no further work in the research centre where they were appointed and/or on the basis that there was no work available and there was no approved list. The State of Rajasthan passed the Act in the B year 1999.

3. Respondent in each case filed a writ petition praying for a direction to the present appellant to give benefit of regularization on the post of Class IV employees and to give regular scale of pay with effect from the date from which persons C junior to him were given benefit of regularization and regular pay scale. Prayer was also made to declare Sections 7, 9, 11 and 19 of the Act to be ultra vires to the Constitution of India, 1950 (in short the 'Constitution').

D 4. The High Court placing reliance on an earlier judgment in *Bhawani Singh and Ors. v. State and Ors.* (2002 (3) Western Law cases 728) declared Sections 9, 11 and 19 as ultra vires and directed the appellant to consider the case of the writ petitioner in each case for regularization in the light of aforesaid judgment and if found eligible to consider his case for E regularization with effect from the date on which any other person junior to him had been granted the same benefits.

5. Stand of the appellant is that since none of the respondents was in employment of the University from 1992 to F 1995, the question of extending the benefit of regularization from the date when his junior, if any, was regularized does not arise. Respondents' stand was that each was entitled to regularization because of long rendition of service. The question relating to regularization of service on the ground of long rendition of G service was the subject matter in a decision by a Constitution Bench of this Court in *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.* (2006 (4) SCC 1).

6. The said issue has been elaborately dealt with in the judgment. It was inter alia held as follows:

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"33. 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 and ad hoc appointment can 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 regularization 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.

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45. While directing that appointments, temporary or casual, be regularized 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 open eyes. 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 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

A 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, moreover when securing of such employment brings at least some succor to them. After all, B 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 C 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 D 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. The argument that since one has been working for some time in the post, it will not be just E to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not 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 F and equality of opportunity enshrined in Article 14 of the Constitution.

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47. When a person enters a temporary employment or G 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 H 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.

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52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College* (1962) Supp. 2 SCR 144. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may be issued to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent." (See Chief Commissioner of Income Tax & Ors. v. Smt. Susheela Prasad and Ors.

A (2007 (8) Supreme 635)."

7. In view of what has been stated in *Uma Devi's* case (supra), we deem it proper to remit the matter to the High Court to consider the cases afresh in the light of the said decision.

B 8. The appeals are allowed to the aforesaid extent with no order as to costs.

D.G. Appeals allowed.