

A MAHADEO BHAU KHILARE (MANE) AND ORS.

v.

STATE OF MAHARASHTRA AND ORS.

MAY 9, 2007

B [S.B. SINHA AND C.K. THAKKER, JJ.]

Service Law:

C *Absorption—Unpaid assistants engaged by Talathi in State of Maharashtra—Claim for absorption on regular posts—Held: the candidates were engaged by employees themselves to help them and not by any authority having requisite jurisdiction therefor—Since they were not in service of State, their regularization would be wholly impermissible—Any action on the part of a servant of State on his own, having no authority in that behalf, would be wholly illegal and without jurisdiction—Any scheme by way of any executive instruction in terms of Article 162 of the Constitution, if violative of statutory rules would not be legally sustainable—Constitution of India, 1950—Article 162.*

E Appellant nos. 1 and 2 were engaged by the Talhathi in his office as Assistant and unpaid candidate. The Revenue officials were directed by the State to stop such engagement. In the year 1995 some of the unpaid candidates approached the Maharashtra Administrative Tribunal and, ultimately, the State Government framed a scheme whereunder unpaid copiers who had completed more than 10 years as such on 30.11.1995 were proposed to be absorbed on various posts according to their qualification and fulfilling other conditions. F Since the appellants were not appointed under the said scheme, they approached the Tribunal, which ultimately declined to give any relief holding that work from them was taken by the Tehsildars on their own without having any authority in that behalf. Writ petitions of the said unpaid candidates having been dismissed by the High Court, they filed the present appeals.

G Dismissing the appeals, the Court

HELD: 1.1. Appellants were appointed by Talathis as their assistants. They only used to assist the Talathis in their day to day work. They were never appointed as assistants to Talathis. No such post of Assistant to Talathis

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had been created and/or sanctioned by any competent authority. No recruitment rules therefor were framed. Therefore, their appointments were illegal. The State had also imposed a ban on appointment of such persons. In any event, they were appointed by the employees themselves to help them and not by any authority having the requisite jurisdiction therefor. Appointments made without following the statutory rules by the State and that too without any remuneration whatsoever was itself unconstitutional.

[Para 10 and 11] [248-F, G]

1.2. Furthermore, before a person can claim regularization, he must be in the service of the State. If the appellants were not in the service of the State, question of their being regularized would be wholly impermissible. Appellants might have worked for a long time but the same by itself is not decisive inasmuch as they had not been occupying any post having not been appointed by the State. Any action on the part of a servant of a State on his own, having no authority in that behalf, would be wholly illegal and without jurisdiction. [Para 12] [249-A, B]

Secretary, State of Karnataka & Ors. v. V. Umadevi, 3 Ors., [2006] SCR 953, [2006] 4 SCC 1, followed.

Punjab Water Supply and Sewerage Board v. Ranjodh Singh & Ors., (2006) 13 SCALE 426 and *Punjab State Warehousing Corporation Chandigarh v. Manmohan Singh & Anr.*, (2007) 3 SCALE 401 and *A Umarani v. Registrar, Cooperative Societies and Ors.*, [2007] 7 SCC 112, referred to.

1.3. Indisputably, the State of Maharashtra has framed recruitment rules. Any scheme by way of an executive instruction in terms of article 162 of the Constitution of India. if violative of such statutory rules would not be legally sustainable. [Para 7] [248-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 191 of 2007.

From the Final Judgment and Order dated 16.02.2005 of the High Court of Judicature at Bombay in Writ Petition No. 3735 of 2001.

R.S. Hedge, Chandra Prakash, Rahul Tyagi and P.P. Singh for the Appellant.

Aparjita Singh, S.S. Shinde and V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** 1. Appellant No. 2 was initially appointed as a serving unpaid candidate in the Office of 'Talathi'. Such an appointment was made purported to be under the Orders of Talathi permitting him to work in his office as unpaid candidate. Appellant No. 1 was appointed as Assistant to Talathi on 2.4.1979. Appellants had been engaged from time to time in the said post. Unpaid candidates, according to appellants themselves, used to receive 30 per cent out of every rupee received by the first respondent for writing of the document by the candidate. Revenue officials were directed by the State to stop such recruitment. Despite the same, however, recruitment of Assistants from persons like the appellants continued.

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C 2. Allegedly, in the year 1995, some of the unpaid candidates filed an original application before the Maharashtra Administrative Tribunal wherein they sought for a direction in regard to their absorption in the services of the State. Therein a scheme was directed to be framed by the Tribunal by a Judgment and Order dated 30.11.1995. A scheme was thereafter framed by the State, the relevant portions whereof read as under:-

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"Government Resolution

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(a) For absorption of unpaid copiers from the Revenue Department in the service of Administration the date of eligibility should be decided as the date of issuance of Order of Maharashtra Administrative Tribunal i.e. 30th November 1995 (cut of date).

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(aa) The candidates who have completed 10 years of service on 30-11-1995 and are in service for more than year if apply for the post of Steno-typist, Typist in the IIIrd grade, Talathi or similar posts of Revenue Department, or for the post of IV grade and if they hold the educational qualification for such posts and if they have registered their names in the Employment Exchange Office while absorption in the said vacant post the age limit be relaxed. Similar condition of their appointment by the Recruitment Committee will not apply.

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(uu) In the case of unpaid copiers the Collector and other local Revenue Officers should execute as follows :-

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(a) The unpaid copiers from the Revenue Department who have been

servicing till 30th November 1995 for more than 10 years such cases may be scrutinized by the Collector and he should enquire from the copier to which posts he wishes to absorb. If the candidate has educational qualification prescribed and if he has registered his name in the Employment Exchange then a list of seniority of such copiers be prepared and he be appointed as per the above scheme.

(2) Those unpaid copiers have served less than 10 years or more than 3 years as on 30th November 1995 then after taking into consideration their education qualification, their names be forwarded to the local Section committee and in case of continuous three candidates relaxation of age limit as per the Government Scheme be informed. Such an unpaid copier be asked to make application directly to the Selection Board.

3. Henceforth, all the Revenue Officer are asked to carefully follow the orders issued by the Government Circular No. EAST/1083/3618/483-E-7 dated 13th February, 1987, Revenue & Forest Department.”

3. Appellants, however, were not appointed under the said scheme. They moved the Tribunal again. By a judgment dated 29.1.1999, respondents were directed by the Tribunal to bring the appellants within the purview of the said scheme. Aggrieved by and dissatisfied therewith, the respondents filed several writ applications which were allowed and the matter was remitted back to the Tribunal.

4. Ultimately, the Tribunal in its Order dated 20.7.2001 opined that the work from the appellants were taken by the Tehsildars on their own without having any authority whatsoever in that behalf. Writ Petitions preferred by the appellants thereagainst have been dismissed by reason of the impugned judgment.

5. Mr. R.S. Hegde, the learned counsel appearing on behalf of the appellant submitted that the Scheme dated 22.10.1996 framed by the State of Maharashtra would apply also to the appellants also and in that view of the matter as also having regard to the fact that a large number of persons similarly situated have already been absorbed in the services of the State, there is absolutely no reason as to why they should be discriminated against.

6. The learned counsel appearing on behalf of the respondents, on the other hand, submitted that not only there is no sanctioned post, the purported

A recruitments had been made by the Tehsildars to assist them and as such the appellants do not come within the purview of the said Scheme.

7. Indisputably, the State of Maharashtra has framed recruitment rules. Any scheme by way of an executive instruction in terms of Article 162 of the Constitution of India, if violative of such statutory rules would not be legally sustainable. [See *A. Umarani v. Registrar, Cooperative Societies and Ors.*, [2004] 7 SCC 112].

8. The question in regard to the existence of any vested legal right, inter alia is such by above appointees and/or daily wagers, to be absorbed regularized in the State Services came up for consideration before a Constitution Bench of this Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.*, [2006] 4 SCC 1.

9. It was categorically held therein that regularisation in service, in cases where the appointments were *void ab initio*, having been made in utter disregard of the existing recruitment rules and/or constitutional scheme adumbrated under Article 14 and 16 of the Constitution of India would be wholly illegal and thus the direction in this behalf can be issued. [See also *Punjab Water Supply & Sewerage Board v. Ranjodh Singh & Ors.*, (2006) 13 SCALE 426 and *Punjab State Warehousing Corporation Chandigarh v. Manmohan Singh & Anr.*, (2007) 3 SCALE 401]

10. In terms of the said Scheme, Steno-typists, Typists on the IIIrd grade or similar posts of the Revenue Department could be absorbed in the State service. We would assume that the said scheme was valid in law, although it was not in view of the decision of this Court in *Umarani* (supra). Appellants were appointed by Talathis as their assistants. They only used to assist the Talathis in their day to day work. They were never appointed as Talathis. No such post of Assistant to Talathis had been created and/or sanctioned by any competent authority. No recruitment rule therefor was framed. Therefore, their appointments were illegal. The State had also imposed a ban on appointment of such persons. In any event, they were appointed by the employees themselves to help them and not by any authority having the requisite jurisdiction therefor.

11. Appointments made without following the statutory rules by the State and that too without any remuneration whatsoever was itself unconstitutional.

12. Before a person furthermore can claim regularisation in the services of the State, he must be in the service of the State. If the appellants were not in the services of the State, question of their being regularized therein, in our opinion, would be wholly impermissible. Appellants might have worked for a long time but the same by itself is not decisive inasmuch as they had not been occupying any post having not been appointed by the State. Any action on the part of a servant of a State on his own, having no authority in that behalf, would be wholly illegal and without jurisdiction. A B

13. For the reasons aforementioned, we are of the view that no case has been made out for our interference with the impugned judgment. Appeals are, therefore, dismissed. No costs. C

R.P.

Appeals dismissed.