STATE OF HIMACHAL PRADESH AND ANR. A

v.

RAVINDER SINGH

(Civil Appeal No. 2224 of 2008)

MARCH 28, 2008

B

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

Labour Laws:

Regularisation – Daily-wager – Seeking regularization as Clerk – Employer offering regularisation as 'Chowkidar' – Offer refused by worker – Termination – Industrial dispute – Tribunal upheld termination – High Court directing regularisation as Clerk – Challenge to – Held: Worker concerned was not selected in the manner as applicable to regular employees – He was a mere back-door entrant – Hence, directions given by High Court for regularization in the post of Clerk set aside – However, time granted to worker to accept offer for regularisation as 'Chowkidar'. C D

Respondent had been appointed on daily-wage basis in the State Horticulture Department. He sought regularization as Clerk. Appellants offered Respondent regularisation as *'Chowkidar'* which he refused. Thereafter the engagement of Respondent as daily wager was terminated. Industrial dispute was raised. The stand of the State was that the Respondent was engaged as daily-paid labourer for carrying out horticulture operations such as spraying of plants, cleaning the floors etc. and therefore, the question of discharging the duties of clerk/supervision did not arise. Tribunal upheld the termination. High Court directed regularisation of Respondent as Clerk under a Government scheme. Hence the present appeal. E F G

Partly allowing the appeal, the Court

HELD: The High Court proceeded on erroneous

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A **premises. The Labour Court had rightly dismissed the claim of the Respondent by holding that he and others, being daily wagers, cannot be treated at par with the regular employees. It also noted that the conditions for regularization under the policy of the Government have**
B **not been noticed. In addition, the Labour Court had observed that the name of the Respondent was not sponsored by the employment exchange; there was no appointment order; the requirements relating to procedure to be followed at the time of recruitment were**
C **also not fulfilled. There was a mere back-door entry. It was further noted that they were not selected in the manner as applicable to regular employees who are liable to be transferred and are subject to disciplinary proceedings to which daily-rated workers are not subjected to. In the background of what has been stated above, the directions**
D **given for regularization in the post of clerk being indefensible are set aside. However, the appellants had regularized the services of the respondent as a *'Chowkidar'* in July, 1997 which the respondent had refused. If the respondent is so advised, he may accept the order in that**
E **regard by submitting the requisite documents within six weeks from today. If not so done, the respondent shall not be entitled to any relief in terms of the High Court's impugned order which has been set aside by this Court. [Paras 7,8, 9] [582-E, F, G; 587-C, D, E, F, G]**

F *Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.* **(2006) 4 SCC 1 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2224 of 2008.

G From the final Judgment and Order dated 26.09.2005 of the High Court of Himachal Pradesh at Shimla at Shimla in C.W.P. No. 354 of 2000.

Naresh K. Sharma and J.S. Attri for the Appellants.

H S.C. Rana and Balraj Dewan for the Respondent.

The Judgment of the Court was delivered by A

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Himachal Pradesh High Court by which two Writ Petitions filed by the respondent were disposed of. The B controversy lies within a very narrow compass.

3. The present dispute relates to Civil Writ Petition No.354 of 2000. Before dealing with the rival contentions the factual background needs to be noted.

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Respondent was appointed on 3.9.1980 as a daily-rated worker in the Horticulture Department of the State. In the Writ Petition the prayer was for regularization as a clerk on completion of ten years of service on daily wages basis. It is to be noted that the union of the employees had moved the Labour Court for regularization of all daily wagers. The same was D adjudicated by the Industrial Disputes Tribunal. A reference was made to the Labour Court and the State filed its response questioning maintainability of the reference. Initially the Labour Court had decided in favour of the workers but on a Writ Petition being filed, the High Court held in favour of the State holding E that the claim for regularization was not maintainable. It was noted that no appointment order was issued and the case of the respondent was not sponsored by the employment exchange. It was also noted that the claim for equal work for equal pay was not maintainable as daily-rated persons were F not required to perform duties at par with those in regular service and they did not also fulfil the procedure at the time of recruitment. Two Writ Petitions were filed; in one the challenge was to the order of the Industrial Disputes Tribunal while the Writ Petition to which this Appeal relates to the Award by the G Labour Court. It is to be noted that the Labour Court had observed that the employer had regularized the respondent as a Chowkidar with effect from 5.7.1997 which was refused by him. Thereafter the engagement as daily wager was terminated. This order was challenged before the Industrial Disputes H

A Tribunal, under Section 33 which was dismissed. However, as noted above the High Court has remanded the matter to the Tribunal.

4. The High Court in the impugned order held that the approach of the Labour Court was wrong as it has introduced B concepts which are unnecessary. It was noted by the High Court that there was no dispute that the respondent was employed as a clerk.

5. Learned counsel for the respondents submitted that the C question whether the appointment was as a clerk has been concluded by an earlier order of the High Court which has become final and, therefore, the present appeal is misconceived.

6. The High Court had rightly observed that the Labour Court embarked upon an uncalled enquiry upon the status of D daily-wage workers vis.a.vis regular workers, therefore, the direction was given that the respondent was entitled to be regularized as clerk under the scheme of the Government with effect from 11th July, 1995.

7. It is to be noted that the High Court proceeded on E erroneous premises. It has observed that there was no dispute that respondent was employed as daily wage worker as clerk with effect from 3rd September, 1980. The High Court itself has observed that the stand of the State was specific that the respondent was engaged as daily-paid labourer for carrying F out horticulture operations such as spraying of plants, cleaning the floors etc. and therefore, the question of discharging the duties of clerk/supervision does not arise. It was also to be noted that the Labour Court had rightly dismissed the claim of the respondent by holding that he and others, being daily wagers, G cannot be treated at par with the regular employees. It also noted that the conditions for regularizations under the policy of the Government have not been noticed. The parameters of regularization have been examined by this Court in *Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.* (2006(4) SCC1). H Paras 22, 27, 36, 39, 42 and 43 of the decision read as follows:

"22. With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasised in *R.N. Nanjundappa* v. *T. Thimmiah* (1972 (1) SCC 409) was also not kept in mind. The Court appears to have been dealing with a scheme for "equal pay for equal work" and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily-rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it.

27. We shall now refer to the other decisions. In *State of Punjab* v. *Surinder Kumar (AIR 1992 SC 1593)* a three-Judge Bench of this Court held that the High Courts had no power, like the power available to the Supreme Court under Article 142 of the Constitution, and merely because the Supreme Court granted certain reliefs in exercise of its power under Article 142 of the Constitution, similar orders could not be issued by the High Courts. The Bench pointed out that a decision is available as a precedent only if it decides a question of law. The temporary employees would not be entitled to rely in a writ petition they filed before the High Court upon an order of the Supreme Court which directs a temporary employee to be regularised in his service without assigning reasons and ask the High Court to pass an order of a similar nature. This Court noticed that the jurisdiction of the High Court while dealing with a writ petition was circumscribed by the limitations discussed and declared by judicial decisions

A and the High Court cannot transgress the limits on the basis of the whims or subjective sense of justice varying from judge to judge. Though the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision applications coming before it, the discretion B had to be confined in declining to entertain petitions and refusing to grant reliefs asked for by the petitioners on adequate considerations and it did not permit the High Court to grant relief on such a consideration alone. This Court set aside the directions given by the High Court for regularisation of persons appointed temporarily to the post C of lecturers. The Court also emphasised that specific terms on which appointments were made should be normally enforced. Of course, this decision is more on the absence of power in the High Court to pass orders against the constitutional scheme of appointment.

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36. This Court also quoted with approval (at SCC p. 131, para 69) the observations of this Court in *Teri Oat Estates (P) Ltd.* v. *U.T., Chandigarh (2004(2) SCC 130)* to the effect: (SCC p. 144, para 36)

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> "*36.* We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction F contained in Article 142 of the Constitution, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."

This decision kept in mind the distinction between "regularisation" and "permanency" and laid down that regularisation G is not and cannot be the mode of recruitment by any State. It also held that regularisation cannot give permanence to an employee whose services are ad hoc in nature.

39. There have been decisions which have taken the cue from *Dharwad case*1 and given directions for H

regularisation, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in *Workmen* v. *Bhurkunda Colliery of Central Coalfields Ltd. (1983 (4) SCC 582)* though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularisation or re-engagement or making them permanent.

42. While answering an objection to the locus standi of the writ petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasised, Bhagwati, C.J., speaking on behalf of the Constitution Bench in *D.C. Wadhwa (Dr.)* v. *State of Bihar (1987 (1) SCC 378)* stated: (SCC p. 384, para 3)

> "The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, Petitioner 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

43. 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, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the 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."

8. In addition it has to be noted that the Labour Court had observed that the name of the respondent claimant was not sponsored by the employment exchange; there was no appointment order; the requirements relating to procedure to be followed at the time of recruitment were also not fulfilled. There was a mere back- door entry. It was further noted that they were not selected in the manner as applicable to regular employees who are liable to be transferred and are subject to disciplinary proceedings to which daily-rated workers are not subjected to.

9. In the background of what has been stated above the directions given for regularization in the post of clerk being indefensible are set aside. However, undisputedly the appellants had regularized the services of the respondent as a Chowkidar in July, 1997 which the respondent had refused. If the respondent is so advised, he may accept the order in that regard by submitting the requisite documents within six weeks from today. If not so done, the respondent shall not be entitled to any relief in terms of the High Court's impugned order which as noted above we have set aside.

10. The appeal is allowed to the aforesaid extent, but without any order as to costs.

B.B.B. Appeal partly allowed.