

State of Punjab and others

Vs

Surinder Kumar and others

Civil Appeal No. 5060 of 1991

(L.M. Sharma, J.S. Verma, S.C. Agrawal JJ)

20.12.1991

### JUDGEMENT

SHARMA, J.:-

1. This special leave petition is directed against the order of the High Court dated 4-4-1991 disposing of a writ petition filed by the present two respondents. The entire judgment reads thus:

"On the facts and circumstances of the case, we are of the opinion that the just and fair order should be that the petitioners who have been appointed on part time basis should be continued until the Govt. make regular appointments on the recommendations of the Public Service Commission. Meanwhile the petitioners will get their salary for the period of the vacation."

Notice was issued to the respondents asking them to get ready for final disposal of the case, and accordingly they have filed their counteraffidavit followed by further affidavits by the parties.

2. Special leave is granted.

3. In pursuance of certain instructions issued by the Director, Education Department of the State of Punjab in 1990, each of the respondents was offered a post, as per Annexures P / 1 and P / 12 respectively, of part time lecturer on the specific condition that he could be relieved at any time without notice, and that the payment would be made at the rate indicated therein on hourly basis. The respondents accepted the offers, and were appointed accordingly. On 26-2-1991 the respondents filed the writ petition (C.W.P. No.3150/91), contending that they were entitled to be regularised in their posts as lecturers with salary on regular pay-scale.

4. A written statement was filed refuting the claim in the writ petition and giving the reference of similar writ petitions which had been earlier dismissed by this Court ' The respondents also detailed relevant facts which clearly distinguish the regularly appointed lecturers from the part time appointees, and indicate that the writ petition was fit to be dismissed. The Court, however, without dealing with any of the points raised by the appellants (respondents before the High Court) allowed the writ petition by a cryptic order, which has been quoted above.

5. It is not contested that an instruction by the Education Department was issued in pursuance of which the appointments of the respondents in question were made as part time lecturers. It is also not suggested that the respondents accepted the terms set out in Annexures P/1 and P/ 2 under mistake. We, therefore, do not find any reason as to why the speel 'fie terms on which the

appointments were made could not be enforced. We have gone through the special leave petition, the respondents' counter-affidavit and the other affidavits filed by the parties, and do not find any relevant material or tenable plea in support of the claim in the writ petition filed in the High Court. The learned counsel for the respondents also could not suggest any ground for sustaining the impugned order except contending that this Court has issued directions for absorption of temporary or ad hoc Government servants on permanent basis in several cases. It has been argued that if this could be done by this Court without assigning any reason, it should be open to the High Courts as well to allow writ petitions in similar terms. We are not in a position to agree.

6. A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a Court whose judgment is not subject to further appeal and other Courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher Court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Art. 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

7. It is true that the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision applications but this discretion has to be confined in declining to entertain petitions and refusing to grant relief, asked for by petitioners, on adequate considerations. and it does not permit the High Court to grant relief on such a consideration alone.

8. We, therefore, reject the argument addressed on behalf of the respondents that the High Court was entitled to pass any order which it thought fit in the interest of justice. Accordingly we set aside the impugned order and allow the appeal, but in the circumstances without costs.

Appeal allowed.

</html