

Director, Institute of Management Development, U.P.

Vs

Pushpa Srivastava, Respondent.

Civil Appeal No. 2923 of 1992

(L. M. Sharma, S. Mohan, N. Venkatachala JJ)

04.08.1992

JUDGEMENT

MOHAN, J.

1. Special leave granted.

2. The civil appeal is directed against the judgment and order of the High Court of Allahabad, Lucknow Bench, Lucknow dated 30th November, 1991 rendered in Writ Petition No. 1041 of 1991. It was filed by the respondent in which the prayer was for a mandamus to the appellant-Institute to regularise the services of the respondent forthwith as Executive in the Institute of Management Development, Uttar Pradesh.

3. The appellant is an Institute established inter alia with the object of undertaking applied scientific, industrial and management research, more particularly, in the 'field of applied sciences with the emphasis on technical management including production management, financial management, marketing management etc. It is an autonomous body. It is governed by the rules of The Association of the Institute.

4. The respondent was first appointed in the appellant-Institute as a Research Executive on a consolidated fixed compensation of Rs. 1,250/- per month on contract basis for a period of three months. It was specifically stated in the order that it was purely on ad hoc basis,, liable for termination without any notice on either side.

5. By an order dated 18th of July, 1988 the appointment of respondent was extended for a further period of three months with effect from 2nd August, 1988 on the same terms and conditions. Here again, it requires to be noted that the appointment was purely on ad hoc basis. On 28th of January, 1989 a fresh office order was made appointing the respondent as Training Executive on a contract basis for a period of three months. The consolidated pay was fixed at Rs. 1,500 / - per month. Here also, the appointment was purely on ad hoc basis and terminable without notice by either side. On 20th June, 1989 she was appointed on a newly created post of Executive carrying a pay scale of Rs. 770-1600. This appointment was also on ad hoc basis for a period of six months and it was terminable by one month's notice on either side. On 5th January, 1990 another ad hoc appointment was made for a period of three months. Though by 'efflux of time the appointment came to an end on 21st of March, 1990 yet she was continued beyond the prescribed period.

6. On 13th July, 1990 she submitted a resignation letter. This letter of resignation was forwarded to the Director of the Institute who accepted the same by an order dated 31st July, 1990.

7. Notwithstanding the acceptance of resignation, on 25th of August, 1990, the respondent made a further request that her services might be continued for some more time in the appellant-Institute. On this request, the respondent was appointed on a contractual basis as a Training Executive on a consolidated compensation of Rs. 2 ' 400/ -per month. On this occasion also, the appointment was purely on a ad hoc basis terminable without notice.

8. On 3rd of January, 1991 a Committee of the Institute went into the question of abolition of redundant posts. The report was submitted by the Committee to the effect that several posts including the posts of Training Supervisors and Research Executive had become redundant. Therefore, the Committee recommended their abolition. Accepting the report of the Committee on 14th January, 1991 five posts were abolished including the post of Training Supervisors and Research Executive with effect from the last training programme of the current financial year.

9. Since the appointment of the respondent was coming to an end at the end of February, 1991 she preferred W.P. 1041 of 1991.

10. Inter alia it was urged that there was no justification for not giving a regular or a "permanent appointment to her. She was compelled to submit her resignation and thereafter was given a permanent consolidated salary. Thus, the action of the Institute was arbitrary, unreasonable and discriminatory. It was further urged that there was every need for continuing the post.

11. The learned Judge accepted this contention and ultimately, making the rule absolute, directed that she be put back on duty on the post hitherto held by her. A further direction was issued to regularise her services within three months. It is under these circumstances special leave petition was preferred by the Institute.

12. The argument on behalf of the appellant and the counter argument on behalf of the respondent, centered mainly round the question whether the Director of the appellant-Institute was competent to abolish the post. While the contention on behalf of the appellant was that Rule 16(viii) of the Rules of the Association of the appellant-Institute would enable the Director to create technical Post. Per contra it was urged on behalf of the respondent that Rule 11, conferring powers on the Board for creating research post, would apply.

13. However, without elaborating the arguments on the scope of the Rules it was urged on behalf of the appellant that the order dated 1-9-90 was specific in its terms limiting the period of appointment for six months from the date of joining. This was purely on a ,contractual basis. The consolidated pay was Rs. 2,400/ -. Therefore, the respondent had no right to continue whatsoever in the post beyond the period of six months irrespective of the fact as to who had the right to abolish the post.

14. The appellant-Institute came to abolish the post because of the financial constraints. The report of the Committee makes it very clear that the Institute was finding it difficult to disburse pay etc. even to its regular employees. Hence, the posts which were redundant including the one occupied by the respondent came to be abolished. If that be so, the High Court was incorrect in directing that the respondent be put back in service and further directing that her services be regularised.

15. In meeting these submissions, Mr. Nariman, learned counsel for the respondent would urge that the case did not proceed on this line before the High Court yet he would endeavour to establish that

the respondent has a right to be regularised. The respondent's service had continued right from 20th June, 1989 at any rate for more than one year. Though it was on ad hoc basis this Court has taken the view that having regard to the length of service the respondent has a right to be regularised. In support of this submission reliance is placed on Jacob M. Puthuparambil v. Kerala Water Authority, 1990 (1) Supp SCR 562 : (AIR 1990 SC 2228). Thus it is submitted that no interference is called for with the impugned judgment.

16. In any event, should the Court be inclined to accept the contention of the appellant, the case of the respondent may be viewed with sympathy as she is 41 years of age. If she is thrown out of job she will be literally on the streets. Therefore, the Institute may be directed to consider her regularisation.

17. For our part, we do not think it is necessary to decide the question as to who has the power to abolish the post of Training Executive; whether under Rule 16(viii), the Director or under Rule 11, the Board since we propose to limit the controversy to the terms of appointment.

18. The order dated 1-9-90 reads as follows:

"1-168D/ 1132 1-9-1990

OFFICE ORDER

With effect from the date of joining Smt. Pushpa Rani Srivastava is appointed on a consolidated fixed pay of Rs.2400/- per month on contract basis for a period of six months in the Institute.

The appointment of Smt. Srivastava is purely on ad hoc basis and is terminable without any notice.

Sd/-

(K K N SINGH)

DIRECTOR"

19. The following are clear from the above order :

(i) The respondent was appointed on a contractual basis.

(ii) The post was to carry a consolidated pay of Rs. 2400/- per month.

(iii) The duration of appointment was six months from the date of the respondent joining charge.

(iv) It is purely on ad hoc basis.

(v) It is terminable without any notice.

20. Because the six months' period was coming to an end on 28th February, 1991, she preferred the

writ petition a few days before and prayed for mandamus which was granted by the learned Judge under the impugned judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on ad hoc basis for more than a year whether she is entitled to regularisation? The answer should be in the negative. However, reliance is placed by learned counsel on behalf of the respondent on the case in *Jacob v. Kerala Water Authority*, (1990 (1) Suppl SCR 562: AIR 1990 SC 2228) (supra).

21. This ruling, in our considered view, does not advance the case of the respondent, as it turned on the interpretation of Rule 9(a)(i) of Kerala State and Subordinate Service Rules of 1958. The relevant portion of the judgment is at page 569 (of Suppl SCR): (at p. 2233 of AIR) which is extracted below.

"The claims made by the employees in this group of cases is contested mainly on the plea that their tenure and service conditions were regulated by Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, 1958 (hereinafter called 'the Rules') which were statutory in character and were, therefore, binding on the Authority as well as the employees. It is contended that the employees belonging to different categories were appointed on different dates by the PHED prior to 1st April, 1984 under this rule and, therefore, their services could only be regulated thereunder."

22. In dealing with this, at page 577 (of 1990 (1) Suppl SCR 562) : (at p. 2238 of AIR 1990 SC 2228), the Court observed

"If any person who does not possess the requisite qualifications is appointed under the said clause, he will be liable to be replaced by a qualified person. Clause (iii) of Rule 9 states that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (e) of Rule 9, however, provided for regularisation of service of any person appointed under clause (1) of sub-rule (a) if he had completed continuous service of two years on December 22, 1973, notwithstanding anything contained in the rules. This is a clear indication that in the past the Government also considered it just and fair to regularise the services of those who had been in continuous service for two years' period to the cut-off date. The spirit underlying this treatment clearly shows that the Government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years period to the cut-off date. This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by subrule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear

to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised."

23. In the instant case, there is no such rule. The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end.

24. If the matter is viewed from this angle, that being the only view, we find no difficulty whatever in setting aside the impugned judgment which is accordingly set aside.

25. Lastly, what is appealed to us by the respondent is sympathetic consideration.

26. George Eliot said

"More helpful than all wisdom or counsel is one draught of simple human pity that will not forsake us."

27. Here is one draught from us. In the facts and circumstances of this case, we direct that her services may be continued till the end of this calendar year on the same terms as spelt out in the order dated 1-9-90. Of course, it would be open to the appellant to consider the regularisation of her services, should it so desire. In that event, this judgment will not stand in the way of such regularisation. However, we make it clear that it is not to be understood that we have directed the regularisation.

28. The appeal is disposed of in the above terms. There shall be no order as to costs.

Appeal allowed.

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