

Madhyamik Siksha Parishad, U.P.

Vs

Anil Kumar Mishra and others

Civil Appeal Nos. 3448-53 and 3454 of 1992

(M. N. Venkatachaliah, P. B. Sawant, N. P. Singh JJ)

19.08.1992

JUDGMENT

1. We have heard Mr. Sehgal for the appellants and Mr. Goel for the respondents. Special leave granted.

2. The appeal is by the Madhyamik Shiksha Parishad, State of U.P., against the judgment dated 11-1-91 by the High Court of Judicature at Allahabad in Civil Misc. Writ Petitions Nos. 10718/88, 11144/88, 20882/ 88, 48531,189, 18796/ 89, 26515/ 90 and 35389/91.

In the year 1986, appellant engaged the respondents for the work of preparing certificates to be issued by the appellant to the successful candidates at the examinations conducted by it. The certificates were printed forms and respondents were required to fill up the particulars such as the name of the candidate, name of the school, date of birth etc. in the appropriate space. The respondents were paid initially Rs. 12/- for 100 certificates which was subsequently raised to Rs. 20/-. It would appear that there was a back-log of certificates to be cleared and the services of the respondents were engaged to clear that back-log on payment ad quantum. The backlog having been cleared and the preparation of the certificates in future having been computerised, the services of the respondents were not continued to be utilised. Respondents did the work of clearance of the back-log for a period ranging from one to two years before the assignment was discontinued.

3. Respondents challenged this discontinuance of their services in the writ petitions from the order in which these appeals arise. The High Court was persuaded to the view that respondents were casual workmen who had completed 240 days of work; that the preparation of the certificates was referable to certain statutory obligations of the appellant; that the discontinuance of services of the respondents was not legal and that they were entitled to reinstatement. Accordingly, the High Court directed the appellant to take respondents back to service as casual workers and continue their service upon payment of wages admissible to the regular employees doing similar work. The High Court further directed that respondents be considered for regular appointment as Lower Division Clerks as and when these posts are filled up on the basis of their qualifications and seniority as daily wages labourers and that the services of the respondents shall not be dispensed with till they were absorbed on a regular basis.

4. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them, the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of completion of 240 days' work. The legal consequences that flow from work for that duration under the Industrial

Disputes Act, 1947 are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here.

5. Be that as it may, further discussion on the merits of the High Court's order is unnecessary as the appeals admit of being disposed of on a concession of the appellant on which both sides are agreed.

6. The appellant-Parishad has offered to consider the cases of these 27 respondents, who were writ petitioners before the High Court, for purposes of recruitment to the post of Lower Division Clerks as and when vacancies arise and steps for filling up of those posts are taken up by the appellant. The appellant submits that if the respondents make appropriate applications at the appropriate time of filling up of the vacancies and if they possess the requisite minimum qualifications for the posts and if they were not beyond the prescribed maximum age limit as on the date on which utilisation of their services commenced in the year 1986, their cases would be duly considered, affording to them preference in the recruitment, other conditions being equal subject to the reservations-policy. Appellant also requires registration of the respondents with the employment exchanges. For purposes of the age limit, their respective age as at the time of commencement of their earlier casual employment would be reckoned.

7. This concession is placed on record and the orders of the High Court under appeal are set aside. The appeals are disposed of accordingly. No costs. Order accordingly.

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