

State of H.P

Vs

Suresh Kumar Verma and Another

Civil Appeal No. 3492 of 1996

(K. Ramaswamy, S. Saghir Ahmad, G. B. Pattanaik JJ)

24.01.1996

JUDGMENT

1. Delay condoned.

2. We have heard the counsel on both sides. This appeal by special leave arises from the orders passed by the High Court of Himachal Pradesh. In this case in C.W.P.No.722/93 dated 10-9-1993, the Division Bench of the High Court has disposed of the matters on the ground that the respondents were reengaged as Assistant Development Officers on daily wages pursuant to the direction by it. It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

3. It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

4. Mr. Mahabir Singh, learned counsel for the respondents contended that there was an admission in the counter-affidavit filed in the High Court that there were vacancies and that, therefore, the respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee.

5. Under these circumstances, the view of the High Court is not correct. It is accordingly set aside. It is mentioned that the respondents have become overaged by now. If they apply for any regular

appointment by which time if they become barred by age, the State is directed to consider necessary relaxation of their age to the extent of their period of service on daily wages and then to consider their cases according to rules, if they are otherwise eligible.

6. The appeal is accordingly allowed. No costs. Appeal allowed.