SUPREME COURT OF INDIA

SUBEDAR SINGH & ORS.

Vs.

DISTT. JUDGE MIRZAPUR & ANR.

14/11/2000

(G.B.Pattanaik, & M B Shah.)

JUDGMENT

PATTANAIK,J.

In these three appeals, the judgment of Allahabad High Court, dismissing the writ petitions filed is under challenge and the question for consideration is whether the appointment of the appellants made as paid Apprentice by the District Judge, not being in consonance with the statutory rules could the appointees claim regularisation of their services. The appellants were appointed admittedly on ad hoc basis and having served for some period, their ad hoc appointment came to an end. Appointment to the ministerial establishments of the Civil Courts, subordinate to the High Court of Allahabad was governed by a set of rules called the Subordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter referred to as the Recruitment Rules) framed by the Governor in exercise of powers under clause (b) of sub-section (1) and clause (b) of sub-section (2) of Section 241 of the Government of India Act. Under the aforesaid rules, appointment to the ministerial establishments of the District Court, has to be made by the District Judge. These rules were replaced by the Recruitment of Ministerial Staff to the Subordinate Offices Rules of 1950, which were framed by the Governor in exercise of powers conferred by Article 309 of the Constitution in supersession of all the rules for recruitment to the ministerial establishment. 1950 Recruitment Rules also have been amended from time to time. Under 1950 Rules, selection of candidates is made on the result of a competitive test and the subjects for such test are indicated in Rule 6. The Governor of Uttar Pradesh framed a set of rules on 14.5.1979 in exercise of the powers under the proviso to Article 309 of the Constitution for regularisation of the services of ad hoc employees called the Uttar Pradesh Regularisation of Ad hoc appointments (on posts outside the purview of the Public Service Commission) Rules, 1979 [for short the Regularisation Rules]. There has been some amendment to the aforesaid rules in the year 1989. The High Court of Allahabad on the Administrative side, never approved the practice of any ad hoc appointment made by the District Judge unless such ad hoc appointment is absolutely necessary in some urgent cases. Certain circulars had been issued by the Registrar of the Court to all the District Judges. Sometime in the year 1992, the Registrar had informed all the District Judges that no ad hoc appointment should be made to any Class III post, without the prior approval of Honble the Chief Justice. It was however indicated that those of the ad hoc appointees who would be entitled to the benefit of the Regularisation Rules, they may be regularised, but those who are not entitled to be regularised under the Regularisation Rules, but had been appointed prior to 21.5.92, they could be permitted to continue, subject to their appearing and passing the competitive tests, held for selection of Class III employees of the subordinate Courts. But those who have been appointed on ad hoc basis subsequent to 21.5.92, their appointment should cease. It transpires from the record of the District

Judge that the persons appointed to the post of copyists were deputed to do other jobs and in their place, some others were engaged as copyists in purported exercise conferred under Rule 269 of the General Rules(Civil). This procedure adopted by the District Judge was on the face of it illegal, and, therefore, the Inspecting Administrative Judge issued certain directions in the matter. The District Judge, Mirzapur, having passed the order that the appointment of the extra copyists would cease w.e.f. 15.5.96, they approached the High Court for appropriate directions. It may not be out of place to mention that earlier to the aforesaid decision of the District Judge, Mirzapur, in several other districts, the action of the respective District Judges was under challenge in different writ petitions in the High Court and the High Court had disposed of those writ petitions with some directions with which we are not concerned in these appeals. It was contended before the High Court that instead of termination of their services, the appellants were entitled to be regularised under the Regularisation Rules. It is in this connection, it was also urged that when work was available and vacancies exist in the establishment, it was highly unjustified on the part of the District Judge to terminate their services and the High Court committed error in not interfering with the said order of the learned District Judge. It was also urged that when on similar circumstances, employees in other districts have been regularised, pursuant to several judgments of the Court, there is no reason to discriminate the appellants. A preliminary objection was also raised on the ground that the matters should have been heard by a Single Judge and not by a Division Bench. In the impugned Judgment, the High Court negatived all the contentions raised and having dismissed the writ petitions excepting Writ Petition No. 31182 of 1996, which was disposed of with certain directions, the present appeals have been preferred.

Mr. P.S. Misra, Mr. A.K. Sanghi and Mr. Yogeshwar Prasad, the learned counsel appearing for the appellants, vehemently urged that the appellants having been appointed on ad hoc basis and having been continued for a long period, were entitled to be regularised under the Regularisation Rules and the High Court committed error in not conferring the benefit of the Regularisation Rules to the appellants. It was also contended on behalf of the appellants that similarly situated persons having been regularised in other districts, termination of the services of the appellants would work-out discrimination and High Court on this ground should have interfered with the order of termination.

Having examined the contentions raised, and having applied our mind to the facts and circumstances of the present case, we are not persuaded to accept any of the submissions made by the learned counsel, appearing for the appellants. The High Court in the impugned judgment has indicated the gross irregularities and illegalities committed by the District Judge in making the appointments in favour of the appellants. Such illegal/irregular appointees are not entitled to invoke the discretionary jurisdiction of the Court under Article 226 of the Constitution. The anxiety and agony of the Inspecting Judge is apparent from his Inspection Report and the direction to the District Judge. When the appointment to the posts in question is governed by a set of statutory rules, it is unthinkable that the District Judge would adopt this extra constitutional method of appointment and that also, by maneuvering and by deputing the copyists to do some other job and replace them by fresh recruits. The so- called Regularisation Rules, in our opinion, does not intend to regularise the services of the illegal and irregular recruits like the appellants. We have carefully scrutinized the aforesaid Regularisation Rules and we do not find any substance in the arguments of the learned counsel for the appellants that their services ought to have been regularised under the aforesaid Regularisation Rules. The High Court has examined all the contentions by a detailed discussion of the relevant provisions of the Rules and we do not find any infirmities with the reasoning and conclusions of the High Court in the impugned judgment. No rule, law or regulation, nor even any administrative order had been shown to us, on the basis of which the appellants could claim the right of regularisation. In the aforesaid premises, we do not find any merits in any of these appeals,

which accordingly stand dismissed, but in the circumstances, there will be no order as to costs.