

SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs

Neeraj Awasthi

Civil Appeal No. 4092 of 2001 With Civil Appeal Nos. 3872, 3873, 4038, 4093-4102, 7545-7646, 7647-7748 of 2001, Civil Appeal No. 6810 of 2005 and Civil Appeal No. 6814 of 2005

(S.B.Sinha and P.P.Naolekar)

16/12/2005

JUDGMENT

S. B. SINHA,

.1. The jurisdiction of the High Court to issue a direction for framing a scheme for regularisation of the employees of the U.P. State Agricultural Produce Market Board (for short "the Board") is in question in this batch of appeals which arise out of judgments and orders passed by the High Court of Judicature at Allahabad in the writ petitions filed by the private respondents either dismissing or allowing the same. ACT

2. The legislature of the State of Uttar Pradesh enacted The Uttar Pradesh Krishi Utpadan Mandi Adhinyam, 1964 (for short "the Act"). The Board has been established under Sec. 26-A of the Act. Section 26-B provides for the constitution of the Board. In exercise of its power conferred upon it by Section 25-A and 26-X of the Act, regulations have also been framed by the Board laying down the terms and conditions of the service of the employees of the Market Committees known as the Uttar Pradesh Agricultural Produce Market Committees (Centralised) Services Regulations, 1984 (for short "Services Regulations"). Similar regulations have also been framed by the Board in respect of its own employees being the Uttar Pradesh Agricultural Produce Markets Board (Officers and Staff Establishment) Regulations, 1984 (for short "Establishment Regulations").

BACKGROUND FACT:

3. In the State of Uttar Pradesh, there are 244 Market Committees. 3395 posts were sanctioned but indisputably 5600 appointments have been made. We are herein concerned with the orders of appointments and orders of terminations issued in respect of about 1021 employees who were appointed between the period 1.4.1996 and 30.10.1997. A resolution was passed by the Board on or about 30th September, 1996 proposing regularisation of the services of those employees who have completed one thousand days of service. The Board had also its construction divisions. The said proposal was, however, confined to the employees working in the construction divisions against contingency funds. Approval having been sought for from the State Government in relation to framing of appropriate rules, in this behalf, informations were sought for from various departments including Mandi Parishad in regard to the appointments made in past six months by a letter dated 20th November, 1997. Relevant informations were furnished by the Director of the Mandi Parishad whereafter the State sought for further informations and details regarding the appointments made in the Mandi Parishad and Mandi Samities by a letter dated 17.3.1998. Such informations were sought for by the State again by a letter dated 18.5.1998. On or about 12.2.1999, an order was issued by the State directing that services of all such employees who had been irregularly appointed during the period 1.4.1996 to 30.10.1997 be cancelled on last-come-first-go-basis stating:

"(1) The irregular appointment made in the Mandi Parishad and Mandi Samities during the period w.e.f. 1.4.96 to 30.10.97 should be cancelled immediately. The following course should be adopted to terminate such appointments:

(a) There is no legal impediment in terminating the service of the employee concerned after cancelling the appointments which have been made without any created/ sanctioned post but the reason therefor shall have to be recorded in the order.

(b) There is no legal impediment in terminating the service after cancelling the appointments of such persons as did not have educational qualifications prescribed for the post concerned but the reason therefor should be recorded in the order.

(c) The termination of service of such persons, as have been appointed in relation to some post and also have educational qualification prescribed for that post, should be made in accordance with the procedure mentioned in their appointment order. In case, no procedure is mentioned in the appointments order, their service should be terminated after giving either notice or pay in lieu thereof.

(2) In this regard I have to inform this thing also that after making intensive examination in respect of irregular appointments made in the Mandi Parishad and Mandi Samities before 1.4.96, kindly furnish clear report alongwith detailed statement by 20.2.99.

(3) Kindly make available in each case by 18.2.99 your proposal with clear recommendation to the Govt. for action against the officers responsible for the said irregular appointments."

Further directions were issued on 17.3.1999 in the following terms:

"In regard to the appointed subject and Semi Govt. Letter No. Dire-Camp 99-468 dt. 8.3.99, I have been directed to say that keeping in view, the decision taken by Govt. in regard to irregular appointments made on the post of various categories in U.P. State Agricultural Production Marketing Board, there has been no requirement of prescribed procedure rules. In such circumstances, the proposal sent to Govt. vide letter 1418/Camp dt. 18.10.96 of Marketing Board Office is rejected by the Govt. after due consideration."

4. Pursuant thereto or in furtherance of such directions, the services of a large number of employees were terminated on or about 20th March, 1999.

5. On 27.1.1998, the Director of the Board informed the Secretary, Department of Agriculture that all appointments are unauthorized/ irregular and, thus, void ab initio and, therefore, their appointments should be terminated following the rules. In the said letter, the opinion of the Chairman of the Board was quoted stating:

"As the action, whatsoever, taken in this matter will create wide ranging ramifications (both political and administrative) therefore it will be proper to send the factual report of the whole case to Govt. for guidance. It will be expedient to take further action after consulting the department of justice and obtaining orders from the Hon'ble Minister for Agriculture and the Hon'ble Chief Minister."

6. Photocopies of the notesheets and photocopies of the details of all appointments and the report received from the Deputy Director (Administration) were annexed thereto.

7. It may be noticed that the State in the meantime had also refused to approve the proposed rules framed by the Board for regularisation of its employees.

PROCEEDINGS BEFORE THE HIGH COURT:

8. Questioning the aforementioned directions of the State, one Rajnish Varsheny filed a writ petition before a Division Bench of the Allahabad High Court in April, 1999. By a judgment and order dated 11.8.2000, a learned Single Judge of the Allahabad High Court allowed the same holding that the orders of termination issued pursuant to the orders of the State Government dated 12.2.1992 were illegal. A Division Bench of the High Court, Lucknow Bench, put its seal of approval to the order of the learned Single Judge by a judgment and order dated 5.9.2000 in similar writ petitions filed by other dismissed employees. A writ petition filed by one Anshuman Misra, however, was dismissed by another Division Bench of the Allahabad High Court at Lucknow upholding the said order of the

State

Government.

The parties are, thus, before us. SUBMISSIONS:

On behalf of the Board:

9. Submission of Mr. M. L. Verma, learned senior counsel appearing on behalf of the Board are:

(i) In terms of the statutory mandate contained in Section 26-M of the Act, the Board was bound by the directions issued by the State.

(ii) The appointments having been made in utter disregard of the mandatory provisions of the Services Regulations and the Establishment Regulations, the employees did not derive any legal right to continue in the said posts.

(iii) Such appointments having been made on a pick and choose method and on an adhoc basis, the judgments of the High Court cannot be sustained.

(iv) Indisputably the provisions of U.R Industrial Disputes Act and the rules framed thereunder relating to retrenchment of workmen were complied with and in that view of the mater it cannot be said that the orders of termination passed against the employees were illegal.

(v) In any view of the matter, the remedy of the employees, if any, was to approach the industrial courts.

(vi) It is not a case, it was urged, where principles of natural justice were required to be complied with.

On behalf of the State

10. Mr. Uday Umesh Lalit, learned senior counsel appearing on behalf of the State of Uttar Pradesh submitted that from the records it would appear that the State adopted a known criterion for cancellation of appointment of such employees who were in the last slots, namely, 1.4.1996 to 30.10.1997. Such orders of termination ensured that the principles of last-come-first-go basis are followed and the employees are paid one month's salary in lieu of notice as also 15 days wages for each completed year of service by way of compensation. No appointment having been made after 30.10.1997, the impugned judgment of the High Court cannot be sustained.

On behalf of the Writ Petitioners

11. Mr. Anoop G. Chaudhari, learned senior counsel appearing on behalf of the Respondents, on the other hand, urged:

(i) that the appointments of the employees cannot be said to be illegal as the provisions contained in the respective regulations apply to appointments in regular cadre.

(ii) There is no embargo in appointing employees on adhoc basis in exigency of service or on work charge basis recognised in the regulations in view of the fact that such employees do not derive the benefits which are granted to the regular employees.

(iii) Section 26-M of the Act had no application in the facts of the case in view of the fact that appointment of adhoc employees is not a matter which would come within the purview of the functions of the Board as envisaged under Sec. 26-F and 26-L of the Act. In any event, so far as the appointments of employees employed in the Market Committees are concerned, the same being governed by Section 23 of the Act, Section 26-M thereof will have no application.

(iv) By reason of purported directions issued under Section 26-M, the rights and privileges granted to the employees under other statutes cannot be taken away.

(v) In view of the decision of this Court in Rakesh Ranjan Verma and others v. State of Bihar and others 1 U.P. State Electricity Board v. RamAutar and another 6e statutory power of appointment being vested in the Board, the State could not interfere therewith.

(vi) In any view of the matter, the purported policy decision adopted by the State must be held to be wholly illegal and without jurisdiction as prior thereto the requirements of each of the samities had not been taken into consideration. It was pointed out that even by 1998 full reports had not been submitted by the Board as regards the financial position of the Market Committees vis-a-vis the strength of the employees and, thus, the policy decision must be held to have been made without any application of mind.

(vii) A policy decision of a State cannot be communicated by a demi-official letter without complying with the constitutional norms.

(viii) One set of ad hoc employees and/ or daily wagers should not be replaced by another set of ad hoc employees/ daily wagers.

(ix) The Board having adopted a resolution to regularise the services of its employees, there was no need to obtain any approval from the State.

(x) As admittedly no appointment whatsoever was made in terms of the statutory regulations since

the inception of constitution of the Market Committees and Boards, the State could not have ignored the past practice particularly in a case of this nature where the employees concerned have requisite educational qualifications.

(xi) The court in such a situation can be said to have the requisite jurisdiction in directing a State within the meaning of Art. 12 of the Constitution of India to make a scheme of regularisation.

12. Mr. G.L. Sanghi, learned senior counsel appearing on behalf of another writ applicant submitted that institutions of the market committees and the Board having their activities principally in rural areas, the human problem should not be ignored as without such daily wagers or ad hoc employees functions of the statutory body may have to be stopped.

13. The learned counsel submitted that the appointments being not void ab initio and of no effect, the State could not have issued directions for termination of their services. As the appointments were made having regard to the necessity felt by the Market Committees and the Board, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

14. Mrs. Shobha Dixit, learned senior counsel appearing on behalf of Rajnish Varshney supplemented the arguments of Mr. Chaudhary and Mr. Sanghi contending that there was no material before the government for issuing the impugned instructions. It was submitted that the Market Committees having regard to Section 19 of the Act had their own funds, the case of each Committee should have been considered separately.

HIGH COURT:

15. A learned Single Judge of the High Court in his order dated 11.8.2000, which has been approved by the Division Bench of the Allahabad High Court in its judgment dated 5.9.2000, held that:

(i) The normal functions of the Board pertain to establishment or construction of new Market yards; control over Market Committees, direction to the Committees to ensure efficiency, etc., it could not have interfered in the functioning of the Market Committees.

(ii) The procedures prescribed were to be applied in relation to selection of regular employees and not ad hoc employees or daily wagers.

(iii) No principle has been laid down as to why ad hoc employees engaged before 1.4.1996 and after 30.10.1997 should be retained in service and, thus, the action of the State was discriminatory in nature.

(iv) The Government instead of formulating any policy resorted to an arbitrary method of issuing a 'Tugalaki' order in terminating the services of the employees recruited between 1.4.1996 and

30.10.1997 were also terminated.

(v) Although such irregular appointments have been made by several directors but only those made by two of them, namely, Shri P.N. Misra and Dr. Raja Ram, having been picked up for being cancelled, the same being discriminatory and mala fide, the order impugned in the writ application were unsustainable.

(vi) An employee should not be continued to be kept as ad hoc employee for more than 240 days.

(vii) The resolution of the Board to regularise services of such employees who have completed one thousand days of service was valid. As the writ petitioners have been working in various Committees for a long period ranging from six to nine years, termination of their services was arbitrary.

(viii) The principles of natural justice have been ignored in terminating the services of such employees and, 'thus, the orders terminating the services of the writ petitioners were bad in law.

It was directed:

"Having regard to the discussions made above, I am inclined to hold that written and verbal termination orders of the petitioners issued by the authorities at the direction of the Government as contained in letter dt. 12.2.99 are arbitrary, unreasonable and discriminatory and, therefore, all such termination orders along with the irrational impugned letter of source dated 12.2.99 are hereby quashed. A writ of certiorari is issued accordingly. Further, a writ of mandamus is also issued commanding the opposite parties to allow the petitioners to resume their duty with immediate effect. They shall be deemed to have continued in service and as such, they shall be relegated to their original position. However, they will not get their back wages. The U.P. Agricultural Produce Market Board shall within six months resolve and formulate a policy to deal with the terms of their service by giving due consideration to its earlier resolution regarding regularization of their services. The Board will also take stern step to ensure that such an odd situation to the embarrassment of the competent authorities does not arise in future."

16. However, as noticed supra, another Division Bench of the same Court in its judgment dated 13.11.2000 opined that the appointments having been made in violation of the statutory regulations, the appointees must be held to have entered into service through backdoor and in that view of the matter, the State has the requisite jurisdiction to issue a direction in terms of Section 26-M of the Act.

17. The judgment of the Division Bench dated 5.9.2000 passed in Rajnish Varshney v. State of U.P. was made in ignorance of an earlier division bench decision in Raja Ram Maurya v. U.P. Rajya Krishi Utpadan Mandi Parishad, Lucknow and, thus, was rendered per incurson.

RELEVANT PROVISIONS OF THE STATUTES:

18. Before advertizing to the rival contentions, we may briefly notice the provisions of the said Act.

19. Market Committees are incorporated and constituted in terms of Sections 12 and 13. Section 19 of the said Act provides for establishment of a Market Committee Fund. Sub-section (2) of Section 19 mandates that all expenditure incurred by the committee shall be defrayed out of the said fund and the surplus, if any, shall be invested in such a manner as may be prescribed. Sub-section (3) of Sec. 19 inter alia illustrates as to how such funds are to be utilised including salaries, pensions and allowances, etc. and other expenses, as may be prescribed, as specified in clause (ii). The proviso appended thereto mandates that annual expenditure in respect of matters specified in clause (ii) shall not exceed 10% of the total annual receipts of the Committee excluding loans raised by it and advances or grants made to it except with the prior approval of the Board.

20. Section 23 of the Act occurring in Chapter IV provides for appointments of officers and servants of the Market Committee and their conditions of services. The appointments of such officers who may be appointed for carrying out the purpose of the Act must be done in terms of the bye- laws framed by it. Sub-section (2) of Section 23 envisages that every Committee shall have such number of Secretaries and such other officers as may be considered necessary by the Board for the effective discharge of the functions of the Committee, appointed by the Board on such terms and conditions as may be provided for in the regulations made by it.

21. Chapter V of the Act deals with external control. Establishment and constitution of the Board are envisaged under Sees. 26-A and 26-B. Section 26-A empowers the Board to appoint such officers and servants as it considers necessary for efficient performance of its functions on such terms and conditions, as may be provided for in the regulations made by the Board. Section 26-L provides for the powers and functions of the Board. Functions of the Board are provided for in sub-section (1) thereof stating:

"(i) superintendence and control over the working of the Market Committees and other affairs thereof including programmes undertaken by such Committees for the construction of New Market Yards and development of existing Markets and Market Areas;

(ii) giving such direction to Committees in general or any Committee in particular with a view to ensure efficiency thereof;

(iii) any other function entrusted to it by this Act;

(iv) such other functions as may be entrusted to the Board by the State Government by notification in the Gazette."

22. The powers of the Board have been enumerated under sub-section (2) of Section 26-L of the Act which includes:

"(x) to do such other things as may be of general interest to Market Committees or considered necessary for the efficient functioning of the Board as may be specified from time to time by the State Government."

23. Section 26-M of the Act empowers the State Government to issue directions in the following terms:

"(1) In the discharge of its functions, the Board shall be guided by such directions on question of policy, as may be given to it by the State Government.

(2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under sub-sec. (1), the decision of the State Government shall be final."

24. Section 26-V of the Act provides for accounts and audit. Section 26-X thereof empowers the Board to make regulations with the previous approval of the State Government which shall be subject to the said Act and the rules made thereunder. Section 32 of the Act confers power upon the Board to call for the proceedings of a Committee for the purpose of satisfying itself as regard legality or propriety of a decision or an order or orders and pass order thereon as it may deem fit if it is of the opinion that the decision or order of the Committee should be modified, annulled or reversed. Section 33-B of the Act reads as under:

"Powers of the State Government.-

(1) The State Government with a view to satisfying itself that the powers, functions and duties of the Board or a Committee by or under this Act are exercised or performed by it properly, may require the Commissioner or the Collector or any other person or persons to inspect or cause to be inspected any property, office, document or any work, of the Board or the Committee or to make inquiries into all or any of the activities of the Board or the Committee in such manner as may be prescribed and to report to it the result of such inquiry within such period as may be specified.

(2) The Board or the Committee, as the case may be, shall give to the Commissioner or the Collector, or other person or persons, all facilities during inspection and for the proper conduct of the inquiry and shall produce any document or information in its possession, when so demanded for the purpose of such inspections or inquiry, as the case may be."

25. Section 39 of the Act provides for the bye-laws making power in the Market Committee.

Proviso appended to Sec. 33 provides that no bye-law other than a bye-law made by adopting draft or model bye-law suggested by the Board shall be valid unless approved by it. Section 40 of the Act provides for rule making power.

26. The State Government framed rules known as "The U.P. Krishi Utpadan Mandi Niyamavali, 1965 (for short "the Rules") in terms of Section 40 of the Act. The functions, duties and powers of the Committees in terms of Sections 16 and 17 of the Act have been laid down in Rule 46. Rule 60 states that the qualification, designations, grades, salaries and allowance of the posts of officers and servants whose appointing authority is the Committee shall be approved by the Director. Such appointment made by the Committee under sub-sec.(1) of Section 23 of the Act for those posts wherefor the Committee is the appointing authority shall be intimated within 30 days of the date of such appointments to the Directors or to such officer as may be authorised by the Director in this behalf. Sub-rule (3) of Rule 60 mandates that the Market Committee shall maintain service records and character rolls in such forms as are prescribed for government servants and those records shall be kept in the custody of the Market Secretary. Rule 63 provides for the functions, powers and duties of the Secretary.

27. In exercise of its regulation making power, as noticed hereinbefore, Services Regulations and the Establishment Regulations have been made.

28. Regulation 2(e) defines "Employee" to mean 'every person appointed on whole time basis in Classes A, B, C and D mentioned in Regulation 5, whether on contract basis, on deputation or otherwise but does not include persons employed on daily wages, work charged and on part-time basis. Chapter IV of the Establishment Regulations provides for recruitment and appointment. Regulation 9 specifies the appointing authority in respect of the posts shown in Column 1 of the table. Regulation 10 provides for the source of recruitment inter alia providing that 85 per cent posts in lowest grade in Class C shall be filled by direct recruitment and 15 per cent by promotion from Class D and all the posts in Class D shall be filled by direct recruitment. Regulation 11(1) provides for constitution of a Selection Committee for the purpose of recruitment to Class A and B posts whereas Regulation 11 (2) provides for constitution of a Selection Committee for recruitment to Class C and D posts. Regulation 12 empowers the appointing authority to determine the number of vacancies in all the classes to be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to Schedules Castes and Scheduled Tribes and other categories under Regulation 8. The other sub-regulations contained in Regulation 12 provides for the mode and manner in which such vacancies shall be filled up. Chapter V lays down the conditions of service by way of appointment, probation, confirmation and seniority. Chapter VI provides for superannuation, pay, allowances and other service conditions.

29. The Services Regulations contain similar provisions. Part III of the said Regulations deal with recruitment and procedure. Regulation 10 lays down that recruitment may be made either from the open market or from promotion. Regulation 11 provides for reservation. Constitution of Selection Committee is contained in Regulation 12. Regulation 14 provides for determination of vacancies whereas Regulation 16 provides for the procedure of selection by direct recruitment. Chapter V of the said Regulations lays down the mode and manner in which the appointment, probation, confirmation and seniority would be made.

LEGALITY OF THE APPOINTMENTS:

30. The Board is a 'State' within the meaning of Article 12 of the Constitution of India. It was constituted in terms of the provisions of the said Act. The powers and functions of the Board as also the State in terms of the provisions of the statute having been delineated, they must act strictly in terms thereof. It is a statutory authority. Its powers, duties and functions are governed by the statute. It is responsible for constitution of the Market Committees for the purpose of overseeing that the agriculturists while selling their agricultural produce receive the just price therefor. It not only regulates sale and purchase of the agricultural produce but also controls the markets where such agricultural produces are bought and sold. The Board is entitled to levy market fee and recover the same from the buyers and sellers through Market Committees. Indisputably, Market Committees and the Board have power to appoint officers and servants. Although, the power of the Board in this respect is not circumscribed, that of the Market Committees is. Market Committees can appoint only such number of secretaries and other officers as may be necessary for efficient discharge of its functions. Terms and conditions of such services are to be provided by it. Section 19 of the Act, however, imposes further restriction on the power of the Market Committee by limiting the annual expenditure made in this regard not exceeding 10% of the total annual receipt of the Committee.

31. The appointments for different classes of employees are to be made by the Board and the officers, as the case may be, in terms of the provisions of the regulations.

32. Both the Services Regulations and the Establishment Regulations, as noticed hereinbefore, are applicable respectively to the employees of the Board as also the Market Committees. The said regulations provide for detailed procedure for appointment and the terms and conditions therefor. No appointment, thus, can be made in violation of the provisions of statute and statutory rules.

33. Submission of the learned counsel appearing on behalf of the employees is that the procedures prescribed by reason of the Regulations are applicable to the regular employees. It is so. The question which, however, falls for consideration is as to whether any appointment can be made de hors the provisions of the Act and the rules. Our attention has been drawn to the definition of 'employee' which does not include persons employed on daily wages, work charged and/ or part-time basis. If the expression "employee" does not bring within its fold any person employed on daily wages, work charged or on part-time basis, the same would mean that the persons so appointed would not be the employees within the meaning of the said regulation. It would, therefore, not be correct to contend that the Market Committee or the Board have the jurisdiction to appoint anybody on daily wages, work charged or on part-time basis de hors the rules. The power to make appointments by the committee or the board whether contained in Section 23 or Section 26-F of the Act are statutory in nature. In absence of any provisions conferred upon them to appoint any employee de hors the provisions of Sections 23 and 26-F and the regulations framed thereunder, indisputably would mean that such appointments are de hors the Act and the rules. The Rules also provide that any appointment made by the Committee under Sub-section (1) of Section 23 shall be intimated within 30 days of such appointment to the Director or to such other officer as may be authorised by the Director in this behalf. It implies that although the Market Committee may have power to make appointments, such appointments can be made in relation to the posts created therefor by the Board wherefor requisite intimation has to be given to the Director or the officer authorised in this behalf. We may assume that for meeting the exigencies of situations it may be possible for the Committee or the Board to appoint a person on ad hoc basis. Such ad hoc

employees, however, being not employee within the meaning of the provisions of the Act and the Regulations, a legal relationship between the employer and the employee would not come into being. As no legal relationship of employer and employee comes into being, evidently, such persons do not derive any status. They a fortiori derive no legal right to continue in service subject, of course, to the compliance of the provisions of any other Act or the rules conferring certain benefits to them. [See State of M.P. and another v. Dharam Bir 9.]

34. Sections 23 and 26-F of the Act categorically mandate that all appointments must be made in terms of the provisions of the regulations. The terms and conditions of such services are also required to be prescribed by the regulations, the logical corollary whereof would be that permanent status is required to be given to a person who is not otherwise an employee of the Board or the Market committee, as the case may be. It is required to be done in terms of the regulation only.

35. The Board is entitled to take a decision which is within its powers and functions delineated by the Act. A decision by way of resolution or otherwise cannot be taken by the Board which is beyond the scope and purview of the Act and the regulations framed thereunder.

36. The Board, therefore, was bound to make a regulation if it intended to put the respondents on its rolls. The High Court, as noticed hereinbefore, however, was of the opinion that it was not necessary so to do. For the reasons aforementioned, we do not agree.

POWER OF STATE TO ISSUE DIRECTIONS:

37. The State in exercise of its power conferred upon it could issue directions. The power of the State Government is confined to issue directions on question of policy. It cannot, however, interfere in the day to day functionings of the Board. Such policy decision, however, must be in relation to the activities of the Board under the Act and not de'hors the same.