SUPREME COURT OF INDIA

Nagar Mahapalika (Now Municipal Corporation)

Vs

State of Uttar Pradesh and Others

Appeal (Civil) 2411 of 2006 (@ S.L.P. (Civil) No. 23732 of 2004)

(S. B. Sinha and P. K. Balasubramanyan, JJ)

02.05.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

The Appellant herein is a Municipal Corporation. It was constituted under the U.P. Nagar Mahapalika Adhiniyam, 1959 (for short, "the Adhiniyam").

For the purpose of recruitment of employees, the procedures laid down in the Adhiniyam under which it was constituted and the rules framed thereunder were required to be complied with by the Appellant. The appointments of the Respondents indisputably were not made in terms of the statute. They were appointed as apprentices by the Administrator of the Municipality by an order dated 11.12.1985.

The Government of Uttar Pradesh created 39 posts for Quinquennial Assessment of tax upto 31st March, 1986 or till the time the same were abolished in the scales of pay enumerated therein which was communicated to the Administration by a letter dated 19.12.1985 subject to the following conditions:

"3. Only ad-hoc appointments are to be made on the aforesaid posts and if there is no work, or if there is no requirement even before the sanctioned period.

4. After 31st March, 1986, all the above posts shall be abolished compulsorily and the appointments should not be extended beyond that period on any condition."

The following facts are not in dispute. The Respondents were appointed on an adhoc basis purported to be as apprentices on payment of apprentice allowance at the rate of Rs. 230/- per month by an order dated 20th October, 1984. Order of sanction for creation of some temporary posts was issued by the State of Uttar Pradesh which was the competent authority therefore, only on 19.12.1985. The Respondents, however, were appointed as apprentices in the Assessment Department by orders of the Administrator dated 5.11.1985 and 6.12.1985 wherefor an office order was issued on 11.12.1985.

The tenure of the services of the Respondents came to an end with effect from 31.12.1986. On or about 4.2.1987, they filed an application before the Concilliation Officer, Allahabad questioning the validity or otherwise of the said order of termination. However, the State of Uttar Pradesh made a reference of the following dispute for adjudication by the Labour Court, Allahabad by a notification dated 26.8.1987 in respect of the Respondent Ram Chandra Gupta:

"Whether termination of the service of Shri Ram Chandra Gupta, son of Shri Mithai Lal from the post of clerk by the employer w.e.f. 31.12.1986 is justified and legal? If not, to what benefit/ relief, the workman concerned is entitled to receive and with details thereof?"

Similar references were made with regard to the other respondents also. By an award dated 30th November, 1998, the Labour Court arrived at a finding that all the workmen had worked for more than 240 days during the period 5.11.1985 and 31.12.1986 and as their services had been terminated in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act, the termination of their services was illegal. The Appellant was consequently directed to reinstate them in service. Aggrieved by and dissatisfied with the said award, a writ petition was filed by the Appellant before the Allahabad High Court which was marked as CMWP No. 7279 of 1989 wherein the following judgment and order came to be passed:

"I have heard the Ld. Counsels for the parties. During the pendency of the Writ Petition, the operation of the impugned award shall remain stayed subject to the condition that workmen are reinstated and are paid their full salary from the date of the award within two months from today. In addition, the Petitioner shall also deposit half of the arrears of pay and allowances, which can be withdrawn by workmen on adequate security. In case, these conditions are not complied with, this stay order shall automatically stand vacated."

We may hereinafter notice some relevant provisions of the Adhiniyam.

Sub-clause (2) of Section 106 of the Adhiniyam provides that qualification of a person to be appointed to the post created under sub- clause (1) thereof shall be such as may be prescribed by the State Government. Section 107 of the Adhiniyam deals with the appointment to the post. Section 108 of the Adhiniyam provides that notwithstanding anything contained in Section 107, officiating and temporary appointments to posts mentioned in sub-sections (1), (2) and (3) thereof may be made by the appointing authorities specified in those sub-sections without consulting the State Public Service Commission or obtaining the recommendations of the Selection Committee but no such appointment shall continue beyond the period of one year or shall be made where it is expected to last for more than a year without consulting the State Public Service Commission or otherwise than in accordance with the recommendations of the Selection Committee, as the case may be.

Section 109 of the Adhiniyam provides that the emoluments and other conditions of services of officers, staff and other servants of the Nagar Mahapalika shall be such as may be prescribed by the State Government. Section 111 of the Adhiniyam confers power on the State Government to make appointments where any authority specified in Section 107 fails within a reasonable time to make appointment to any post specified in Section 106 or created there under.

Section 112-A of the Adhiniyam reads as under:

(1) Notwithstanding anything contained in Sections 106 to 110 the State Government may at any time by rule provide for one or more services of such officers and servants as the State Government may deem fit common to the Mahapalikas or to the Municipal Board, Jal Sansthan of the State.

(2) that when any such service is created, officers and servants serving on the post included in the service as well as the officers and servants performing duties and functions of those posts under sub-clause (1) of clause (ee) of Section 577 may if found suitable be absorbed in the service provisionally or finally and the services of others shall stand determined in the prescribed manner.

(3) That without prejudice to the generality of the provision of sub- sections (1) and (2) such rule may also provide for consultation with the State Public Service Commission in respect of any of the matters referred to in the said sub-section.

Before the High Court, a contention was raised that appointment of the Respondents being for a fixed period as envisaged under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and furthermore in view of the fact that their appointments being governed by the provisions of the U.P. Municipal Corporation Adhiniyam, 1959, the award of reinstatement was unwarranted in law.

It was furthermore urged that in any event, the said Respondents having been appointed only on an adhoc basis and not in terms of the provisions of the said Adhiniyam and the rules framed thereunder, had no legal right to continue in service. Moreover, they having been appointed on daily wages, their disengagement from services cannot be construed to be 'retrenchment' under the provisions of the U.P. Industrial Disputes Act.

The High Court, however, did not go into the aforementioned questions at all. The High Court dismissed the said writ petition only on the premise that the workmen having completed 240 days of continuous service and as they had been reinstated in service pursuant to the interim order passed by the High Court, it would not be appropriate to displace the workmen from employment and to offer other reliefs, particularly, when a relief of reinstatement can be granted for violation of the provisions of Section 6-N of the Act in view of the decision of this Court in Hindustan Tin Works Pvt. Ltd. v. Employees of M/s Hindustan Tin Works Pvt Ltd. and Others, : However, they were directed to be paid 50% of the back wages.

The learned counsel appearing on behalf of the Appellant would contend that having regard to the nature of appointment, the impugned award could not have been passed. The learned counsel appearing on behalf of the Respondent, on the other hand, would support the impugned award.

This is one of those cases which clearly depict as to how the officers of the local-self government at their own whims and caprice have been making appointments without following the procedures laid down under the Adhiniyam. The Administrator of a Municipal Corporation is a public servant. He was bound to follow the provisions of the Adhiniyam and the Rules. It is surprising how the Respondents could be appointed even prior to creation of the temporary posts by the State. The Appointing Authority has now taken a stand that the Respondents had been appointed in terms of the order of sanction dated 19.12.1985. The offers of appointment, precede the said date. The Respondents although purported to have been appointed as apprentices, were appointed as clerks on daily wages in the Assessment Department. Evidently, the provisions of the Apprentice Act, 1961 have also not been followed. The officers appeared to be absolutely ignorant of the provisions of the said Act. They even do not know how offers of appointment should be issued.

This Court in a large number of decisions has expressed its concern on how and in what manner appointments on daily basis or by way of ad hoc arrangement are made in flagrant violations of constitutional provisions enshrined under Articles 14 and 16 of the Constitution of India and/ or the statutory recruitment rules. This Court has also been noticing that the State or the public sector undertakings or the local self governments themselves are making all endeavours to regularise the services of such employees who have entered the services through the backdoor. The Industrial Tribunals, in some cases the High Courts also, had been generous enough to direct regularisation for the services of such workmen without proper application of mind.

Recently, a Constitution Bench of this Court has held that such appointments being contrary to the provisions of Articles 14 and 16 of the Constitution of India are illegal. [See Secy., State of Karnataka & Ors. v. Umadevi & Ors., 2006 (4) SCALE 197.

It is, however, difficult for us to accept that the Respondent have been appointed on temporary basis pursuant to the said GO dated 9.12.1985 or such appointments were made for a fixed tenure within the meaning of the provisions of sub-clause (bb) of clause (oo) of Section 2 of the Industrial Disputes Act.

We, however, do not agree with the High Court that as by way of an interim order the award was directed to be implemented, the same should itself form the basis for dismissing the writ petition.

The High Court exercised its discretion in not granting an interim relief in favour of the Appellant. In view of the refusal on the part of the High Court to grant an interim relief as was prayed for by the Appellant, the Appellant implemented the award pending the appeal which can only be subject to appeal, that would not mean that the High Court would not or should not go into the merit of the matter. In fact it is the duty of the High Court to consider the appeal on merits. It is unfortunate that the writ petition filed in the year 1989 has been disposed of in 2004 but the Appellants cannot be blamed therefor. The Respondents might have continued in service for more than 14 years only because the High Court did not pass any interim order, but the same, in our opinion, should not have formed the basis for making the interim order absolute or for non- consideration of the merit of the matter.

In our opinion, the High Court did not adopt a correct approach in the matter.

Non-compliance of the provisions of Section 6-N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full backwages and continuity of service in favour of the retrenched workmen, the same would not mean that such a relief is to be granted automatically or as a matter of course.

The Labour Court in its award did not take into consideration the relevant facts for exercise of its discretion in granting the relief.

It is now well-settled, by reason of a catena of decisions of this Court, that only because the Labour Court may grant the relief of reinstatement with full backwages, the same should be granted as a matter of course. The Appellant herein has clearly stated that the appointments of the Respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money. Appointments of the Respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefor having come to an end. It is, therefore, in our considered view, not a case where the relief of reinstatement should have been granted.

In Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. & Anr. v. Shri S.C. Pandey 2006 (2) SCALE 619, it is stated:

"The Industrial Court as also the High Court applied the principles of estoppel on the finding that the respondent was transferred from Morena to Gwalior. If his appointment was void, being contrary to regulations, in our opinion, the procedural provisions like estoppel or waiver were not applicable. If an appointment made by the Branch Manager was wholly without jurisdiction, the order of appointment itself was void. Furthermore, the contention of the appellant had been that in terms of Regulation 16 of 1976 Regulations only the Managing Director of the Corporation could issue an offer of appointment. It has not been found by the Industrial Courts or the High Court that the Branch Manager and the Regional Manager were authorized to make such appointments. The appointment of the respondent, thus, must be held to have been made only to meet the exigencies of services and not in terms of the service regulations. The appointment of the Respondent, thus, could not have been made for filling up a regular vacancy for the purpose of invoking Rule 2 of the Standing Orders.

However, it has not been contended that the services of the respondent were not governed by the provisions of the Industrial Disputes Act. He worked from 16.9.1985 to 19.5.1987. He must have, thus, completed 240 days of service. The termination of his services without complying with the provisions of Section 25F of the Industrial Disputes Act was, thus, illegal. He, however, had unjustly been directed to continue in service by reason of an interim order. He has been continuing in service pursuant thereto.

The appellant, in our opinion, cannot be made to suffer owing to a mistake on the part of the court. The respondent also cannot take advantage of a wrong order.

In the peculiar facts and circumstances of the case, we, therefore, of the opinion that interest of justice would be sub-served if, in place of directing reinstatement of the services of the respondent, the appellant is directed to pay a sum of Rs. 10, 000/- by way of compensation to him. It is directed accordingly. The orders under challenge are set aside. The appeal is allowed with the aforementioned directions and observations."

The learned counsel appearing on behalf of the Respondents has strongly relied upon a decision of this in S.M. Nilajkar and Others v. Telecom District Manager, Karnataka wherein this Court was considering the question as to whether the interpretation of the expression "the termination by the employer of the service of a workman for any reason whatsoever" has been employed by the Parliament while defining the term "retrenchment". It was held:

"12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a workman so long as it is attributable

to the act of the employer would fall within the meaning of "retrenchment" dehors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within categories (a), (b), (bb) and (c) would fall within the meaning of "retrenchment".

In Nilajkar (supra), this Court cannot be said to have laid down a law having universal application. In that case also backwages had been denied by the learned Single Judge of the High Court which order was held to be just and reasonable. Therein, the question which arose was whether in fact the Appellants therein were appointed in a project work.

The said decision has been distinguished by this Court in various decisions including Executive Engineer, ZP Engg. Divn. and Another v. Digambara Rao and Others 2004 (8) SCC 262 which in turn has been followed in a large number of decisions.

However, there cannot be any dispute that provisions of Section 6- N of the U.P. Industrial Disputes Act have not been complied with. We are, however, of the opinion that in stead and in place of issuing a direction for reinstatement of service, interests of justice shall be sub- served if compensation of Rs.30, 000/- per person is directed to be paid.

It goes without saying that the Respondents would be entitled to wages and other remunerations in terms of the interim order passed by the High Court so long they have actually worked. We, furthermore, hope and trust that in all future appointments, the Appellant shall strictly follow the provisions of the Adhiniyam and the Rules.

The Appeal is allowed in part and to the extent mentioned hereinbefore. No costs.