SUPREME COURT OF INDIA

U.P. State Electricity Board

Vs.

Pooran Chandra Pandey

(A.K. Mathur and Markandey Katju JJ.)

09.10.2007

ORDER

1. Heard learned counsel for the parties and perused the record.

2. This appeal has been filed against the impugned judgment and order dated 3.1.2000 in SA No. 364/1999 of the Division Bench of the Allahabad High Court (Lucknow Bench) whereby the Division Bench has affirmed the judgment of the learned Single Judge dated 21.9.1998 in Writ Petition No. 4027(SS) of 1998.

3. By means of the writ petition, 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society (hereinafter referred to as the Society) had prayed for regularization of their services in the U.P. State Electricity Board (hereinafter referred to as the Electricity Board. It appears that the Society had been taken over by the Electricity Board on 3.4.1997. A copy of the minutes of the proceeding dated 3.4.1997 is Annexure P-2 to this appeal. That proceeding was presided over by the Minister of Cooperatives, U.P. Government and there were a large number of senior officers of the State government present in the proceeding. In the said proceeding, it was mentioned that the daily wage employees of the Society who are being taken over by the Board will start working in the Electricity Board in the same manner and position.

4. Pursuant to the said proceeding, the respondents herein were absorbed in the service of the Electricity Board.

5. Earlier, the Electricity Board had taken a decision on 28.11.1996 to regularize the services of its employees working on daily wage basis from before 4.5.1990 on the existing vacant posts and that an examination for selection would be held for that purpose.

6. The contention of the writ petitioners (respondents herein) was that since the Society had been taken over by the Electricity Board, the decision dated 28.11.1996 taken by the Electricity Board with regard to its daily wage employees will also be applicable to the employees of the Society who were working from before 4.5.1990 and whose services stood transferred to the Electricity Board and who were working with the Electricity Board on daily wage basis.

7. The learned Single Judge in his judgment dated 21.9.1998 held that there was no ground for discriminating between two sets of employees who are daily wagers, namely, (i) the original employees of the Electricity Board and (ii) the employees of the Society, who subsequently became the employees of the Electricity Board when the Society was taken over by the Electricity Board.

This view of the learned Single Judge was upheld by the Division Bench of the High Court.

8. We are in agreement with the view taken by the Division Bench and the learned Single Judge.

9. The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before 4.5.1990 and their services were taken over by the Electricity Board in the same manner and position. In our opinion, this would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated 28.11.1996.

10. In our opinion, the proceeding dated 3.4.1997 makes it clear that the employees of the Society should be deemed to be the employees of the Electricity Board with continuity of their service in the Society, and it is not that they would be treated as fresh appointees by the Electricity Board when their services were taken over by the Electricity Board. In this view of the matter, the writ petitioners (respondents herein) are entitled to the benefit of the order of the Electricity Board dated 28.11.1996. This view also finds support from the affidavit of Shri Ramapati Dubey, Chief Engineer, R.P.M.O., U.P. State Electricity Board in which it is mentioned that In this way, the Board Order dated 28.11.1996, a copy of which has been filed as Annesxure No. 5 to the writ petition, has been complied with and the employees of the Cooperative Electric Supply Society have been given the same status and benefit of regularization in the similar manner as it was given to the employees of the Board.

11. Learned counsel for the appellant has relied upon the decision of this Court in Secretary, State of Karnataka & Ors vs. Uma Devi (3) & Ors (2006) 4 SCC 1 and has urged that no direction for regularization can be given by the Court. In our opinion, the decision in Uma Devis case (supra) is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution.

12. As observed by this Court in State of Orissa vs. Sudhansu Sekhar Misra (AIR 1968 SC 647 vide para 13):-

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem, 1901 AC 495:

Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

13. In Ambica Quarry Works vs. State of Gujarat & others (1987) 1 SCC 213 (vide para 18) this Court observed:- The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and

not what logically follows from it.

14. In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd (2003) 2 SCC 111 (vide para 59), this Court observed:-

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

15. As held in Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid`s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In London Graving Dock Co. Ltd. vs. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office vs. Dorset Yacht Co. (1970

(2) All ER 294) Lord Reid said, Lord Atkin`s speech . is not to be treated as if it was a statute definition; it will require qualification in new circumstances. Megarry, J. in (1971)1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases,

one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

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Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

16. We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devis case (supra) is being applied by Courts mechanically as if it were a Euclids formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Uma Devis case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devis case (supra) inapplicable to the facts of that case.

17. In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-`-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board in the same manner and position. Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Uma Devis case (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution.

18. We may further point out that a seven-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhis case (supra) is a decision of a seven-Judge Bench, whereas Uma Devis case (supra) is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, Maneka Gandhis case (supra) does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face.

20. For the reasons aforementioned, we find no merit in this appeal. The appeal is accordingly dismissed. No costs.