SUPREME COURT OF INDIA

State of Uttranchal

Vs.

Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad

C.A.No.4856 of 2007

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

12.10.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Uttaranchal High Court dismissing the writ petition filed by the appellants.

3. The factual position in a nutshell is as follows:-

On the basis of a dispute raised, reference was made to the Labour Court, Haldwani, Uttar Pradesh, referring the following question for adjudication:-

Whether the non-regularization of 14 members mentioned in the Schedule by the employers is improper or unjustified? If yes, to what relief/benefit the concerned workmen are entitled, from which date and with what other details?

The employer took the stand that the concerned workmen were being engaged from time to time on temporary basis and wages and other benefits as admissible were being paid. The question of any regularization does not arise. The Labour Court found that the employees were not regularized because of non-creation of posts by the Government. Stand of the workmen was that several permanent posts were lying vacant in the Irrigation Department. The Labour Court accordingly directed that salary and other benefits ought to be paid to the concerned workers while considering them regular with effect from the date of judgment of the Labour Court. It was, accordingly, held that non-regularization was illega1.

4. A writ petition was filed before the Uttaranchal High Court which was dismissed by the impugned order. The High Court was of the view that all the 14 workmen, in question, were working on daily wages for more than six years and had completed 240 days in each calendar year and they ought to be regularized. Accordingly, the writ petition was dismissed.

5. In support of the appeal, learned counsel for the appellant submitted. that the directions given by the Labour Court and the High Court were clearly contrary to what has been stated by a Constitution Bench of this Court in Secretary, State of Karnataka and Ors. Vs. Uma Devi (3) and Ors. (2006 (4) SCC 1).

6. Learned counsel for the respondent, on the other hand, submitted that the concerned workmen had worked for more than 240 days in each of the six years they were engaged. Therefore, they were entitled to be regularized.

7. With reference to the order of the Labour Court, it is submitted that payments were being made to them on the basis of sanctioned wages. From this, it was contended, it is clear that there were sanctioned posts.

8. In Uma Devis case (supra), the issue relating to regularization was examined at length. It was essentially held that there was no question of any automatic regularization.

9. In B.N. Nagarajan & Ors. v. State of Karnataka & Ors. (1979) 4 5CC 507), it was held that the words regular or regularization do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. Further, when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. This view has been approved by the Constitution Bench in Uma Devis case (supra) at para 16. It was emphasized here that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is totally different and cannot be equated with regularization.

10. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularization in service. In Madhyamik Shiksa Parishad v. Anil Kumar Mishra & Ors. (2005 (5) SCC 122), it was held that the completion of 240 days work does not confer the right to regularization under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the service. In M.P. Housing Board and Anr. v. Monoj Srivastava (2006 (2) SCC 702) (paragraph 17) after referring to several earlier decisions it has been re-iterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. This view has been reiterated in Gangadhar Pillai v. Siemens Ltd. (2007 (1) SCC 533). The same question has been examined in considerable detail with reference to employee working in a Government Company in Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd. (2007 (1) SCC 408) and paragraphs 34 and 35 of the judgment are being reproduced below:-

34. Thus, it is well settled that there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of E. Ramakrishnan and Ors. v. State of Kerala and Ors. (1996) 10 5CC 565) this Court held that there can be no regularization de hors the rules. The same view was taken in Dr. Kishore v. State of Maharashtra (1997) 3 SCC 209) and Union of India and Ors. v. Bishambar Dutt (1996) 11 SCC

341). The direction issued by the Services Tribunal for regularizing the services of persons who had not been appointed, on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In Dr. Surinder Sinqh Jamwal and Anr. v. State of Jammu & Kashmir and Ors. (AIR 1996 SS 2775), it was held that ad hoc appointment, does not give any right for regularization as regularization is governed by the statutory rules.

The above position was highlighted in Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and Ors. (2007 (6) SCC 207).

It is not in dispute that some of the concerned workmen have been regularized. Before any direction for regularization can be given, the factual position has to be noted as to whether there was any sanctioned post. Apparently, in the present case, these factual details have not been discussed by either the Labour Court or the High Court. We, therefore, remit the matter to the Tribunal to consider the factual background and to decide the matter afresh in the light of what has been stated in Uma Devis case (supra) and Hindustan Aeronautics case (supra).

The appeal is al1owed to the aforesaid extent with no order as to costs.