SUPREME COURT OF INDIA

B.S.N.L., JAMMU

Vs.

Teja Singh

C.A.No.292 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

16.01.2009

ORDER

1. Leave granted.

2. The respondent was employed with the appellant company as a daily-rated Mazdoor. He was recruited in the year 1973. He was appointed on regular basis with effect from 11.8.1986. He attained the age of superannuation on 30th August, 1989.

3. Thereafter, again while working on daily-wages, his services were terminated in 1993.

4. He filed a representation for payment of gratuity as also other retiral benefits. He having been denied the retiral benefits on the premise that he had not completed 10 years' qualifying service as required in terms of the Service Rules, he filed an original application before the Central Administrative Tribunal.

5. The said application was allowed inter alia on the premise that the appellant had formulated a regularisation scheme in the year 1989 in terms whereof the respondent should have been given a permanent status. The High Court has upheld the said view.

6. A Constitution Bench of this Court in *Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors.*[1] has categorically held that keeping in view the constitutional scheme of equality, as contained in Articles 14 and 16 of the Constitution of India, regularisation or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees in public employment dehors the constitutional scheme is impermissible in law.

7. By way of one time concession the Constitution Bench, however, held as under:

> "53. One aspect needs to be clarified. There may be cases where regular appointments (not illegal appoints) as explained in *S.V. Narayanappa*[2], *R.N. Nanjundappa*[3] *and B.N. Nagarajan*[4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of

tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.

The process must be set in motion within six months from this date.

We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

8. We may notice that the law in this behalf has been laid down by the Constitution Bench of this Court, stating:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end and the end of the contract, if it were an engagement or appointment on daily wags or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as 'litigious employment' in the earlier part of the judgment,

he would not be entitle to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

9. In view of the said decision of the Constitution Bench, there cannot be any doubt whatsoever that the 1989 regularisation scheme having not been enforced in the case of the respondent, it did not come within the purview of the exception carved out by the Court in paragraph 53, of Umadevi as quoted above. The view of the Constitution Bench in Umadevi (supra) has been reiterated by a three-Judge Bench of this Court in *Official Liquidator vs. Dayanand and Ors.*[5], stating that the High Courts shall give effect thereto, opining:

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation.

It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State an who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to

countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in *U.P. SEB v. Pooran Chandra Pandey*[6] should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench."

10. For the reasons aforementioned, we are of the opinion that the view of the learned Tribunal as also the High Court cannot be sustained. The impugned judgment is, therefore, set aside and the appeal is allowed accordingly. No costs.

[1]*[2006 (4) SCC 1]* [2]*(1967 1 SCR 128)* [3]*(1972 1 SCC 409)* [4]*(1979 4 SCC 507)*
[5]*[2008 (10) SCC 1]* [6]*(2007 11 SCC 92)*