SUPREME COURT OF INDIA

Man Singh

Vs.

Commissioner, Garhwal Mandal, Pauri

C.A.No.1366 of 2009

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

03.03.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant had been appointed as a Peon on a short term vacancy from time to time for a fixed period. Such appointments were said to have been made on diverse dates, namely - on 9.5.1989, 20.9.2989, 4.12.1989, 2.2.1991, 2.3.1991, 29.6.1991, 27.8.1991, 11.12.1991, 1.1.1992, 31.3.1992, 26.8.1992, 5.3.1993, 2.8.1993, 28.9.1993, 4.12.1993, 4.1.1994, 23.5.1994, 6.9.1995, 6.11.1995 and 15.2.1996. Names were called for from Employment Exchange in the year 1995. Appellant applied for the post of Peon which fell vacant in the District of Chamoli. A Selection Committee was constituted for selection of the candidates. Appellant is said to have appeared before the Selection Committee. The name of the appellant was placed at serial No.3 in the general category. However, on or about 29.5.1995, the name of the appellant was deleted and in his place the name of one Mohan Lal was inserted. Appellant's services were terminated on 5.4.1996.

3. Aggrieved by and dissatisfied therewith, he filed a writ petition on or about 3.12.2002 before the High Court of Uttaranchal which by reason of the impugned judgment has been dismissed.

4. Mr. R. Krishnamorthi, learned counsel appearing on behalf of the appellant, would urge that appellant having been working since 1989 continuously, his services could not have been terminated particularly in view of the fact that he was selected for regular appointment by a selection committee.

5. It has been brought on record that the name of the appellant was wrongly placed at serial No.3 in the wait-list as Mohal Lal had secured higher marks than the appellant. As there were only three vacancies, appellant's name had to be deleted.

6. Appellant does not attribute any mala fide to the respondent. It is not his case that Mohan Lal, in fact, had not secured higher marks than him. If a mistake was committed, the respondents were entitled to rectify the same. All persons similarly situated under our constitutional scheme are required to be treated equally. Some mistakes were found in the selection list. If those mistakes have been rectified and the irregularities have been removed by preparing the selection list strictly in accordance with rules, no exception thereto can be taken.

7. Mohan Lal was wrongly placed in the category of reserved candidates as he had competed with the general category candidates. Appellant, indisputably, had been appointed on periodical basis. He might have continued to work as a Peon for a long time but by reason thereof, he did not acquire any indefeasible right to become a permanent employee of the department. Regularization of services, as is well-known, is impermissible in law. Though belatedly respondents had taken steps to fill up the existing vacancies in terms of the recruitment rules and upon following the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India.

8. Contention of the appellant that as he has been working for a long time, should have been given preference over said Shri Mohan Lal, in our considered opinion, cannot be accepted. In *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.*[1] , a Constitution Bench of this Court has laid down the law in the following terms:

> "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 at the end of the contract, if it were an engagement or appointment on daily wages 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 entitled 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. We are bound by the said decision as opined in *Official Liquidator v. Dayanand & Ors.*[2], wherein it has categorically been laid down:

"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 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 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 root will not be able to decide as to which of the judgment 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 and 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."

10. Reliance placed by Mr. Krishnamorthi on *Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka & Ors.*[3] is wholly misplaced. It is not a case where one set of ad hoc recruits was being replaced by another set of ad hoc recruits.

11. Respondent had filled up the vacancies in terms of the rules. Furthermore, appellant's name was not sponsored by the Employment Exchange. He might have got himself registered in the Employment Exchange but in absence of any proof that his name was sponsored by the Employment Exchange, the same could not have been considered. The Employment Exchange sponsors the names of the candidates in terms of the provisions laid down in the Employment Exchange Manual. The Employment Exchange authorities are bound to sponsor the names in accordance with seniority. Names of a candidate can be sponsored only when his turn comes and not prior thereto {[See *Arun Tiwari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.*[4] , *Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and Ors.*[5] }

12. Mr. Krishnamorthi submits that Shri Mohan Lal is no longer in service. That by itself may not be a ground, particularly at this distant time, to direct appointment of the appellant. Recruitment process started in the year 1995. A select list was prepared. Ordinarily, the life of a select list is one year. In absence of any notification extending the validity of such select list, no appointment can be directed to be made from such select list.

13. There is, thus, no merit in this appeal. It is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

[1]*(2006) 4 SCC 1*
[2]*(2008) 10 SCC 1*
[3]*AIR 1992 SC 677*
[4]*AIR 1998 SC 331*
[5]*(2006) 8 SCC 487*