

# SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Daya Lal

C.A.No.486 of 2011

(R.V.Raveendran and Markandey Katju, JJ.,)

13.01.2011

## JUDGMENT

### **R.V.Raveendran, J.**

1. Leave granted.

2. The first matter relates to persons temporarily appointed as Assistant Superintendents in 1985 and 1986 in aided hostels. The prefix 'Assistant' was omitted in 1996 and thereafter the respondents were known as Superintendents. The second matter relates to a person temporarily appointed as a Superintendent on 30.6.1998 in an aided hostel. They filed writ petitions contending that they were employed on full-time basis and were discharging functions similar to those of Superintendents in Government hostels, but were being paid only a meagre salary while their counterparts in Government hostels are paid much higher pay in the scale of Rs.4000-6100 in the category (A) and (B) Hostels and Rs.3200-4900 in category 'C' hostels. They sought regularization in the posts of Hostel Superintendent from the date of initial appointment and payment of salary on par with hostel Superintendent of class 'C' hostels of the Social Welfare Department.

3. The respective respondents in the remaining eight appeals, claim that they were appointed in the years 1995, 1996, 1997 and 1998, as part-time cooks/chowkidars in government hostels run by Social Welfare Department. They claim that their appointment orders were issued by the respective Mess Committee of the hostel where they were employed; that the State Government was paying a fixed amount of Rs.600/- per month in the form of aid to the concerned Hostel Mess Committee which, in turn, was being paid to them as remuneration. The State Government issued an order dated 28.12.1998, stopping the practice of appointing Class IV employees on consolidated wages and to remove any person appointed on that basis. By subsequent circular dated 21.1.1999, the District Social Welfare Officers were directed to remove part time chowkidars/cooks employed by the Department with effect from 1.2.1999 and replace them by ex-servicemen or widows of ex-servicemen. In view of the Government directives, the respondents apprehended their services may be dispensed with. [The services of two of the respondents - Madan Lal Yogi and Kurda Ram who were

appointed on 15.7.1995 and 1.7.1995 respectively were however terminated even earlier, on 17.3.1997 and 28.12.1998]. The respondents submitted that this Court had earlier approved a scheme under which part time cooks and chowkidars who were working as on 1.5.1995 were regularized; and that as they (respondents) were all appointed subsequent to 1. 5.1995 and were not therefore covered under the said scheme, a fresh scheme should be framed to benefit them. They therefore sought a declaration that the circulars dated 28.12.1998 and 1.2.1999, were invalid and a direction for regularization by framing an appropriate scheme similar to the scheme framed by the State Government in pursuance of the order dated 26.5.1995 of the Rajasthan High Court in *Anshkalin Samaj Kalyan Sangh, Banswara vs. The State of Rajasthan*'.

4. In the first seven appeals, a learned Single Judge by a common order dated 7.5.2003 allowed the writ petitions. He held that the writ petitioners working on the posts of Superintendent, Cooks and Chowkidars are entitled to salary on par with the salary which was paid to their counterparts holding similar posts in the hostels run by the Social Welfare Department of the State Government with effect from the dates of their respective writ petitions. He also held that any attempt to terminate the services of employees working in the hostels on consolidated salary was unjust and illegal and therefore the writ petitioners should be permitted to continue to work on the posts which they were holding as on the date of filing their respective writ petitions. He directed the State Government to frame a scheme on the same lines in which the State Government had earlier framed a scheme relating to part-time cooks and chowkidars (who were serving as on 1.5.1995). He also quashed the orders dated 28.12.1998 and 21.1.1999 (which directed chowkidars and cooks employed on consolidated wages should be removed with immediate effect from 1.2.1999 and should be replaced by ex-servicemen or widows of ex-servicemen). The scheme referred to by the learned Single Judge was the scheme which was framed by the State Government in pursuance of the directions of the Rajasthan High Court in *Anshkalin Samaj Kalyan Sangh* (supra) which was approved by this court in 1996 (in CA No.365/1994 - *State of Rajasthan vs. Mod Singh*). Feeling aggrieved, the State filed appeals which were dismissed by a common judgment dated 16.8.2004. The said judgments are challenged in the first seven appeals by the State and its functionaries.

5. In the next two appeals, a learned Single Judge by common order dated 5.2.2001 allowed the writ petitions of the respondent in terms of the following directions issued in *Anshkalin Samaj Kalyan Sangh* (supra) : "In the circumstances of the case, it would be just and proper to direct that the Chowkidars and Cooks employed in the hostels run by the Government or Government aided institutions, shall be paid at the rate of the minimum of the pay scale applicable to Class IV employees and Cooks in the Government employment respectively from the date of their filing of the petition. In cases of those who have filed the petition, in cases of those who have not filed the petition, it shall be paid from the date of this order. So far as the regularization is concerned, the cases of all such employees who have put in service of five years or more shall be immediately taken up for consideration for regularization and scheme for regularization of their services shall be framed and put into effect within a period of six months from today. A scheme for regularization of employment of such employees who have not completed five years service shall also be framed within a

reasonable time by the Government. These directions shall be applicable in the cases of all the employees similarly situated working in the hostels under the Social Welfare Department of the State irrespective of the fact whether such employees have filed petitions in this Court or not. The benefit of this Order shall be available to only those employees who were in service on the day of filing of petition or the date of this order as the case may be."

The writ appeals filed by the State against the said order were dismissed by a division bench by common order dated 16.11.2005.

6. In the last appeal (relating to Kurda Ram), the writ petition for regularization was dismissed by a learned Single Judge by order dated 3.5.1999. However, the special appeal filed by the respondent was allowed by order dated 2.12.2005 and the order of termination was set aside following the decision dated 16.8.2004 (which is the subject matter of the first seven appeals). The division bench observed that the respondents' case may be considered in the light of the decision of this court in the pending challenge to the order dated 16.8.2004.

7. Two questions therefore arise for consideration in these appeals:

“(i) Whether persons appointed as Superintendents in aided non-governmental Hostels are entitled to claim absorption by way of regularization in government service or salary on par with Superintendents in Government Hostels?

(ii) Whether part-time cooks and chowkidars appointed temporarily by Mess Committees of Government Hostels, with two or three years service, are entitled to regularization by framing a special scheme?”

8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

“(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While 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, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even

temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute. (See : *Secretary, State of Karnataka vs. Uma Devi*<sup>2</sup>, *M. Raja vs. CEERI Educational Society, Pilani*<sup>3</sup>- S.C. *Chandra vs. State of Jharkhand*<sup>4</sup>, *Kurukshetra Central Co-operative Bank Ltd vs. Mehar Chand*<sup>5</sup>, and *Official Liquidator vs. Dayanand*<sup>6</sup>-

9. As noticed above, the respondents in these appeals were appointed in pursuance of the Government & Aided Hostels Management Rules, 1982 which were issued by the State Government on 18.1.1982. Though they were referred to as Rules, they were not statutory rules framed by the State Government in pursuance of any power vested in the State by the legislature under any enactment. They were more in the nature of executive instructions and guidelines framed for administrative convenience. The said rules were intended to apply to Government hostels run by the Social Welfare Department as also aided hostels which received any aid in the form of grant from the Social Welfare Department. We may refer to the relevant provisions of these Rules.

“9.1) Rule 5 indicated the staff pattern in Government Hostels. Clause (2) of Rule 5 provided that every government hostel should have an Assistant Superintendent and the salary of the Assistant Superintendent in 'A' and 'B' category hostels will be in the pay scale of Rs.385-650 and in 'C' category hostels, the salary will be in the pay-scale of Rs.350-570. Clauses (4), (5) and (6) of Rule 5 provided that every hostel will have one temporary Doctor (who will be paid a monthly conveyance allowance of Rs.75/- in 'A' & 'B' category Hostels and Rs.50/- in 'C' category Hostels), a Class IV employee who was to stay in the hostel by being provided accommodation and a Safai Karamchari who was to be appointed on temporary basis. 9.2) Clause 9 provided that

every Government hostel will have a Mess Committee consisting of Superintendent/Warden as the President, one elected Secretary from among the students, five other students as members and an Assistant Superintendent as accountant-cum-cashier. Clause (3) of Rule 9 provided that the Mess Committee will arrange for the food, breakfast, water, electricity, clothes, hair-cutting, soap, oil and shoes etc. for the students for which the Government would pay to the Mess Committee a sum of Rs.80/- per student (relating to students of Classes 6 to 8) and Rs.85/- per month (relating to students of Classes 9 to 11). For every academic session, the Government would also pay in a lumpsum to the District Officer, a sum calculated at the rate of Rs.60/-per student (for classes 9 to 11) and Rs.40/- per student (for classes 6 to 8) for providing books, stationery and fees for the students in the Hostels. Clause (7) of Rule 9 provided that Mess Committee of Government Hostels will not be provided departmental cooks but each Mess Committee will be given a grant of Rs.250/- per month per cook and the number of cooks will be decided with reference to the number of students (one cook for 25 students) and the appointment of cooks will be on part-time basis for ten months in a year. 9.3) Rule 11 related to recognition of aided hostels and their management. Clause (1) thereof provided that registered voluntary service organizations are required to submit applications to the Director for management of hostels, recognition and permission of grant. Clause (2) provided that the Director, Social Welfare Department, will dispose of the applications taking note of the availability of sufficient building and other sources, whether sufficient means for meeting the necessary expenses are available with the organization in the proposed hostel, whether the organization is capable of providing the prescribed facilities in the hostel. Clause (3) provided that one of the conditions for sanction of the hostel is the admission of students belonging to scheduled castes, scheduled tribes and backward classes as declared by the Government from time to time. Clause (5) of Rule 11 provided that 90% of the amount payable by the Social Welfare Department to the Aided Hostels (for providing food, clothes etc. to the students) will be paid to the account of the Mess Committee (calculated with reference to the number of students) and grant for fees and books of the students will be distributed by the District Offices. It further provided that the expenses on the salary and allowances of Assistant Superintendent, class IV employees appointed by the Aided organization, cost of fixed assets and rent of building will be borne by the aided organization which runs the hostel. Re : Question (i) - First two appeals relating to aided hostels

10. It is thus evident that insofar as aided hostels were concerned, the Government was liable only to extend aid by way of a grant to students of 6 to 8 standards and students of 8 to 11 standards, staying in such hostels, to meet the expenditure of food, water, electricity, clothes, hair-cutting, soap, oil and shoes and another grant for books and stationery of such students. The Government was not liable to bear the expenses of salary and allowances of the employees of the aided hostels and it was for the private organizations which ran the aided hostels to meet the salaries of employees from their own resources. The persons employed in the aided hostels were the employees of the respective organizations running those hostels and not the employees of the Government. The Government has merely prescribed the

eligibility conditions to be fulfilled by the private organizations to get grants to meet the food and education expenses of students staying in such hostels. Therefore under no stretch of imagination persons employed by the aided hostels could be termed as persons employed by the State Government. Nor could the Government be held liable for their service conditions, absorption, regularisation or salary of employees of private hostels. If the employees (either permanent or temporary) of the aided hostels are not the employees of the Government, but of the aided private charitable organizations which run such aided hostels, they could not obviously maintain any writ petition claiming the status or salary on par with the corresponding post-holders in State Government service, nor claim regularization of service under the state government. Hence, the writ petitions by persons employed in aided hostels for relief of regularization or parity in pay, were not maintainable and the decision of the High Court granting any relief to them cannot be sustained. Re : Question (ii) - The other appeals relating to part-time cooks/chowkidars in government hostels.

11. The part-time cooks and chowkidars were employed on temporary basis in the Government hostels in the years 1995, 1996, 1997 and 1998. They approached the High court in the year 1999 (except Madan Lal Yogi who approached in the year 1997). The services of some of them had been terminated within one or two years from the date of temporary appointment. Though the State had taken a decision to terminate all those who were appointed on consolidated wage basis, the other respondents continued because of the interim orders by courts. Service for a period of one or two years or continuation for some more years by virtue of final orders under challenge, or interim orders, will not entitle them to any kind of relief either with reference to regularization nor for payment of salary on par with regular employees of the Department.

12. The decision relied upon by the High Court namely the decision in Anshkalin Samaj Kalyan Sangh of the High Court no doubt directed the state government to frame a scheme for regularization of part-time cooks and chowkidars. It is clear from the said decision, that such scheme was intended to be an one-time measure. Further said decision was rendered by the High Court prior to Uma Devi, relying upon the decision of this Court in *Daily Rated Casual Labour vs. Union of India*<sup>7</sup>, *Bhagwati Prasad vs. Delhi State Mineral Development Corporation*<sup>8</sup> and *Dharwad District PWD Literate Dalit Wage Employees Association vs. State of Karnataka*<sup>9</sup>. These directions were considered, explained and in fact, overruled by the Constitution Bench in Uma Devi. The decision in Anshkalin Samaj Kalyan Singh is no longer good law. At all events, even if there was an one time scheme for regularisation of those who were in service prior to 1.5.1995, there cannot obviously be successive directions for scheme after scheme for regularization of irregular or part-time appointments. Therefore the said decision is of no assistance. Conclusion

13. In view of the above, both the questions are answered in the negative and in favour of the appellants. Therefore, none of the respondents is entitled to any relief. All the appeals are allowed and the orders of the High Court challenged in these appeals are set aside. Consequently, the writ petitions filed by the respondents before the High Court stand dismissed.

**Judgment Referred.**

<sup>1</sup>*WP No.3453/1994*

<sup>2</sup>*(2006) 4 SCC 0001*

<sup>3</sup>*(2006) 12 SCC 0636*

<sup>4</sup>*(2007) 8 SCC 0279*

<sup>5</sup>*(2007) 15 SCC 0680*

<sup>6</sup>*(2008) 10 SCC 0001*

<sup>7</sup>*(1988) 1 SCC 0122*

<sup>8</sup>*(1990) 1 SCC 0361*

<sup>9</sup>*(1990) 2 SCC 0396*