

SUPREME COURT OF INDIA

The Chief Executive Officer, Pondicherry Khadi and Village Industries Board

Vs.

K. Aroquia Radja

C.A.No.2323 of 2013

(G.S. Singhvi, H.L. Gokhale and Ranjana Prakash Desai JJ.)

12.03.2013

JUDGEMENT

H.L. GOKHALE J.

1. Leave Granted in both these appeals.

2. Both these appeals raise the question as to whether the employees who are appointed on a co-terminus basis have any right to continue in service after the cessation of the engagement of the person with whose engagement their services were made co-terminus. Facts leading to these appeals are this wise:-

3. The Pondicherry Khadi and Village Industries Board (Board for short) is a statutory body corporate constituted under Section 3 of the Pondicherry Khadi and Village Industries Board Act, 1980 (Board Act for short). The board is running various Khadi spinning/weaving/silk centers which provide employment opportunities to a large number of persons, particularly women. It runs several Khadi Bhandars for the sale of Khadi and Village Industries goods produced by the board. The board has 219 sanctioned posts at various levels as approved by the Government of Puducherry. It has framed Recruitment Rules/Standing Orders with respect to each of these posts.

4. Government of India had issued Office Memorandum dated 18.5.1998, wherein after referring to the principles laid down by this Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Ors. reported in 1996 (6) SCC 216 (which recognises the recruitment through the employment exchanges as the principle mode of recruitment), it was directed that

all vacancies arising under the Central Government Offices/establishments (including quasi- government institutions and statutory organizations) irrespective of the nature and duration (other than those filled through UPSC), are not only to be notified, but also to be filled through the Employment Exchange alone. Other permissible sources of recruitment were to be tapped only if the Employment Exchange concerned issued a Non-availability Certificate. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the Department and the Ministry of Labour (Directorate General, employment & Training). Similar instructions are also in force requiring vacancies against posts carrying a basic salary of less than Rs. 500/- per month in Central Public Sector undertaking to be filled only through Employment Exchange.

5. It so transpired that one Shri P. Angalan, assumed the office of the Chairman of the Board on 12.7.2002, and he desired engagement of certain persons as his personal staff. There was no provision for any sanctioned post of personal staff in the board, yet without obtaining the names sponsored by the Employment Exchange, the said Chairman engaged five persons as his personal staff viz. the four respondents herein and one T. Kumar (since deceased).

6. In view of the persuasion of the said Chairman, the Government of Puducherry issued general orders dated 13.2.2003 appointing the respondents on co-terminus basis. They were appointed on fixed scale of pay. The appointment orders of these respondents clearly stated that their service shall automatically stand terminated, as soon as the tenure of the Chairman is over. The government order approving the appointment of these five persons read as follows:-

“GOVERNMENT OF PONDICHERRY

DEPARTMENT OF INDUSTRIAL DEVELOPMENT

(INDUSTRIES AND COMMERCE)

No. J.12014/5/2002/Ind. & Com.B Pondicherry, the 26 Mar 2003

To

The Chief Executive Officer,

Pondicherry Khadi and Village Industries Board,

Plot No. 1 & 2, Kamaraj Salai,

New Saram, Pondicherry

Sir,

Sub: DID (Ind & Com.) – Providing personal staff to the Chairman of the Boards/Corporations-Approval-Conveyed

Ref:1 I.D. No.A.52011/1/2002/DP&AR/SSI (2)

Dated 13.02.2003 of the Department of Personnel and

Administrative Reforms (Personnel Wing), Pondicherry

2. Letter No. 1/516/2002/Estt-I dated 13.03.2003 from the Chief Executive Officer, Pondicherry Khadi and Village Industries Board, Pondicherry

I am directed to invite a kind reference to the I.D. Note cited under reference one above.

2. Approval of the Government is hereby conveyed for the engagement of the following personal staff by the Chairman of the Pondicherry Khadi and Village Industries Board on co-terminus basis as requested in the reference second cited above:-

Sl.	Name and Address	Post	Scale of Pay	No				
1.	K.Aroquia Radja, S/o Kulandai Raj,	Stenographer	Rs.	No. 24, II Cross, Balaji Nagar,		4500-125-700		Pondicherry-13
2.	G. Ayappan, S/o Gangadharan,	Personal Clerk	Rs.	No. 29, II Cross, Mariamman Nagar,		3050-75-3950		Karamanikuppan, Pondicherry-4
3.	T. Kumar, S/o Thiagarajan,	Staff Car	Rs.	Thirupur Kumaran Street, Manjolai,		Driver 3050-75-3950		Ariyankuppam, Pondicherry-7
4.	P. Rajesekar, S/o Puroshothaman,	Peon	Rs.	No. 8, Main Road, C.N. Palayam,		2550-55-2660		Arumapathpuram (P.O.) Villianur via,
5.	S. Ramachandran, S/o Subramani,	Peon	Rs.	64, Gangai Amman Koil Street,		2550-55-2660		Pillaichavadi, Pondicherry-14
								-3200

3. These official's services shall automatically stand terminated as soon as the Chairman ceases to hold his post.

4. Further, it is also requested to send proposals for incorporating the provision of personal staff to Chairman in the Act/Rules of corporation immediately.

Yours faithfully

(P.M.Emmanuel)

Under Secretary to Govt. (Ind. & Com.)”

7. Based on the above order of approval, a separate office order dated 26.3.2003 was issued concerning the appointment of the five persons, containing the terms and conditions which were as follows:- “.....

TERMS AND CONDITIONS FOR ENGAGEMENT OF PERSONAL STAFF ON CO-TERMINUS BASIS

1. The individual is engaged on co-terminus basis. It means that the services of the individual stands automatically terminated as soon as the present Chairman ceases to hold his post/ceases to be in the office of the Chairman.

2. The terms of this engagement will be co-terminus basis and coincide with the tenure of the Chairman of the Board or will be in force till the Chairman requires his service whichever is earlier. When the necessity for his services ceases, his services stands terminated from this office without any prior notice and he will not have any claim for regular appointment/absorption in Board's service whatever be the duration of services in the office.

3. No pay fixation will be done for his engagement. But the pay will be claimed on per with the same post and scale of pay exists in the government against which he is engaged and he will earn increment, as per Rules, every year in the time scale of pay in which he is engaged.

4. No Act/Service Rules/Regulations will be made applicable to the individual for claiming the regular appointment in the Board. Because of working in the Board on co-terminus basis, he does not have any right for claiming regular appointment in the Board.

5. The engagement is neither temporary/regular no adhoc basis. It is only purely co-terminus basis for the purpose of assisting the Chairman till he hold his post.
6. Neither legal nor the Board Resolution to be passed shall bind over orders issued to the individual to make him as a regular employee in the Board in future.
7. Because of working as on Co-terminus basis, the Board will not give any preference for selection to any post if any recruitment is made in the future.
8. Whatever be the period the individual served in the Board it will not be accounted for any purpose.
9. The individual has no right to go to anywhere viz. Higher Authority/Legal Authority to claim the services put by him for regular appointment.
10. The benefits enjoyed by the regular employee will not be made applicable to the individual engaged on co-terminus basis. Procedure and rules followed for regular employees will not be followed in the case of Co-terminus basis engagement.
11. On humanitarian ground he will avail casual leave, as Board thinks fit.
12. The individual may claim T.A on humanitarian basis, if permitted to go on tour by the Chairman since he has to incur expenditures for undertaking tour. The services will confine only to the office of the Chairman and not to the Board.
13. The individual may claim O.T.A in connection with official duty performed by him in the office of the Chairman.
14. The individual is exempted from production of Medical Certificate and Character and Antecedents, since it is not a regular/temporary/adhoc appointment selected by the Board as per Recruitment Rules/Recruitment Committee.

15. During the tenure of his service, if he is found under any mis- conduct or involved in any type of criminal case, his services will be forthwith terminated without any notice.

16. No other service terms and conditions will be made applicable to the individual except the above said facilities O.T.A and O.T.A. In the event of the candidate is accepting the above terms and conditions for the co-terminus engagement, he is directed to report for duty before the undersigned with his Bio-data/other testimonies not later than 10 days time of receipt of this office order.”

8. The board, after obtaining the approval from the Government as above, issued the necessary appointment orders on 22.1.2004 to the five persons concerned, engaging them as personal staff retrospectively from 22.7.2002, although making clear once again, therein, that these appointments were on co-terminus basis. In spite of this position, the then Chairman moved a resolution and got it passed in the board on 31.8.2005, to send a proposal to the Government for absorption of five personal staff in lieu of vacant posts for the Governor’s approval. However, the Government declined to approve the said proposal. The Chairman, therefore, got another resolution passed in the Board for absorption of the five persons on 17.2.2006. The said Chairman thereafter forwarded a note containing 8 paragraphs to the Lt. Governor of Puducherry. Paragraphs 5 to 8 of this note read as follows:-

“5. Accordingly, a proposal was sent to Government for absorption of the above five personal staff taking in account the continuous service of 3 ½ years and experience in the respective posts. Whereas the proposal has not been agreed to by the Government on the ground that the above appointments were made on co-terminus basis with the tenure of the Chairman.

6. Again the above subject matter was discussed in the 50th Board meeting held on 17.02.2006, where it has been resolved as follows:

“The Board was informed that the proposal sent earlier for absorption of personal staff of the Chairman has not been approved by the Government. However, Chairman has desired to send a separate note with necessary justification to government, in relaxation of the existing norms, for approval, as a special case. The Board has endorsed the same.”

7. Considering the fact that the above proposal involves no additional creation of posts involving additional financial liability, the power of the board to relax any of the provisions of recruitment Rules, wherever it is felt necessary, length of service put in by the above personal staff and in the light of deliberation of the Board, the Government is solicited to approve the above proposal of absorption of the 5 personal staff of the Chairman, in relaxation of existing norms, as a special case.

8. Bio-data of the personal staff are placed in the file for kind perusal.”

Paragraph 7 of the above note was approved by the then Lt. Governor of Puducherry on 26.2.2006 in spite of the fact that this time the note was not routed through the concerned Administrative Secretariat, namely Department of Industrial Development (Industries & Commerce), and Office of the Chief Secretary of the Government of Puducherry.

9. It is relevant to note that earlier the services of some other similarly situated temporary employees of the Legislative Assembly Department, Puducherry were not regularized and came to be terminated. On their termination they had approached the Central Administrative Tribunal, and their Original Applications were dismissed. Those orders were confirmed by the High Court and by this Court by its order 6.3.2006 in SLP (C) No. 7859-7877 of 2005 in the case of Ilango & Ors. Vs. Union of India & Ors. It is also material to note that a similar proposal for regularization of services concerning other co-terminus employees, engaged by the very Board, also came to be rejected by the Lt. Governor, subsequently, on 17.6.2008.

10. The above proposal for absorption of these five persons was kept in abeyance due to the declaration of elections of the State Assembly of Puducherry in March 2006. The then Chairman P. Angalan resigned from his chairmanship when his term expired on 16.4.2006, and thereafter, alongwith him all the four respondents and above referred T. Kumar were relieved from their services.

11. The respondents filed a Writ Petition nearly two years later bearing No. 3181 of 2008 seeking a direction to implement the resolution dated 17.2.2006 and the approval dated 26.2.2006. In their Writ Petition they accepted in para 3 that they were appointed on co-terminus basis. In para 6 thereof, they stated that they were already dis-engaged from their services after the resignation of the Chairman in April 2006. In spite of these averments in the petition, a Single Judge of the High Court of Madras relied upon the fact that an approval had been given to their

absorption, and the issue was kept in abeyance only till the elections of the year 2006 were over, and two years had gone thereafter. Therefore, the learned Single Judge by the order dated 26.2.2008, directed that the petitioner herein (which was the respondent in that petition) shall act as expeditiously, as possible, preferably within a period of 6 weeks from the date of receipt of a copy of the order in accordance with the note of approval. It is material to note that the petition was disposed of at the admission stage itself, and the present petitioner did not have any opportunity to file a reply to place the necessary facts on record such as the recruitment rules and the nature of respondents' engagement.

12. In view of passing of this order the appellants filed a Writ Appeal, bearing No. 1131 of 2011 before the Division Bench of Madras High Court, and placed the necessary material on record. Yet the Bench gave importance to the fact that board had sought an approval from the Lt. Governor of Pondicherry which had been granted. Therefore, according to the Division Bench, there was no error in the order of the Single Judge directing the implementation of the decision of the board to absorb the respondents herein. The appeal was consequently dismissed.

13. In the meanwhile, the respondents filed another Writ Petition bearing No. 13428 of 2010 since no order was being passed by the Board with respect to their absorption in spite of the order passed by the Single Judge in Writ Petition No.3181 of 2008. During the pendency of this second Writ Petition, the petitioner passed order dated 10.1.2011 rejecting the claim of the respondents. Therefore, the respondents amended the second Writ Petition and challenged this order dated 10.1.2011. This second Writ Petition reached for hearing after the dismissal of the Appeal Nos. 1131 of 2011 filed by the appellants herein. That being so, the learned Single Judge who heard Writ Petition No. 13428 of 2010 allowed the same, and quashed the order of 10.1.2011, after referring to the dismissal of the Writ Appeal filed by the appellants herein. Being aggrieved by the judgment and order in that Writ Petition the appellants have filed the second SLP (C) No.4688 of 2012 which has been heard alongwith SLP (C) No.4669 of 2012 which has been filed to challenge the order of the Division Bench in Writ Appeal No.1131 of 2011. Both these appeal arising out of these two SLPs have been heard and are being disposed off together. Consideration of the submissions of the rival parties:-

14. The principle contention of the appellants is that as seen from the above narration of facts, the engagement of the respondents was clearly on a co-terminus basis. There was no assurance to them that they will be continuing in service after the tenure of the Chairman of the Board was over. There are recruitment rules and a procedure by which the employees under the Board are to be engaged. It was

submitted on behalf of the appellant that any departure therefrom would mean allowing a back door entry in Government Establishment / Quasi Government employment which would be violative of Articles 14 and 16 of the Constitution of India. As against this submission of the appellant, it was pointed out by the respondents that in their case there has been an approval by the Board and then by the Lt. Governor. That being so, there was no reason to interfere into the orders passed by the Division Bench as well as by the Single Judge in the two matters before us directing implementation .

15. We have noted the submissions of counsel for both the parties. It is very clear from the narration of facts as above that the respondents were engaged only because their names were sponsored by the then Chairman of the Board. They have not come into the service either through the Employment Exchange or through any procedure in which they were required to compete against other eligible candidates. It is also seen that the proposal which was sent to the Governor for his approval was not sent through the normal routine of the concerned Administrative machinery, and through the Chief Secretary of Puducherry. Since the proposal was not routed through the normal channel of administration, the factual position with respect to the irregular employment of the respondents could not be placed before the Governor. The relevant facts such as those relating to their initial engagement, availability of sanctioned posts in the same category in the Board, relevant rules for engagement of the employees etc. could also not be placed before the Governor. Even so the proposal itself recorded that the respondents had put in just 3½ years of service, and the proposal to regularize them had been once turned down by the Government. Section 15 of the Board Act clearly laid down that the Board was bound by the directions given by the Government in the performance of its function under the Act. The Governor was not supposed to act on his own, but with the aid and advice of the Council of Ministers. The question as to whether it will result into creation of additional posts and additional financial liability was required to be referred to the Government. Besides, the resolution only recorded the request of the Chairman in that behalf. It was not a resolution of the Board approving regularization or relaxing the existing norms, as a special case.

16. The learned Single Judge allowed the Writ Petition No.3181 of 2008 at the admission stage itself without affording an opportunity to the appellants to place these relevant facts before the Court, which led to an erroneous decision. If the petition was to be allowed, the least that was expected was to permit the respondents to the petition to file their response, and then take the decision one way or the other. Again the Division Bench also did not look into the substantive issue before it although the relevant material was placed before the bench in the

writ appeal. The learned Single Judge who heard the second writ petition merely followed the decision of the Division Bench in writ appeal.

17. The learned Single Judge who heard the Writ Petition No.3181 of 2008 and also the Division Bench which heard the writ appeal could not have ignored that the respondents were clearly told that their services were co- terminus, and they will have no right to be employed thereafter. Condition No.4 and 6 of the earlier referred terms and condition are very clear in this behalf. The respondents had taken the co-terminus appointment with full understanding. It was not permissible for them to challenge their dis- engagement when the tenure of the Chairman was over. What a Constitution Bench of this Court has observed in paragraph 45 of Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors. reported in 2006 (4) SCC 1, is quite apt. The said para reads as follows:-

“45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.....”

18. As stated by this Court in Umadevi (supra), absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment is impermissible and violative of Article 14 and 16 of the Constitution of India. As recorded in paragraph 53 of the report in SCC, this Court has allowed as a one time measure, regularization of services of irregularly appointed persons, provided they have worked for ten years or more in duly sanctioned posts. That is also not the case in the present matter.

19. In another judgment of this Court in State of Gujarat and Anr. Vs. P.J. Kampavat and Ors. reported in 1992 (3) SCC 226, this Court had occasion to look

into a similar situation. That was a case where persons concerned were appointed directly in the office of the Chief Minister on purely temporary basis for a limited period up to the tenure of the Chief Minister. This Court held that such an appointment was purely a contractual one, and it was co-terminus with that of the Chief Minister's tenure, and such service came to an end simultaneously with the end of tenure of the Chief Minister. No separate order of termination or even a notice was necessary for putting an end to such a service.

20. We have to note that in the present case the M.L.A. concerned was to function as the Chairman during the course of his tenure as an M.L.A., and had resigned with the announcement of the election for the state assembly. A proposal for regularization of the co-terminus employees appointed by him was directly sent to the Governor without the same being routed through the State Government. Similar such proposals have come to be rejected. As observed by this Court in *Union of India Vs. Dharam Pal* reported in 2009 (4) SCC 170, the requirement of being employed through proper channel could not be relaxed in an arbitrary and cavalier manner for the benefit of a few persons. This would be clearly violative of Articles 14 and 16 of the Constitution of India.

21. This being the scenario, the learned Single Judge as well as the Division Bench, and the subsequent learned Single Judge have erred in passing the orders that they have. The High Court has erred in deciding Writ Petition No.3181 of 2008 by directing the board to implement the resolution/note issued by the Chairman and approved by the Governor. The Division Bench has also erred in leaving the order passed by the learned Single Judge in that petition undisturbed. So has the learned Single Judge erred who heard the second Writ Petition.

22. For the reasons stated above both these appeals are allowed, and the impugned judgments and orders in Writ Appeal No. 1131 of 2011 as well as one in Writ Petition No. 3181 of 2008 and Writ Petition No. 13428 of 2010 are set-aside. Writ Petition No. 3181 of 2008 and 13428 of 2010 shall stand dismissed. Consequently the Interim Applications in both these appeals, and the Contempt Petition No.1841 of 2011 filed by the respondent in the Madras High Court will also stand disposed of. In the facts of the present case we do not pass any order as to the costs.