

PETITIONER:
KARNATAKA STATE PRIVATE COLLEGE STOP-GAPLECTURERS ASSOCIATIO

Vs.

RESPONDENT:
STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT 29/01/1992

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
PANDIAN, S.R. (J)
KULDIP SINGH (J)

CITATION:
1992 AIR 677 1992 SCR (1) 397
1992 SCC (2) 29 JT 1992 (1) 373
1992 SCALE (1) 198

ACT:

Service Law-Private Degree Aided Colleges-Teachers-Karnataka Government's order dated 3rd October, 1982-Provision for ad-hoc appointments and reappointments with one day's break in service-Provision for payment of fixed salary being ten rupees less than the minimum paid to regular teachers-Validity of Provision for one day's break in service held ultra vires-Payment of fixed salary to temporary teachers held arbitrary-Directions for continuing services of temporary teachers, their regularisation and payment of salary on par with regular teachers issued-Practice of ad-hoc appointments deprecated.

HEADNOTE:

The Education and Youth Services Department of the State of Karnataka issued an order dated 3rd October 1981 which provided two different methods of selection of teachers in private aided degree colleges-one by Selection Committee and another by Management. Under the order appointments for more than three months could be made by a selection committee whereas temporary appointments for less than 3 months could be made by the Management and such temporary appointments could be continued for a further period of not more than 3 months, with one day's break in service. The Government order also provided that such temporary teachers shall be paid fixed salary being ten rupees less than the minimum payable to regular teachers. The teachers temporarily appointed under the said order accordingly continued in service for a long period but with a break of a day or two every three months in their service. Subsequently, they filed a writ petition in this Court seeking regularisation of their services by invoking the principle of equitable estoppel arising from implied assurance due to their long continuance. It was contended on behalf of the petitioners that; (i) since the State has regularised the services of contract teachers and local teachers appointed in Government or vocational colleges they should also be extended similar treatment; and (ii) payment of fixed salary instead of regular emoluments for eight months in a year was discriminatory and arbitrary.

398

Allowing the petition, this Court,

HELD: 1. Provision of one day's break in service in the Government order is deprecated and is struck down as ultra vires. If the intention was to differentiate between appointments for more than three months and others it was a futile exercise. That was already achieved by providing two different methods of selection one by Selection Committee and other by Management. Distinction between appointment against temporary and permanent vacancies are well known in service law. It was unnecessary to make it appear crude. If the purpose was to avoid any possible claim for regularisation by the temporary teachers then it was acting more like a private business house of narrow outlook than government of a welfare State. Such provisions cannot withstand the test of arbitrariness. [403 G; 402 A-B]

B.R. Parineeth & Ors. v. The State of Karnataka & Ors. CMW 6232 of 1990 decided on 3.7.1990, referred to.

2. Order for payment of fixed salary to temporary teachers is declared invalid. An appointment may be temporary or permanent but the nature of work being same and the temporary appointment may be due to exigency of service, non-availability of permanent vacancy or as stop-gap arrangement till the regular selection is completed, yet there can be no justification for paying a teacher, so appointed, a fixed salary by adopting a different method of payment than a regular teacher. Fixation of such emoluments is arbitrary and violative of Article 14 of the Constitution. [403 G; 402 F-G]

2.1 Payment of nearly eight months' salary by resorting to government order and, that too fixed amount, for the same job which is performed by regular teachers is unfair and unjust. Such injustice is abhorring to the constitutional scheme. [403 A-B;]

3. The practice of management of not making regular selection utmost within six months of occurrence of vacancy is condemned. The helplessness expressed by the State that the managements went on continuing such teachers without holding regular selections despite orders of educational authorities may be true but not convincing and sounds like surrender in favour of private managements. [403 C, 402 E]

3.1 Managements shall take steps, whenever necessary, to fill up permanent vacancies in accordance with rules. Delay in filling

399

up the vacancies shall not entitle the management or director to terminate the services of temporary teachers except for adequate reasons. But it shall entitle the government to take such steps including supersession of management or stopping grants-in-aid if premitted under law to compel the institutions to comply with the rules. [404 B]

4. Regularisation of services of teachers of Government colleges by the State may not furnish, any basis for petitioners to claim that the state may be directed to issue similar order regularizing services of teachers of privately managed colleges. All the same such policy decisions of government in favour of one or the other set of employees of sister department are bound to raise hope and expectations in employees of other departments. Therefore, it is incumbent on governments to be more circumspect in taking such decisions. [404 E-G]

5. Ad-hoc appointments, a convenient way of entry usually from backdoor, at times even in disregard of rules and regulations, are comparatively recent innovation to the service jurisprudence. The infection is widespread in

government or semi-government departments or State financed institutions. Malady appears to be widespread in educational institutions as provisions for temporary or ad-hoc appointments have been exploited by the managements of private aided colleges to their advantage by filling it, on one hand, with persons of own choice, at time without following the procedure and keeping the teachers exposed to threat of termination, on the other, with all evil consequences flowing out of it. Any institution run by State fund but managed privately is bound to suffer from such inherent drawbacks. [400 G-H; 401 C-D]

6. In the circumstances of the case following directions are issued:-

a) Any teacher appointed temporarily shall be continued till the purpose for which he has been appointed exhausts or if it is in waiting of regular selection then till such selection is made; [404 A]

b) Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise; [405 B]

400
c) If regular selections have been made the government shall create additional posts to accommodate such selected candidates; [405 B]

d) From the date of judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent post. [405 D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 873 of 1990.

(Under Article 32 of the Constitution of India)

WITH

Contempt Petition No. 6 of 1991.

AND

Civil Appeal Nos. 309 to 373 of 1992.

R.K. Garg, Kapil Sibal, V. Lakshmi Narayanan, D.K. Garg and P. Mahale for the Petitioners.

R.N. Narasimhamurthy, Kh. Nobin Singh and M. Veerappa for the Respondents.

The Judgment of the Court was delivered by

R.M. SAHAI, J. Teachers appointed temporarily for three months or less, by privately managed degree colleges receiving cent per cent grant-in-aid, controlled administratively and financially by the Educational Department of the State of Karnataka, seek regularisation of their services by invoking principle of equitable estoppel arising from implied assurance due to their continuance, as such, for years with a break of a day or two every three months. Another basis for direction to regularise is founded on denial of similar treatment by the State as has been extended to contract teachers and local teachers appointed in government or vocational colleges. Payment of fixed salary instead of regular emoluments for eight months in a year and that too for number of years is yet another grievance.

Ad-hoc appointments, a convenient way of entry usually from back-door, at times even in disregard of rules and regulations, are comparatively recent innovation to the service jurisprudence. They are individual problem to begin

with, become a family problem with passage of time and end with human problem in court of law. It is unjust and unfair to those who are lesser fortunate in society with little or no approach even though better qualified, more meritorious and well deserving. The infection is

401

widespread in government or semi-government departments of State financed institutions. It arises either because the appointing authority resorts to it deliberately as a favour or to accommodate someone or for any extraneous reason ignoring the regular procedure provided for recruitment as a pretext under emergency measure or to avoid loss of work etc. Or the rules or circulars issued by the department itself empower the authority to do so as a stop-gap arrangement. The former is an abuse of power. It is unpardonable. Even if it is found to have been resorted to as a genuine emergency measure the courts should be reluctant to grant indulgence. Latter gives rise to equities which have bothered courts every now and then. Malady appears to be widespread in educational institutions as provisions for temporary or ad-hoc appointments have been exploited by the managements of private aided colleges to their advantage by filling it, on one hand, with persons of own choice, at times without following the procedure, and keeping the teachers exposed to threat of termination, on the other, with all evil consequences flowing out of it. Any institution run by State fund but managed privately is bound to suffer from such inherent drawbacks. In State of Karnataka it is basically State created problem due to defective rule and absence of any provisions to effectively deal with such a situation.

What is surprising is that till today the State has not been able to bring out a comprehensive legislation on such an important aspect as education and the appointment, selection, promotion, transfer, payment of salary etc. of teachers is regulated by government orders issued from time to time. Since 1980 it is governed by an order issued by Educational and Youth Services Department of the State of Karnataka on 3rd October, 1981. Clause 5 of the Order reads as under:

"Any appointment for a period of three months or less in a College shall be made, subject to approval of the Director within one month from the date of appointment by the Management or such authority as the Management by Order, may specify in that behalf. Such temporary appointments may, however, be continued for a further period of not more than three months, with one day's break when selection through the Selection Committee is likely to take time. The Director may, for reasons to be recorded in writing refuse approval for the said appointment and the services of the person so appointed shall be terminated forthwith."

Appointments for more than three months is to be by a regularly constituted selection committee under clause 4 of the order. But if is for three months or less than the appointment could be made by the

402

Management under clause 5 subject to approval by the Director. It could be continued for further period of three months if there was delay in regular appointment. But the direction to re-appoint with one day's break is not understandable. If the intention was to differentiate between appointments for more than three months and others it was a futile exercise. That had already been achieved by

providing two different methods of selection one by Selection Committee and other by Management. Distinction between appointment against temporary and permanent vacancies are well known in service law. It was unnecessary to make it appear crude. If the purpose was to avoid any possible claim for regularisation by the temporary teachers then it was acting more like a private business house of narrow outlook than government of a welfare State. Such provisions cannot withstand the test of arbitrariness. That is why the High Court, while disposing of CMW 6232 of 1990 - B.R. Parineeth & Ors. v. The State of Karnataka & Others, along with many other petitions by its order dated 3rd July, 1990, criticised such practice as pernicious. The rule making authority lost sight of fact that such policy was likely to give dominance to vested interests who leave no opportunity to exploit the educated youth who have to survive even at cost of one meal a day. That is apparent from continuance of these teachers for 8 to 10 years with sword of termination hanging on their head ready to strike every three months at the instance of either the management or the Director. Provision of stop-gap appointments might have been well intended and may be necessary as well but their improper use results in abuse. And that is what has happened on a large scale. The helplessness expressed by the State in the counter-affidavit that the managements went on continuing such teachers without holding regular selections despite orders of educational authorities may be true but not convincing. It sounds like surrender in favour of private managements.

Another obnoxious part is the emoluments that have been paid to the temporary teachers. The order provides that the teacher shall be paid a fixed salary which is ten rupees less than the minimum payable to regular employee. This method of payment is again beyond comprehension. An appointment may be temporary or permanent but the nature of work being same and the temporary appointment may be due to exigency of service, non-availability of permanent vacancy or as stop-gap arrangement till the regular selection is completed, yet there can be no justification for paying a teacher, so appointed a fixed salary by adopting a different method of payment than a regular teacher. Fixation of such emoluments is arbitrary and violative of Article 14 of the Constitution. The evil inherent in it is that apart from the teachers being at the beck and call of the management are in danger of being exploited as has been done by the management

403

committees of State of Karnataka who have utilized the services of these teachers for 8 to 10 years by paying a meagre salary when probably during this period if they would have been paid according to the salary payable to a regular teacher they would have been getting much more. Payment of nearly eight months' salary, by resorting to clause 5, and, that too fixed amount, for the same job which is performed by regular teachers is unfair and unjust. A temporary or ad-hoc employee may not have a claim to become permanent without facing selection or being absorbed in accordance with rules but no discrimination can be made for same job on basis of method of recruitment. Such injustice is abhorring to the constitutional scheme.

While deprecating direction by the government to break service for a day or two and paying fixed salary to temporary employees we must condemn the practice of management of not making regular selection utmost within six months of occurrence of vacancy. Nor the helplessness of

government can be appreciated as expressed in the counter affidavit that despite orders the management continued with it. If the government could not take effective measure either by superseding the management or stopping grant-in-aid then either it was working under pressure from Management of the private aided institutions or it was itself interested in continuing such unfortunate state of affairs. In either case the equities have been created because of doing of state itself, therefore, it should resolve it. One such method was adopted by the High Court in individual petitions filed by the teachers by directing the Director of Education to hold selection. In pursuance of it some of the teachers have been regularised. But substantial number still remain due to State's going back on its agreement before the court by creating obstacles in implementation of the order. Many of them who have faced selection and have secured higher marks and are in zone of selection are being denied the benefit because it is claimed that such regularisation would be contrary to reservation policy of the State. The policy is under challenge in another proceedings in the Court. Without entering into validity of the policy which according to petitioner results in cent per cent reservation we are of opinion that such practice should be put an end to, therefore, following directions are necessary to be issued:

(1) Provision in clause 5 of one day's break in service is struck down as ultra vires.

(2) Orders for payment of fixed salary to temporary teachers is declared invalid. But it shall operate prospectively. A teacher appointed temporarily shall be paid the salary that is admissible to any teacher appointed regularly.

404

(3) Any teacher appointed temporarily shall be continued till the purpose for which he has been appointed exhausts or if it is in waiting of regular selection then till such selection is made.

(4) Management shall take steps, whenever necessary, to fill up permanent vacancies in accordance with rules. Delay in filling up the vacancies shall not entitle the management or Director to terminate the services of temporary teachers except for adequate reasons. But it shall entitle the government to take such steps including supersession of management or stopping grants-in-aid if permitted under law to compel the institutions to comply with the rules.

So far these petitioners and teachers similarly situated are concerned, it could not be disputed that many of those teachers who appeared for selection in pursuance of the High Court order secured sufficiently high marks but they could not be regularised because the vacancies are said to be reserved. But what has been lost sight of is that petitioners are seeking regularisation on posts on which they have been working and not fresh appointments, therefore, they could not be denied benefit of the High Court's order specially when no such difficulty was pointed out and it was on agreement by the respondents that the order was passed. No material has been brought on record to show that any action was taken prior to decision by the High Court against any institution for not following the reservation policy. To deny therefore the benefit of selection held on agreement by the respondents is being unjust to such selectees. Further the State of Karnataka appears to have been regularising services of adhoc

teachers. Till now it has regularised services of contract lecturers, local candidates, University lecturers, Engineering colleges, lecturers etc. It may not furnish, any basis for petitioners to claim that the State may be directed to issue similar order regularising services of teachers of privately managed colleges. All the same such policy decisions of government in favour of one or the other set of employees of sister department are bound to raise hopes and expectations in employees of other departments. That is why it is incumbent on governments to be more circumspect in taking such decisions. The petitioners may not be able to build up any challenge on discrimination as employees of government colleges and private colleges may not belong to the same class yet their claim cannot be negated on the respondents' stand in the counter affidavit that the regularisation of temporary teachers who have not faced selection shall impair educational standard without explaining the effect of regularisation of temporary teachers of University and even technical colleges. Such being the unfortunate state of affairs this Court is left with no option but to issue following directions to respondents for not honoring its com-

405

mitments before the High court and acting contrary to the spirit of the order, and also due to failure of government in remaining vigilant against private management of the college by issuing timely directions and taking effective steps for enforcing the rules:

- (1) Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.
- (2) If regular selections have been made the government shall create additional posts to accommodate such selected candidates.
- (3) The teachers who have undergone the process of selection under the directions of the High Court and have been appointed because of the reservation policy of the Government be regularly appointed by creating additional posts.
- (4) From the date of judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent post.
- (5) Such teachers shall be continued in service even during vacations.

For these reasons this petition succeeds and is allowed. The direction is issued to respondents in the terms indicated above.

Civil Appeal Nos. 309-373 of 1992 arising out of SLP (Civil) Nos. 13131-95 of 1990 challenging the order of High Court in CMW 6232 of 1990 decided on 3rd July, 1990 is disposed of accordingly.

Contempt Petition No. 6 of 1991 alleging violation of status quo order granted in W.P. (Civil) No. 873 of 1990 need not be decided. It is directed to be filed.

The petitioners shall be entitled to their cost from the State of Karnataka.

T.N.A.

Petition allowed.

406