

CASE NO.:
Appeal (civil) 857 of 2007

PETITIONER:
Punjab State Warehousing Corp. , Chandigarh

RESPONDENT:
Manmohan Singh & Anr

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 19496 of 2005)

S.B. Sinha, J.

Leave granted.

The State of Punjab formulated a scheme on 23.01.2001 for regularisation of its employees.

The question which arises for consideration in this appeal arising out of a judgment and order dated 25.04.2005 passed by a Division Bench of the Punjab and Haryana High Court in Civil Writ Petition No. 10307 of 2004 is as to whether the appellant herein was bound to invoke the said scheme in respect of its own employees.

The validity or otherwise of the said Scheme came to be questioned before this Court. This Court passed an interim order. Pursuant thereto or in furtherance thereof, Respondent No. 1 herein was appointed on contract basis as Restorer on a consolidated monthly salary. His services indisputably were extended from time to time.

The contention of the appellant is that the contract of the respondent's service was not renewed as the services of Respondent No. 1 were not required any further and, thus, by an order dated 24.12.2001 his services were terminated. Questioning the validity of the said order, a writ petition was filed by the Respondent before the High Court. The said writ petition was disposed of directing the appellant herein to consider the case of Respondent No. 1 in the backdrop of the said Scheme dated 23.01.2001. Inter alia on the premise that in view of a clarification issued by the State Government that the said scheme was not applicable to the case of contract employees, the respondent's claim for regularisation was rejected by an order dated 17.06.2004. A fresh Writ Petition was filed which by reason of the impugned judgment has been allowed.

The High Court, however, in its judgment opined that the case of Respondent No. 1 was covered by the said policy decision and as such he was entitled to the benefit thereof. The appellant is, thus, before us.

One of the questions which was raised for its consideration before the High Court was as to whether the workmen engaged on contract basis were covered by the Scheme dated 23.01.2001.

The said purported scheme of the State was not made in terms of Article 162 of the Constitution of India. It was by way of a circular letter dated 23.01.2001. The State, without issuing any notification or without even exercising its statutory power governing the constitution and functioning of the statutory authorities like the appellant, sought to extend the same to public sector undertakings, corporations, boards, local authorities and other autonomous bodies which it could not do in law. Therein, it was stated:

"iv. For accommodating work charged/ daily wage/ other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the DOP and FD for filling up the vacancies would not apply. Wherever for the absorption/ regularization of workers as per the above policy any Department's own Recruitment Rules come in the way, such provisions of the Recruitment Rules will stand relaxed."

However, a clarification was sought for from the State Government by the Managing Director of the appellant by a letter dated 29.03.2001 as to whether the staff not being charged against any project or work is to be regularized or not; in response where to, it was clarified:

" It is clarified that those employees who are working in Corporation for the last more than three years continuously apart from work charge/daily wages, are to be regularized because these categories of workers are covered under the policy instructions No. 11/34/2000-4 P. p.31301 dated 23.01.01. issued by the Government of Punjab."

It is not the case of the parties hereto that Respondent No. 1 was appointed upon compliance of the constitutional scheme as adumbrated in Articles 14 and 16 of the Constitution of India. It is also not the case of the respondent that prior to his appointment either any advertisement was issued or even the Employment Exchange was notified in regard to the then existing vacancies. It is also not known whether there existed a sanctioned post. It is furthermore neither in doubt nor in dispute that the terms and conditions of the services of the employees of the appellant - Corporation which is a body constituted and governed under the Punjab Warehousing Corporation Act, 1957 are governed by the provisions thereof and the rules framed thereunder.

The terms and conditions of employees of the appellant - Corporation being governed by a statute and statutory rules could have been altered only by reason of amendment of the rules only. The State as is well known had no say in that behalf. We fail to understand as to under what circumstances the State had issued the aforementioned circular letter dated 23.01.2001. A policy made by a State would ordinarily apply only in respect of the employees working under it. The policy decision of a State cannot be extended to a statutory Corporation unless it is permitted to do so by the statute. [See Pawan Alloys & Casting Pvt. Ltd., Meerut v. U.P. State Electricity Board and Ors. (1997) 7 SCC 251]

Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso

appended to Article 309 of the Constitution of India, laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules. A'fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution of India; the same cannot be done by way of a circular letter.

This aspect of the matter is covered by a decision of this Court in A. Umarani v. Registrar, Cooperative Societies & Ors. [(2004) 7 SCC 112] wherein the law was stated in the following terms:

"No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."

A Constitution Bench of this Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors. [(2006) 4 SCC 1] categorically held that any appointment made in violation of the Constitutional scheme would be a nullity.

Submission of Mr. Nidhesh Gupta, learned counsel appearing on behalf of the respondent that having regard to the fact that the policy decision was made as a one time measure, the scheme in question would come within the protective umbrella of paragraph 53 of Umadevi (supra) could be accepted for more than one reason. Firstly, because the High Court did not proceed on that basis; secondly, if the scheme itself was not applicable in case of Respondent No. 1, even in terms of the said policy decision, as has been clarified by it, the question of invoking the said paragraph in the instant case would not arise. Moreover, in view of series of decisions of this Court explaining paragraph 53 Umadevi (supra), such a Scheme could be made out only in respect of such employees whose appointments were irregular and not illegal.

This aspect of the matter has recently been considered in Punjab Water Supply & Sewerage Board v. Ranjodh Singh & Ors. [2006 (13) SCALE 426] in the following terms:

"A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones."

[See also Municipal Corporation, Jabalpur v. Om Prakash Dubey \026 2006 (13) SCALE 266 : (2007) 1 SCC 373]

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.