

V. Krishnamurthy Vs. the Chief Superintendent (Training) Power Engineer Training Society (a Government of India Organisation), thermal Power Station, Personel Training Institute and anr.

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Court : Chennai

Decided On : Jun-14-1990

Reported in : (1991)177MLJ1

Appellant : V. Krishnamurthy

Respondent : The Chief Superintendent (Training) Power Engineer Training Society (a Government of India Organisat

Judgement :

ORDER

K.M. Natarajan, J.

1. This writ petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus or other appropriate orders calling for the records relating to the impugned order of the first respondent in No. NEY/ADM/5585 dated 9.8.1989 and quash the same.

2. The case of the petitioner as disclosed from the affidavit can be briefly stated as follows: He was appointed as a peon in the Thermal Power Station, Personnel Training Institute, Neyveli, a Government of India organization, on 12.3.1974.

Thereafter on 27.12.1983 he was appointed as lower division clerk with effect from 31.12.1983 on ad hoc basis in and by the order of the first respondent dated 31.12.1983. Consequent on his appointment as lower division clerk his initial pay was fixed at Rs. 260 in the scale of pay of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400. Thereafter, a typewriting test was conducted on 14.10.1985 for the purpose of drawal of annual increment. He passed the test. He was allowed, to draw his first increment with effect from 14.10.1985 as he passed the test. Thereafter, he was allowed to draw increment every year and he was continuously officiating in the post of lower division clerk from 31.12.1983. While such being the case the first respondent issued the impugned order dated 9.8.1989 reverting him to the post of peon from 9.8.1989. Against the order of the first respondent, he preferred an appeal to the second respondent on 11.8.1989. But the second respondent has not passed any order on his appeal. Hence the writ petition. He would state that he was appointed as against a sanctioned post of lower division clerk consequent on the promotion of P. Lakshmikanthan and he worked as typist for six years. The second respondent in fairness ought to have regularised the services of the petitioner in the post of lower division clerk. He is fully qualified to hold the post of lower division clerk. He has not been found unsuitable for the post and no deficiency was found in him. When applications were called for appointment to the post of lower division clerk from Group D employees, the petitioner who was working as a lower division clerk in Group C post was not called upon to submit his application. Had he been called upon to do so, he would have done so. On the other hand, he was given the impression that he would continue in the post of the lower division clerk. Lastly it is stated that since the petitioner was working for a long period in the post of lower division clerk, it cannot be said that it was only an ad hoc appointment. The impugned order is violative of Articles 14 and 16 of the Constitution of India, since the temporary service in question is not for a short period intended to him due to some emergent and unforeseen circumstances. Further, the petitioner was not given any opportunity much less a reasonable opportunity to show cause against the reversion and this is violative of the principle of natural Justice. Hence this writ petition. In W.M.P. No. 16803 of 1989 the impugned order was stayed and he was allowed to continue in the post of the lower division clerk.

3. In the counter-affidavit filed by the respondents, it is stated that the post of lower division clerk was caused temporarily purely by the ad hoc promotion of P. Lakshmikanthan as Upper Division Clerk on ad hoc basis in the place of K.V. Ramana Rao. As such, permanent post was existing only in the post of Head Clerk. When this post is regularised by a suitable candidate, there are possibilities of incumbent of ad hoc promotees of Head Clerk going back to their original post. The temporary vacancy caused by the appointment in the post of lower division clerk was filled by the appointment of the writ petitioner on purely temporary ad hoc basis. It is further stated that the petitioner is not possessed of any certificate issued by the Board of Technical Examinations for passing typewriting lower grade examination. The typing test conducted by the department was only for the purpose of sanctioning increment for the individual after two years period from the date of his ad hoc appointment to the post of lower division clerk. It is further stated that no permanent vacancy existed and hence the regular procedure for filling up the vacancy through the Employment Exchange was not resorted to and whatever number of years the petitioner has worked on ad hoc basis against the temporary vacancy cannot be considered for the post while filling it on direct recruitment. During 1984-85 there was a ban on recruitment of persons to this post and no new recruitments were done during those years. Hence, the petitioner continued on ad hoc basis as lower division clerk. In March, 1989, the ban referred to was lifted and clearance was obtained from the Government for filling up 48 vacancies. The petitioner continued to function as lower division clerk on ad hoc basis for six years due to the ban of recruitment etc. The circular dated 11.4.1989 for the recruitment to the post of lower division clerk was circulated among all the Group C and Group D employees. The petitioner as lower division clerk in charge of the dispatch work has initialed the circular for the purpose of circulation among Group C and D employees. He has not applied for the post wantonly though he knows very well that his candidature will be considered only when he applied for the post. Hence the respondents prayed for dismissal of the petition.

4. Learned Counsel for the petitioner submitted that admittedly the petitioner was appointed as a peon in the Thermal Power Station, Neyveli, a Government of India Organization, on 12.3.1974 and he was continuously working without any blemish whatsoever till 27.12.1983 when he was appointed as lower division clerk with

effect from 31.12.1983. The petitioner is possessed of sufficient educational qualification. He has passed the typewriting test conducted by the department, even though he has not obtained a certificate issued by the Board of Technical Examinations for passing typewriting lower grade examination. Admittedly the typing test was conducted by the department on 14.10.1985 in which he was issued a certificate. Since he passed the test, an order was passed on 24.10.1985 to the effect that consequent on passing the typewriting test conducted on 14.10.1985, he was allowed to draw the first increment with effect from 14.10.1985 F.N. in the scale of pay of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400 plus usual allowances less the amount already paid and thereafter he had been getting all the increments periodically. The petitioner would submit that in the post of lower division clerk he has worked for six years and there was no adverse remark whatsoever against him. It is specifically stated in the order dated 27.12.1983 that the petitioner is hereby appointed as lower division clerk faith effect from 31.12.1983 afternoon on ad hoc basis in the scale of pay of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400 plus usual allowances as admissible from time to time in the Power Engineers Training Society. It is also stated that his appointment is against the vacancy of sanctioned post of lower division clerk caused consequent to the promotion as upper division clerk on ad hoc basis of P. Lakshmikanthan, lower division clerk. It is stated in the counter that the post of lower division clerk was purely temporary caused by the ad hoc promotion of P. Lakshmikanthan. This has caused a vacancy in the post of lower division clerk. In 1984-85 there was ban on recruitment of persons. In 1989 the ban was lifted. Hence the petitioner was reverted. It is not in dispute that the petitioner was not given any opportunity before the order of reversion was passed. His also admitted that the petitioner had been in continuous service on temporary basis from 31.12.1983 and he has been officiating in the post of lower division clerk since that date and he has been allowed to draw increments only after he passed the necessary test in typewriting. In this connection, the learned Counsel for the petitioner drew the attention of this Court to three decisions for the proposition that the department having allowed the petitioner to continue in the post of lower division clerk for six years is not entitled to revert him to the post of peon and that there cannot be any ad hoc appointment for six years. In Jethani Mohan

Chanchaldas Civil Judge v. Union of India (Bombay) (1984) 1 All. India Ser.L.J. 76 at page 77, a Division Bench of the Bombay High Court held:

It may be made clear at the outset that although the order appointing the petitioner to the post of Civil Judge Junior Division, dated 16.4.1975, speaks about the appointment being on ad hoc basis, as the order does not itself specify the time for which the petitioner was to hold that appointment nor was the petitioner appointed in any leave vacancy, in our view the appointment of the petitioner cannot be considered as being really on ad hoc basis. It was, stated by the respondents that the vacancy in the post in which the petitioner was appointed was a reserved post for scheduled caste but in fact no appointment of a scheduled caste candidate was ever made thereafter. The petitioner's appointment, therefore, though on the face of it appeared to be on ad hoc basis under the circumstances, it could be said in the least a temporary appointment.

That was a case where the appointment was made on 16.4.1975 on ad hoc basis and the reversion was made on 6.4.1979. It was held in that case that the said order of reversion against the petitioner was clearly vitiated. In Upendra Nath Ojha v. Union of India and Ors. (1986) 3 All.L.J. 358' it was observed as follows:

That apart, a particular incumbent had discharged duties in a particular post and having officiated in that post for a long term of seven years and the petitioner having been allowed to cross the efficiency bar, it would no longer remain open to the respondents to say that the petitioner, Shri Ojha, was discharging his duties in the higher post as a stop gap arrangement/temporary measure. This view taken by us gains considerable support from the judgment of the Supreme Court reported in Narendra Chadha and Ors. v. Union of India and Ors. : [1986]1SCR211 . True it is that the case decided by their lordships of the Supreme Court arose out of a dispute between the direct recruits and the promotees in regard to their respective seniority in the Indian Economic Service. But the observations of their Lordships at paragraph 19 of the said Judgment would be very much relevant for the present purpose and we sincerely hope that the authorities would change their views in the light of the dictum laid down by their lordships and we feel persuaded to quote the observations of their lordships see paragraph 16 which runs thus:

As observed in *D.R. Nim v. Union of India and Ors.* A.I.R. 1957 S.C. 1301. When an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violating of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to him some emergent and unforeseen circumstances.

In *Mrs. Usha Kapoor v. State of Punjab and Ors.* (1989) 1 All. Ser. L.J. 54 it was held:

After hearing the learned Counsel for the parties and having gone through their pleadings and the material on the record, I am of the considered view that the impugned action of the respondents is wholly arbitrary, hence, deserves to be struck down being violative of Articles 14 and 16 of the Constitution of India. No doubt, when the petitioner was originally appointed on 18th January, 1979, she was appointed on ad hoc basis. She continued to serve as such for more than 7 years and it was -with effect from 31st March, 1986 that her services were terminated. During this long period of 7 years the petitioner earned seven good reports, one being very good. Such a continuous service and that too without any break could not be allowed to be treated as merely ad hoc, and the state could not be permitted to dispense with the services of the petitioner unceremoniously by passing a simple order of termination of the service. During this long period extending to 7 years, the State Government could have easily made up its mind as to whether the services were to be retained or not. Once having come to know that the 7 annual confidential reports of the petitioner were 'good/very good' and the petitioner fulfilled the qualifications of age as well as Master's Degree in Psychology with specialisation in vocational guidance, it was the duty of the State Government to ensure that the petitioner was appointed on regular basis. The Damocles sword could not be permitted to hang over her head for an indefinite period. Such an interim and stop-gap arrangement was neither legally permissible nor administratively conducive for the efficiency of the services. If the respondents

were not satisfied with the work and conduct of the petitioner, her services should have been terminated much before the expiry of 7 years, if not immediately after the expiry of first terms of ad hoc appointment; otherwise the ad hoc employment of the petitioner should have been regularised as was done by the State Government by ignoring the advice of the Public Service Commission in the case of Mis. K. Gupta, as admitted by the State Government in para 11, sub-para (iii) of their written statement. Hence, this remissness on the part of the State Government can not be condoned by accepting their pleas that 'the direct recruitment to the post of Assistant Employment Officer (V.G.) is made on the recommendations of the Punjab Public Service Commission and the Government in normal circumstances does not regularise the services of the petitioner by relaxing the service rules.' In order to regularise the service of the petitioner if relaxation was found necessary to be made by the State Government, the same should have been made instead of terminating the services of the petitioner.

Applying the ratio in the above decisions to the facts of this case, it is seen that though the original appointment was on ad hoc basis, there is absolutely nothing to show in the order that the appointment was for a particular period. From the various documents produced, it is seen that the petitioner is officiating in the post of lower division clerk and discharging his duties. Having officiated in the post for a long period of 6 years and having been allowed to cross the efficiency bar, it is no longer open to the respondent to say that the petitioner was discharging the duties in the said post as a stop gap arrangement or temporary measure. The fact of crossing the efficiency bar is also in favour of the petitioner. Further, the petitioner is possessed of sufficient qualification for the said post. It is immaterial whether the typewriting test is conducted by the department or by the Board of Technical Examination. When once the respondents have offered the post to the petitioner and have passed an order that he is eligible for increment, it is not open to them now to say that he is not possessed of the said qualification. Considering the facts and circumstances of the case and applying the ratio in the above quoted divisions, the impugned order is clearly violative of Articles 14 and 16 of the Constitution. Further, the petitioner was not given any opportunity before the impugned order was passed. The learned Counsel for the respondents submitted that it is not a regular promotion and that if it is a regular promotion, he can be

allowed to continue. But here it is a case of temporary promotion. I do not find any merit in the said contention. The impugned order reads that the ad hoc promotion of the petitioner is hereby cancelled with effect from 9th August, 1989, while the order referred to therein dated 27.12.1983 by which he was appointed reads that he is appointed as lower division clerk with effect from 31.12.1983 afternoon on ad hoc basis in the scale specified therein plus the usual allowances and admissible from time to time and there is absolutely nothing to show that it is only a promotion on temporary basis. Whatever that be, the fact remains that he was officiating as lower division clerk for six years continuously and his reversion at this stage is nothing but arbitrary and violative of Articles 14 and 16 of the Constitution of India as his temporary appointment in the post is not for a short period. Hence, I have no hesitation in holding that the impugned order is liable to be struck down for the reasons already stated above.

5. In the result, the writ petition is allowed. The impugned order dated 9.8.1989 passed by the first respondent reverting the petitioner to the post of the peon is hereby quashed as prayed for. However, there will be no order as to costs.