

Ram Das Vs. U.P. State

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Court : Allahabad

Decided On : Feb-03-2012

Judge : Anil Kumar

Appeal No. : SERVICE SINGLE NO. 3185 OF 1993

Appellant : Ram Das

Respondent : U.P. State

Judgement :

1. Matter is taken in revised cause list. None appeared on behalf of the petitioner.
2. Heard learned Standing Counsel and perused the record.
3. Petitioner was appointed on contractual basis in the matter in question and last contractual appointment of the petitioner was for a period of three months with effect from 4.10.1991,thereafter, the services of the petitioner was not extended, as such, he filed a present writ petition before this court with the following main prayer:-

"Issue a writ of certiorari quashing the oral termination of the services of the petitioner with effect from 1.7.1992."

4. In view of the abovesaid facts, the question which arises for consideration in the present case is whether the petitioner who is appointed on contractual basis has

got any right to get his contractual appointment, extended in service after the expiry of the term of the contractual employment.

5. In the case of Director Institute of Management Development U.P. Vs. Smt. Puspa Srivastava, J.T. 1992 (4) S.C. 489 wherein the Apex Court held as under:-

"Para No. 23 - In the instant case, there is no such rule. The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end."

6. Division Bench of this court in the case of Life Insurance Corporation and another Vs. Sri Rajeev Kumar Srivastava 1994 (12) LCD held as under:-

"Para No. 17 - The next submission of the learned counsel of the appellants is that the judgment of Hon'ble Supreme Court in the case of Director, Institute of Management Development U.P. (supra) determines the case of the parties may be seen. In this case Honb'le Supreme Court has held that where the appointment is purely on ad hoc basis and is contractual and by efflux of time the appointment comes to an end, the person holding such post can have no right to continue on the said post. We have considered the submissions. The ratio of the judgment of Honb'le the Supreme Court leaves no room for doubt that the petitioner's contractual employment on daily payment basis having come to end by efflux of time, does not amount to retrenchment. Thus the provision of Section 25(F) of Industrial Disputes Act is also not attracted."

7. Further Hon'ble Apex Court in the case of State of Orissa Vs. Chandra Sekhar Mishra 2002(10) SCC 583 held as under:-

"Secondly, the respondent was appointed on 1.2.1972 on contract basis for a period of three years. This period of contract was extended up to 31.1.1978. when the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee."

8. The same view again reiterated by the Hon'ble Apex Court in the case of Account Officer (Aandl) A.P. SRTC and Another Vs. P.Chandra Sekhara Rao and others, 2006 (7) SCC page 488.

9. Constitution Bench of the Apex Court in Secretary, State of Karnataka and others Vs. Uma Devi and others, IT 2006 (4) SC 420, in Para 34 of the judgment has observed as under:-

"If it is contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."

10. In the case of Uma Devi (Supra) the Apex Court in para 36 of the judgment has observed as under:-

"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 eyes open. It may be true that he is not in a position to bargain not at arms 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. IF the Court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the Court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or causally, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast, contrary are in search of employment and one is not compelled to accept the casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term."

11. For the foregoing reasons, the present writ petition lacks merit and is dismissed. No order as to costs.

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