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STATE OF KARNATAKA AND ORS.

v.

G. HALAPPA AND ORS.

APRIL 26, 2002

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[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

Service Law :

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Karnataka Education Department Services (Recruitment to Secondary School Assistant Grade-II Cadre and Physical Education Teachers Grade-I) (Special Recruitment) Rules, 1983 :

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Appointments—On contract basis—Till regular incumbent selected and reports on duty—Salary less than the minimum of Pay Scale—Service not counted for the purpose of further service in Government—Analogy between the contract employees and local candidates whose services are regularly absorbed could not be drawn—Karnataka Civil Services (Absorption of Persons Appointed on Contract Basis in the category of posts of Primary School Teachers, Secondary School Teachers, Government Junior College Lecturers, First Grade College Lecturers, Lecturers in Polytechnics, Lecturers in Government Engineering Colleges, into State Civil Services) (Special) Rules, 1990.

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Appellant-State appointed local candidates by making special provisions in the Karnataka Education Department Services (Recruitment to Secondary School Assistant Grade-II Cadre and Physical Education Teachers Grade-I) (Special Recruitment) Rules, 1983; on the other hand respondents were recruited on contract basis on certain terms for a period of one year or until the regular incumbent reports for duty whichever is earlier. The candidates appointed on contract basis would get consolidated salary equal to Rs. 10 less than the minimum of the pay scale attached to the post. These respondents were subsequently regularly recruited to Government services as Teachers and Lecturers. Thereafter, the State framed certain rules for absorption of contract Teachers/Lecturers on certain terms. However, it was made clear that they would not be entitled to claim any arrears of salary. It was also provided therein that the initial basic pay of a contract teacher absorbed under the Rules shall be fixed in the scale of pay of the category of the post to which

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he has been appointed at a stage equal to the basic pay that he would have drawn if he had been appointed to such post as regular candidate, with effect from the date of his appointment as a contract teacher. The contract employees moved the Central Administrative Tribunal to treat them as local candidates as under the rules local candidates have been conferred some additional pay benefits including pay protection. Tribunal relied on its earlier Judgment in *Parmeshwarappa's* case and decided the case in favour of contract employees by treating them at par with local candidates under Rules 41-A of the Karnataka Civil Services Rules. Hence appeal by the State.

Allowing the appeals, the Court

HELD : 1. The appointments to which the contract employees joined are very precarious appointments, the same being terminable at the end of one year or earlier than even before the regular recruitment takes place. It was made clear that their salary would be fixed at less than the minimum of the pay scale attached to the post and their service as rendered would not be counted for the purpose of further service in Government. If this position is clear, then an analogy could not have been drawn between contract employees and the local candidates whose services are regularly absorbed. [504-C-E]

2. To invoke Rule 41A of Karnataka Civil Services Rules would be out of place in a case of this nature because the intendment of such Rules is that if a person has been appointed as a local candidate and if he is likely to be absorbed in a regular service but in a different post, certain benefits are given to him. That is not the situation in the present case. Similarly, in the case of a regularly appointed candidate if he is appointed in another post, continuity would be maintained so far as emoluments are concerned. Such a situation in the present case will not arise at all because it is not the continuation of the original appointment made which is on a contract basis and contract comes to an end either on the expiry of the term or when a regular candidate reports on duty. Particularly when the contract itself makes it clear that the service shall not be counted for any purpose, the claim of the respondents could not have been brought under Rule 41A at all. [504-E, F, G]

State of Maharashtra v. Digambar, [1995] 4 SCC 683 and *Union of India and Anr. v. K.N. Sivadas and Ors.*, [1997] SCR Supp. 3 p. 211, referred to.

3. The view taken by the Tribunal in *Parameshwarappa's* case is not justified and, therefore, that view shall stand overruled. However, it is clarified that if any emoluments have already been paid to the respondents in terms

A of the orders made by the Tribunal as confirmed by the High Court, the same shall not be recovered. [505-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 525-641 of 1999.

B From the Judgment and Order dated 1.4.1998 of the Karnataka High Court in W.P. No. 10496/98 and 10497-10612 of 1998.

WITH

C.A. Nos. 2941-3091/2002, 3491-3516, 3747-3748 of 2000)

C V.R. Reddy, N. Ganpathy, Sanjay R. Hegde, Satya Mitra, S.K. Kulkarni, M. Giresh Kumar, Ankur Kulkarni, Ms. Sangeeta Kumar, S. Ravindra Bhat, Naveen R. Nath, Lalit Mohini Bhat, S.R. Hegde and Vinod Pandey for the appearing parties.

D The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted in SLP(C) Nos. 6456-6606/2000.

E The State of Karnataka appointed stipendiary graduates or local candidates by making special provisions in exercise of the powers conferred by the proviso to Article 309 of the Constitution [vide notification no. DPAR 50 SDE 81(A) dated June 25, 1982]. Similarly, in different departments recruitments were made because a large number of vacancies stood unfilled. In supersession or addition to other Rules, the Karnataka Education Department Services (Recruitment to Secondary School Assistant Grade-II Cadre and Physical Education Teachers Grade-I) (Special Recruitment) Rules, 1983 were framed, which were notified on September 28, 1983.

F The respondents were recruited under these rules and Rule 3(1) of the said Rules provided that the appointment shall be on contract basis for a period not exceeding one year or until the candidates selected by the recruitment committees report to duty whichever is earlier and that their appointment shall stand terminated on the expiry of the said period. The terms of contract were spelt out by a separate order [No. ED 296 DPI 83 dated December 1, 1983] issued by the State Government. The selection was to be made by a committee on the basis of the marks obtained in the qualifying examination. The appointment of the candidates on contract basis shall be on

the consolidated salary equal to Rs.10 less than the minimum of the pay scale attached to the post. A

Subsequently, regular recruitment took place in which the respondents were also participants and they were regularly recruited into the Government service and have been appointed in the category of posts of Primary School Teachers, Secondary School Teachers, Government Junior College Lecturers, First Grade College Lecturers, Lecturers in Polytechnics, Lecturers in Government Engineering Colleges. Thereafter, the State Government framed certain rules known as 'the Karnataka Civil Services (Absorption of Persons Appointed on Contract Basis in the category of posts of Primary School Teachers, Secondary School Teachers, Government Junior College Lecturers, First Grade College Lecturers, Lecturers in Polytechnics, Lecturers in Government Engineering Colleges, into State Civil Services) (Special) Rules, 1990 [hereinafter referred to as 'the Absorption Rules']'. It was provided therein that irrespective of the general recruitment rules and other rules in that regard a contract teacher will be absorbed in the category of post to which he was initially appointed on contract basis other than the posts of Lecturers in Government Junior Colleges. It was also provided therein that the initial basic pay of a contract teacher absorbed under these rules shall be fixed in the scale of pay of the category of the post to which he is appointed at a stage equal to the basic pay that he would have been eligible to draw had he been appointed to such post as a regular candidate in accordance with the rules of recruitment with effect from the date of his appointment as a contract teacher. It was however, made clear that he would not be entitled to any arrears of salary for the period of service rendered by him prior to the date of absorption under these rules. D E

Application had been filed before the Karnataka Administrative Tribunal [hereinafter referred to as 'the Tribunal'] seeking for direction to the authorities making the selection so that the petitioners therein were to be treated as "local candidates" for the purpose of recruitment, as was done by the Tribunal in certain other similar cases. The Tribunal in *Parameshwarappa's* case further elucidated that such persons who had been appointed after selection by the DLRC on a regular basis will be entitled to have their pay fixed by taking note of the service rendered by them on contract basis and necessary benefit of increment be given by stepping up the salary. When this order was challenged before this Court, the same was dismissed on the ground of delay in presentation of the same. F G H

A The picture that emerges before the Court in these matters is that there were a large number of vacancies available in the State of Karnataka and those posts could not be filled up for one reason or the other. Pending direct recruitment, steps were taken to fill up those vacancies either by engaging the services of stipendiary graduates or by engaging the services of contract employees. In the case of either of these categories, they were to draw a minimum emolument which is less than the minimum of the pay scale attached to the post. Further, it was made clear that the period of service rendered will not be counted for any purpose. The expression "local candidate" and Rule 41A of the Karnataka Civil Services Rules and Note 7 to Rule 41 was however, interpreted in a very strained manner by the Tribunal to uphold the contention raised on behalf of the petitioners.

The appointments to which the contract employees or the stipendiary graduates joined are very precarious appointments, the same being terminable at the end of one year or earlier than even before the regular recruitment takes place. It was made clear that their salary is fixed at the emolument which is less than the minimum of the pay scale attached to the post and their service as rendered will not be counted for the purpose of further service in the Government. If this position is clear, as to how an analogy could have been drawn between contract employees and the local candidates whose services are regularly absorbed is difficult to understand. Subsequently, the local candidate is appointed to a post which is vacant and he will be absorbed in the same post and appropriate benefits will be given to him. To invoke Rule 41A of the Karnataka Civil Services Rules would be out of place in a case of this nature because the intendment of the said Rule is that if a person has been appointed as a local candidate and if he is likely to be absorbed in the regular service but in a different post, certain benefits are given to him. That is not the situation in the present case. Similarly, in the case of a regularly appointed candidate if he is appointed in another post, continuity would be maintained so far as emoluments are concerned. Such a situation in the present case will not arise at all because it is not the continuation of the original appointment made which is on a contract basis and contract comes to an end either on the expiry of the term or on a regular candidate reporting to duty. Particularly when the contract itself makes it clear that the service shall not be counted for any purpose, the claim of the respondents could not have been brought under Rule 41A at all.

H In *State of Maharashtra v. Digambar*, [1995] 4 SCC 683 and *Union of India and Anr. v. K.N. Sivasdas and Ors.*, [1997] SCR Supp. 3 p. 211 this Court

has held that even in cases where a large number of petitions have been filed by different categories of persons and the question to be answered is the same, if some of which have been decided and which reached this Court have been dismissed by this Court at the SLP stage and the burden upon the State falls too heavy on its coffers, it may become necessary for the Court to set it right appropriately. Therefore, the arguments advanced on behalf of the appellants that if we interfere with the order of the Tribunal it may lead to anomalous situation in respect of some of the persons who have already been given benefit on the basis of *Parameshwarappa's* case and not in case of some others need not detain us. A B

In that view of the matter, we do not think the view taken by the Tribunal in *Parameshwarappa's* case is justified and, therefore, that view shall stand overruled. Thus, we have no option but to allow these appeals because both the Tribunal and the High Court have proceeded on the basis of *Parameshwarappa's* case. The orders made by the High Court and Tribunal stand set aside. However, we make it clear that if any emoluments have already been paid to the respondents in terms of the orders made by the Tribunal as confirmed by the High Court, the same shall not be recovered but in other respects the order made by us shall be given full effect to. C D

S.K.S.

Appeals allowed.