

PUNJAB STATE WAREHOUSING CORPN., CHANDIGARH

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v.

MANMOHAN SINGH AND ANR.

FEBRUARY 20, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Service Law—Regularization—scheme for regularization by State Government—Contract employee of statutory Authority Termination of services—Challenged—Direction by High Court to employer to consider the case of employee in the backdrop of the Scheme—Employee denying regularization on the ground that Scheme not applicable to the contract employee—Denial of regularization set aside by High Court—On appeal, held: Employee not entitled to regularization under the Scheme—The terms and conditions of the employees of the employer was governed by statutory rules—Scheme of the State could not have been extended to the Statutory Corporation—Constitution of India, 1950—Article 309 and 162—Policy decision.

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State Government formulated a Scheme for regularization of services of its employees. Respondent No. 1 was appointed with the appellant on contract basis pursuant to interim order passed by this Court. His services were extended from time to time. Subsequently the contract was not renewed, and the services were terminated. The termination order was questioned in Writ Petition. The Writ Petition was disposed of directing the appellant to consider the case of respondent No. 1 in the backdrop of the Scheme of the State Government. Appellant rejected the claim of regularization in view of the clarification issued by the State Government that the Scheme was not applicable to the case of contract employees. Thereagainst respondent filed another Writ Petition and the same was allowed by High Court. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: 1. The scheme for regularization 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

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A 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. [Para 8] [936-E-F]

B 2. 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. [Para 10] [937-B-D]

D 3. 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 had no say in that behalf. 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. [Para 11]

E *Pawan Alloys and Casting Pvt. Ltd., Meerut v. U.P. State Electricity Board and Ors.*, [1997] 7 SCC 251, referred to.

F 4. 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. [Para 12] [937-G-H]

Secretary, State of Karnataka & Ors. v. Umadevi and Ors., [2006] 4 SCC 1, followed.

H *A. Umarani v. Registrar, Cooperative Societies and Ors.*, [2004] 7 SCC 112, relied on.

5. 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's* case. 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. Such a Scheme could be made out only in respect of such employees whose appointments were irregular and not illegal. [Para 15] [938-C-E]

Punjab Water Supply and Sewerage Board v. Ranjodh Singh and Ors., (2006) 13 SCALE 426, relied on.

Municipal Corporation, Jabalpur v. Om Prakash Dubey, (2006) 13 SCALE 266 [2007] 1 SCC 373, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 857 of 2007.

From the final Judgment and Order dated 25.4.2005 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 10307/2004.

Gurminder Singh, A.P. Dhamija, Ram Niwas, B.K. Sharma and Pratibha Jain for the Appellant.

Nidesh Gupta, Vinod Shukla, J. Goel and S. Janani for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

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

3. 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.

4. 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

A were extended from time to time.

5. 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.

6. 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.

7. 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.

8. 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."

9. 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 whereto, it was clarified: A

“ 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. B p.31301 dated 23.01.01. issued by the Government of Punjab.”

10. 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. C D

11. 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. E F

12. 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. G H

A 13. 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:

B “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.”

C 14. 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.

D 15. 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.

E 16. 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:

F “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.”

G [See also *Municipal Corporation, Jabalpur v. Om Prakash Dubey* [2006] 13 SCALE 266 : [2007] 1 SCC 373.]

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

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Appeal allowed.