

A MAN SINGH

v.

COMMNR. GARHWAL MANDAL, PAURI & ORS.

(Civil Appeal No. 1366 of 2009)

B MARCH 3, 2009

[S.B. SINHA AND DR. MUKUNDKAM SHARMA, JJ.]

C *Service Law – Appointment/Selection – Names called from Employment Exchange for Selection – Short term employee with the employer also applied for regular appointment on the post – Initially placed in selection list – Later, on rectification of mistake, his name removed from the list – His services terminated – Held: Selection having been made in accordance with rules after rectification of mistake, D exception thereto cannot be taken – The candidate with long service cannot be given preference over the candidate selected as per rules.*

E **Appellant was working with the respondent as a peon on a short term vacancy from time to time from 1989 to 1996. In 1995, the names were called from Employment Exchange for regular appointment to the post. Appellant also applied for the same. Initially his name was at serial F No. 3 of wait list of selection. But later his name was deleted and name of another candidate was inserted at its place. Thereafter, appellant's services were terminated. His challenge to the termination order in writ petition was dismissed by High Court. Hence the present appeal.**

G **Dismissing the appeal, the Court**

HELD: 1.1 Appellant does not attribute any *mala fide* to the respondent. It is not his case that the other candidate in fact, had not secured higher marks than him. If a mistake was committed, the respondents were

entitled to rectify the same. If those mistakes have been rectified and the irregularities have been removed by preparing the selection list strictly in accordance with rules, no exception thereto can be taken. All persons similarly situated under constitutional scheme are required to be treated equally. [Para 6] [1106-B-C]

1.2. The other candidate was wrongly placed in the category of reserved candidates as he had competed with the general category candidates. Appellant, indisputably, had been appointed on periodical basis. He might have continued to work as a Peon for a long time but by reason thereof, he did not acquire any indefeasible right to become a permanent employee of the department. [Para 7] [1106-B; 1106-C]

1.3. Respondent had filled up the vacancies in terms of the rules. Furthermore, appellant's name was not sponsored by the Employment Exchange. In absence of any proof that his name was sponsored by the Employment Exchange, the same could not have been considered. [Para 11] [1109-F, G]

Arun Tiwari and Ors. v. Zila Mansavi Shikshak Sangh and Ors. AIR 1998 SC 331 and Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and Ors. 2006 (8) SCC 487, referred to.

1.4. Regularization of services, is impermissible in law. Though belatedly respondents had taken steps to fill up the existing vacancies in terms of the recruitment rules and upon following the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. The plea of the appellant that as he has been working for a long time, should have been given preference over the other candidate cannot be accepted. [Paras 7 and 8] [1106-F, G]

A *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.* **2006 (4) SCC 1, followed.**

Official Liquidator v. Dayanand and Ors. **2008 (10) SCC 1, relied on.**

B *Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka and Ors.* **AIR 1992 SC 677, distinguished.**

C **1.5. Even if the other candidate is no longer in service as stated before the Court; that by itself may not be a ground, particularly at this distant time, to direct appointment of the appellant. Recruitment process started in the year 1995. A select list was prepared. Ordinarily, the life of a select list is one year. In absence of any notification extending the validity of such select list, no appointment can be directed to be made from such select list. [Para 12] [1110-C]**

Case Law Reference:

E	2006 (4) SCC 1	Followed.	Para 8
	2008 (10) SCC 1	Relied on.	Para 9
	AIR 1992 SC 677	Distinguished.	Para 10
F	AIR 1998 SC 331	Referred to.	Para 11
	2006 (8) SCC 487	Referred to.	Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1366 of 2009.

G From the Judgment & Order dated 3.12.2002 of the High Court of Uttaranchal at Nainital Civil Misc, Writ Petition No. 6232 (S/S)/2001.

R. Krishnamorthi and Mohan Pandey for the Appellants.

H

Abhay Prakash Sahay and Jatinder Kumar Bhatia for the Respondents.

A

The Judgment of the Court was delivered by

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

B

2. Appellant had been appointed as a Peon on a short term vacancy from time to time for a fixed period. Such appointments were said to have been made on diverse dates, namely - on 9.5.1989, 20.9.2989, 4.12.1989, 2.2.1991, 2.3.1991, 29.6.1991, 27.8.1991, 11.12.1991, 1.1.1992, 31.3.1992, 26.8.1992, 5.3.1993, 2.8.1993, 28.9.1993, 4.12.1993, 4.1.1994, 23.5.1994, 6.9.1995, 6.11.1995 and 15.2.1996.

C

Names were called for from Employment Exchange in the year 1995. Appellant applied for the post of Peon which fell vacant in the District of Chamoli. A Selection Committee was constituted for selection of the candidates. Appellant is said to have appeared before the Selection Committee. The name of the appellant was placed at serial No.3 in the general category. However, on or about 29.5.1995, the name of the appellant was deleted and in his place the name of one Mohan Lal was inserted. Appellant's services were terminated on 5.4.1996.

D

E

3. Aggrieved by and dissatisfied therewith, he filed a writ petition on or about 3.12.2002 before the High Court of Uttaranchal which by reason of the impugned judgment has been dismissed.

F

4. Mr. R. Krishnamorthi, learned counsel appearing on behalf of the appellant, would urge that appellant having been working since 1989 continuously, his services could not have been terminated particularly in view of the fact that he was selected for regular appointment by a selection committee.

G

5. It has been brought on record that the name of the appellant was wrongly placed at serial No.3 in the wait-list as

H

A Mohal Lal had secured higher marks than the appellant. As there were only three vacancies, appellant's name had to be deleted.

B 6. Appellant does not attribute any *mala fide* to the respondent. It is not his case that Mohan Lal, in fact, had not secured higher marks than him. If a mistake was committed, the respondents were entitled to rectify the same.

C All persons similarly situated under our constitutional scheme are required to be treated equally. Some mistakes were found in the selection list. If those mistakes have been rectified and the irregularities have been removed by preparing the selection list strictly in accordance with rules, no exception thereto can be taken.

D 7. Mohan Lal was wrongly placed in the category of reserved candidates as he had competed with the general category candidates. Appellant, indisputably, had been appointed on periodical basis. He might have continued to work as a Peon for a long time but by reason thereof, he did not acquire any indefeasible right to become a permanent employee of the department.

F Regularization of services, as is well-known, is impermissible in law. Though belatedly respondents had taken steps to fill up the existing vacancies in terms of the recruitment rules and upon following the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India.

G 8. Contention of the appellant that as he has been working for a long time, should have been given preference over said Shri Mohan Lal, in our considered opinion, cannot be accepted.

H In *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* [(2006) 4 SCC 1], a Constitution Bench of this Court has laid down the law in the following terms :

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a 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. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would

A

B

C

D

E

F

G

H

A not be entitled to any right to be absorbed or made
permanent in the service. In fact, in such cases, the High
Court may not be justified in issuing interim directions,
since, after all, if ultimately the employee approaching it
is found entitled to relief, it may be possible for it to mould
B the relief in such a manner that ultimately no prejudice will
be caused to him, whereas an interim direction to continue
his employment would hold up the regular procedure for
selection or impose on the State the burden of paying an
employee who is really not required. The courts must be
C careful in ensuring that they do not interfere unduly with the
economic arrangement of its affairs by the State or its
instrumentalities or lend themselves the instruments to
facilitate the bypassing of the constitutional and statutory
mandates.”

D 9. We are bound by the said decision as opined in *Official
Liquidator v. Dayanand & Ors.* [(2008) 10 SCC 1], wherein it
has categorically been laid down :

E “90. We are distressed to note that despite several
pronouncements on the subject, there is substantial
increase in the number of cases involving violation of the
basics of judicial discipline. The learned Single Judges
and Benches of the High Courts refuse to follow and accept
F the verdict and law laid down by coordinate and even
larger Benches by citing minor difference in the facts as
the ground for doing so. Therefore, it has become
necessary to reiterate that disrespect to constitutional
ethos and breach of discipline have grave impact on the
credibility of judicial institution and encourages chance
G litigation. It must be remembered that predictability and
certainty is an important hallmark of judicial jurisprudence
developed in this country in last six decades and increase
in the frequency of conflicting judgments of the superior
judiciary will do incalculable harm to the system inasmuch
H as the courts at the grass root will not be able to decide

as to which of the judgment lay down the correct law and which one should be followed. A

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law." B
C
D
E

10. Reliance placed by *Mr. Krishnamorthi on Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka & Ors.* [AIR 1992 SC 677] is wholly misplaced. It is not a case where one set of ad hoc recruits was being replaced by another set of ad hoc recruits. F

11. Respondent had filled up the vacancies in terms of the rules. Furthermore, appellant's name was not sponsored by the Employment Exchange. He might have got himself registered in the Employment Exchange but in absence of any proof that his name was sponsored by the Employment Exchange, the same could not have been considered. G

The Employment Exchange sponsors the names of the candidates in terms of the provisions laid down in the Employment Exchange Manual. The Employment Exchange H

- A authorities are bound to sponsor the names in accordance with seniority. Names of a candidate can be sponsored only when his turn comes and not prior thereto {[See *Arun Tiwari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.* [AIR 1998 SC 331]; *Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and Ors.* [(2006) 8 SCC 487]}
- B

12. Mr. Krishnamorthi submits that Shri Mohan Lal is no longer in service. That by itself may not be a ground, particularly at this distant time, to direct appointment of the appellant. Recruitment process started in the year 1995. A select list was prepared. Ordinarily, the life of a select list is one year. In absence of any notification extending the validity of such select list, no appointment can be directed to be made from such select list.
- C

- D 13. There is, thus, no merit in this appeal. It is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

K.K.T.

Appeal dismissed.