

A SHREENIDHI KUMAR & ORS.
v.
UNION OF INDIA & ORS.
(Civil Appeal No. 9893 of 2011)

B NOVEMBER 17, 2011

[R.M. LODHA AND H.L. GOKHALE, JJ.]

Service Law:

C *Contract employment – Engagement of Subject Matter*
Experts (SMEs) in State of Bihar on contract basis for two
years – Maximum age limit ranging from 37 to 42 years for
different categories – Advertisement challenged as
inconsistent with State Government Resolution dated
D *18.7.2007 which provided 65years as maximum age limit for*
contract employment – HELD: Resolution dated 18.7.2007 is
applicable in a case of delay in regular employment against
sanctioned posts and in a case of requirement of employees
for short period i.e. for few days or few months – Such
E *appointment has to be for a short period and in no case*
exceeding one year – The period of employment exceeding
12 months will not be covered by the Resolution – In the
instant case, engagement of SMEs was for a period of two
years and it was not against any sanctioned posts and, as
such, Resolution dated 18.7.2007 was not applicable – As a
F *necessary corollary, the maximum age limit of 65 years*
provided in the Resolution is not available for employment
exceeding one year in temporary schemes .

G **The Department of Agriculture, Government of Bihar,**
by an advertisement dated 13.6.2009 invited applications
for employment on contract basis for 4062 post of
Subject Matter Expert (SME) under the Krishi Prasar
‘Sudharikaran’ Yojna for a period of two years. The age
limit put for different categories ranged from 37 to 42

years. The said advertisement was challenged in a writ A
petition before the High Court as inconsistent with the
Resolution dated 18.7.2007 issued by the Personnel and
Administrative Reforms Department, Govt. of Bihar which
provided the maximum age limit for employment on B
contract basis as 65 years. The Single Judge of the High
Court directed the writ petitioners to approach the State
Government. On such a representation, the Director,
Department of Agriculture, Govt. of Bihar declined any
alteration in age limit mentioned in the advertisement. The
order of the Director was challenged in writ petitions C
before the High Court. The Single Judge of the High
Court by order dated 13.8.2009 quashed the order of the
Director and sent the matter back to the Agriculture
Production Commissioner to pass fresh order as regards
validity of the age limit clause in the advertisement and D
to bring it in tune with the Resolution. However,
meanwhile, the employment list of SME was finalised on
10.8.2009. The names of the appellants appeared in that
list, but they were not given employment because of the
order dated 13.08.2009 passed by the Single Judge. The
appellants, therefore, challenged the order of the single E
Judge in a Letters Patent Appeal before the Division
Bench of the High Court, which dismissed the appeal
holding that by finalisation of the Employment List dated
10.8.2009 no vested right accrued in favour of the
appellants. F

Disposing of the appeal, the Court

Held: 1.1. The Resolution dated 18.7.2007 provides for
procedure and guidelines for employment on contract
basis in two contingencies, namely, (i) in a case of delay G
in regular employment against the sanctioned posts, but
such appointment has to be for a short period and in no
case, exceeding one year; and (ii) in case of requirement
of the employees to work for short period in temporary
schemes, i.e. for few days or for few months; it cannot H

A be few years. The employment period of 'two' years is little long to constitute 'short period' contemplated in para 2(2) of the Resolution. The period of employment in temporary schemes exceeding 12 months, thus, will not be covered by the Resolution. As a necessary corollary, B the maximum age limit of 65 years provided in para 2(8) of the Resolution is not available for employment exceeding one year in the temporary schemes. Any other view will be against all norms of public employment. [para 13] [411-G-H; 412-A-D]

C 1.2. Insofar as the advertisement for appointment of SME to 4062 posts on contract basis under the Yojna is concerned, the employment period is for maximum two years. The Director was, thus, right when he observed in his order that the Resolution providing for upper age limit D of 65 years was not applicable for employment on contract basis under the advertisement as the SMEs are not being employed against the approved posts and their employment was being done temporarily for two years. [para 14] [412-E-F]

E 1.3. The orders dated 13-8-2009 and 23-3-2010 passed by the Single Judge and the Division Bench, respectively, of the High Court are set-aside. However, in the circumstances of the case, it would not be in the interest of justice to unsettle the appointments of SME F already made on 24.2.2010 against 4062 posts under the Yojna, since less than four months' contract period is left for those appointees as the maximum period of employment is two years. In case the posts of SME under the Yojna are required beyond two years from 24-2-2010, G it is directed that the authorities concerned shall make fresh appointments in accordance with law. [para 15] [412-G-H; 413-A-B]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9893 of 2011.

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ORS.

From the Judgment & Order dated 23.3.2010 of the High Court of Judicature at Patna in LPA No. 1310 of 2009. A

Nagendra Rai, Shantanu Sagar, Smarhar Singh, Abhishek Singh, Gopi Raman, Priti Roshani (for T. Mahipal) for the Appellants. B

Ardhendumauli Kumar Prasad (for Gopal Singh) for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted. C

2. On July 18, 2007, a Resolution (for short "Resolution") was issued by the Personnel and Administrative Reforms Department, Government of Bihar providing for procedure and guidelines for employment on contract basis. Inter alia, it provided that employment on the contract basis will be done only against the sanctioned posts and on the basis of the advertisement. It further provided that employment on contract basis may be considered under any scheme for special proposal for short period only. In case of delay in regular employment against the permanent posts, the employment on contract basis can be made for short time and for maximum period of one year. It also provided that maximum age limit for employment on contract basis would be 65 years. D E

3. On June 13, 2009, an advertisement (hereinafter referred to as "advertisement") was issued in the newspaper "Hindustan" by the Department of Agriculture, Government of Bihar inviting applications for employment on contract basis for 4062 posts of Subject Matter Expert (for short "SME") under "Krishi Prasar Sudridhikaran Yojna (for short "Yojna"). The advertisement provided for minimum qualification and also the age limit - on 1.1.2008: 37 years for unreserved; 40 years for extremely Backward and Backward Castes; 40 years for women (unreserved, extremely Back and Backward) and 42 F G H

A years for SC/ST (Male and Female). The other details like reservation, basis of selection, period of employment etc. were also given in the advertisement along with the format of the application.

B 4. The above advertisement was challenged by 13 persons in a Writ Petition (being CWJC NO. 7366 of 2009) before the High Court of Patna. The Challenge was to clause (2) relating to age limit. The petitioners therein alleged that the age limit prescribed in the advertisement was inconsistent with the Resolution as the maximum age limit prescribed therein for employment on contract basis was 65 years.

C 5. The Single Judge of the High Court, by his order dated July 13, 2009, while dealing with the challenge to the age limit prescribed in the advertisement directed the petitioners therein to approach the State Government (Agriculture Department) with a representation to reconsider clause (2) of the advertisement and make it in tune with the Resolution. The Single Judge also observed that while considering the representation, the authorities would bear in mind that the appointment on similar posts in agriculture department had not been made for over 15 years and the petitioners therein had become over-age during those years and considering these aspects, the authorities should fix the maximum age in clause (2) of the advertisement.

F 6. Consequent upon the order dated July 13, 2009 and the representation made by the persons who were petitioners in the Writ Petition before the High Court, the Director, Department of Agriculture, Government of Bihar (for short "Director") reconsidered the whole issue and held that there was no question of alteration of age limit mentioned in the advertisement. The Director, in his order, observed as follows:

H "The afore stated application and record of the office have been perused. In resolution memo No. - 2401 dated 18.7.07 of Personnel and Administrative Reforms

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Department, the upper age limit of 65 years for the approved posts pertaining to employment on contract basis is against. At present expert in subject matter are not being employed against the approved post. This employment is being done temporarily for two years. By this employment of 4062 specialist in subject matter has to be done as per the scheme Krishi Prasar Sudharikaran Scheme, and this scheme is totally temporarily. In this scheme age limit for unreserved is 37 years for most backward and 40 years for backward females (unreserved, most backward and backward) 40 years and for SC & ST (male and female) 42 years has been fixed by personnel and Administrative Reforms Department and the consent of the group of ministers has been granted. It has been issued vide departmental official order No. 75 dated 6.1.1990. As per the scheme the specialist of subject matter have been planned to be assigned numerous duties such as, scheme sponsored by the centre, preparation of list of macromode, isopomode/atma scheme, scheme to prepare the list of beneficiaries in seed expansion scheme, organising training at village level, technical assistance to the villagers, conduction and supervision of the work of seed production in agricultural areas, constitution of agricultural welfare group at village level and make arrangement for their training to collect specimen from the agriculturist for checking the soil quality and send the same to the laboratory and simultaneously send the examination report to the villagers, for selection of venues for farm field school, to arrange training during the period of travelling of F.F.S. and to collect the data of accounts and also to conduct other works assigned by the department of agriculture. Therefore, there is no question of alteration of age limit mentioned in Memo No. PR-13448 (Agri)9-10 Para 12”.

7. The above order passed by the Director came to be challenged in two Writ Petitions before the High Court of Patna.

- A The Single Judge of the High Court, vide order dated August 13, 2009, quashed the order of the Director and sent the matter back to the Agriculture Production Commissioner, Bihar with a direction to him to pass fresh order in consultation with the Personnel and Administrative Reforms Department of the State Government about the validity of clause (2) of the advertisement to bring it in tune with the Resolution. It is not necessary to refer to other directions given in the order dated August 13, 2009.

C 8. Before the order was passed by the Single Judge on August 13, 2009, as noticed above, in view of the order passed by the Director on July 23, 2009, the processing of the applications received pursuant to the advertisement was completed and the Employment List of SME was finalised on August 10, 2009. The present appellants are some of those whose names appeared in that list. However, these appellants were not given employment since immediately thereafter by the order dated August 13, 2009, the High Court had quashed the order passed by the Director and sent the matter back to the Agriculture Production Commissioner, Bihar for passing fresh order as noted above. The appellants, therefore, challenged the order of the Single Judge before the Division Bench in a Letters Patent Appeal.

F 9. The Division Bench, after hearing the parties, dismissed the appeal on March 23, 2010. The main reason given by the Division Bench in dismissing the appeal is that by finalisation of the Employment List dated August 10, 2009, no vested right has accrued in favour of the appellants. As regards the Resolution, the Division Bench observed that the Single Judge in his order had only interpreted the Resolution and directed the State Government to act accordingly and the State Government has not challenged that order.

G 10. One more fact needs to be noticed here that pursuant to the order of the Single Judge passed on August 13, 2009, the State Government altered the age limit for employment on contract basis for 4062 posts of SME under the Yojna;

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increased the age limit to 65 years and gave the employment on that basis on February 24, 2010 for a period of two years. A

11. We have heard Mr. Nagendra Rai, learned senior counsel for the appellants and Mr. A.K. Prasad for respondent Nos. 3 and 5. B

11. We shall reproduce relevant portion of para 2 of the Resolution. It reads thus:

"2. In the light of the above referred the State Government has taken the following decision for equalization of policy/ guidelines for employment on the basis of contract. C

(1) Employment on the basis of contract will be done only against the sanctioned posts and these kinds of employment will be done only on the basis of advertisement. D

(2) These kinds of employment will be done under any scheme for some special proposal and for short period only But in case of delay in regular appointment against the permanent created posts, this kind of employment can be made for short time. But this kind of employment against the permanent post will be done for maximum one year only. E

x xx xx xx xx xx xx F

(8) Maximum age limit will be 65 years for employment on contract."

13. The Resolution provides for procedure and guidelines for employment on contract basis. It basically provides for employment in the State on the contract basis in two contingencies namely; (i) in case of delay in regular employment against the sanctioned posts and (ii) in case of requirement of the employees to work for short period in temporary schemes. The Resolution, accordingly, has to be considered H

A being applicable to above two situations. If the regular employment against sanctioned posts has been delayed for one reason or the other, the employment can be made on contract basis. But such appointment has to be for a short period and in no case, exceeding one year. Similarly, if there is requirement of the employees to work in the temporary schemes for a short period then the employment on contract basis can be made. Although, time period of such employment is not stated in the Resolution, but the use of expression "short period only" is not without significance. The employment period of 'two' years is little long to constitute 'short period' contemplated in para 2(2) of the Resolution. 'Short period' referred to in para 2(2), in our opinion, means duration of few days or few months. It cannot be few years. The period of employment in temporary schemes exceeding 12 months, thus, will not be covered by the Resolution. As a necessary corollary, the maximum age limit of 65 years provided in para 2(8) of the Resolution is not available for employment exceeding one year in the temporary schemes. Any other view will be against all norms of public employment.

E 14. Insofar as the advertisement for appointment of SME to 4062 posts on contract basis under the Yojna is concerned, the employment period is for maximum two years. The Director was, thus, right when he observed in his order that the Resolution providing for upper age limit of 65 years was not applicable for employment on contract basis under the advertisement as the SMEs are not being employed against the approved posts and their employment was being done temporarily for two years.

G 15. We are, therefore, unable to uphold the order of the Single Judge dated August 13, 2009 and the order dated March 23, 2010 passed by the Division Bench. We set-aside these orders. Having held that, however, in our view, it would not be in the interest of justice to unsettle the appointments of SME already made on February 24, 2010 against 4062 posts

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under the Yojna now since less than four months' contract period is left for those appointees as the maximum period of employment is two years. In case the posts of SME under the Yojna are required beyond two years from February 24, 2010, we direct that the concerned authorities shall make fresh appointments in accordance with law. A
B

16. The appeal is disposed of accordingly. No order as to costs.

R.P.

Appeal disposed of.