CASE NO.:
Appeal (civil) 5185 of 2006

PETITIONER:
State of M.P. & Ors.

RESPONDENT:
Lalit Kumar Verma

DATE OF JUDGMENT: 24/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J.

Leave granted.

Respondent herein was appointed on daily wages. Indisputably, his recruitment was not made in terms of the statutory rules. No offer of appointment was also issued. He filed an application before the Labour Court purported to be for his classification in permanent category of workman. An Award was made on the premise that he having worked continuously for a period of more than six months, acquired a right for classification in the category of permanent clerk and in that view of the matter, his services could not have been terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947. He was directed to be classified on the permanent basis as clerk from two years prior to the date of his filing the application, i.e., 11th November, 1991. He was also held to be entitled to prescribed wages and thus, the amount of difference in wages of the said post and other benefits was directed to be paid. A writ petition was preferred thereagainst by the appellants before the High Court, which was also dismissed by a learned Single Judge, opining that no case had been made out to interfere therewith.

Shri S.K. Dubey, learned Senior Counsel appearing on behalf of the appellants would contend that the impugned judgment cannot be sustained in view of the fact that the respondent, in law, was not entitled to be classified as a permanent employee under the provisions of Madhya Pradesh Industrial Relations Act, 1960. Strong reliance in this behalf was placed on State of Madhya Pradesh & Ors. vs. Yogesh Chandra Dubey & Ors. [(2006) 9 SCALE 73 : (2006) 8 SCC 67)]. It was urged that in any event the respondent should not have been directed to be held entitled to back wages from 1992.

Mr. Ashok Mathur, learned counsel appearing on behalf of the respondent, on the other hand, would submit :-

(i) that the Special Leave Petition being barred by limitation, the delay in filing the same should not be condoned;

(ii) as the certificates issued in favour of the respondent had been examined by three Courts, this Court should not interfere therewith.

The application was filed by the respondent before the Labour Court on the premise that the order of termination dated 10.10.1991 was illegal and he should have been declared permanent on 1st April, 1987 after classification in the category of Supervisor and Clerk.

Clause 2 of the Standard Standing Orders reads as under:

"2. Classification of employees.Employees shall be classified as (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) badlies, (v) apprentices, and (vi) temporary:

(i) A permanent employee is one who has completed six months satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

* * *

(vi) temporary employee means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above."

A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. Respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee.

In Mahendra L. Jain & Ors. vs. Indore Development Authority & Ors. [(2005) 1 SCC 639], this Court opined :

"The 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed hereinbefore, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with. It is accepted that no appointment letter was issued in favour of the appellants. Had the appointments of the appellants been made in terms of the provisions of the Adhiniyam and the Rules framed thereunder, the respondent Authority was statutorily enjoined to make an offer of appointment in writing which was to be accepted by the appellants herein. Who made the appointments of the appellants to the project or other works carried on by the Authority is not known. Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed hereinbefore that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work of progress collection of ODA work. The said order is not an offer of appointment by any sense of the term."

It was further opined :

"The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lex, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of

employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.

* * *

For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-'-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules."

The said decision shall apply in all fours to the facts of the present case. {See also M.P. Housing Board & Anr. vs. Manoj Shrivastava [(2006) 2 SCC 702], Municipal Council, Sujanpur vs. Surinder Kumar, (2006) 5 SCC 173 and Indian Drugs and Pharmaceuticals Limited vs. Workman, Indian Drugs and Pharmaceuticals Limited, Civil Appeal No. 4996 of 2006 decided on 16.11.2006}

The respondent was also not appointed in terms of the statutory rules. He was furthermore not entitled to any regular scale of pay attached to any post. Ordinarily, therefore, he could not have been directed to be regularized in service having regard to the Constitution Bench decision of this Court in Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors. [(2006) 4 SCC 1]. Reliance, however, has been placed by Mr. Mathur on paragraph 53 of the judgment which reads as under :

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

Strong reliance has also been placed by Mr. Mathur upon a Division Bench decision of this Court in Mineral Exploration Corpn. Employees' Union vs. Mineral Exploration Corpn. Ltd. & Anr. [(2006) 6 SCC 310], wherein, this Court, while following the case of Uma Devi & Ors. (supra), invoked paragraph 53 of the said decision to opine :

"We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi (3) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal."

The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

In National Fertilizers Ltd. vs. Somvir Singh [(2006) 5 SCC 493], it has been held :

"The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in State of Mysore v. S.V. Narayanappa, R.N. Nanjundappa v. T. Thimmiah and B.N. Nagarajan v. State of Karnataka wherein this Court observed: [Umadevi (3) case 1 , SCC p.24, para 16]

"16 . In B.N. Nagarajan v. State of Karnataka this Court clearly held that the words 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service."

In R.S. Garg vs. State of U.P. & Ors. [2006 (7) SCALE 405], it has been held by this Court :

"The original appointment of 3rd respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench. Furthermore, relaxation, if any, could have been accorded only in terms of Rule 28 of the Rules, Rule 28 would be attracted when thereby undue hardship in any particular case is caused. Such relaxation of Rules shall be permissible only in consultation with the Commission. It is not a case where an undue hardship suffered by the 3rd respondent could legitimately been raised being belonging to a particular class of employee. No such case, in law could have been made out. It, in fact, caused hardship to other employees belonging to the same category, who were senior to him; and thus, there was absolutely no reason why an exception should have been made in his case."

{See also State of Gujarat & Anr. vs. Karshanbhai K. Rabari & Ors. [(2006) 6 SCC 21].}

Yet, recently in Principal, Mehar Chand Polytechnic & Anr. vs. Anu Lamba & Ors. [(2006) 7 SCC 161], it was held :

"The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus."

We may, however, notice that in Mineral Exploration (supra), the attention of this Court was not drawn to the earlier precedents including a Three Judge Bench of this Court in B.N. Nagarajan & Ors. vs. State of Karnataka & Ors. [(1979) 4 SCC 507].

The Labour Court, Industrial Tribunal as also the High Court, therefore, was not correct in directing regularisation of service of the respondent.

Our attention has been further drawn to the fact that by reason of an Office Order dated 26.4.2004, the Award of the Labour Court as also the High Court had been implemented by classifying the respondent as permanent on the basis of daily wages clerk.

Yet again, by another Office Order dated 17.12.2004, the provisions of Madhya Pradesh Revised Pay Rules, 1998 had been applied in his case.

The decision to implement the judgment was evidently subject to the decision of this Court. But, the Special Leave Petition is barred by limitation. The question, inter alia, which arises for consideration before us is as to whether we should condone the delay or allow the respondent to

continue to occupy the permanent post.

The legal position somehow was uncertain before the decision rendered by the Constitution Bench of this Court in Uma Devi (supra). It has categorically been stated before us that there was no vacant post in the department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision has also no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by Article 16 of the Constitution of India.

Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be sub-served if we direct that any benefit which has already been given to the respondent shall not be recovered. He is also directed to be paid a sum of Rs.1,50,000/- (One lakh fifty thousand) towards compensation and costs for condoning the massive delay in filing the Special Leave Petition.

The impugned judgments are set aside, subject to the directions mentioned hereinbefore. This appeal is allowed. No costs.