

CASE NO.:
Appeal (civil) 254 of 2004

PETITIONER:
Jodhpur Vidyut Vitran Nigam Ltd. and Anr.

RESPONDENT:
Nanu Ram & Ors.

DATE OF JUDGMENT: 24/11/2006

BENCH:
Arijit Pasayat & S. H. Kapadia

JUDGMENT:
J U D G M E N T
KAPADIA, J.
Civil Appeal No. 254 of 2004
with
Civil Appeal No. 1042 of 2006

The distinction between regularisation and conferment of permanence in civil service arises for determination in this civil appeal filed by the appellant-Jodhpur Vidyut Vitran Nigam Ltd. against decision dated 5.12.2002 delivered by the Division Bench of the High Court of Rajasthan in Civil Special Appeal (Writ) No. 867 of 2002.

Respondents 1 to 20 were engaged for temporary construction work in different divisions on muster roll around 21.4.1980 and on subsequent dates on daily wage basis. They completed two years of service after 31.3.1982. They claimed regularisation on completion of two years of service in terms of an Arbitration Award (Part I) dated 31.5.1978. Under para 15 of the said Award, it was stipulated that fixation in the regular pay scale for employees recruited on or after 1.4.1978 shall be regularised by the recruitment policy to be detailed in the Award to follow. On 15.6.1979 the second Award was accordingly published under which it was inter alia stipulated that workmen (work-charged) engaged between 1.4.1979 and 30.6.1979 have to be screened and if found satisfactory be classified as temporary work-charged and thereafter on rendering of satisfactory service for two years can be regularised in accordance with Award dated 31.5.1978 from 1.4.1981 and so on.

Relying on the two Awards, referred to above, on completion of two years the respondents herein claimed permanence. At this stage, it may be noted that, in terms of the above two Awards the State Government constituted Screening Committees from time to time. On 26.9.1983 the duly constituted Screening Committee was required to consider regularisation of casual and daily rated workmen, who had completed two years service prior to 31.3.1982. It needs to be reiterated that the respondents herein did not come in this categorization as they had not completed two years service on 31.3.1982. As stated above, they completed their services only after 31.3.1982. Be that as it may, the respondents herein claimed regularisation in terms of the above two Awards on completion of two years service from the date of their appointment, which as stated hereinabove, was after 31.3.1982. The above two Awards stood terminated w.e.f. 29.6.1985. The matter had a chequered history. Suffice it to state, that the respondents herein have been regularised on the basis of the recommendations of the Screening Committee w.e.f. 1.4.1989. The respondents seek regularisation from the prior date i.e. on and from 1.4.1982. On 6.9.1999 the State Government referred the dispute to the Industrial Tribunal. In the statement of claim respondents herein submitted that though they have been regularised w.e.f. 1.4.1989, like some of the other workmen they were also entitled to get regularisation w.e.f. 1.4.1982; that though they were entitled

for this benefit from 1.4.1982, they have been regularising only w.e.f. 1.4.1989 without any reason and justification; that workmen junior to them have been given this benefit w.e.f. 1.4.1982 and, in the circumstances, respondents herein prayed that all of them be granted permanent pay scale w.e.f. 1.4.1982 with interest at the rate of 18%.

By way of written statement, the appellants herein pointed out, that the respondents were engaged for temporary construction work in different divisions; that they were daily wage earners whose names appeared on muster roll; that they were not found eligible for regular pay scales by the Screening Committee on earlier occasions; that they did not comply with the eligibility criteria mentioned in Circular No. 1806 dated 26.9.1983; that vide Circular No. 867 dated 29.6.1985 the earlier two Awards were terminated and, therefore, the respondents herein were not entitled to rely upon those Awards; that ultimately, the respondents have been regularised on 1.4.1989 after they were found eligible by the Screening Committee; that in the State, thousands of muster roll workmen were engaged in the construction work for whom there was no vacant sanctioned post and, therefore, against the supernumerary posts the workmen had to be adjusted by giving regular pay scale and, therefore, it was not possible for the management to regularise all the workmen with retrospective effect. In the written statement filed by the State before the Industrial Tribunal it was pointed out that the Screening Committee had to consider the financial burden of regularising thousands of muster roll workmen with retrospective effect. In the written statement, it was further pointed out that, some of the muster roll workmen have been recruited without the approval of the management. All these considerations had to be kept in mind by the Screening Committee before granting regularization. In the circumstances, it was not possible for the State to appoint such committees at regular intervals.

By the impugned Award dated 24.8.2000 passed by the Industrial Tribunal, the claim of the respondents workmen was accepted for the following reasons.

According to the Industrial Tribunal, when the workers in the past were given the benefit of regularization on completion of two years continuous service as on 31.3.1982 then there was no reason to discriminate workmen who completed two years continuous service on and after 31.3.1982. According to the Industrial Tribunal, the above two Awards stood terminated in the year 1985 whereas respondents 1 to 20 herein completed two years service in April, 1982 and, therefore, there was no reason to deny the benefit of the pay scale to these respondents who completed two years service in April, 1982. This, according to the Tribunal, was discriminatory. According to the Industrial Tribunal, the State Government had discriminated between workmen who completed two years service by 31.3.1982 and those who completed two years service by 31.3.1983. According to the Industrial Tribunal, the above two Awards were in existence even on 31.3.1983 and, therefore, there was no reason to discriminate workmen who had completed two years service by 31.3.1982 on one hand and those who completed two years service by 31.3.1983. For the above reasons, the Industrial Tribunal came to the conclusion that the respondents herein cannot be deprived of their legal rights.

The Award of the Industrial Tribunal was challenged by the appellants in the High Court by filing Writ Petition No. 1060/01. The learned Single Judge upheld the Award vide judgment dated 7.8.2002. Aggrieved by the said judgment, the appellants herein moved in Civil Special Appeal No. 867/02. By the impugned judgment it was held that regularisation cannot be made dependant upon fortuitous circumstances, i.e., the date on which the Screening Committee was constituted. According to the impugned judgment, the respondents workmen had completed two years service by 1.4.1983 and on that date they had acquired their eligibility. According to the impugned judgment, the eligibility of the workmen was two years of continuous service; that the Screening Committee may meet at any time but once the workmen are found to be suitable, their regularisation has to relate

back to 1.4.1983 and, in the circumstances, the respondents herein were entitled to regularisation from the date when they became eligible for regularization. This civil appeal is filed against the impugned decision of the High Court dated 5.12.2002.

At the outset, we may state that, as held by this Court in the case of Secretary, State of Karnataka and Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1, there is a vital distinction between regularisation and conferment of permanence in service jurisprudence. The words "regular" or "regularisation" do not connote permanence. They cannot be construed 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 defects in the method of appointments. It has been held in the above judgment that it is a misconception to equate regularisation with permanence. (See para 15).

Applying the above test to the facts of the present case, the Screening Committee was required to examine the question as to how many workmen could be regularised, keeping in mind the budget provisions, availability of the posts, the number of muster roll workers engaged in the construction work without their being in existence vacant sanctioned posts, the manner in which these muster roll workers were initially recruited with or without the approval of the management and, thereafter, on the basis of eligibility the Screening Committee had to recommend their absorption in regular service. These aspects were required to be examined by the Screening Committee. Mere completion of two years was not the only criteria. Even in the Award dated 31.5.1978 read with Award dated 15.6.1979 the fixation in the regular pay scale was only for those employees who were recruited with the approval of the management and in accordance with law. Even under the Awards, as they then stood, the Screening Committee had to examine the performance of the workmen before granting them the regular pay scale. Granting of pay scale simpliciter is different from grant of permanency. While granting permanency, the State has to consider the number of posts falling vacant, those posts should exist as and by way of regular vacancy, the financial burden of granting permanency and, therefore, in our view, the High Court has failed to keep in mind the difference between the concept of grant of pay scale as distinct from grant of permanency. The State was not under an obligation to constitute Screening Committee at the end of each year. Constitution of the Screening Committee was within the discretion of the State Government dependant upon the above factors. Therefore, there was no question of comparing the case of the present respondents with the case of the workmen who got regularised prior to 31.3.1982. Each exercise by the Screening Committee has to be seen in the light of the above factors. In a given exercise, the State may have sufficient number of vacant posts to accommodate certain number of workers. However, that may not be the case in the subsequent years. Therefore, there is no question of any discrimination in the matter of regularisation or in the matter of grant of permanency.

In the circumstances, we set aside the impugned judgment of the Division Bench dated 5.12.2002 in Civil Special Appeal (Writ) No. 867/02 and remit the matter for de novo consideration in the light of the judgment of this Court in Umadevi case (supra).

Accordingly, the civil appeal stands allowed to the aforesaid extent with no order as to costs.

Civil Appeal No. 1042 of 2006:

This matter is a sequel to our decision in above Civil Appeal No. 254/04, therefore, we are not required to reiterate the facts of the case in detail once again. Suffice it to state that the sole respondent-Karam Singh was appointed as a daily rate worker on muster roll basis w.e.f. 26.5.1980. He completed two years' service after 31.3.1982. On 26.8.1983 the Screening Committee, appointed by the State Government met to consider the cases of workmen, who had completed two years service as on

26.9.1983. It recommended names for regularisation on the basis of their seniority and keeping in mind the budget provisions. After the meeting of the Screening Committee in 1983, there was no post available with the management. This was on account of financial constraints. However, on 5.6.1989 the duly constituted Screening Committee recommended the names of the workmen, including the respondent, for regularisation and grant of regular pay scale w.e.f. 1.4.1989. These recommendations were accepted by the Board of Directors after taking into consideration the financial condition of the Nigam. Thus, the respondent herein was granted regular pay scale from 1.4.1989. After accepting the regular pay scale, the respondent moved the High Court by way of writ petition. This writ petition was dismissed. The respondent was asked to approach the Industrial Tribunal. He approached the Industrial Tribunal by way of Reference Case No. 20/97.

Before the Industrial Tribunal, the respondent asked for regular pay scale from 1.4.1983, although he was regularised from 1.4.1989. In reply, the management pointed out that since the respondent was regularised w.e.f. 1.4.1989 he was not entitled to claim regular pay scale from 1.4.1983. It was further pointed out that the respondent was interviewed by the Screening Committee constituted on 2.3.1989 and that committee had granted regularisation to the respondent keeping in mind the above factors including existence of vacancies as also the budgetary provisions.

By Award dated 18.11.1999 the Industrial Tribunal took the view that since the respondent had completed two years of continuous service by 31.3.1983 and since he was found suitable by the Screening Committee the respondent stood regularised w.e.f. 1.4.1983 and, therefore, he was entitled to regular pay scale on and from 1.4.1983. Aggrieved by the Award, the management moved the High Court by way of Civil Writ Petition No. 699/2000-2001. By judgment dated 2.7.2001, the learned Single Judge dismissed the writ petition stating that there was no illegality or error apparent on the face of the Award. Hence, the writ petition stood dismissed. Aggrieved by the decision of the learned Single Judge, the management preferred Civil Special Appeal (Writ) No. 876/01 to the Division Bench of the High Court which, as stated above, came to the conclusion, vide judgment dated 22.11.2001, that the respondent herein had completed two years on 31.3.1983; that the committee have not screened the cases within reasonable time for which the claim of the workman cannot be defeated; that the management had approved the recommendations of the Select Committee belatedly for which the claim of the workman cannot be defeated and, in the circumstances, the Division Bench directed the management to treat the respondent herein as regularised w.e.f. 1.4.1983. However, it was clarified that the service of the respondent can be regularised only against the vacancies available for regularisation and if the vacancy is available on 1.4.1983 only then the respondent should be made regular in service with effect from that date.

The respondent, however, moved Civil Misc. Review Application No. 53/03 in the said Civil Special Appeal (Writ) No. 876/01. In the review petition, the respondent submitted that he had not asked for regularisation before the Industrial Tribunal; that the Industrial Tribunal had granted him the regular pay scale and not regularisation w.e.f. 1.4.1983 and, therefore, the Division Bench of the High Court had erred in directing the management to regularise the services of the respondent herein on and from 1.4.1983. In the review petition, the respondent herein contended that there was no question of regularising his service w.e.f. 1.4.1983 only against vacancies available for regularisation since he had not asked for such a relief. This review application came before the Division Bench which passed a cryptic impugned order stating that instead of regularisation of service the respondent workman shall be entitled to regular pay scale from 1.4.1983. Aggrieved by the aforesaid order of the Division Bench dated 1.5.2003 read with the clarification dated 20.9.2005, Rajasthan Rajya Vidyut Utpadan Nigam Ltd. ("Nigam") has come to this Court by way of the civil appeal.

Shri Deshpande, learned counsel appearing for the respondent herein, submitted, that the respondent had never asked for regularisation; that he had only sought regular pay scale w.e.f. 1.4.1983 and, therefore, this case stood on entirely different footing vis-à-vis the earlier case of twenty work-charged employees. Learned counsel, therefore, submitted that the judgment delivered by this Court in Civil Appeal No. 254/04 (supra) should not be made applicable to the present case.

We do not find any merit in this argument. The grant of regular pay scales was directly linked to the question of regularisation. In the circumstances, the judgment delivered by us in Civil Appeal No. 254/04 (supra) would apply to the facts of the present case also.

Accordingly, we set aside the impugned judgment dated 1.5.2003 delivered by the Division Bench in Civil Special Appeal (Writ) No. 876/01 and Order dated 20.9.2005 in Civil Misc. Review Application No. 53/03 and remit this matter also to the Division Bench of the High Court for de novo consideration in the light of the law laid down by us in Civil Appeal No. 254/04 (supra). The appeal stands allowed with no order as to costs.