CASE NO.:
Appeal (civil) 5873 of 2007

PETITIONER:
C.S. Azad Krishi Evem Prodyogiki Vishwa.

RESPONDENT:
United Trades Congress & Anr.

DATE OF JUDGMENT: 13/12/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No. 4677 of 2007]
S.B. SINHA, J :

1. Leave granted.

2. This appeal is directed against the judgment and order dated 7.03.2006 passed by a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the appellant from an award dated 30.05.1998 passed by the Presiding Officer, Industrial Tribunal (3) U.P. Kanpur.

3. Appellant is a University created under the Uttar Pradesh (Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam) Act, 1958 (for short \023the Act\024). The service conditions of the employees of the University are governed thereby as also by the statute framed thereunder. Its basic object was to undertake various training and projects for the betterment of agriculture. For the said purpose, it employs persons from time to time; sometimes project-wise.

4. Admittedly, Respondent No. 2 herein was appointed on daily-wages by the University on 1.07.1980. He was being paid wages on a daily basis. He worked as a Laboratory Assistant \026 cum \026 Attendant which is a Class IV post. The job of Assistant Clerk, however, was being taken from him on and from 1.11.1991. His remuneration was being paid at the rate of Rs. 40/- per day.

5. Respondent No. 1 which is a trade union, raised an industrial dispute on behalf of the respondent No. 2 on the premise that his services had not been regularized by the University. Pursuant thereto, a reference was made by the appropriate Government which reads as under:

\023Whether the employer by not declaring the employment of its employee Kalyan Sharan, S/o Shiv Dutt working as a clerk permanent did commit illegality? If yes whether the concerned employee is the rightful claimant to the benefits (reliefs) and from which date and with what reason?

6. The Presiding Officer, Industrial Tribunal (3), UP, to whom the said reference was made, inter alia having regard to an order passed by the High Court on a concession made by the learned counsel for the University in a writ petition filed by other employees of the University, by an award dated 30.05.1998 directed:

\023\005Thus it is being completely proved that the employer has been taking work from the concerned worker from 1.11.91 continuously as a

Clerk however he is being paid salary on a daily wage basis as a daily wage employee which is highly unfortunate, improper and illegal and the concerned worker as per the nature of his work is rightly entitled to be made permanent and regularized in the post of Clerk/ typist keeping in view the nature of the work which he is doing now.

After having considered the written statements, counter replies, documents, and deposition of witnesses and after hearing the arguments of both the sides I have come to the conclusion finally that the employer of the concerned worker Kalyan Sharan S/o Shiv Dutt, post \026 Clerk having not declared the concerned worker as regularized and permanent is an illegality and is wrong. Thus, it is my decision in this dispute is that the employer while declaring the concerned worker permanent should extend him all the benefits due to him from the day of this Order.\024

7. Validity of the said award was questioned by the appellant before the Allahabad High Court which by reason of the impugned judgment has been dismissed by a learned Single Judge of the Court, holding:

\023After perusal of the judgment passed by the Labour Court it is clear that the Labour Court has considered each and every aspect and has come to the conclusion that in spite of the fact that respondent workman is working from 1980 and is being treated as daily wager, this clearly amounts to unfair labour practice. The finding recorded by the Labour Court is a finding of fact in view of the judgment reported in 2005 (3) SCC 193, Management of Madurakantam Cooperative Sugar Mills Ltd. Vs. S. Vishwanathan, the Apex Court has clearly held that there is very little scope of interference in the finding recorded by the Labour Court. The finding recorded by the Labour Court is a finding of fact and unless and until it is proved beyond doubt that the Labour Court has exceeded its jurisdiction and the finding recorded by the Labour Court is against the evidence on record and is perverse then the High Court while exercising the jurisdiction under Article 226 of the Constitution of India has the jurisdiction to interfere otherwise there is very little scope for interference.\024

8. Dr. R.G. Padia, learned senior counsel appearing on behalf of the appellant, in support of this appeal, would submit that the impugned award as also the judgment and the order of the High Court are wholly unsustainable inasmuch as :

(i) The appointment of the respondent No. 2 having been made de\022hors the statutory rules, no direction for regularization could have been issued.
(ii) The Industrial Tribunal could not direct regularization of a Class III employee, particularly, when the respondent No. 2 had not worked for a long time in the said post.
(iii) The Industrial Court cannot grant a declaratory decree.

9. Mr. S. Chandra Shekhar, learned counsel appearing on behalf of the

respondents, on the other hand, would submit:

(i) Respondent No. 2 having been working against a permanent vacancy both as a Laboratory Assistant which is a Class IV post and as an Assistant Clerk which is a Class III post for a long time, the Industrial Court acted within its jurisdiction in passing the impugned award.
(ii) As pursuant to the order passed by the High Court in another writ petition, the services of those who were junior to the respondent No. 2 were regularized, he was also entitled to a similar benefit.

10. Concededly, Appellant is a University constituted by a statute. Who would be the officers and authorities of the University is specified in Section 8 of the Act. The competent authority of the University has made \021Statutes\022 in terms of the provisions of the Act. The matter relating to appointment of staff is governed by Chapter XIII of the Statutes framed by the University, providing that all appointments shall be made strictly on the basis of merit. For the purpose of appointing different categories of employees, provisions have been made for constitution of selection committees.

Statute 10 reads as under:

\02310. Appointments of all other staff not specifically provided for in the Act of these Statutes shall be made by the Kulpati with the approval of the Board except the following posts which may be filed by the Kulpati without reference to the Board namely;
(a) The non-teaching posts carrying a scale the maximum of which does not exceed Rs. 450/- including those which are filled by obtaining services of a person on deputation for a period upto three years from a regularly constituted service of State or Central Government or an autonomous body constituted by the State or Central Government. The upper limit of Rs. 450/- will be subject to alteration from time to time, by the resolutions of the Board of management, on the basis of rationalization or enhancement occurring on the basis of the decision of the Government.

(b) The posts for which the Kulpati is the appointing authority under the provisions of the Act.\024

11. The University Statute does not provide for appointment on daily-wages or on an adhoc basis. Respondent No. 2 in his written statement filed before the Industrial Court did not make any averment that he had been appointed in terms of the provisions of the statute or prior thereto any advertisement therefor was made. According to him, he being a hard working, honest, efficient and eligible employee, was \021entrusted\022 with the work of a Clerk from 1.11.1991. In his written statement, it was averred:

\0235. That though the worker was working against a permanent vacant post as a clerk in a permanent manner, however, the employer is not giving him the actual scale of pay and other allowances and benefits as that of a permanent clerk. However, he is still considered as a daily wager inspite of having worked since last 14 years continuously, which is illegal and wrong.\024

12. A feeble attempt, however, was made by the learned counsel appearing on behalf of Respondent No. 2 to state that he had been appointed against a permanent vacancy. In his written statement, he did not raise any

such contention. It does not also appear from the records that any offer of appointment was given to him. It is inconceivable that an employee appointed on a regular basis would not be given an offer of appointment or shall not be placed on a scale of pay. We, therefore, have no hesitation in proceeding on the premise that Respondent No. 2 was appointed on daily-wages. The Industrial Court in passing the impugned award proceeded on the premise that Respondent No. 2 had been working for more than 240 days continuously from the date of his engagement. It is now trite that the same by itself does not confer any right upon a workman to be regularized in service. Working for more than 240 days in a year was relevant only for the purpose of application of Section 6N of the U.P. Industrial Disputes Act, 1947 providing for conditions precedent to retrench the workmen. It does not speak of acquisition of a right by the workman to be regularized in service.

13. In Executive Engineer, ZP Engg. Divn. And Another v. Digambara Rao and Others [(2004) 8 SCC 262], it was held:
\023It may not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularisation. It is also not the case of the respondents that they were appointed in accordance with the extant rules. No direction for regularisation of their services, therefore, could be issued.

[See also Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Others, (2005) 5 SCC 122 and State of U.P. v. Neeraj Awasthi and Others, (2006) 1 SCC 667]

14. A similar question came up for consideration in a large number of decisions before this Court. We will, however, refer only to some of them.

In A. Umarani v. Registrar, Cooperative Societies and Others [(2004) 7 SCC 112], this Court held:

\02439. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any \023State\024 within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. v. Suresh Kumar Verma)

40. It is equally well settled that those who come by back door should go through that door. (See State of U.P. v. U.P. State Law Officers Assn.)

41. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature.\024

A Constitution Bench of this Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1] clearly held that an appointment de\022hors the statutory rules would render the appointment a nullity, stating:

\02418. Without keeping the above distinction in mind and without discussion of the law on the question

or the effect of the directions on the constitutional scheme of appointment, this Court in Daily Rated Casual Labour v. Union of India directed the Government to frame a scheme for absorption of daily-rated casual labourers continuously working in the Posts and Telegraphs Department for more than one year. This Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge. While it might be one thing to say that the daily-rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its executive, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made thereunder concerning public employment. The same approach was made in Bhagwati Prasad v. Delhi State Mineral Development Corpn. where this Court directed regularisation of daily-rated workers in phases and in accordance with seniority.

22. With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasised in R.N. Nanjundappa v. T. Thimmiah was also not kept in mind. The Court appears to have been dealing with a scheme for \023equal pay for equal work\024 and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily-rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it.\024

It was further held that no person who was temporarily or casually employed could be directed to be continued permanently. It was also opined that by doing so it would be creating another mode of public employment which is not permissible in law. [See also Punjab Water Supply & Sewerage Board v. Ranjodh Singh and Others, (2007) 2 SCC 491]

15. The High Court has relied upon a decision of this Court in Mahendra L. Jain and Others v. Indore Development Authority and Others [(2005) 1 SCC 639]. Therein it is stated:
\02319. The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularisation of their services. The answer thereto must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality.

The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation.\024

[See also M.P. Housing Board and Another v. Manoj Shrivastava (2006) 2 SCC 702, M.P. State Agro Industries Development Corpn. Ltd. and Another v. S.C. Pandey (2006) 2 SCC 716, Indian Drugs & Phrmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408 and Gangadhar Pillai v. Siemens Ltd. (2007) 1 SCC 533].

16. The Industrial Court, therefore, in our opinion, committed a serious error in passing the impugned award. The High Court unfortunately did not pose unto itself a right question. It referred to a large number of decisions. Although most of the decisions referred to by the High Court should have been applied for upholding the contention of the appellant herein, without any deliberation thereupon, the learned Judge has proceeded to determine the question posed before it on a wholly wrong premise. As noticed hereinbefore, it relied upon Mahendra L. Jain (supra) which in no manner assists Respondent No. 2.

17. What was necessary to be considered was the nature of work undertaken by the University. It undertakes projects. For the said purpose, it may have to employ a large number of persons. Their services had to be temporary in nature. Even for that the provisions of Articles 14 and 16 are required to be complied with. In the event, the constitutional and statutory requirements are not complied with, the contract of employment would be rendered illegal.

18. Services of Respondent No. 2 were not terminated. He has been continuing to serve the University. We have noticed hereinbefore that in a writ petition filed by other employees on a concession made by the counsel for the University, a purported scheme dated 24.04.2000 has been formulated. Dr. Padia in that view of the matter stated before us that despite the legal position, as noticed hereinbefore, in the event the case of Respondent No. 2 comes within the purview of the said Scheme, his services shall be regularized when his turn comes therefor.

19. We place on record the aforementioned statement made by Dr. Padia that as and when Respondent No. 2 becomes entitled to be considered for being absorbed in the services of the University pursuant to the said scheme, his case may be considered. If his turn for consideration for regularization has already come, a decision thereupon shall be taken as expeditiously as possible.

20. The impugned judgment is set aside. The appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of this case, there shall be no order as to costs.