

Vandana and Others Vs Union of India and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 30, 2011

Acts Referred: Constitution of India, 1950 " Article 14, 16(1), 226

Citation: (2012) 1 ILR (P&H) 1013

Hon'ble Judges: M.M. Kumar, J; Gurdev Singh, J

Bench: Division Bench

Advocate: H.C. Arora, for the Appellant; Ashwinie K. Bansal, for the Respondent

Judgement

M.M. Kumar, J.

(1) The short issue raised in the instant petition filed under Article 226 of the Constitution is whether the services of the petitioners, who were

appointed as Stenographer (OG) on temporary basis initially for 89 days, between June 1993 to October 1995, could be regularised and a

direction could be issued to the respondents to frame a Scheme for regularization. The applicant-petitioners have challenged order dated 2.9.2005

(P-1) rendered by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, " the Tribunal"). The Tribunal has rejected the prayer

of the applicant-petitioners for regularising of their services on the ground that they were never recruited in accordance with the rules through the

process of the Staff Selection Commission (SSC), which is now recognised to be a mode of recruitment. However, at the same time, the Tribunal

has disposed of the original application by observing in para 7 as under:

7. Examined under the above proposition of law, we find that applicants were never recruited in accordance with the rules through the process of

SSC which is now recognised to be a mode of recruitment. In these circumstances, the prayer of the applicants to order their regularization by

grant of relaxation, has to be rejected. We, however, cannot close our eyes to the practical side of life which indicates that the human resources

have been utilized by getting services from persons, like the applicants, which arrangement has continued for a period of more than 10 years. It is

very strongly contended by the Id. Counsel for the applicants that the respondent department have never held a regular selection for appointment to

the posts of Stenographers through the process of SSC. Applicants, he contends, are being deprived of regular appointment in this case on

account of failure of the respondents to get recruitment done through the process known to law. The contention merits consideration not only of

this court but also of the competent authority under the respondents. Respondents must evolve some procedure through which applicants also can

avail the opportunity of participating in the process of selection through SSC. We, therefore, desire that respondents should take steps to that

effect and applicants may be put to some kind of competitive examination for their appointment on regular basis. Respondents may also consider

creation of some posts for some vacancies do not exist, taking into consideration the fact that the respondent department was in need of services

of these applicants on similarly placed persons working as Stenographers for a very long time and take decision to create any further posts. As and

when respondents put the applicants through the regular process of Selection, some competitive examination be held through SSC or any other

agency and applicants may be permitted to participate in the same, along with other candidates. In case, they are found qualified in the said

competitive examination, they may be considered for their regular appointments with grant of relaxation in age for the period they have already

worked under the respondents.

(2) It is pertinent to mention that at one stage the instant petition was dismissed by the Division Bench in light of the law laid down by the

Constitution Bench of Hon"ble the Supreme Court in the case of Secretary, State of Karnataka and other Secretary, others versus Uma Devi and

others (1), vide order dated 18.5.2006. There after, the applicant-petitioners filed Review Application No. 207 of 2006 contending that they have

come through employment exchange and have been working for the period often years. The Division Bench recalled order dated 18.5.2006

keeping in view of the observations made by their Lordships" of Hon"ble the Supreme Court in para 53 of the judgment in the case of Uma Devi

(supra).

(3) We have heard learned counsel for the parties at length and perused the paper book with their able assistance. Their Lordships" of Hon"ble the

Supreme Court In the case of Uma Devi (supra) has deprecated regularisation of services of such employees who have entered service by illegal

manners.

(4) The Constitution Bench has made distinction between "illegality" and "irregularity". In order to cull out the aforementioned distinction, their

Lordships" made a reference to the arguments raised in the case of R.N. Nanjundappa versus T. Thimmiah (2), wherein it was observed that if the

appointment made itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, such an illegality cannot be regularised.

It has been further observed that ratification and regularisation is possible of an act which could be within the power and province of the authority

but there has been some non-compliance of the procedure or manner which did not go to the root of the appointment and that regularisation

cannot be a mode of recruitment. If such a proposition was to be accepted then a new head of appointment would be introduced in defiance of

rules, which would have the effect of setting at naught the rules. The Constitution Bench has also made a reference to another judgment of the

Supreme Court rendered in the case of B.N. Nagarajan versus State of Karnataka (3). Therefore, a clear distinction between those who have

entered into service in violation of the rules and basic structure of the Constitution as envisaged by Articles 14 and 16(1) of the Constitution are

class apart from those whose appointments have come to be irregular. It is in these circumstances that their Lordships" of the Supreme Court in

Umadevi"s case (supra) has observed in para 53 as under:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.Y

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 above referred 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 regularizing or

making permanent, those not duly appointed as per the constitutional scheme.

(5) When the aforesaid principles are applied to the facts of the present case, it becomes patently clear that the case of the applicant-petitioners

would fall in the exception carved out in para 53 of the judgment in Uma Devi's case (supra), inasmuch as, they were initially appointed purely on

temporary basis on the basic pay of "1200+other allowances, for a period of 89 days between June 1993 to October 1995. There is no dispute

that their names were duly requisitioned by the respondents through Employment Exchange and that they have been continuing in the respondent

department for more than ten years. As a sequel to the above discussion, the instant petition is disposed of with a direction to the respondents to

frame a scheme of regularisation in accordance with the judgment of Hon"ble the Supreme Court rendered in the case of Uma Devi (supra) and if

the petitioners are found suitable in all respects their services should be regularised. The needful shall be done within a period of three months from

the date of receipt of a copy of this order.