

(2008) 08 AHC CK 0300

Allahabad High Court

Case No: None

Gyanendra Veer Singh, Arvind
Singh and Braj Pal Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 18, 2008

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 39

Citation: (2009) 1 AWC 676 : (2008) 3 UPLBEC 2336

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

The petitioners seeking a writ of mandamus directing respondent No. 2 not to proceed with selection of part time Assistant Teacher in pursuance of advertisement dated 11.6.2008 and further mandamus directing respondents not to interfere in working of petitioners as Part Time Assistant Teachers till regular selection is made and pay their salary regularly, have approached this Court by invoking extraordinary jurisdiction of this Court under Article 226 of Constitution of India.

2. The case of the petitioners is that in the institution known as Sunasir Nath Inter College, Banda, Shahjahanpur (hereinafter referred to as the institution") petitioners No. 1 and 2 were appointed as Part Time Assistant Teacher on 31.7.1995 whereas petitioner No. 3 was appointed as Assistant Teacher on part time basis on 25.7.2000. The institution is aided only upto Junior High School though recognised upto Intermediate level by the Board of U.P. but it is not aided by the Government and recognition after Junior High School upto Intermediate level is without any financial assistance. For appointment on the post of Assistant Teacher in the institution the procedure required to be followed is prescribed in Intermediate Education Act, 1921

(for short "1921 Act") and Regulations framed thereunder read with U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "1982 Act") and the Rules framed thereunder. It is not in dispute that no recruitment in accordance with aforesaid statutes have been made so far. Even for ad hoc appointment provision has been made u/s 18 of 1982 Act and Rules framed thereunder read with Removal of Difficulty Orders issued thereunder.

3. It is not the case of the petitioners that the aforesaid procedure has been followed in their appointments. The petitioners were engaged as Part Time Assistant Teachers by the management of the institution itself initially for a particular session, for example, petitioners No. 1 and 2 were engaged for the Sessions 1995-96 and thereafter their engagement was extended in subsequent sessions. Similarly petitioner No. 3 was engaged for the Sessions 2000-01 and the same was extended from time to time and the last extension was for the session 2007-08. It is said that now the management has published an advertisement for making fresh selection as Part Time Assistant Teacher in the institution and the petitioners are not being given extension. It is contended that the said action of the respondents are arbitrary and illegal. He placed reliance on some interim orders passed in similar cases.

4. It is not in dispute that as per the terms of appointment, engagement of the petitioners was only for a particular session and by efflux of time the same has come to an end. The last extension was for the session 2007-08 and it has come to an end on 30.6.2008. The question whether the petitioners can claim a right to continue in institution despite the aforesaid condition of appointment which has already exhausted. The letter of appointment in effect has already lost its efficacy by efflux of time having lapsed on 30th June, 2008. Whether the petitioners in such circumstance can be directed to continue even beyond 30th June, 2008 is the moot question to be considered and answered here. In my view reply would be in negative. The appointment of the petitioner being for a fixed tenure, he has no right to continue beyond the period indicated in the letter of appointment. From a perusal thereof it is evident that the appointment was made time bound.

5. Extension of appointment by judicial order therefore is not permissible. A similar controversy came up for consideration before a Division Bench of this Court in Alok Kumar Singh (Dr.) & 15 Ors. v. State of U.P. and Ors. (2002) 2 UPLBEC 1373 wherein it has been held that the petitioners cannot claim any right to continue in service beyond the period of appointment provided in the letter of appointment. Since the matter is already concluded by a Division Bench judgment of this Court, interim order sought to be relied by the petitioners is of no help, as this Court is bound by the law laid down in the final judgment of this Court Interim orders do not lay down any binding precedent and would have to bow down to a final verdict.

6. Besides, the appointment of the petitioners is for a fixed term i.e. till 30.6.2008. The appointment of the petitioners came to an end by 30.6.2008 automatically by efflux of time. The appointment, being a fixed term appointment, in case the

contention of the petitioners is accepted, it would amount to re-writing the appointment letter allowing the petitioners to continue without there being any letter of appointment issued by the competent authority for a period subsequent to 30.6.2008. In [Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava](#), the Hon'ble Apex Court held that the appointment, which is made for a fixed tenure comes to an end on the expiry of the period of appointment provided in the letter of appointment and the incumbent need not be terminated as the termination of employment comes automatically by efflux of time. In this case also, admittedly, the appointment of the petitioner is for fixed tenure and in case the contention of the petitioner is accepted it will amount to giving an appointment by this Court for the period subsequent to 30.6.2008 substituting itself to the position of appointing authority. This is neither permissible in law nor should be done. When a procedure is prescribed to do a thing in a particular manner, it should not be done otherwise. Similar view has been taken by this Court in Writ Petition No. 20871 of 2006 Dr. vijay Kumar Singh and Ors. v. State of U.P. and Ors. decided on 25.4.2006. Further a Constitution Bench of the Apex Court in [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), of the judgment has observed as under:

If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

7. Learned Counsel for the petitioner further submits that on account of unemployment and lack of bargaining position, the petitioner cannot negotiate with the respondents on equal terms and therefore, the condition of engagement on contractual basis for one session is exploitative and is arbitrary. We are afraid that even this submission cannot be accepted. Rejecting similar argument in Umadevi (Supra), the Apex Court in para 36 of the judgment has observed as under:

It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain-not at arms length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such

employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term.

8. A Division Bench has reiterated the aforesaid view after following the aforesaid judgment in *Sarvesh Kumar Singh v. State of U.P. and Ors.* writ petition No. 25849 decided on 11.05.2006; and *Amar Nath Tiwari v. State of U.P. and Ors.* writ petition No. 28632 of 2006 decided on 23.05.2006.

9. learned Counsel for the petitioner sought to place reliance on certain interim orders passed by this Court at the time of admission permitting the petitioners to continue till candidates regularly selected are available. However, this aspect of the matter has been considered by a Division Bench of this Court in Civil Misc. Writ Petition No. 812 (S/B) of 2007, *Dr. Manish Dixit and Ors. v. State of U.P. and Ors.* decided on 19.7.2007 and this Court held as under:

Learned counsel for the petitioner sought to place reliance on an interim order dated 23.05.2007 passed by this Court in W. P. No. 221 (S/B) of 2007 and the judgment dated 15.11.2006 passed by a Division Bench of this Court in W.P. No. 1560 (S/B) of 2006. We find, from perusal of the aforesaid order, that the condition of appointment and various issues which have been considered by us in this case were neither raised nor argued nor decided in the aforesaid orders. Therefore in our view, the said orders cannot be treated to be a binding precedent to give relief sought by the petitioners in this writ petition particularly when the various issues which have been considered by us in the writ petition have already been decided finally by several Division Bench judgments of this Court as referred hereinabove. Learned Counsel for the petitioners further placed some orders passed by this Court relating to disposal of the writ petition at the admission stage, copies whereof are on page Nos. 38-39 of the writ petition but there also we find, that the issues as have been considered here were not raised in those cases. Therefore the aforesaid judgments cannot be said to be binding precedent on the various issues which have been considered by this Court in the present case.

11. At this stage, it would also be appropriate to notice that earlier it was held by the Apex Court that right to earn livelihood is part and parcel of "right to life" under Article 21 of the Constitution and this was equated with the right to employment. However, the Apex Court in *Secretary State of Karnataka and Ors. (Supra)* has rejected this submission that Article 21 would include the right to employment and in para 42 of the judgment has held as under:

42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right of employment can also be brought in under the concept of right of life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in Government service or in [he service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

11. The Apex Court also considered the question as to whether a writ of mandamus can be issued by the Court directing the employer either to absorb the employee in permanent service or to allow him to continue, and in this context has held as under:

In order to that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it.

12. It is not the case of the petitioners that respondents are under a legal duty or the petitioners have statutory or fundamental right to seek direction directing the respondents to continue the petitioners till regular selected candidate are available.

13. In view of the aforesaid discussion, I do not find any merit in this writ petition and is accordingly dismissed. No order as to costs.