(2004) 10 MP CK 0033

Madhya Pradesh High Court

Case No: Writ Petition (S) No. 1368 of 2004

Jagdish Prasad Tripathi		APPELLANT
	Vs	
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision: Oct. 29, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) ILR (MP) 1119 : (2005) 1 JLJ 420 : (2004) 4 MPHT 355 : (2005) 1 MPJR 47 : (2004) 4 MPLJ 564

Hon'ble Judges: R.V. Raveendran, C.J; Shantanu Kemkar, J; K.K. Lahoti, J

Bench: Full Bench

Advocate: Manoj Rajak, for the Appellant; P.N. Dubey, Dy. A.G. for the Respondent Nos. 1 to 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.V. Raveendran, C.J.

The petitioner claims that he worked as ad-hoc Assistant Teacher between 8-3-1981 to 30-4-1981 and again from 31-8-1981 to 30-44982, that thereafter his services were dispensed with without assigning any reason and without affording any opportunity. He, therefore, filed an Application (O.A No. 967 of 1998) before the M.P. State Administrative Tribunal praying that he may be taken back into service. The said application was dismissed by the Tribunal by order dated 21-5-2002 for the reasons stated in its order passed on the same day in Raghunath Prasad Badgiya v. State of M.P. (O.A. No. 1310/1998). The petitioner has challenged the said order of the Tribunal in this writ petition filed on 11-3-2004 with a further prayer that he may be permitted to work in the post of Assistant Teacher with all back-wages and all consequential benefits by regularising his service from the date of initial

appointment.

When the said writ petition came up before the Division Bench on 11-8-2004, the learned Counsel for the petitioner submitted that the petitioner will be satisfied if the relief granted by a Division Bench of this Court, by order dated 4-11-2003 in W.P. No. 5238/2002 (S.K Nema v. State of M.P.) and connected cases filed against similar orders of the Tribunal is granted to him. The Division Bench found that the petitioner had approached the Tribunal 16 years after ceasing to be an ad hoc teacher. Therefore, the Division Bench was of the view that the Tribunal had rightly rejected the petition on the ground of limitation, delay and laches. However, the petitioner contended that in S.K. Nema, in similar circumstances, another Division Bench had granted certain relief and that decision was a binding precedent and he should also be granted similar relief, that is, (a) the respondents should consider his case for regularisation sympathetically by taking into account the fact that he was unemployed for several years; and (b) if he applies against any advertisement for selection of Assistant Teachers, the age limit for appoint- ment may be relaxed in his case.

The Division Bench was of the view that S.K Nema was based more on sympathy than any principle of law and was not inclined to grant any relief in terms of S.K Nema. But as the said decision was cited as a binding precedent, to avoid any grievance that different Division Benches of the Court, dealt with similar matters differently, referred the matter to a Full Bench. The Division Bench made it clear that the reference was being made to the Full Bench without admitting the writ petition as the very question that arose for consideration was whether the writ petition should be entertained at all.

Three questions arise for our consideration : (a) Whether S.K Nema is correctly decided; (b) Whether the decision in S.K Nema is a binding precedent on co-ordinate Benches and Single Benches, and; (c) Whether the " petitioner is entitled to any relief.

Re.: Question (a):

It is no doubt true that the facts in S.K Nema were almost similar to the fats of this case. S.K. Nema had been appointed as ad-hoc teacher for a period of 89 days between January and April, 1985 and thereafter was not continued. S.K. Nema approached the M.P. Administrative Tribunal in the year 1994, that is nine years later, seeking reinstatement. The Tribunal rejected the application. S.K. Nema challenged the order of the Tribunal. The Division Bench disposed of the writ petition by order dated 4-11-2003. It did not consider the matter on merits. It did not deal with the correctness or otherwise of the order passed by the Administrative Tribunal. It also did not examine facts of the case and whether on facts, S.K. Nema was entitled to any relief. But nevertheless, the petition was disposed of (with connected cases) with the following observations:-

"A Division Bench of this Court in similar circumstances expressed its helplessness in granting any relief to the petitioner therein. However, it is suggested that it is open to the petitioner to make a representation to the respondents for appointment a teacher, if he is so qualified. In that view of the matter, the respondents may consider the cases of the petitioners taking into account that the petitioners are unemployed for so many years and the other persons, who were appointed as Assistant Teacher even for a short period, were sought to be regularised by the order of the Tribunal in 1986. It is submitted by Mr. Yadav, learned Government Advocate that there is no parity in so far as those who were regularised since they were regularly selected Asstt. Teachers and the petitioners before the Court were ap- pointed only on contract basis. Be that as it may, what the Court may do, in these circumstances, is to direct the petitioners to make representation to the authorities and if such a representation is made, the same shall be considered by the respondents sympathetically.

Mr. Thakur, learned Counsel for one of the petitioners, has submitted that advertisements have been made for selection of Assistant Teachers. The case of the petitioners may also be considered in accordance with the law taking into account that the petitioners are unemployed for such a long time. The age bar, if any, may be relaxed in the facts and circumstances of the case. It is open to the respondents to consider all aspects of the matter."

The question is whether the decision in S.K Nema, which without setting aside the order of the Tribunal and without giving any finding on any fact or question of law, was justified in making observations in the nature of directions, out of sympathy, requiring the State to consider the application of the peti- tioners by relaxing the age by 10 to 20 years, when that was not permissible under the Rules.

When the rules require an authority to act in a particular man- ner, the Courts obviously can not acting out of sympathy, direct the authority to act contrary to the Rules. The Courts have no doubt directed relaxation of age, but that is in rare cases and for valid reasons and for a period which can be supported legally and logically. For example, the Supreme Court, in Union of India (UOI) and Others Vs. Secretary, Madras Civil Audit and Accounts Association and Another, , directed that the age limit should be relaxed by the period an apprentice has undergone training, that is, if the apprentice has undergone training for one year, the age relaxation should be for one year. Similarly in some cases of stop-gap or temporary employees,, the Courts have directed that the maximum age limit should be relaxed by a period correspond- ing to the period of their stop-gap or temporary employment, if they apply for regular recruitment. But the Court can not, out of sympathy, direct relaxation of the maximum age, without limit and without any discernible logical basis.

In S.K. Nema, the employee had served for 89 days, in the year 1985. A direction was issued by the Division Bench, 18 years later, to consider him for selection to the post

of Assistant Teacher, by relaxing the age limit, taking into account the fact that he was unemployed for a long time. In effect, the Court directed the State to grant relaxation of age as much as 15 to 20 years on the sole ground that the candidate was unemployed. Such a direction would be a recipe for chaos and disaster in administration. If unemployment should be the sole ground for relaxing the age limit, then virtually in all cases, necessarily age relaxation has to be given as usually it is the unemployed who apply for employment. The Courts should not only resist from legislating and policy making, but also desist from directing the authorities to act in a manner which violated the Rules.

The Supreme Court has time and again deprecated observations and directions by Courts out of sympathy, which violate the Rules and which put the authorities to predicament and dilemma. We may refer to some of those decisions.

1. In Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, , the Supreme Court expressed that sympathy is out of place where selection is governed by Statutory Rules. The following observations are relevant:-

".....there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reasoning given by the Tribunal is accepted, the statutory recruitment rules would be- come nugatory or otiose and the department can favour any person or appoint any person without following the procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted, then eligible and qualified persons would be sufferers as they would not get any chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appoint- ment merely on the ground of equity and compassion. It is, therefore, not safe to bend the arms of law only for adjusting equity. We, therefore, find that the reasoning given by the Tribunal that sympathy demands the absorption of the respon- dent in the service of the Corporation suffers from error of law."

2. In C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , it was held :-

"We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institu- tions to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

3. In State of Madhya Pradesh and Another Vs. Dharam Bir, , the Supreme Court observed :-

"The Courts as also Tribunals have no power to override the mandatory provisions of the Rules on sympathetic consideration .....Such an order would amount to altering or amending the statutory provisions made by the Government....."

4. In Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, , it was observed :-

"We have no doubt in our mind that sympathy or sentiment by itself can not be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right."

The Supreme Court cited with approval the following observations in Latham v. Richard Johnson & Nephew Ltd., reported in 1911 11 AE.R. Rep. 117:-

"We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o'' the wisp to take as a guide in the search for legal princi- ples."

5. In Ramakrishna Kamat and Others Vs. State of Karnataka and Others, and A. Umarani Vs. Registrar, Cooperative Societies and Others, , the Supreme Court observed :-

"While being sympathetic to the persons who come before the Court, the Court can not at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment."

The greater the power or discretion, the greater should be caution and restraint In exercising such power of discretion. The Courts can not direct an authority to act sympathetically, where the matter is governed by statutory rules and regulations, merely because the Court feels that persons who has approached the Court should be shown sympathy. In service jurispru- dence, every time preference in appointment is shown to someone of sympa- thy, the result will be to deny correspondingly, employment to a deserving candidate, who would have got the appointment by reason of fulfilling the eligibility and qualification criteria. The decision in S.K Nema has opened the flood gates for persons who were employed for few days, decades ago, to approach the authorities and Courts requesting and asserting that they should be given employment by the State, irrespective of the fact that they are in the late 40s or 50s and irrespective of the fact that they are totally out of touch with teaching, and requiring the State to ignore the maximum age limit criterion, prescribed by the rules. But judicial process should not become and alternative mode of recruitment, de hors the rules vide State of Himachal Pradesh Vs. Suresh Kumar Verma and another, .

One more aspect is however required to be borne in mind. When a Court directs an authority to consider the matter sympathetically, it does not mean the rules and regulations governing the matter can be flouted or ignored. At best it could only mean that where two views are possible, a view that is favourable to the employee may be adopted, or where the matter is one of discretion, such discretion may be

exercised in favour of the employee. In fact, the question of acting sympathetically would arise only where the matter is not governed by any specific rule or regulation and where the authority concerned is vested with discretion, and where any action based on sympathy would not prejudice any other person, but lead to a just result. Be that as it may. It is evident that the decision in S.K Nema is erroneous and unsustainable.

Re : Question (b):

The next question for consideration is, even if the decision in S.K Nema was not erroneous, whether such a decision would be a binding precedent in other cases. It is now well settled that the judgment of a High Court should not be read as a statute. Nor everything said in a judgment is a binding precedent. We may with benefit refer to the following first principle relating to binding precedents, (vide Salmond On Jurisprudence - 12th Edi- tion, Pages 176-177) :-

"As against persons not parties to the suit, the only part of a case which is conclusive (which the exception of cases relating to status) in the general rule of law for which it is authority. This rule or proposition, the ratio decidendi, may be described roughly on the rule of law applied by and acted on by the Court, or the rule which the Court regarded as governing the case."

In Bachan Singh and Others Vs. State of Punjab, , the Supreme Court observed that what is binding as a precedent is the ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-mat- ter of the decision and not statements which are not necessary for the decision which go beyond the occasion and lay down a rule that is unnecessary for the purpose on hand. In Mohini Mohan Chakravarty Vs. State of West Bengal and Another, , the Supreme Court held that the ratio of any decision must be understood in the background of the facts of that case and a case is only an authority for what it actually decides, and not what logically follows from it.

Any observation made or relief given by a Court, out of sympa- thy, compassion, sentiments, and not based on any discernible principle of law or de hors the merits of the case can not be a binding precedent. A judgment of a Court contains three parts : (i) finding of facts, (ii) statement of principle of law applicable to the legal problem raised on the facts, based on which the case is decided; and (iii) decision which is based on the finding of fact, applicable principles of law, and in some cases, discretion and the need to mould the relief in a particular manner. Out of the three parts, it is only the second part, that is ratio decidendi or statement of law applied and acted upon by the Court, that is a binding precedent. Neither the findings on facts nor the ultimate decision, that is, the relief given or the manner adopted to dispose of the case, is a precedent.

Tested on the touch-stone of the said principles, we have no doubt in our minds that the decision in S.K. Nema, does not lay down any principle of law which can be

considered to be the ratio decidendi. It does not record any finding of fact. It does not disturb the decision of the Tribunal. It does not evolve any principle of law, nor apply any principle to the facts or legal questions. We find that the observations apparently are only out of sympathy. It does not even contain any enforceable direction. Therefore, the decision S.K. Nema can not be said to contain any principle which will be a binding precedent.

Re : Question (c):

In this case there was a delay of 16 years in approaching the Tribunal. There is a delay of more than one and half years in approaching this Court. The application was rightly rejected by the Tribunal and the writ petition is also liable to be rejected both on merits and on the ground of delay and laches. Mere ad hoc employment for a period of about seven weeks in 1981 and eight months in 1981-82 does not entitle the petitioner to seek reinstatement or other relief after 16 years under any principle of law. There- fore, the petitioner is not entitled to any relief.

Consequently, the writ petition is dismissed.