

(1996) 06 CAL CK 0004

Calcutta High Court

Case No: C.O. No. 918 (W) of 1996

Subhasis Rana

APPELLANT

Vs

The Chairman, Baidyabati
Municipality and Others

RESPONDENT

Date of Decision: June 4, 1996

Citation: 100 CWN 1180

Hon'ble Judges: D.P. Kundu, J

Bench: Single Bench

Advocate: M.K. Bose and M.M. Belal, for the Appellant; Sibapada Mukherjee and Dipti Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Kundu, J.

The writ petitioner's case is that a vacancy was created in a permanent post of typist due to resignation of one Bulbul Somaddar in the office of the respondent no. 1. The writ petitioner applied for the post of typist and an interview was held by the concerned authority and the concerned authority after being satisfied appointed to the said post of typist on casual basis with retrospective effect from 4.2.93 until further order. The said appointment of the petitioner on casual basis was made by an office order dated 15.3.93. The writ petitioner stated that above-referred Bulbul Samaddar was initially appointed to the post of typist on casual basis and thereafter was appointed temporarily on probation for one year to that post with effect from first April, 1991 and thus Bulbul Samaddar was regularised in the service. Said Bulbul Samaddar was subsequently confirmed to the said post of typist. It is the case of the writ petitioner that since said Bulbul Samaddar was appointed on casual basis and thereafter was regularized in the service and the writ petitioner was appointed on casual basis in the vacancy created due to resignation of Bulbul Samaddar, the writ petitioner should also be regularized in the service and that the writ petitioner has legitimate expectation to be regularised and/or absorbed in the service of

Baidyabati Municipality. The respondents in their affidavit-in-opposition stated that initially there were two sanctioned posts of typist in the pay scale of Rs. 1,040-25-1. 215-30-1, 485-35-1, 590-40-1. 670-50-1,920. These two posts of typist were held by Sri Dilip Mukherjee and Sri Kenaram Pathak. Subsequently Sri Dilip Mukherjee was appointed to the post of Assistant Accountant of the Municipality and thus one post of typist fell vacant and to carry on the work-load of typing job aforesaid Bulbul Samaddar resigned from the service with effect from 1.2.93 and the writ petitioner was appointed at first by Memo No. 3633/A-38 dated 15.3.93 purely on casual, daily wage, no work no pay basis at the rate of Rs. 25 per day with retrospective effect from 4.2.93. Thereafter, by Office Memo No. 3797/ A-38 dated 30.3.93 casual appointment of the writ petitioner, was terminated with effect from 1.4.93. Thereafter by Memo No. 76/A-38 dated 5.4.93. Thereafter by Memo No. 76/A-38 dated 5/6.4.93 the writ petitioner was again appointed on casual basis with effect from 5.4.93. Again his service was terminated with effect from 2.5.93 by office Memo No. 417/A-38 dated 28/30.4.93. The Writ petitioner was again appointed as casual typist on daily wage no work no pay basis for one month with effect from 4.5.93. After the expiry of one month from 4.5.93 the writ petitioner was not in service. He was again appointed for one month with effect from 9.6.93 as a casual typist on daily wage and no work no pay basis by Office memo No. 964/A-38 dated 8.6.93 the Writ petitioner's " service was over and thereafter he was again appointed as a casual typist on daily wages of Rs. 28/- for a month with effect from 2.12.93 vide Office Memo No. 3260/A-38 dated 1.12.93. It has been stated by the respondents that pursuant to the last Memo dated 1.12.93 the Writ petitioner worked as a casual typist upto 1.1.94 and thereafter he was not further appointed. It has been contended in the affidavit-in-opposition that the writ petitioner did not work continuously from 4.2.93 to 1.1.94 and the content of the certificate given by the former Chairman of Baidyabati Municipality on 12.4.95 which is Annexure "D" to the Writ petition, is against the office record and has no factual basis. It has been alleged by the respondents that it seems that the Writ petitioner has procured the said certificate for the purpose of the present Writ proceeding.

2. The respondents further stated that there was a sanctioned post of Steno-cum-typist but considering the need of typing work of the Municipality a post of another typist (3rd typist) was required and the Municipal Authority got the post of Steno-cum-Typist converted to the post of Typist with the proper sanction of the State Government. Thereafter the Municipal Authority took steps for filling up the two substantive posts of typist through Employment Exchange and appointed two persons, namely. Sri Prasanta Ghosh and Sri Joyanta Chatterjee, out of the persons sent by Employment Exchange, in usual or allowable pay-scale. One vacancy was filled up on 1.1.94 and the other one was filled up on 2.4.94 and the other one was filled up on 2.4.94. It is a definite case of the respondents that there is no more vacant post of typist in the Municipality. The respondents stated that the appointment of one Sri Shyam Sunder Adhikari was on casual basis, on daily wages

and on the basis of no work no pay for doing some urgent typing work. The respondents stated that the petitioner's claim that he had worked throughout the year without any break is absolutely without any basis and the writ petitioner was never assured by the respondents that he would be absorbed in permanent post of typist in the Municipality.

3. This court is of the view that the claim of the Writ petitioner for regularization in the service of the Municipality cannot be said to be based on proper foundation. The writ petitioner for about a year: with short breaks worked as a casual employee. The writ petitioner was lastly appointed as a casual typist by memo dated 1.12.93 and he worked upto 1.1.94. The present writ petition was filed in 1996. Therefore for about two years the writ petitioner was not in service of the Municipality, the certificate (Annexure "D" of the Writ petition) dated 12.4.95 cannot be relied upon because the content of the said certificate has been disputed by the respondents" by saying that the same is against the office records. The respondents further stated that from the office records it transpires that the writ petitioner did not work for two years at a stretch with effect from 4.2.93. It is a definite case of the respondents that the writ petitioner on -different occasions in between the period commencing from 4.2.93 to 1.1.94 worked-as a casual typist on daily wages. It is also a definite case of the respondents that the writ petitioner did not work in any capacity under "Baidyabati Municipality on and from 2.1.94. The respondents stated that the content of the certificate (Annexure D" to the Writ petition) given by the erstwhile Chairman certifying that the writ petitioner had worked in the office of the Municipal Commissioner of Baidyabati for two years.at a stretch with effect from 4.2.93 as a typist is- untrue, incorrect and baseless. The writ" petitioner also could not produce any evidence, to prove that the stand taken by respondents in respect of Annexure "D" to the writ petition is incorrect. Except Annexure "D" the writ petitioner could not produce any evidence to prove that the stand taken by respondents in respect of Annexure "d" to the writ petition is incorrect. Except Annexure "D" the writ petitioner could not produce any evidence to show that in fact he had served the Municipality even after 2.1.94. Had the writ petitioner worked in the Municipality even after 2.1.94 then there must have been some evidence to prove such fact. In absence of any such evidence on record it is not possible for the court to hold that content of Annexure "D" to the writ petition is correct.

4. The Learned Advocate for the writ petitioner referred to and relied upon following five decisions, (1) Navjyoti Coop. Group Housing Society & Ors. a Union of India & Ors. reported in (1992) 4 SCC 477. (2) State of Himachal Pradesh and Other vs. Kailash Chand Mahajan & Ors. reported to (1992) Supp. (2) SCC 351 (3) Ashyini Kumar & Ors. v. State of Bihar & Ors. reported in J.T. 1994(8) SC 563 (4) H.C. Puttaswamy & Ors. v. the Hon"ble Chief Justice-of Karnataka High Court reported in J.T. 1990 (4) SC 474 (5) Vajrasharee v. State of Kamataka reported in 1996 (1) SLR 391. The respondents have not cited any, decision.

Navjyoti's case (Supra) and Kailash Mahajan's case (Supra) were referred to support the contention of legitimate expectation.

Ashyini Kumar's case (Supra) was referred to support the contention that in this type of case there is some justification to keep human consideration also in mind. It is evident from Ashyini Kumar's case (Supra) that in view of disagreement between the two Learned judges the matter was directed to be placed before the Bench of three Judges for decision. That apart in Ashyini Kumar's case (Supra) termination of 1363 persons were under consideration. In the present writ proceeding the termination order is not the subject matter. Therefore, this court is of the view that Ashyini Kumar case (Supra) has no relevance in the facts and circumstances involved in the present writ proceeding.

5. In H.C. Puttaswamy's case (Supra) the Hon"ble Supreme Court held that the appointments under consideration in that case were not valid. But the Hon"ble Supreme Court could not, however, refuse to recognise the consequence of uprooting the appellants therein. The human problem stood at the outset and it was that problem which motivated the Learned Judges of Hon"ble Supreme Court in allowing the review petition. In Puttaswamy's case (Supra) the appellants were in service for about 10 years. In Puttaswamy's case (Supra) it was observed as follows:

There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in normal course have been promoted to higher cadre. They are now diverged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only (sic) their untold miseries and of their family if they are left in the midstream. Indeed, It would be an act of cruelty at this -stage to ask them to appear for written test and vivavoce to be conducted by Public Service Commission for fresh selection (See : Lila Dhar vs. State of Rajasthan)

6. These facts and circumstances are absent in the present writ proceeding. Therefore, decision of Puttaswamy's case has no manner of application in the instant case.

7. Vajrasharee's case (supra) was referred to and relied upon to support the contention of regularization of the service of the writ petitioner. In Vajrasharee's case (Supra) the petitioner was appointed in the service on contract basis on 1.6.88. He had continued upto year 1994 with the customary artificial break. Thus it appears that in Vajrasharee's case (Supra) the petitioner worked for about 6 years and she

was a teacher. The petitioner in Vajrasharee's case contended that the Supreme Court of India in the decision reported in Kamataka State Private College Stopgap Lecturer Association vs. State of kamataka & Ors. AIR 1992, Supreme Court 677 had directed that services of teachers such as the petitioner who had been appointed on an ad-hoc basis for years with break every year were liable to be regularized. The petitioner in Vajrasharee's case (Supra) submitted that she had been discriminated against insofar as these principles had been made applicable in the case of school teachers because these principles had been denied to her by the respondent institution. Thus it is evident that the facts and circumstances involved in Vajrasharee's case were absolutely different from the facts and circumstances involved in the present writ proceeding. Therefore the decision in Vajrasharee case (Supra) has no manner of application in the facts and circumstances of the present writ proceeding.

8. The petitioner in the instant writ proceeding before preferring the writ petition, for about two years was not in service of the Municipality, He worked for about a year as a casual employee. Admittedly his name -was not forwarded by Employment Exchange. Under these circumstances this court cannot pass any order directing his regularization or absorption in the service, more so when the respondents have stated in their affidavit that there is no more vacant post of typist in the Municipality. This court is of the view that working for a period of one year as casual employee by (sic) does -not confer any right upon the writ petitioner or create any equity in favour of the writ petitioner to claim for regularization in service, There is nothing on record to show that while Municipality was filling up the vacancies in two substantive posts of typist through Employment Exchange, the writ petitioner raised any objection. As stated earlier one of such vacancy was filled up on 1.1.94 while the other one was filled up on 2.4.94. It was argued on behalf of the petitioner that even if there is no vacancy in the post of typist, the writ petitioner can be regularised or absorbed as class IV staff. For the reasons already stated hereinabove this prayer of the writ petitioner cannot also be accepted.

9. The Learned Advocate for the writ petitioner argued that the writ petitioner had legitimate expectation to be regularized or absorbed in the service of the Municipality and was entitled to a fair hearing before a decision adversely affecting his interest was made by the Municipal Authorities. At this stage it may be useful to refer to certain decisions on legitimate expectation.

10. In-AG. of Hong Kong vs. Ng. Yuen Shiu (1983) (2) A.C. 629 LORD FRASER speaking for the court, in his speech, expressed, inter alia, the following view:

The phrase "legitimate expectation" in this context originated in the judgement of Lord Denning M.R. in Schmidt vs. Secretary of State for Home Affairs (1969) 2 Ch. 149, 170. It is many ways an apt one to express the underlying principle, though it is somewhat lacking "in precision. In Salani vs. Mackeller (no. 2) (1977) 137 CLR 396, 404, Barwick CJ. construed the word "legitimate" in that phrase as expressing the

concept of "entitlement or recognition by law." So understood the expression (as Barwick C.J. rightly observed) "adds little, if anything, to the concept of a right." With great respect to So wick C-J -then Lordships consider that the word "legitimate" in that expression falls to be read as meaning "reasonable". Accordingly, "legitimate expectation" in this context are capable of including expectations which go beyond enforceable legal rights. provided they have some reasonable basis, see *Reg. vs. Criminal (sic) Compensation Board. Ex parte Lain* (1967) 2 Q.B. 864. So it was. held in *Reg. vs. Board of Visitors of Hull Prison, Ex parte. (sic) (sic)(No.2)(sic)*.1.WLR. 1041 that a prisoner, is entitled to challenge by judicial review, a decision by a prison board of visitors- awarding him loss of remission of sentence, although he has no legal right to remission, but only a reasonable expectation of receiving it.

11. The expectations may be based upon some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.

12. In *Council of Civil Service Unions and Ors, vs. Minister for the Civil Service* (1984) 3 All E.R. 935 Lord Fraser in his speech expressed, inter alia, the following view:

But even where a person claiming some benefit or privilege law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so. the Courts will protect his expectation by judicial review as a matter of public law. This subject has been fully explained by Lord Diplock in *O'Reilly vs. Mackman* (1982)3 All ER 1124. (1983) 2 AC 237 and I need not repeat what he has so recently said. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. Examples of the former type of expectation are *Re Liverpool Taxi Owners' Association* (1972) 2 All ER 589, (1972) 2 QB 299 and *A-G of Hong Kong vs. Ng Yuen Shiu* (1983) 2 All ER 346 (1983) 2 AC 629. (I agree with Lord Diplock's view expressed in the speech in this appeal, that "legitimate" is to be preferred to "reasonable" in this context. I was responsible for using the word "reasonable" for the reason explained in *Ng Yuen Shiu*, but it was entitled only to be exegetical of "legitimate).

To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too.-It. must, affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i)(sic); has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decisionmaker will not be withdrawn without giving him first an opportunity of

advancing reasons for contending that they should not be withdrawn. (I prefer to continue to call the kind of expectation that qualified a decision for inclusion in class (b) a "legitimate expectation" rather than a reasonable expectation", in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a "reasonable" man, would not necessarily have such consequences. The recent decision of this House in *Findlay vs. Secretary of State for the Home Dept* (1984) 3 All ER 80 1, (1984) 3 WLR 1159 presents an example of the latter kind of expectation. "Reasonable" furthermore bears different meanings according to whether the context in which it is being used is that of private law or of public law. To eliminate confusion it is best avoided in the latter).

13. Lord Roskill in *Council of Civil Service Unions and Ors. case* (Supra) in his speech expressed, inter alia, the following view :

The introduction of the phrase "reasonable expectation" into this branch of our administrative law appears to owe its origin to Lord Denning MR in *Schmidt vs. Secretary of State for Home Affairs* (1969) 1 All ER 904 at 909, (1969) 2 Ch 149 at 170 (when he used the phrase "legitimate expectation"). Its judicial evolution is traced in the opinion of the Judicial Committee delivered by Lord Fraser in *A.G. of Hong Kong vs. Ng Yuen Shiu* (1983) 2 All ER 346 at 350-51. (1983) 2 AC 629 at 636-638. Though the two phrases can, I think, now safely be treated as synonymous for the reasons there given by my noble and learned friend, I prefer the use of the adjective "legitimate" in this context and use it in this speech even though in argument it was the adjective "reasonable" which was generally used. The principle may now be said to be firmly entrenched in this branch of the law. As the cases show, the principle is closely connected with "a right to be heard". Such an expectation of prior consultation. Another may be an expectation of being; allowed time to make "representations, especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure.

14. In *Food Corporation of India vs. M/s. Kamdbenu Cattle Feed Industries*, (1993 MS. SCW 1509), Justice J.S. Verma speaking for the Bench observed as follows:

A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fair play in action". Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every (sic) to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case.

15. In *Navajyoti Coop-Group Housing Society vs. Union of India*, (1992 AIR SCW 3075) Justice G.N. Ray speaking for the Bench observed as follows:

In the aforesaid facts, the Group Housing Societies were entitled to legitimate expectation" of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment

16. In *Union of India vs. Hindustan Development Corporation* (1994 AIR SCW 643) Justice K. Jayachandra Reddy speaking for the Court observed as follows:

Time is a three-fold present : the present as we experience it. the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or. a hope. nor can it amount to "a claim or demand on the ground of a right. However earnest and sincere a wish.. a desire or. a hope any be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a " genuine expectation. Such expectation should be. justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

17. From the above quoted views on "legitimate expectation" it appears that an expectation to be a "legitimate expectation" must have reasonable basis. Legitimate expectation" must have reasonable basis. Legitimate expectation may be based upon a statement or undertaking by, or on behalf of the public authority which has the duty of making the decision. Legitimate expectation may arise either from an express promise or assurance given on behalf of a public authority or from the existence of a regular practice or consistent past practice which he claimant can reasonably expect to continue. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence.

18. From the facts and circumstances of the case discussed hereinabove it is evident that the expectation of the Writ Petitioner has no reasonable basis. The expectation of the Writ Petitioner is not based upon any statement or undertaking by or on behalf of the Municipal Authority. No promise or assurance was given by the Municipal Authority. There is no existence of regular practice or consistent past practice on the basis of which the Writ petitioner can legitimately expect to be regularized or absorbed in the service of the Municipality. Single instance of Bulbul Samaddar does not amount to a regular practice or consistent past practice followed by the municipal Authorities. The expectation of the Writ petitioner is not

founded on the Sanction of law or custom or established procedure followed in regular or natural sequence, in view of these facts and circumstances the Court is of the view that fee Writ petitioner lad/has no "legitimate expectation" for being regularized or absorbed in the service of the Municipality. In view of the discussions made hereinabove the Writ petition is dismissed. However, there shall not be any order as to costs.