Upendra Singh vs The State Of Bihar And Ors. on 23 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1315, 2018 (3) SCC 680, 2018 LAB. I. C. 1441, AIR 2018 SC (CIVIL) 1156, (2018) 2 PAT LJR 91, (2018) 3 SERVLR 101, (2018) 3 SCALE 363, (2018) 1 SERVLJ 329, (2018) 157 FACLR 990, (2018) 2 JLJR 34, 2018 (7) ADJ 8 NOC

Author: A.K. Sikri

Bench: Ashok Bhushan, A.K. Sikri

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2356 OF 2018

UPENDRA SINGH .....APPELLA

VERSUS

STATE OF BIHAR AND OTHERS .....RESPONDENT

JUDGMENT

A.K. SIKRI, J.

The appellant herein has challenged the judgment dated July 25, 2013 passed by the High Court of Judicature at Patna dismissing the Letters Patent Appeal (LPA) filed by the appellant. In fact, by the said common judgment, two LPAs are decided. One LPA was filed by three persons and the other was filed by eight persons. All these eleven persons, who were engaged by one K.D.S. College (respondent No.8 in these proceedings) situate within the jurisdiction of P.S. Gogari, District Khagaria, Bihar, wanted regularisation of their services and payment of salary based on such regularisation. Their writ petition was dismissed by the learned Single Judge and the intra-court appeal has met the same fate. However, it appears that out of eleven persons, who were the appellants in the aforesaid two LPAs, only the appellant herein has approached this Court feeling dissatisfied with the outcome therein.

2) The main case set up by the appellant is that, no doubt, respondent No.8 was a private college when the appellant was engaged, however, it was ultimately taken over by the State Government and got affiliated to the Bihar University. It is stated that having regard to the long service rendered by the appellant, coupled with the decision of the University authorities itself to regularise such persons, he was also entitled thereto. However, the same is denied and he has not been paid his regular salary for last over a decade. The claim is founded on the following averments:

> 3) The Governing Body of respondent No.8 constituted a Selection Committee for appointment of teaching and non-teaching staff and this Committee, after following due process of recruitment through an advertisement and thereafter selection on interview, appointed the appellant in Grade III in non-teaching category with effect from January 24, 1978. In the year 1980, a decision was taken by the Government of Bihar to some Universities, including the Bihar University, that the colleges affiliated with these Universities be converted as 'Constituent Colleges' of the University on the basis of which respondent No.8 also became a Constituent College of the Bihar University. This decision was implemented by respondent No.8 as well and with effect from June 16, 1981, respondent No.8 attained the status of Constituent College. Thereupon, respondent No.8 absorbed all the employees, including the appellant, and the appellant continued in service of respondent No.8 thereafter. However, as the University authorities did not make payment of salaries to the appellant and some other employees of Grade III and Grade IV, although they were continued in service, representations were made in this behalf by the College Employees' Federation.

Though, initially assurances were given, they were not fulfilled, because of which the Employees' Federation started the agitation and continued the same. Ultimately, State of Bihar and Bihar Higher Education Department entered into an agreement dated April 26, 1989 with the Bihar State University and the College Employees' Federation agreeing to absorb the employees, including the appellant, on the basis of Staffing Pattern. Based on that decision, respondent No.8 scrutinised the records of its employees and recommended the names of non-teaching staff, including that of the appellant, through its letter dated December 22, 1989 to the Government recommending the names for absorption. All such names were considered by a three man Staffing Committee appointed by the University, which inspected the records, however, no final decision was taken. In these circumstances, when the matter was getting delayed, the appellant and others filed writ petition in the High Court in the year 1997, which was disposed of on May 05, 1999 directing the State Government to take appropriate decision as early as possible. Thereafter, the matter was considered and ultimately the Bihar University issued orders dated August 30, 1999/ September 15, 1999 rejecting the claims of these employees, including the appellant, and directing them not to work in the College. This action was challenged by filing writ petitions, which were allowed and the appellant and some others were taken back in the employment. However, they were not paid salary of the regular staff. Thereafter also, few rounds of litigation took place when the writ petitions were filed in which orders were passed by the High Court to consider the claim of these persons and it is not necessary to give those details. Suffice is to state that there was an issue as to whether there were sanctioned posts or not against which the cases of these persons could be considered. According to

the appellant, respondent No.8 informed the University, vide letter dated June 11, 2009, that there are twenty five posts sanctioned for the College, out of which fifteen posts were for Grade IV employees and ten for Grade III employees. In spite thereof, no decision was taken and ultimately Writ Petition No. 16667 of 2010 was filed by the appellant and some other employees, which was dismissed by the Single Judge of the High Court on February 01, 2013. It is against this judgment, LPAs in question were filed, which have been dismissed by the impugned judgment.

4) The case set up by the appellant, in nutshell, is that the appellant has been working for more than two decades; he was appointed by respondent No.8 after following due process of recruitment; the appointment was against sanctioned post; after respondent No.8 college attained the status of 'Constituent College', the University refused to pay the salary of the regular staff; and though decision was taken to regularise the services on the basis of Staffing Pattern as far back as on May 10, 1991 by a resolution of the State Government in this behalf, benefit thereof is not extended to the appellant even when he fulfils all the conditions contained in the said resolution.

5) Learned counsel for the appellant submitted that the writ court as well as the appeal court have proceeded on a wholly erroneous basis and assumption that the Government had, at no stage, agreed to regularise the appellant and others. She submitted that the State Government had already given concurrence for such a regularisation but was delaying its implementation on one pretext or the other. This concurrence of the State Government was recorded in the agreement dated April 26, 1989 with the University and the College Employees' Federation, which was followed by various other documents exchanged between the University, the State Government and respondent No.8. It was also argued that the High Court wrongly proceeded on the basis that the appellant was appointed after the cut off date of July 12, 1980, whereas the record reveals that he was appointed much prior thereto, i.e. on January 24, 1978.

6) Learned counsel for the respondent, on the other hand, justified the reasoning adopted by the courts below and argued that the case of the appellant was not covered by the resolution passed on Staffing Pattern, inasmuch as, neither there were sanctioned posts when the appellant was appointed nor any such post existed thereafter, nor was he appointed against sanctioned post or after following the due procedure. He submitted that the appointment of the appellant or similarly situated persons was done by respondent No.8 of its own and when respondent No.8 became Constituent College, the University was well within its right not to regularise those persons who were not appointed against the sanctioned post. The learned counsel referred to clause (1) of the Manual of Bihar University Laws (Part – I) which deals with the appointment and powers of the Vice Chancellor and sub-clause (6) thereof stipulates that it is the Vice Chancellor which has the power to make appointment to the post within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff etc., meaning thereby not only power is given to the Vice Chancellor but even he can appoint only against the posts, that too within the sanctioned grades.

7) After considering the respective arguments, we are of the view that the impugned judgment is without any blemish and no interference is called for. In fact, whole premise on which the case is founded by the appellant seems to be incorrect. We note that the cases of these persons, including

the appellant, were duly considered by the University, on the basis of which order dated August 13, 2003 were passed refusing regularisation. This order specifically states that the initial appointment of the appellant and others was not in accordance with law. It was made without advertisement and there was no recommendation of panel by the Selection Committee. So much so, the appointments were not made by the competent authority. We find that the University, or for that matter, the Government had agreed to regularise the services of those employees of the colleges, which had become the Constituent Colleges, only on the condition that their initial appointment was after following the due procedure and that too against the sanctioned post. A statement was made at the Bar by learned counsel for the respondent that there were no sanctioned posts even now.

8) Law pertaining to regularisation has now been authoritatively determined by a Constitution Bench judgment of this Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1. On the application of law laid down in that case, it is clear that the question of regularisation of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be disputed by the learned counsel for the appellant as well. That is why she continued to plead that the appointment of the appellant was made after following due procedure and in accordance with law. However, that is not borne from the records. Pertinently, order dated August 13, 2003, vide which the appellant was refused regularisation on the aforesaid ground was not even assailed by the appellant at that time. It may be mentioned that in Uma Devi, the Court left a small window opened for those who were working on ad hoc/ daily wage basis for more than ten years, to regularise them as a one-time measure. However, that was also subject to the condition that they should have been appointed in duly sanctioned post. Further, while counting their ten years period, those cases were to be excluded where such persons continued to work under the cover of orders of the courts or the tribunal. The High Court has, in the impugned judgment, discussed these nuances and has also referred to the judgment in Uma Devi and held that the benefit of one-time measure suggested in that case could not be extended to the appellant because of the following reasons:

> "The Appellants clearly fall in the exception noticed in paragraph-53 of Umadevi (supra) as their claims were sub judice on the date the pronouncement of the Constitution Bench was made in view of pendency of C.W.J.C. No. 12235 of 2005 disposed subsequently on 29.08.2006. Such litigious continuation in employment stands excluded from the directions of Umadevi.
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> The Appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their initial appointment by the Managing Committee was in consonance with Article 14 of the Constitution of India by open advertisement and competitive merit selection. On account of various interpretations by more than one Bench of M.L. Kesari (supra) reference was made to the Full Bench. We have already noticed from the order refusing regularization dated 13.08.2003 that the appointment of the Appellants on daily wage was not in consonance with the law.

The conclusion in Ram Sewak Yadav (supra) at paragraph 43 is as follows:

"43 (A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc, and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and he person must have continued in service for over ten years without intervention of any court orders."

9) We are, thus, of the view that there is no merit in this appeal, which is accordingly dismissed.

No costs.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

FEBRUARY 23, 2018.