# Principal, Mehar Chand Polytechnic & ... vs Anu Lumba & Ors on 8 August, 2006

## Equivalent citations: AIR 2006 SUPREME COURT 3074, 2006 AIR SCW 4373, 2006 LAB. I. C. 3570, 2007 (1) AIR JHAR R 59, 2006 (6) AIR KANT HCR 18, (2006) 45 ALLINDCAS 21 (SC), (2007) 1 ALLMR 443 (SC), (2007) 2 SERVLJ 85, (2007) 1 MAD LJ 17, 2006 (7) SCC 161, 2006 (45) ALLINDCAS 21, 2006 (9) SRJ 61, (2006) 2 CURLJ(CCR) 102, 2006 (7) SCALE 648, (2006) 6 SUPREME 313, (2006) 4 SCT 49, (2006) 5 SERVLR 430, (2006) 111 FACLR 630, (2006) 7 SCALE 648, (2006) 4 LAB LN 219, (2006) 6 SCJ 185

## Author: S.B. Sinha

## Bench: S.B. Sinha, Dalveer Bhandari

CASE NO.:
Appeal (civil) 7051 of 2002

PETITIONER:
Principal, Mehar Chand Polytechnic & Anr

RESPONDENT:
Anu Lumba & Ors.

DATE OF JUDGMENT: 08/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:

J U D G M E N T W I T H CIVIL APPEAL NOS.7052/2002, 6028-30/2004,7505-06/2004 & 2922/2005 AND CIVIL APPEAL NOS. 3436/2006, 3438/2006 & 3437/2006 [Arising out of SLP (Civil) Nos.7925/2004, 8133/2004 & 8154/2004] AND T.C. (Civil) NOS.65-71/2004 T.C. (Civil) No. OF 2006 [Arising out of T.P. (CIVIL) NO.850/2005] S.B. SINHA, J :

Delay condoned in S.L.Ps.

Leave granted in S.L.Ps.

These civil appeals and transfer applications involve a common question as regards the legal right of regularization of the Respondents in services, although appointed for a fixed period in a project and, thus, are being disposed of by this common judgment.

We would notice the factual matrix of the matter from Civil Appeal No. 7051 of 2002. The First Respondent was appointed as an Assistant Computer Instructor. Mehar Chand Polytechnic, Jalandhar, undertook a Community Polytechnic Project, a scheme issued by the Ministry of Human Resources Development, Government of India. The Central Government issued "provisional norms" for implementing the scheme. Specific amounts by way of both recurring and non-recurring expenses used to be granted by the Central Government. Under the head 'non-recurring' expenses, a sum of Rs. Ten lacs was earmakred for acquisition of tools and equipments for five extension centres. As regards recurring nature of expenditure, Instructor were to be appointed on a consolidated amount of Rs.1,500/- or Rs.2,000/- as the case may be. The total amount of recurring expenditure was fixed at Rs. Seven lacs only. In the circular letter, it was, inter alia, stated :

"The expenditure shown above are at the maximum limit and the actual expenditure on each item should be limited to the bare minimum. The payment of salary/honorarium should also be limited considering the nature of duties and responsibilities entrusted and no regular staff should be appointed till the final guideline document is approved and necessary instructions are intimated. Engagement of Part-time/Full-Time staff should be based on the actual requirement."

It was directed that the total wages payable to the employees should not exceed 2/3rd of the amount of the grant. It was further stated that even deputation should not be encouraged. By a circular letter dated 07.04.1998, the Technical Teachers' Training Institute, inter alia, issued the following directions to the Principal of the Polytechnic :

"2. Those who have been taken on deputation from the Polytechnic to Community Polytechnic, their salaries can be protected but total wage salaries of whole CP Scheme should not in any circumstances exceed 2/3rd of the allotted recurring grant. As such CPs must be careful in taking the person on deputation and in no circumstances, two persons Project Officer and Asstt. Project Officer or both should not be taken on deputation.

3. As already indicated, as per the guidelines of Govt. of India which have already been circulated, persons can be taken on deputation or on contract/tenure basis. But certain cases have come to the notice of undersigned where CP have appointed PO or APO or both on scale basis. As this is a plan and project scheme of GOI, taking the person on the scale is not permissible as per the instructions of GOI, MHRD and also this is not permissible to give them revised scales as per the 5th Pay Commission of Central Government or 4th Pay Commission of respective State Government. As such, it is intimated that under no circumstances, you should give the revised scales to the persons working under CP/CDRT Scheme unless clear-cut guidelines are issued by GOI, MHRD."

Indisputably, no post was created. The objective of the project was not to provide employment but to give some input to the people at the rural level by educating them so as to enable them to utilize their lands more beneficially. The project although lasted for a long time, but visualized to be of limited duration, by reason thereof no substantive appointment was to be given. The project was to be manned by a few persons on a temporary basis.

The First Respondent herein was appointed in the said project in terms of the said policy decision of the Central Government. One of the appointment letters issued to the First Respondent reads as under :-

> "Please refer to your application dated 31.7.1992 for the post of Asstt. Computer Instructor at this wing.
>
> You are hereby offered the post of Asstt. Computer Instructor on purely temporary basis w.e.f. 3.8.1992 on a consolidated salary of Rs.1500/- per month for a period of one year i.e. upto 31.7.1993.
>
> 3. Your services can be terminated by giving 15 days notice on either side."

It is not the case of the Respondents that prior to issuance of the said offer of appointment any vacancy existed or the same was notified to the Employment Exchange. It is furthermore not their case that they were recruited in terms of the statutory rules and/or upon compliance of the requirements envisaged under Articles 14 and 16 of the Constitution of India. It is also not their case that prior to their appointments any advertisement was issued enabling the eligible candidates to file applications therefor or the vacancies were notified to the Employment Exchange.

They made a representation for grant of scale of pay, which was rejected. A writ petition was filed before the Punjab & Haryana High Court. An interim order was passed directing the Central Government to put them on a regular scale of pay.

While considering the matter, the officials of the Directorate of Technical Education, Punjab, sought for an information as to whether the Respondents had obtained a certificate in computer training from a recognized institute. A resolution to the said effect was taken by the appropriate committee.

Pursuant to the said resolution, the said Respondent was asked as to whether she possessed the requisite qualification, to which she stated that she had obtained a certificate from M/s Babbage Institute of Computer Studies, which although was registered with the Registrar of Firms and Societies but was not recognized by any competent authority.

The High Court by reason of the impugned judgment allowed the writ petition directing the appellant to create suitable posts as also consider the question of regularization of her services to the said post within three months, directing :

> " The petitioner has been in position since the year 1992. The post is still needed. In this situation, we consider it appropriate to direct that the petitioner's case for regularization on the post held by her shall be considered within three months. The respondents shall fix an appropriate scale of pay and place her in that scale. The emoluments shall not be below Rs.5500/- per month as mentioned above."

A limited noticed was issued by this Court confined only to the question as to whether the High Court could direct for regularization of services of the Respondent.

Mr. Sunil Gupta, the learned Senior Counsel appearing on behalf of the Appellants, submitted that in view of the fact that the Respondent was appointed in a project, the High Court could not have directed regularization of her services. Such a direction, the learned counsel contended, is contrary to the decisions of this Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Others [(1992) 4 SCC 99], State of Himachal Pradesh v. Nodha Ram and Others [AIR 1997 SC 1445] as also a recent Constitution Bench decision in Secretary, State of Karnataka and Others v. Umadevi and Others [(2006) 4 SCC 1].

Mr. T.L. Iyer, the learned Senior Counsel appearing on behalf of the Respondents, on the other hand, urged that keeping view the fact that the scheme was in operation since 1979, and the number of such Community Polytechnics has gone up throughout India, the Union of India, being a model employer, could not have taken recourse to arbitrary exercise of power by imposing such harsh conditions of service. Putting of long years of service, according to the learned counsel, itself would be sufficient for directing regularization of service.

Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. The State although is a model employer, its right to create posts and recruit people therefor emanates from the statutes or statutory rules and/or rules framed under the proviso appended to Article 309 of the Constitution of India. The recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

The Parliament for giving effect to the provisions of the Article 16 of the Constitution enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. The statutes and the statutory rules framed by the Union of India and other States also invariably require issuance of a public notices so as to enable all eligible candidates to file applications thereof. The Constitution and/or statutes or statutory rules do not make any distinction between post and posts. The recruitment process for all posts is the same.

In a large number of cases, this Court noticed that the holders of public posts had been making recruitments in total violation of the recruitment process. In regard to the question of regularization also, different orders had been passed by different benches. Some benches pointed out that the equality doctrine enshrined in Articles 14 and 16 of the Constitution of India had been grossly violated by the authorities, and the provisions of recruitment rules were given a complete go by. Even the beneficent provisions of the reservation applicable to the backward classes of people had

not been adhered to.

This Court also noticed a growing tendency of giving backdoor appointments to a large section of employees on ad hoc basis or on daily wages.

With a view to give a quietus to the controversies arising out of differences in opinion expressed in different decisions, in Secretary, State of Karnataka and Others v. Umadevi and Others [(2006) 4 SCC 44], a three- Judge Bench of this Court thought it fit to refer the matter for authoritative pronouncements by a Constitution Bench, stating :

> "1. Apart from the conflicting opinions between the three-Judge Bench decisions in Ashwani Kumar v. State of Bihar; State of Haryana v. Piara Singh; and Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka on the one hand and State of H.P. v. Suresh Kumar Verma; State of Punjab v. Surinder Kumar; and B.N. Nagarajan v. State of Karnataka on the other, which have been brought out in one of the judgments under appeal of the Karnataka High Court in State of Karnataka v. H. Ganesh Rao, decided on 1.6.2001 the learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).
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> 2. On the other hand, Mr. M.C. Bhandare, learned Senior Counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provisions of Articles 14 and 21 of the Constitution.
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> 3. Mr. V. Lakshmi Narayan, learned counsel appearing in CCs Nos.109-498 of 2003, has filed the GO dated 19.7.2002 and submitted that the orders have already been implemented.
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> 4. After having found that there is conflict of opinion between the three-Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.
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> 5. Let these matters be placed before the Hon'ble the Chief Justice for appropriate orders."

The Constitution Bench of this Court while answering some of the said questions in no uncertain terms held that any appointment made in violation of the statute or in derogation of the equality clause contained in Articles 14 and 16 of the Constitution would be void and of no effect. It was opined that such persons who had obtained such illegal appointments were not entitled to claim regularization.

We may at this juncture notice that way back in 1992, a three-Judge Bench of this Court in Delhi Development Horticulture Employees' Union (supra) observed as under :

> "The above figures show that if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc."

Yet again in Nodha Ram (supra) in regard to the status of the temporary employees employed in the Government project, it was held :

> "It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, therefore, set side."

Strong reliance has been placed by Mr. Iyer in Jacob M. Puthuparambil and Others etc. v. Kerala Water Authority and Others [(1991) 1 SCC 28], for the proposition that even if statutory rules do not operate in the field, direction for regularization is permissible in law.

Jacob (supra) was decided in a different fact situation. In that case the employees concerned were working in the erstwhile Public Health Engineering Department. Upon creation of the Kerala Water and Waste Water Authority constituted under Section 3(1) of the Ordinance 14 of 1984 repealed and replaced by Act 14 of 1986, their services were transferred. The cases of regularization of the

employees appointed during different periods came up for consideration in the light of Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, 1958 and the Resolution adopted by the Authority in terms thereof.

The contention of the employees therein was that they were having been appointed in terms of the Rule 9(1) of the Rules and their names having been called for from the Employment Exchange, the services of those who possessed requisite qualifications, could not be terminated. Clause (iii) of Rule 9 provided for regularization of service of any person appointed under clause (i) of sub-rule (a). A resolution had also been passed by the Authority recommending to the State regularization of the service of the employees recruited in the erstwhile PHED and still working in the Kerala Water Authority.

It is in the aforementioned backdrop this Court directed regularization of those who possessed the requisite qualifications.

In this case, neither a policy decision was taken by the Central Government nor their existed any rules in this behalf. Although this Court is not directly concerned as to whether such a policy decision could have been taken in view of the provisions contained in Article 309 of the Constitution of India, we may notice that in A. Uma Rani v. Registrar, Cooperative Societies and Others [(2004) 7 SCC 112], this Court opined :

> "No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."

Reliance has also been placed by Mr. Iyer on Karnataka State Private College Stop-Gap Lecturers Association etc. v. State of Karnataka and Others [(1992) 2 SCC 29], wherein this Court issued some directions; but while doing so it did not take into consideration the relevant constitutional provisions. It may, however, be noticed that even therein it was opined :

> " A temporary or ad hoc employee may not have a claim to become permanent without facing selection or being absorbed in accordance with rules but no discrimination can be made for same job on basis of method of recruitment. Such injustice is abhorrent to the constitutional scheme.
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> Reliance placed by the learned counsel on the said decision is, therefore, misplaced.
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> Reliance has also been placed on State of Haryana and Others v. Piara Singh and Others [(1992) 4 SCC 118]. We need not dilate on the said decision as the same was considered by the Constitution Bench in Umadevi, supra opining that the direction made therein to some extent is inconsistent with the conclusion, stating :
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> "With respect, the direction made in paragraph 50 of Piara Singh is to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it

> appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

Baseruddin M. Madari and Others v. State of Karnataka and Others [(1995) Supp. 4 SCC 111], whereupon again reliance has again been placed by the Senior Counsel, this Court following the decision in Karnataka State Private College Stop-Gap Lecturers' Association (supra) did not lay down any law that services of all ad hoc employees are required to be regularized.

The Constitution Bench in Umadevi (supra) in regard to the temporary employees clearly opined :

> " There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.
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> It was further observed :
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> " The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The project undertaken by the Union of India although continued for some time was initially intended to be a time bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturalists. In absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus.

In Umadevi (supra), it was stated :

> "There have been decisions which have taken the cue from the Dharwad case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in The Workmen v. Bhurkunda Colliery of Central Coalfields Ltd., though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent"

See also State of U.P. v. Neeraj Awasthi and Others [(2006) 1 SCC 667].

Yet again in National Fertilizers Ltd. & Ors. v. Somvir Singh [(2006) 6 SCALE 101], it was held :

> "Regularization, furthermore, is not a mode of appointment. If appointment is made without following the Rules, the same being a nullity the question of confirmation of an employee upon the expiry of the purported period of probation would not arise "

It was further opined :

> "It is true that the Respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the Respondents have worked for some time, the same by itself would not be a ground for directing regularization of their services in view of the decision of this Court in Uma Devi (supra)."

For the reasons aforementioned, the impugned judgments cannot be sustained. In view of the fact that limited notice was issued in Civil Appeal Nos.7051 and 7052 of 2002 arising out of S.L.P. (Civil) Nos.11597 and 22493 of 2001, we set aside only that part of the judgment whereby and whereunder the Appellants had been directed to create posts and regularize the services of the Respondents therein. The impugned judgments of the High Court to the aforementioned extent are set aside.

In view of our findings aforementioned, the transfer cases are also disposed on the same terms. The appeals are, thus, allowed, to the extent mentioned hereinabove. The parties shall, however, pay and bear their own costs.