Union Of India & Anr vs Arulmozhi Iniarasu & Ors on 6 July, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2731, 2011 (7) SCC 397, 2011 AIR SCW 4252, 2011 LAB IC 3314, (2011) 2 CURLR 861, (2011) 4 SERVLR 697, (2011) 3 SCT 815, (2012) 6 ALL WC 6090, (2011) 130 FACLR 1076, (2011) 4 PAT LJR 83, (2011) 4 LAB LN 494, (2011) 5 ALLMR 469 (SC), (2011) 3 SERVLJ 92, (2011) 3 JCR 254 (SC), (2011) 8 ADJ 59 (SC), (2011) 7 SCALE 340, (2011) 3 ESC 538, (2011) 3 KER LT 84

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Bench: H.L. Dattu, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4990-4991 0F 2011

(Arising Out of S.L.P. (C) Nos. 25200-25201 of 2010)

UNION OF INDIA & ANR. -- APPELLANTS

VERSUS

ARULMOZHI INIARASU & ORS. -- RESPONDENTS

J U D G M E N T

D.K. JAIN, J.:

1.Leave granted.

2.These two appeals, by special leave, are directed against the judgment and final order dated 5th January, 2010 delivered by the High Court of Judicature at Madras, whereby the High Court, in slight modification of the order passed by the Central Administrative Tribunal, Madras Bench (for short "the Tribunal"), has directed that the respondents shall be given a relaxation of five years and three years respectively to SC/ST and OBC candidates in age limit for being considered for selection to the post of Sepoy in the Central Excise department, Ministry of Finance, Government of India. However, the High Court has directed that the said relaxation would be applicable to those candidates who were actually erstwhile employees of the said department.

3.Shorn of unnecessary details, the facts essential for adjudication of the present appeals may be stated as follows:

The respondents were engaged as part-time contingent casual labourers-purely on temporary basis in the Office of the Commissioner of Central Excise, Chennai Zone, in the year 1999. As per offer of appointment on record, they were required to work on the basis of the need of the office, for which they were to be paid @ `10/- per working hour with no guarantee as regards minimum number of hours in a month. In para 7 of the said letter, it was stated that the appointment letter would not confer any right to claim any permanent post in the department as also any automatic right to be considered for selection to any permanent post in the department. Most of them were in continuous employment for a period ranging from 8 to 14 years. It is common ground that none of the respondents fall within the purview of 1993 scheme, notified on 10th September, 1993, for conferring temporary status and regularisation of casual workers, who were in employment on 1st September, 1993, all of them having been engaged after the said date.

4.On 2nd May, 2005, in compliance with the directions issued by the Ministry of Finance, the appellants dispensed with the services of all such casual labourers and handed over the work done by them to contractors.

Aggrieved by the said action the respondents herein, approached the Tribunal by preferring an original application, (O.A.No.764 of 2005) seeking regularisation of their services. The said O.A. was dismissed by the Tribunal. Against the order of dismissal, the respondents filed a writ petition before the High Court. While disposing of the writ petition, the High Court directed the appellants herein to consider the matter afresh in light of the circulars issued by the Department of Personnel in O.M.No.49019/1/2006-Estt(C) dated 11th December, 2006 as also the circulars issued by the Ministry of Finance dated 7th September, 2007 and 13th September, 2007. These circulars were issued pursuant to the order passed by this Court in the case of Secretary, State of Karnataka & Ors.

Vs. Umadevi (3) & Ors.1, inter-alia directing the Union of India, State Governments and their instrumentalities to take steps to regularise, as a one time measure, the services of such irregularly appointed employees, who are duly qualified in terms of the statutory recruitment rules for the post

and who have worked for ten years or more in duly sanctioned post but not under cover of orders of Courts or Tribunals.

5.Upon a fresh consideration in terms of the said direction, the Chief Commissioner of Central Excise found that the respondents were not eligible for regularization of their services as they did not satisfy the 1 (2006) 4 SCC 1 criteria laid down in the case of Umadevi(3) (supra) and Office Memorandum dated 11th December, 2006, issued by Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions.

6.On 14th January, 2008, the office of the Chief Commissioner of Central Excise, Chennai Zone, issued a notice inviting applications for recruitment to 40 (37 GC & 3 OBC) posts of Sepoy (General Central Service Group D Post). As per the recruitment rules, the age limit prescribed for the post as on 1st January, 2008, was 27 years for general candidate, 32 years for SC/ST candidates and 30 years for OBC because of relaxation of age limit by five years and three years in the cases of SC/ST candidates and OBC candidates respectively. In the recruitment process, thus initiated, initially the respondents were permitted to participate but later on, realising that the respondents (all SC/ST and OBC candidates) had crossed the prescribed age, they were not called to participate in the further selection process. Their applications were rejected as age barred.

7. Being aggrieved by the decision of the department in not granting relaxation in age, the respondents filed fresh Original Applications before the Tribunal. The Tribunal was of the view that the ratio of the decision of this Court in Nagendra Chandra & Ors. Vs. State of Jharkhand & Ors.2 was applicable to the case of the respondents and therefore, they were entitled to the same relief as was granted in that case. Accordingly, the Tribunal directed the appellants herein to consider the case of the respondents for appointment by relaxing the age limit prescribed, if necessary, in view of the long service rendered by them.

8.Aggrieved by the said direction, the appellants herein unsuccessfully questioned the validity of the order of the Tribunal before the High Court.

The High Court disposed of both the writ petitions with modification of the order of Tribunal to the effect that relaxation in the age limit could be up to 3 years for OBC candidates and 5 years for SC/ST candidates, subject to the condition that it would be applicable to those candidates who were actually erstwhile employees of the department. Hence, the present appeals.

9.Mr. B. Bhattacharya, learned Additional Solicitor General of India, appearing for the appellants strenuously urged that the High Court has committed a manifest error in directing relaxation of age bar in the case of the respondents by treating the decision in the case of Nagendra Chandra & Ors. (supra) as a binding precedent on the point, without appreciating that: (i) the observation with regard to relaxation in age bar in the penultimate paragraph of Nagendra Chandra's case (supra) was 2 (2008) 1 SCC 798 made by this Court in exercise of power under Article 142 of the Constitution of India, which is not possessed by either the High Court or the Tribunal and (ii) the fact-situation in the instant case was entirely different from the one obtaining in that case. It was asserted that unlike Nagendra Chandra's case (supra), where there was irregularity in the

appointment of Constables against the sanctioned posts, the present case pertained to engagement of need based casual labourers without any recruitment rules or sanctioned posts. It was thus, argued that the High Court failed to notice distinction between the casual labourer and those whose appointment was irregular because of non-compliance with some procedure in the selection process, which is not the case here when none of the respondents had earlier participated in recruitment for the post of Sepoys.

10.Per contra, Mr. P.B. Krishnan, learned counsel appearing for the respondents, in his written submissions, has submitted that though the respondents were informed at the time of the appointment about the nature of their work, many a times they continued to work day and night and also on national holidays without any monetary benefits only with the hope and expectation that they would be absorbed on regular basis or at least conferred temporary status. It has been further pleaded that the action of the appellants in rejecting the request for age relaxation without taking into account considerable years of their casual service, was highly unjust and arbitrary. The learned counsel pleaded that by reason of the impugned directions the respondents have only been given a right to compete and not an appointment as such and therefore, this Court should be loathe to interfere with a just and equitable order by the authorities below, particularly when similarly placed labourers had been granted age relaxation.

11.Thus, in these appeals the first and the foremost question to be examined is whether in the matter of relaxation of age limit, prescribed as eligibility criteria for appointment on a particular post, any principle of law has been laid down in the decision of this Court in Nagendra Chandra's case (supra)? If so, whether it could be applied to the facts of the present case for directing the afore-stated relaxation in age limit?

12.Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases.

(Ref.: Bharat Petroleum Corpn. Ltd. & Anr. Vs. N.R. Vairamani & Anr.3; Sarva Shramik Sanghatana (KV), Mumbai Vs. State of Maharashtra & Ors.4 and Bhuwalka Steel Industries Limited Vs. Bombay Iron & Steel Labour Board & Anr.5.)

13.Bearing in mind the aforenoted principle of law, we may now refer to the decision in Nagendra Chandra (supra). It is plain from a bare reading of the said decision that the question which fell for consideration before a bench of three learned Judges of this Court was as to whether the appointments of the appellants in that case were illegal or irregular. This Court opined that since the appointments made were not only in infraction of the recruitment rules but also violative of Articles 14 and 16 of the Constitution of India, these were illegal. It was thus, held that the appellants would

not be entitled to get the benefit of the directions contained in Umadevi(3) case (supra), which are applicable only to those qualified employees who were appointed irregularly in a sanctioned post.

Having come to the conclusion that the subject appointments being illegal, the competent authority was justified in terminating the services 3 (2004) 8 SCC 579 4 (2008) 1 SCC 494 5 (2010) 2 SCC 273 of the employees concerned and the High Court was also justified in upholding the same, in our view, the relied upon observation in the penultimate paragraph of the judgment in Nagendra Chandra (supra) does not appear to be consistent with the ratio of the decision of the Constitution Bench in Umadevi(3) case (supra). In the said decision it has clearly been held that the courts are not expected to issue any direction for absorption/regularisation or permanent continuance of temporary, contractual, casual, daily wagers or ad-hoc employees merely because such an employee is continued for a long time beyond the term of his appointment. It has also been held that such an employee would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. Therefore, in our opinion, the said observation cannot be said to be an exposition of general principle of law on the point that a long length of service, dehors the relevant recruitment rules for the post, is a relevant factor for waiver or relaxation of any eligibility criterion, including age limit, for future regular selections for the post. Obviously, the observation, general in nature, was made by this Court in exercise of its jurisdiction under Article 142 of the Constitution of India and, therefore, cannot be treated as a binding precedent. It has to be confined to the peculiar facts of that case.

14.We may now advert to the second limb of the question in para 11 (supra). The issue need not detain us for long as in our view the factual position as obtaining in the present case does not fit in with the fact situation in the case of Nagendra Chandra (supra). In the instant case, indubitably, the respondents were engaged as part time contingent casual labourers in the office of the Commissioner of Central Excise for doing all types of work as may be assigned to them by the office. Their part time engagement was need based for which they were to be paid on hourly basis. Though their stand is that many a times they were required to work day and night but it is nowhere stated that they were recruited or ever discharged the duties of a `sepoy' for which recruitment process was initiated vide public notice dated 14th January 2008 and the Tribunal as also the High Court has directed the appellants to grant relaxation in age limit over and above what is stipulated in the recruitment rules/advertisement. In view of the stated factual scenario, in our opinion, the engagement of the respondents as casual labourers even for considerable long duration did not confer any legal right on them for seeking a mandamus for relaxation of age limit. We have no hesitation in holding that Nagendra Chandra's case (supra) has no application on facts in hand and the impugned direction by the Tribunal, as affirmed by the High Court based on the said decision, was clearly unwarranted.

15.We may now consider the plea relating to the legitimate expectation of the respondents of being permanently absorbed/regularised in the Excise Department on account of their alleged uninterrupted engagement for long durations ranging between 8-14 years.

16.The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions. However, for the sake of brevity, we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to a few decisions.

17.In Council of Civil Service Unions Vs. Minister for Civil Service6, a locus classicus on the subject, for the first time an attempt was made by the House of Lords to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such 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) he 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 some rational 6 1985 AC 374 : (1984) 3 All ER 935 (HL) ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

18.Recently, in Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.7, one of us (D.K. Jain, J.), referring to a large number of authorities on the point, summarised the nature and scope of the doctrine of legitimate expectation as follows:

> "32. An examination of the aforenoted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

19.Bearing in mind the afore-stated legal position, we may now advert to the facts at hand. For the sake of ready reference, the relevant portions of 7 (2009) 1 SCC 180 offer of appointment issued by Commissioner of Central Excise, Chennai, to the respondents on 6th August 1999 are extracted below:

> "The under mentioned candidates who have been applied in response to the advertisement given by this department in the "Daily Thanthi" & who are appeared in Interview conducted by this office on 10.04.99 are offered appointment provisionally

in "part time contigent casual labourers" Purely on temporary basis on the basis of payment for the number of hours actually worked in a month. They will be paid Rs. 10.00 for every working hour. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

3. The candidates should note that they will be asked to work on the basis of the need of the office and there is no guarantee as regards minimum number in a month. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX

6. The offer of appointment is purely on temporary basis only. In case the work and conduct of the candidates is not found to be satisfactory. Their services will be terminated without any intimation/notice.

7.This appointment letter does not confer any right to claim any permanent post in this department and does not also vest any automatic right to be considered for selection to any permanent post in the Department.

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20.It is plain from the terms of the letter of appointment that the respondents were told in unambiguous terms that their appointments were temporary and would not confer any right to claim any permanent post in the department. It is not the case of the respondents that at any point of time, during their engagements with the appellants, a promise was held out to them by the appellants that they would be absorbed as regular employees of the department. In fact, no such promise could be held out in view of the Government O.M. dated 7th June, 1988 banning the employment of persons in regular posts.

21.At this juncture, it would be apposite to note that a similar plea was negatived by the Constitution Bench in Umadevi(3) (supra) by observing thus:

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

22.Having bestowed our anxious consideration to the facts of the case, in our opinion, the doctrine of legitimate expectation, as explained above, is not attracted in the instant case. The argument is rejected accordingly.

23.Lastly, as regards the submission that the action of the appellants is highly discriminatory in as much as some similarly situated persons have been appointed/absorbed as Sepoys, the argument is stated to be rejected.

It is well settled that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality. (Ref.: Sushanta Tagore & Ors. Vs. Union of India & Ors.8; U.P. State Sugar Corpn.

Ltd. & Anr. Vs. Sant Raj Singh & Ors.9; State, CBI Vs. Sashi Balasubramanian & Anr.10 and State of Orissa & Ors. Vs. Prasana Kumar Sahoo11.)

24.In view of the foregoing discussion, the impugned judgment cannot be sustained. It is set aside and the appeals are allowed accordingly.

However, in the facts and circumstances of the case, there shall be no order as to costs.

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(D.K. JAIN, J.) 8 (2005) 3 SCC 16 9 (2006) 9 SCC 82 10 (2006) 13 SCC 252 11 (2007) 15 SCC 129
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(H.L. DATTU, J.) NEW DELHI;

JULY 6, 2011.

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