Pragati Mahila Samaj & Anr vs Arun S/O Laxman Zurmure & Ors on 19 July, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3450, 2016 (9) SCC 255, 2016 (5) ABR 117, AIR 2016 SC (CIVIL) 2183, (2017) 2 MAH LJ 66, (2016) 5 SERVLR 183, (2016) 7 SCALE 224, (2016) 3 LAB LN 525, (2016) 4 PAT LJR 92, (2016) 4 SCT 4, (2016) 3 JLJR 469, (2016) 3 CURLR 17, (2017) 1 ALLMR 477 (SC), (2017) 1 SERVLJ 16, (2017) 3 ALL WC 3111, 2017 (121) ALR SOC 64 (SC), 2017 (171) AIC (SOC) 11 (SC), (2016) 6 BOM CR 307

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Bench: J. Chelameswar, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6498 OF 2016
(ARISING OUT OF SLP (C) No. 30834/2014)

Pragati Mahila Samaj & Anr. .....Appellant(s)

VERSUS

Arun & Ors. .....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 01.08.2014 passed by the High Court of Judicature at Bombay Bench at Nagpur in Writ Petition No. 2374 of 1999 whereby the High Court allowed the writ petition filed by respondent No.1 herein and set aside the order dated 05.08.1998 passed by the College Tribunal, Nagpur University, Nagpur in Appeal No. N-10 of 1998 and quashed the termination order dated 31.03.1998 issued by appellant No.1 herein by which the services of the respondent No. 1 had been terminated. The High Court further directed the

concerned authorities to reinstate the respondent No.1 on the post of Lecturer but without payment of any back wages to him.

3. Facts of the case lie in a narrow compass. They, however, need mention in brief to appreciate the short controversy involved in the appeal. The facts are taken from the SLP.

4. Pragati Mahila Mahavidyalaya (appellant No.2 herein) is a girls college at Bhandara, Maharashtra. It is run by appellant No. 1, which is a registered trust/society at Bhandara. The appellant No. 2 published an advertisement on 23.06.1996 inviting application for the posts of Lecturers. The respondent No.1 was selected and was accordingly given appointment for the post of Lecturer in Geography as part-time Lecturer vide appointment order dated 20.07.1996. The appointment was temporary. It was for a fixed period from 01.08.1996 to 30.04.1997. It came to an end by efflux of time. In the Academic Session 1997-1998, another advertisement was issued and vide appointment order dated 21.07.1997, respondent No. 1 was appointed as part-time Lecturer in Geography on temporary basis upto 30.04.1998. On 21.03.1998, the Nagpur University (respondent No.2 herein) granted approval to the appointment of respondent No.1 as a part-time Lecturer.

5. According to the respondent No.1, he was appointed as full-time Lecturer. The respondent No.1 also made a complaint to the Grievance Committee of the University to this effect. However, vide order dated 31.03.1998 (Ann. 5), the services of respondent No.1 were terminated w.e.f. 30.04.1998.

6. Challenging the order of termination, respondent No.1 filed an appeal being Appeal No. N-10 of 1998 before the University and College Tribunal, Nagpur (in short "the Tribunal") under Section 59 of the Maharashtra University Act, 1994. By order dated 05.08.1998, the Tribunal dismissed the appeal and upheld the termination order. It was held that the respondent No.1 was not appointed on a regular basis but his appointment was only on temporary/ad-hoc basis and it was for a specified term as a part-time Lecturer.

7. The respondent No.1, felt aggrieved, filed a writ petition being Writ Petition No. 2374 of 1999 before the High Court praying for setting aside of the order of Tribunal dated 05.08.1998 passed in Appeal No. N-10 of 1998. The High Court vide order dated 16.12.2008 partly allowed the writ petition and set aside the order of Tribunal dated 05.08.1998 and in consequence also set aside the termination order dated 31.03.1998. The High Court further directed the Management to reinstate the respondent No.1 in services but without payment of any back wages to the respondent No.1.

8. Challenging the said order, the College filed an appeal being L.P.A. No. 26 of 2009 before the Division Bench of the High Court.

9. By order dated 23.06.2009, the Division Bench disposed of the appeal and remanded the matter to the Single Judge of the High Court for deciding it afresh on merits.

10. After remand, the writ petition was restored to its original number, i.e. W.P. No. 2374 of 1999. It was, however, dismissed for want of prosecution by order dated 08.07.2010.

11. Thereafter an application being Civil Application No. 149 of 2010 was filed by respondent No.1 for restoration of the writ petition. It was also dismissed in default on 08.04.2011.

12. In 2012, the respondent No.1 filed another application for restoration of the writ petition. It is, however, not clear from the pleadings as to by which order, the Writ Petition was restored to its file. Be that as it may, vide impugned judgment dated 01.08.2014, the Single Judge allowed the writ petition, set aside the order dated 05.08.1998 passed by the Tribunal in Appeal No. N-10/1998 and quashed the termination order dated 31.03.1998. It was held that the advertisement (Ann.1) nowhere said that the appointment is temporary. It was also held that since the appointment was made on the basis of selection and interview and hence it has to be held as permanent. The direction was issued to reinstate the respondent No. 1 in service but without paying him any back wages for long intervening period.

13. Challenging the said judgment, the appellants have filed this appeal by way of special leave before this Court.

14. Heard Mr. A.K. Sanghi, learned senior counsel for the appellants and Mr. Nitin Bhardwaj, learned counsel for respondent No.1, Mr. Kishor Lambat, learned counsel for respondent No.2 and Ms. Shubhada K. Phattankar, learned counsel for respondent No.3. We have also perused the written submissions filed by the parties.

15. Mr. A.K. Sanghi, learned Senior Counsel appearing for the appellant, urged two points. In the first place, learned counsel contended that the Single Judge of the High Court erred in allowing the writ petition filed by respondent No.1 and thereby erred in setting aside the order of the Tribunal which had rightly upheld the termination order of respondent No.1.

16. In the second place, Mr. Sanghi pointed out that the appointment of respondent No.1 to the post of Lecturer was part-time in nature as is clear from the advertisement (Ann.1). Learned counsel further pointed out that the appointment being temporary as well as for a fixed period as is clear from the appointment orders (Annexures 2 & 3), the respondent No.1 had no right to claim the status of permanent employee in service for want of any material and seek the relief of regularization and reinstatement.

17. Learned counsel further submitted that since the appointment of respondent No.1 is regulated and controlled by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (in short "The Act"), the nature of respondent No.1's appointment coupled with the legality and correctness of the termination order is required to be decided in the first instance in the light of the relevant provisions of the Act. Learned Counsel contended that the High Court unfortunately did not even take note of any provision of the Act which has application to the facts of the case.

18. Learned counsel then submitted that this Court had the occasion to examine this very question, which is the subject matter of this case, in the case of Hindustan Education Society & Anr. vs. SK. Kaleem SK. Gulam Nabi & Ors reported in (1997) 5 SCC 152 wherein this Court examined the

question in the light of the provisions of the Act and held that the appointment of the employee concerned was temporary in nature and, therefore, he could not be considered as permanent employee. This Court repelled all the submissions of the employee, which were pressed in service for challenging the order of termination, and upheld the termination order as being legal.

19. Learned Counsel, therefore, submitted that keeping in view the provisions of the Act and the law laid down in Hindustan Education Society's case (supra), which again was not taken note of by the High Court, the impugned order cannot be said to be passed in conformity with the law and hence it is not legally sustainable. It was lastly urged that the writ petition filed by respondent No.1 is, therefore, liable to be dismissed by upholding the order of the Tribunal and in consequence of the termination order.

20. In reply, learned counsel for respondent No.1 (employee) supported the impugned order and contended that no case is made out to set aside the impugned order as the same is based on proper reasoning calling for no interference therein.

21. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellants.

22. In our considered opinion, learned counsel for the appellants rightly argued that the rights of the parties to the case at hand are governed by the provisions of the Act and, therefore, question involved in the case needs to be decided keeping in view the provisions of the Act and the law laid down in Hindustan Education Society's case (supra) which applies to the facts of this case.

23. Since the question involved in the case is squarely covered by the law laid down in Hindustan Education society's case (supra), it is apposite to reproduce the decision in full rather than to mention its ratio only. It reads as under:

> "3.....The admitted position is that Respondent 1 came to be appointed on 10-6-1992 against a clear vacancy with the following stipulation:
>
> "Your appointment is purely temporary for a period of 11 months from 11-6- 1992 to 10-5-1993 in the clear vacancy. After expiry of the above period your service shall stand terminated without any notice."
>
> 4. Thus, it could be seen that the appointment of the first respondent was only a temporary appointment against a clear vacancy. The appointments are regulated and controlled by the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977. Section 5 of the Act postulates as under:
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> "5. Certain obligations of Managements of private schools.—(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy:

> Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill in such vacancy, ascertain from the Educational Inspector, Greater Bombay, or as the case may be, the Education Officer, Zilla Parishad, whether there is any suitable person available on the list of surplus persons maintained by him for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy. (2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-

sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice, or salary of one month in lieu of notice.

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2). (4-A) Nothing in sub-sections (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

5. In view of the above and the order of appointment, the appointment of the respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by sub-sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person so appointed shall be put on probation for a period of two years subject to the provisions of sub- sections (4) and (5). He shall, on completion of the probation period of two years, be confirmed.

6. Under these circumstances, the appointment of the respondent cannot be considered to be a permanent appointment. As a consequence, the direction issued by the High Court in the impugned judgment dated 31-7-1996 in Writ Petition No. 5821 of 1995 that he was regularly appointed is clearly illegal and cannot be sustained.

7. The appeal is, accordingly, allowed. The order of the High Court stands reversed and the writ petition stands dismissed. No costs."

24. Mere perusal of the aforementioned decision, which also mentions in verbatim Section 5 of the Act, would go to show that the concerned employee (writ petitioner) was appointed for a fixed period (11 months) by the Management. His services were, therefore, brought to an end on the expiry of the period by the Management by passing a termination order which gave rise to filing of the writ petition by the concerned employee. The High Court allowed the writ petition and set aside the termination order. It was held that the writ petitioner was regularly appointed in service on selection and hence the termination order treating him to be temporary was bad in law. The Management, felt aggrieved of the order of High Court, came in appeal to this Court. This Court by aforementioned order allowed the Management's appeal, set aside the order of the High Court and while dismissing the employee's writ petition upheld the termination order. It was held that the appointment of the writ petitioner (employee) was governed by Section 5 of the Act. It was further held that the appointment was temporary in nature as is clear from the appointment order itself and being for a fixed period, it was terminable on the expiry of the period. It was also held that since the permanent appointment was also governed by sub- sections (1) and (2) of Section 5, it was for the Management to initiate and fill up the post on permanent basis by following the procedure prescribed in Section 5 of the Act. It was also held that the sanction granted by the competent authorities was confined to writ petitioner's temporary appointment and such grant of sanction did not result in conferring any permanent status on the writ petitioner.

25. Coming now to the facts of the case at hand, we find remarkable similarity in the facts of the case at hand and the one involved in Hindustan Education Society's Case (supra). In the case at hand, we find from the two appointment orders that the respondent No.1 was temporarily appointed as Lecturer for one Session in the first instance and on the expiry of the first period, his appointment came to an end. The respondent No.2 then was appointed afresh second time, which period was then extended up to 30.04.1998. We further find from the advertisement that the post of Lecturer for Geography was advertised as a part-time post.

26. The relevant extract from the appointment orders dated 20.07.1996 (Annexure-2) and 21.07.1997 are quoted infra:

> Order dated 20.07.1996 "Your appointment is temporary for one session from 1.8.96 to 30.4.97 period of one session. Your services are likely to be discontinued by giving one month's notice on either side." Order dated 21.07.1997 "Your appointment is on temporary basis upto 30.04.1998. Your services are likely to be discontinued by giving one month's notice on either side."

27. We also find that the approval for the aforementioned appointment was accorded by the concerned authority vide letter dated 21.03.1998, as it is without adding any more rights. Taking these facts in consideration and keeping in view the law laid down in Hindustan Education Society's case (supra), we are of the view that appointment of the respondent No. 1, whether first or second, since inception remained a "temporary appointment as part-time lecturer" for a fixed period and did not result in "permanent appointment" on the post of Lecturer. It also did not create any right in favour of respondent No. 1 so as to enable him to claim regularization in service.

28. We also find that it is not the case of respondent No.1 and nor any finding was recorded by the High Court that the Management had followed the procedure prescribed under sub-sections (1) and (2) of Section 5 for filling the post against the permanent clear vacancy while selecting the respondent No. 1. On the other hand, we find as mentioned above that the High Court neither took note of the provisions of the Act much less examined the question arising in the case in the context of the provisions of the Act and nor examined the question in the light of the law laid down in Hindustan Education Society's Case (supra). We also do not find any material to hold that the initial appointment of respondent No.1 was against the permanent vacancy and that he was appointed permanently by the Management by following the procedure prescribed under sub-sections (1) and (2) of Section 5 of the Act.

29. In our view, when the rights of the parties are governed by the Act, then it is necessary for the Court in the first instance to decide the rights in the light of the mandate of the provisions of the Act. The respondent No. 1 neither challenged the constitutional validity of the Act and nor challenged the termination on the ground of mala fides attributable against any particular authority. The respondent No. 1 was also not able to point out any arbitrariness in the impugned action to enable the High Court to invoke Article 14 of the Constitution for quashing the termination order. In these circumstances, we are of the view that there was no justification for the High Court to hold that the respondent No. 1 was appointed on permanent basis and that termination order was bad in law.

30. In view of foregoing discussion, we cannot concur with the view taken by the High Court, which, in our opinion, is not legally sustainable.

31. The appeal thus succeeds and is allowed. Impugned order is set aside and that of the Tribunal restored. As a result, the writ petition filed by respondent No.1 (employee) stands dismissed and the termination order dated 31.03.1998 is upheld as legal.

……..J.
[J. CHELAMESWAR]

….…….J.
[ABHAY MANOHAR SAPRE] New Delhi;
July 19, 2016
