

Kendriya Vidyalaya Sangathan & Ors vs L.V. Subramanyeswara & Anr on 10 May, 2007

Equivalent citations: 2007 AIR SCW 3228, 2007 (5) SCC 326, 2007 (4) AIR KAR R 446, AIR 2007 SC (SUPP) 259, (2008) 1 SERV LJ 66, (2007) 4 JLJR 16, (2007) 2 ESC 336, (2007) 5 SUPREME 106, (2007) 5 MAH LJ 522, (2007) 4 MPLJ 10, (2007) 4 LAB LN 101, (2007) 7 SCALE 86, (2007) 4 PAT LJR 19, (2007) 3 SCT 198, (2007) 3 SERV LR 740

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Bench: S.B. Sinha, C.K. Thakker

CASE NO.:

Appeal (civil) 8563 of 2002

PETITIONER:

Kendriya Vidyalaya Sangathan & Ors

RESPONDENT:

L.V. Subramanyeswara & Anr

DATE OF JUDGMENT: 10/05/2007

BENCH:

S.B. Sinha & C.K. Thakker

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL NO. 8559 OF 2002 AND CIVIL APPEAL NO. 8560-8561 OF 2002 AND CIVIL APPEAL NO. 8562 OF 2002 S.B. SINHA, J.

1. Appellant is an autonomous body. It is a society registered under the Societies Registration Act. Government of India, Ministry of Human Resource Development, however, exercises control over it. The recruitment of teachers and other staff is governed by rules known as Appointment, Promotion, Security etc. Rules, 1971. Rules were framed by the Board of Governors of the Appellant, the relevant provisions whereof are as under:-

4. Authorised permanent strength and temporary strength of the Service :-

(i) The authorised permanent and temporary strength of the various grades of the service on the appointed day shall be as specified in Schedule I.

(ii) After the appointed day, the authorised permanent and temporary strength of the

various grades of the service shall be such as may, from time to time, be determined by or under the authority of the Board.

Provided that the competent authority may make temporary additions to any grade of the service as found necessary in the interest of the work of the Sangathan.

6. Recruitment

(i) The method of filling up of the posts in the various grades of the Service, age limit and other qualifications relating thereto shall be as specified in Schedule I (In case of posts not covered in Schedule I, procedure, qualifications and similar matters shall be determined by the Commissioner). Provided that the upper age limit prescribed for direct recruitment may be relaxed in the case of candidates belonging to the Scheduled Castes/Scheduled Tribes and other specified categories of persons in accordance with the orders issued in this behalf from time to time by the Central Government.

(ii) Appointments by direct recruitment or by promotion of departmental candidates shall be made, except when there are special reasons to be recorded in writing with the approval also of the Chairman, in the order in which the names of eligible candidates are included in the Select Panel of the appropriate grade prepared according to the procedure laid down in Rule 7.

7. Preparation of Select Panels (1) In the case of posts being filled up by direct recruitment the appropriate selection authority shall, after test or interview or both, as the case may be, place the candidates considered suitable for appointment to the particular grade/post in a select panel in the order of their merit.

(2) in the case of posts being filled up by promotion on the principle of seniority subject to the rejection of the unfit, the Departmental Promotion Committee or other selecting authorities will first decide the field of choice i.e. the number of eligible employees who are to be considered for inclusion in the Select Panel. From among such employees those who are considered unfit for promotion are to be excluded. The "Select Panel" will then be prepared by placing the names of the remaining employees without disturbing the seniority interest.

(3) In the case of promotion on the basis of the seniority-cum-merit or on the principle of merit with due regard to seniority the field of choice will first be decided and the employees considered unfit excluded in the same way as in the sub-rule (2) above. The remaining employees are then to be classified as "outstanding" "very good" and "good" on the basis of merit, as determined by their respective records of service and also test or interview if considered necessary. The "Select Panel" will thereafter be prepared by placing the names in the order of those categories, without disturbing the seniority interest within each category.

(4) Where the posts are to be filled up partly by direct recruitment and partly by promotion, the select panel will be prepared as follows:-

The appropriate selecting authority will first prepare two separate select panels for the two categories in accordance with the procedure laid down above. The required panel will then be drawn up by combining these two separate panels according to the quota of posts reserved for each category. That is to say, the names of direct recruits will appear first, followed by the promotees, in proportion to the respective quota reserved for them.

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9. Ad-hoc Appointment (1) Notwithstanding anything contained in rule 6 & 7 when an employee included in the select panel is not available or where such a select panel has not yet been prepared and the appointing authority considers it necessary and expedient to do so, a vacancy in any grade of the service may be filled on ad-hoc and temporary basis by the appointment of a person or persons otherwise eligible for appointment thereto :

(i) for a period not exceeding six months ; or

(ii) for the period for which a select panel in respect of the particular post/grade is not prepared as per rule 7, whichever is less.

(2) Every appointment under sub-rule (1) shall be made only as a temporary arrangement and no such appointment shall be deemed to confer on the appointee any right or claim to the respective grade/post or to seniority in that grade.

2. Teachers in terms of the said rules are appointed on All India basis. To cater the need of the students and the schools run by appellant throughout the country which are about 854 in number, the services of the regular teachers are liable to transfer all over India. Advertisements were issued by the appellant in some local newspapers inter alia for its Hyderabad Institution for primary teachers on leave vacancies. Pursuant thereto or in furtherance thereof the names of the respondents were registered with the local employment exchanges and not in the Central Employment Exchange. They had been admitted intermittently. One of the terms of the offer of appointment issued in their favour was that the same would not confer any right upon them to claim regular appointment. It was furthermore categorically stipulated that they were appointed as stop-gap arrangement for a particular period in the academic year. They were selected, however, not by a regular selection committee. Praying for the regularisation, they filed writ petitions before the Andhra Pradesh High Court. Interim orders were passed in terms whereof they continued in service. Appellant Society having been notified in terms of sub-Section (2) of Section 14 of the Administrative Tribunals Act in terms of a notification dated 1.1.1999; all the writ petitions were transferred to the Central Administrative Tribunal.

3. The Tribunal dismissed the said transfer applications. Noticing that there had been no regular vacancies, it was held:-

"13. Admittedly, all the applicants were appointed on adhoc basis for short spells by the Assistant Commissioner, clearly stipulating that such appointment would not confer upon them any right to the post, considering candidates sponsored by the local employment exchange. It is also brought out that the various orders passed by the High Court by which applicants were paid same salary as is paid to the regular employees and were also directed to continue. In view of those orders, the applicants were sought to be continued. It is however not in dispute that the applicants were not regularly appointed by the Selection Committee after considering candidates sponsored by the Central Employment Exchange as per the appointment procedure contained in the rules."

4. Aggrieved by and dissatisfied thereagainst, the respondents filed writ petitions.

5. The High Court, however, in its impugned judgment opined that although the respondents have continued in the services intermittently and with artificial breaks, but till their services were terminated, they have worked continuously and as such their services would be regularized in view of the decision of this Court in *Ashwani Kumar and Others v State of Bihar and Others* [(1997) 2 SCC 1].

6. The High Court noticed that the selection of the respondents were not regular selection within the meaning of Rule 7 of Appointment Rules. Despite the same, it thought fit to rely upon a Division Bench decision of the Jammu and Kashmir High Court in LPA(SW) No. 199 of 1995. It was directed:-

"...The petitioners are accordingly declared to be in service of the respondents herein notwithstanding the impugned proceedings dated 10.12.2001 under which they were replaced on the ostensible ground of regular incumbents joining the service of the respondent school. In the circumstances the impugned proceedings dated 10.12.2001 are set aside. The second respondent Assistant Commissioner, Kendriya Vidyalaya Sangathan Secunderabad is directed to give appropriate posting orders to the petitioners herein within four weeks from the date of receipt of a copy of this order."

7. Mr. S. Rajappa, learned counsel appearing on behalf of the appellant in support of this appeal would contend:-

(i) That respondents having recruited in terms of Rule 9 of Rules by way of a temporary arrangement to meet the exigencies of work and they have continued as ad hoc/part time /contractual employees inter alia by reason of the interim orders passed by the Court.

(ii) Their services should not have been directed to be regularized.

(iii) The respondent's case do not come within the purview of the Constitution Bench decision of this Court in *Secretary, State of Karnataka and Others v Umadevi* (3) and

Others [(2006) 4 SCC 1].

8. Mr. K. Ramakrishna Reddy, learned senior counsel, Mr. P.S. Narasimha, learned counsel on the other hand would submit that the respondents have worked for a long period and having the requisite qualifications, the services of the respondents could not have been discontinued by the appellant. The entry of the respondents in the services being not a back door one and as prior thereto, their names were sponsored by the employment exchange and they have been selected by a selection committee. The Rule of Equality in public employment and equal opportunity as emphasized by this Court in *Umadevi* (supra) as also the rule of reservation and the rules framed by the appellant having been satisfied, their appointment satisfies the test laid down in *Umadevi* (supra). In any event, the exceptions carved out in *Umadevi* (supra) clearly apply in the instant case as their selection in terms of Rule 9 of the Rules should be treated to be only irregular and not illegal.

9. As in case of one of the respondents, the judgment of the High Court directing the appellant to pay regular scale of pay having attained finality as the special leave petition filed thereagainst has been dismissed. The impugned judgment should not be interfered with. In any event, this Court taking into consideration the human element of the matter should not interfere with the impugned judgment.

10. Had such regular vacancies been created, appellants would have been directed to be appointed on All India Basis. Respondents did not get their names registered in the Central Employment Exchange. Keeping in view the nature of the job and in particular that the posts are transferable throughout the country, an opportunity within the meaning of Articles 14 and 16 of the Constitution of India would mean an opportunity to all who are eligible therefor. Advertisement was issued for a limited purpose, namely, for leave vacancies, local employment exchanges were contacted only for filling of such posts and not regular posts.

11. Selections were held only at the local level and not on All India Level.

12. It is true that they had continued in service for such a long time, but they have been thrust upon the appellant by reason of interim orders passed by the High Court. The Constitution Bench of this Court in *Umadevi* (supra) held:-

15. Even at the threshold, it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. In *State of Mysore v. S.V. Narayanappa* this Court stated that it was a misconception to consider that regularisation meant permanence. In *R.N. Nanjundappa v. T. Thimmiah* this Court dealt with an argument that regularisation would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para

26) "Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a

case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

16. In *B.N. Nagarajan v. State of Karnataka* this Court clearly held that the words "regular" or "regularisation"

do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

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53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*, *R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

13. It is therefore, not correct to contend that in the aforementioned backdrop of events, respondents satisfy the tests of equality, reservation or rule of law as adumbrated in Umadevi (supra). Reliance placed on paragraph 53 of Umadevi (supra) is also mis-placed. What would be meant by the term irregularity must be understood in the context of the decision of this Court in Punjab Water Supply and Sewerage Board v Ranjodh Singh & Ors [2006 (13) SCALE 426]. The said paragraph has been explained by this Court in Punjab State Warehousing Corp., Chandigarh v Manmohan Singh & Anr. [2007 (3) SCALE 401].

14. Furthermore, the respondents even did not complete the period of 10 years without intervention by the Court, they would not have been in service for more than 10 years but for intervention of the High Court, they had been continued in service in terms of the interim order passed by the High Court.

15. So far as the submission of the learned counsel that in the case of some of the respondents, the High Court had applied the principle of equal pay for equal work. That aspect of the matter has also been considered by a Constitution Bench in Umadevi (supra):-

"44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements.

Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."

16. Direction to regularize the services of the respondents in view of the authority by Constitution Bench in Umadevi (supra), therefore cannot be said to be of any significance so as to deny the relief to the appellant.

17. Ashwani Kumar (supra) has also been noticed by the Constitution Bench. A distinction furthermore must be noted in mind between regularisation and permanency, the regularisation does not mean permanency. In A. Umarani v Registrar, Cooperative Societies and Others [(2004) 7 SCC 112,], this Court had made the distinction, it was furthermore held:-

"34. Sub-rule (25) of Rule 149 provides that the principle of reservation of appointment for Scheduled Castes/Scheduled Tribes and Backward Classes followed by the Government of Tamil Nadu for recruitment to the State shall apply.

35. No appointment, therefore, can be made in deviation of or departure from the procedures laid down in the said statutory rules.

36. The terms and conditions of services are also laid down in the said rules."

18. For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained. The Appeals are allowed. The impugned judgment is set aside. In the facts and circumstances of this case, there shall be no order as to costs.