

M.D. U.P. Land Dev. Corpn. And Anr vs Amar Singh And Ors on 1 April, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2357, 2003 (5) SCC 388, 2003 AIR SCW 2345, 2003 LAB. I. C. 1757, 2003 ALL. L. J. 1439, (2003) 6 ALLINDCAS 476 (SC), 2003 (6) ALLINDCAS 476, 2003 (4) SLT 201, 2003 (3) ALL CJ 1832, (2003) 3 JT 615 (SC), (2003) 3 SCR 266 (SC), 2003 (7) SRJ 138, 2003 (2) SERVLJ 310 SC, 2003 (4) ACE 304, 2003 ALL CJ 3 1832, (2003) 3 SERVLR 360, (2003) 5 INDLD 610, (2003) 2 LAB LN 1103, (2003) 3 SCALE 675, (2003) 3 ESC 305, (2003) 3 SUPREME 174, (2003) 2 UPLBEC 1791, (2003) 97 FACLR 642, (2003) 3 LABLJ 220, (2003) 2 SCT 968

Bench: Shivaraj V.Patil, Arijit Pasayat

CASE NO.:

Appeal (civil) 6847 of 1997

PETITIONER:

M.D. U.P. LAND DEV. CORPN. AND ANR.

RESPONDENT:

AMAR SINGH AND ORS.

DATE OF JUDGMENT: 01/04/2003

BENCH:

SHIVARAJ V.PATIL & ARIJIT PASAYAT

JUDGMENT:

JUDGMENT 2003(3) SCR 266 The following Order of the Court was delivered :

This appeal is a directed against the order of the Devision Bench of the High Court. In short and substance, the facts leading to filing of this appeal are:

The appellant-Corporation took a decision to prepare a panel of 25 posts of Assistant Project Managers. Pursuant to the said decision the Corporation wrote a letter to the Vice Chancellor, Agricultural University on 9.11.1990 seeking names of B.Sc.(Agr) graduates for the purpose. Thereafter, letters were issued to the candidates for the purpose of training of one year for the 'Million Wells Scheme' with a fixed stipend of Rs.1200 per month. The State Government on 22.2.1993 gave sanction for creation of 30 new and temporary posts of Assistant Manager under a new World Bank Project, i.e., U.P. Sodic Land Reclamation Project. The candidates who were selected, were thereafter appointed as Assistant Managers after serving for sometime. Out of 32

candidates selected 6 persons approached the High Court by filling a Writ Petition seeking regularisation of their services with a grant of regular pay-scales. The learned Single judge allowed the Writ Petition and gave direction to regularise their services and also to grant pay-scale applicable to the post of Assistant Manager. Initially the Writ Petition was allowed in the absence of representation by the Corporation, but after hearing on the application made for recalling the order passed by the learned Single Judge, the same order was passed upholding the direction given for regularisation on grant of pay-scales. Aggrieved by the order of the learned Single Judge, the appellant-Corporation filed Special Appeal before the Division Bench of the High court. The Division Bench did not find any merit in the appeal and in that view, concurring with the order of the learned Single Judge, dismissed the Special Appeal. Hence this appeal.

In order to appreciate the rival contentions, we think it appropriate to refer to certain documents. The notes and order dated 2/11/1990/ prepared by the Director of Corporation, on which a claim is made by the respondents herein, reads thus:

"Work is proposed to be assigned. Therefore, actually only 13 employees would be available for the work of the Asset. Project Managers while under the Million Wells Scheme a total number of 16 employees are required. In this way 3 employees of Grade-3 would have to be appointed. Keeping in view that in future also other projects may be received by the Corporation and several employees of this grade may be required on a short notice, it is proposed that by inviting names from the Agriculture Universities or by advertising a panel of 25 persons be prepared for appointment of trainees. The posts would be filled according to the need from this panel. On being available the panel of trainees, the advantage would be that the work of the employees appointed from within this panel shall be judged for one year as trainees and (later on) for one year on probation and on finding the work satisfactory and on the requirement they would be absorbed in the corporation otherwise the option not to appoint them would remain open.

On the above points Ka, Kha, Ga, Ghha the marked proposal for approval please."

It appears, pursuant to the said note and order, the General Manager of the Corporation addressed letters to few institutions and universities seeking names of the candidates for recruitment to the post of Assistant Project Manager, (Group-3). One such letter reads as follows:

In this Corporation around 25 posts of Assistant Project Managers (Group-3) under pay scale of Rs. 1230-2080 are likely to be created in future. The management of the Corporation has decided that for the purposes of recruitment on those posts, a panel of B.Sc. (Agr.) Agricultural graduates be prepared. The selected candidates will be kept on training for one year and thereafter on probation for another year.

Therefore, you are requested to send a list of agricultural graduates B.Sc. (Agr.) alongwith their complete addresses who have passed out in last two years from your university. By this way candidates will be informed for their examination/interview. Name of those candidates who are doing higher studies, may not be included in the said list. Early action in this regard will be highly appreciated.

After receipt of the names of the candidates in response to the letters referred to above, the selected candidates were given letters on February 9, 1991. One such letter reads:

"Kindly refer to letter no. L.D.C../90-91/Assistant Managers/(P)/ 2275-B dated 14.1.91 issued by this office. You are required to attend the office of Sr. Deputy Manager, Jaunpur (Reclamation Development Project Million Wells Scheme, 88/A Charka Colony, Hussainabad, Jaunpur) for training by 25.2.91. During the period of training you will be paid Rs. 1200 (twelve hundred only) per month as training allowance. Besides this nothing shall be payable. Travelling expenses shall be paid, if done exclusively, for the Corporation. No travelling expenses will be paid for the first contribution.

If you do not attend upto 25.2.91 in that case, your selection shall be deemed as cancelled.

Copy to :

1. Sr. Deputy Manager, Jaunpur under Reclamation Development Project, Million Wells Scheme, 88/a Charka Colony, Hussainabad, Jaunpur with a view to make arrangement for training and enable the trainees to contribute."

The relevant portions of the letter of Joint Secretary, U.P. Government dated 22nd February. 1993 addressed to the Joint Director of the Corporation is to the following effect:

With reference to the above mentioned subject vide your D.O. letter No. 1647 dated 24.12.92 I have been directed to state that in all 260 posts of different categories were created for the U.P. Land Development Corporation Limited, against which at present 140 posts are already occupied by the incumbents as mentioned in Column 5 and balance 120 posts are vacant, however, while keeping them suspended, in lieu thereof permission is hereby given to fill up 107 temporarily newly created posts as mentioned in column 6 for implementation of the U.P. Sodic Land Reclamation Project sponsored by the World Bank."

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5. So far as 120 vacant posts of the Corporation are concerned, they shall remain suspended and before filling the same in future prior approval from the Financial Department of the Government shall be obtained.

6. While filling up the newly created post the corporation shall ensure that instead of filling the same enmasse they would be filled up from time to time according to the need by taking the surplus employees from the Agricultural Directorate and the Command Area projects on deputation."

On 4/8/1993 the Corporation resolved to discontinue the 'Million Wells Scheme' with effect from 31/3/1994. This Court granted special leave on 29/11/1999 and stayed the impugned judgment of the High Court. On 18/ 2/2000 the Corporation terminated the services of three respondents that lead to filing a separate Writ Petition with which we are not concerned in this appeal.

Mr. Sunil Gupta, learned Senior Counsel appearing for the appellant- Corporation urged that the learned Single Judge as well as the Division Bench of the High Court committed serious error in direction regularisation of services of the respondents when the "Million Wells Scheme' came to an end with effect from 31/3/1994 and the appointments of the respondents were not made as against any sanctioned post; their appointments as Assistant Managers were on a temporary basis, for the purpose of 'Million Wells Scheme': with the closure of the Scheme the Respondents' services could not be continued or regularised. According to him, the Division Bench of the High Court did not correctly and completely read the internal note or order dated 2/11/1990, the letters addressed by the Corporation to the University dated 9/11/1990 and the very Government order dated 22/2/1993 giving sanction for temporary posts against which the respondents were appointed; because of the same the conclusions arrived at by the Division Bench of the High Court are unsustainable. In support of his contention that with the closure of a project work or the scheme coming to an end, the employees appointed for the purpose of a scheme or a project work do not have any vested right and they cannot insist or claim for regularisation of their services. He cited few decisions of this Court : (1) Jawahar La! Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. v. Bal Kishan Soni and Ors., [1997] 5 SCC 86 ; (2) Ashwani Kumar and Ors. v. State of Bihar and Ors., [1997] 2 SCC 1 ; (3) State of U.P. and Ors. v. Ajay Kumar, [1997] 4 SCC 88 and (4) Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur through its Manager and Am: v. Sree Kumar Tiwary and Am:, [1997] 4 SCC 388.

Per contra, Mr. K..B. Sinha, Learned Senior Counsel representing the respondent urged in support and justification of the impugned judgment and order. According to him, names of the respondents were called for from the Universities ; the respondents were qualified and have rendered satisfactory service for about three years without any complaint and merely because they were sent for training under 'Million Wells Scheme', it could not be taken that their services were temporary for the purpose of that scheme alone. He added that even after training of one year, they were allowed to continue in service and under the circumstances, learned Single Judge as well as the Division Bench of the High Court were right in giving the directions to regularise their services and granting pay scales to them.

Having pursued the impugned order in the light of the documents referred to above and keeping in view the rival contentions urged on either side, we are of the view that the impugned judgment and order of the High Court cannot be sustained for the reasons more that one. The internal note and order of the Corporation, which is made the basis for the claim that 25 posts were available on a

regular basis, is itself not correct. At this stage we may observe that the internal note and order dated 2/11/1990 was prepared by the Director of the Corporation for his own purpose, but strangely enough a copy of the same was produced by the respondents in the Writ Petition. We fail to understand how, the copy of this internal note and order came to the hands of the respondents. Apart from the fact whether such an internal note itself could give any right to the respondents, the very reading of the same does not give an impression that it is indicated to create 25 posts on a regular basis. It only states that a panel of 25 persons be prepared for training, taking note of the future possible requirement of persons working in the project. The Division Bench of the High Court has misread this document. The letter dated 9/11/1990 addressed to the Vice Chancellor of Agricultural University seeking names of the candidates for recruitment to the post of Assistant Project Manager (Group-3) itself shows that 25 posts of Assistant Project Managers are likely to be created in future for that purpose; the Corporation had decided that a panel of B.Sc. (Agr.) graduates be prepared; the selected candidates would be given training for one year and thereafter, they would be put on probation for another year. A request was made in the letter to send a list of agricultural graduates B.Sc. (Agr.) By the letters addressed to respondents individually dated February 9, 1991 they were asked to attend the office of Senior Deputy Manager, Jaunpur (Reclamation Development Project, Million Wells Scheme) for training by 25/2/1991; during the period of training, they would be paid Rs. 1200 per month as training allowance. A copy of the said letter was also given to the Senior Deputy Manager, Jaunpur (Reclamation Development Project, Million Wells Scheme). We may say that this letter does not say more than calling the candidates to join for the purpose of training, that too under the 'Million Wells Scheme'.

The letter dated 22/2/1993 of the Joint Secretary, U.P. Government extracted above, in clear terms states that 260 posts of different categories were created for the appellant-Corporation, against which 140 posts were already occupied by the incumbents and 120 posts were still left vacant ; those 120 posts were kept suspended and in lieu thereof permission was given to fill 107 posts temporarily newly created for the purpose of U.P. Sodic Land Reclamation Project sponsored by the World Bank. From these documents it is clear that the respondents were never recruited as against regularly sanctioned posts on a regular basis. Reading of these documents and the contentions raised on either side go to show that the appointments of the respondents were temporary under the 'Million Well Scheme' afore- mentioned. When the work of the scheme had come to an end, the respondents were not entitled to claim regularisation of their services. Even though their services were continued after 31/3/1994 by virtue of an interim order passed in the Writ Petition, they cannot claim benefit of regularisation of their services as a matter of right. This Court in *State of Himachal Pradesh v. Nodha Ram and Ors.*, AIR (1997) SC 1445. in para 4 has stated thus:

"4. 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 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 aside."

In clear and certain terms it is stated that when the project comes to close, the employees who are working in the project will not get any vested right. In other words, once the project comes to an end, services of the employees also come to an end. The other decisions cited by the learned counsel more or less are to the same effect.

In view of what is stated above, the impugned order, in our view, cannot be sustained. Hence, the impugned judgment and order is set aside. The appeal is allowed, but, with no order as to costs.

However, the learned Senior Counsel for the respondents submitted that some of the juniors working under the same scheme have been retained in service and the services of the respondents were terminated. He also submitted that the respondents having served the Corporation without any complaint for about three years, their services may be availed of as and when such opportunity arises. We are of the view that the question whether juniors to the respondents are retained in service or not, does not arise for our consideration in this appeal. As far as the request that their services could be availed of for some other project, all that we can say is that it is for the respondents to approach the Authorities and if the Authorities find them suitable and it is permissible in law to assign them such work, it is open for them to do so, but we cannot give such a direction in that regard.