

A STATE OF MADHYA PRADESH AND ORS.

v.

YOGESH CHANDRA DUBEY AND ORS.

SEPTEMBER 8, 2006

B [S.B. SINHA AND DALVEER BHANDARI, JJ.]

C *Service Law—Public Employment—Regularization—Respondents appointed on daily wages—Appointment not in terms of the statutory rules, made only to meet the exigencies of situation—Held: As respondents did not hold any post, they were not entitled to any regular scale of pay—Constitution of India, 1950—Article 12.*

D Respondents were appointed on daily wages. The appointments were not done in compliance of any statutory rules. No advertisement was issued nor vacancies notified to the employment exchange. On the premise that they are entitled to regularization of services, Respondents filed original application before the Tribunal claiming regular scale of pay. Tribunal disposed of the petition with a direction that the Respondents be paid wages at the minimum pay scale of the post on which they were working along with applicable allowances. Writ petition filed by Appellant was dismissed by High Court.

E In appeal to this Court, it was contended that Respondents did not hold any post and were therefore not entitled to claim minimum of the pay scale attached to the post in which they had been working, with applicable allowances.

F Allowing the appeal, the Court

G **HELD:** 1.1. It is neither in doubt nor in dispute that the Respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularisation is not a mode of appointment. If any recruitment is made by way of regularisation, the same would mean a back-door appointment, which does not have any legal

sanction. [861-C, D]

A

1.2. A person, who had been appointed by a State upon following the Recruitment Rules, enjoys a status. A post must be created and/or sanctioned before filling it up. As the Respondents did not hold any post they are not entitled to any scale of pay. [862-B; 864-F]

B

State of Karnataka & Ors. v. KGSD Canteen Employees' Welfare Assn. & Ors, [2006] 1 SCC 567 and *M.P. Housing Board & Anr. v. Manoj Shrivastava*, [2006] 2 SCC 702, relied on.

BHEL & Anr. v. B.K. Vijay & Ors., [2006] 2 SCC 654 and *Municipal Council, Sujampur v. Surinder Kumar*, JT (2006) 5 SCALE 505, referred to.

C

2. However, keeping in view the peculiar facts and circumstances of this case, the State should take steps to fill up the vacant posts, if any, as expeditiously as possible, in which event, the cases of the respondents may be considered together with other eligible candidates. However, age bar, if any, to the extent they had worked with the appellants may be relaxed. [864-F-G]

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3982 of 2006.

From the Judgment and Order dated 4.8.2004 of the High Court of Madhya Pradesh, Bench at Indore in Writ Petition No. 6640 of 2003.

E

S.K. Dubey and B.S. Bantia for the Appellants.

Vimal Chandra, S. Dave, Neelam Kalsi and Shailendra Narayan Singh for the Respondents.

The Judgment of the Court was delivered by

F

S.B. SINHA, J. Leave granted.

Whether the respondents, who were engaged on daily wages, are entitled to claim minimum of the pay scale attached to the post in which they had been working with applicable allowances, is the question involved in this appeal, which arises out of a judgment and order dated 4th August, 2004 passed by the High Court of Madhya Pradesh, Indore Bench in Writ Petition No.6640/2003. The respondents were appointed on daily wages. The amount of daily wages at the rate of Rs.97.14p. was fixed by the Collector of District. They are not appointed upon compliance of the statutory rules. No advertisement

G

H

A was issued. Vacancies were also not notified to the Employment Exchange.

On the premise that they are entitled to regularisation of their services, they filed an original application before the Madhya Pradesh State Tribunal, *inter alia*, praying for the following reliefs :

B “(A) Order be passed for payment of Pay Scale for Assistant Grade Post Regular (except increment in salary benefit) from the date of filing the case before this Hon’ble Tribunal from the Respondents in view of the orders passed by Hon’ble M.P. State Administrative Tribunal Bhopal dated 15.12.97 Annexure A-6.

C (B) That the respondents be directed that Respondent should take appropriate action for regularising the applicant as Assistant Grade III Post within the prescribed time period.”

D In the said proceedings, the appellant *inter alia*, contended that the respondents having not been engaged on any vacant post, payment of salary on a regular scale of pay is impermissible in law. The posts of Assistant Grade III, it was pointed out, are filled up in terms of the procedures provided laid down in the Recruitment Rules known as Madhya Pradesh Public Health Engineering Department (Non-Gazetted) Service (Conditions of Service and Recruitment) Rules, 1976. All recruitments, therefore, were required to be made strictly in terms thereof.

E By reason of an order dated 1.1.2002, the Tribunal directed:

F “.....In similar cases the Tribunal has given the relief to the applicants which the applicant’s counsel is seeking. Therefore, this petition is disposed off with the direction that the applicants shall be paid the wages at the minimum of the pay scale of the post on which they are working along with applicable allowances but without the benefit of increments with effect from the date of filing of this petition. Provided these possess the minimum qualification for the post.”

G Evidently, the Tribunal issued the said directions on the basis of an earlier order dated 15.12.1997 passed by it in Original Application No. 400/1994.

H A writ petition filed by the appellant herein before the High Court was dismissed by reason of the impugned judgment following an earlier decision of the Division Bench of the same court.

Mr. S.K. Dubey, learned Senior Counsel appearing on behalf of the appellants raised a short contention in support of this appeal. It was urged that the respondents could have claimed salary on a regular scale of pay if they had a legal right to be regularised in service. The respondents, it was contended, do not hold a post and therefore, the impugned judgment cannot be sustained.

Mr. Vimal Chandra Dāve, learned counsel appearing on behalf of the respondents, on the other hand, submitted that respondents were entitled to the same scale of pay as are being paid to the holders of Assistant Grade III on the basis of 'doctrine of equal pay for equal work'.

It is neither in doubt nor in dispute that the respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularisation is not a mode of appointment. If any recruitment is made by way of regularisation, the same would mean a back-door appointment, which does not have any legal sanction.

In *State of Karnataka & Ors. v. KGSD Canteen Employees' Welfare Assn. & Ors.*, [2006] 1 SCC 567, this Court laid down the law in the following terms :

"The contention that at least for the period they have worked they were entitled to the remuneration in the scale of pay as that of the government employees cannot be accepted for more than one reason. They did not hold any post. No post for the canteen was sanctioned by the State. According to the State, they were not its employees. Salary on a regular scale of pay, it is trite, is payable to an employee only when he holds a status. (See *Mahendra L. Jain v. Indore Development Authority*, [2005] 1 SCC 639.)

The High Court was, thus, not correct in holding that the members of the first respondent could be treated on par with the Hospitality Organisation of the State of Karnataka. Such equation is impermissible in law. In the Hospitality Organisation of the State, the posts might have been sanctioned. Only because food is prepared and served, the

A same would not mean that a canteen run by a Committee can be equated thereto.”

A person, who had been appointed by a State upon following the Recruitment Rules, enjoys a status. A post must be created and/or sanctioned before filling it up. The question recently came up for consideration in *M.P.*

B *Housing Board & Anr. v. Manoj Shrivastava*, [2006] 2 SCC 702, wherein it was held:

“33. For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute *vis-a-vis* the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules.”

It was further opined :

“The appointment made by a person who has no authority therefor would be void. *A fortiori* an appointment made in violation of the mandatory provisions of the statute or constitutional obligation shall also be void. If no appointment could be made in terms of the statute, such appointment being not within the purview of the provisions of the Act, would be void; he cannot be brought within the cadre of permanent employees. The definitions of “permanent employee” and “temporary employee” as contained in the Rules must, thus, be construed having regard to the object and purport sought to be achieved by the Act.”

Therein the question which arose for consideration was : ‘As to whether the respondent therein was a permanent employee within the meaning of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961?’ It was observed :

“A person with a view to obtain the status of a “permanent employee” must be appointed in terms of the statutory rules. It is not

the case of the respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field. A

The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the respondent had worked for more than six months satisfactorily in terms of clause 2(vi) of the Standard Standing Orders, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the respondent." B

The matter fell for consideration also in *BHEL & Anr. v. B.K. Vijay & Ors.*, [2006] 2 SCC 654, wherein it was held : C

"In terms of the proviso appended to Rule 5, the decision of the State Government, in any dispute raised as regards the status of the Safety Officer, is to be final. The respondent did not raise such a dispute. He made representations only after the judgment was passed in the criminal case. In the criminal case the learned Chief Judicial Magistrate imposed a fine of Rs.500 on the persons who were accused therein. Despite the finding in the said criminal case, it was open to the appellant to contend before the State Government that having regard to the facts and circumstances of this case, the respondent was not entitled to the remunerations payable to Senior Executive Officer. D E

In P. Ramanatha Aiyar's Advance Law Lexicon, 3rd Edn. Vol.4, at p.4469, the expression "status" has been defined as under:

"Status is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, *Jurisprudence* 253, 257), or, to be verbally accurate, of his capacity for rights and duties. (Holland, *Jurisprudence* 88). F

The status of a person means his personal legal condition only so far as his personal rights and burdens are concerned. *Duggamma v. Ganeshayya*, AIR (1965) Mys 97 at 101. [*Indian Evidence Act* (1 of 1872), Section 41.] G

In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively

A determined by law and not by agreement between the parties concerned. (*Roshan Lal Tandon v. Union of India*, (1967) SLR 832.)”

The said expression has been defined in *Black's Law Dictionary* meaning :

B “Standing; state or condition; social position. The legal relation of individual to rest of the community. The rights, duties, capacities and incapacities which determine a person to a given class. A legal personal relationship, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the state are concerned.”

C Only because a person is given a particular status, the same would not mean that his other terms and conditions of service would not be governed by the contract of employment or other statute(s) operating in the field. We may notice that a three-Judge Bench of this Court in *Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors.*, [1999] 6 SCC 439 observed as under: (SCC p.449, para 22)

D “[We] hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes.”

E [See also *Municipal Council, Sujampur v. Surinder Kumar*, JT (2006) 5 SCALE 505]

As the respondents did not hold any post, in our opinion, they are not entitled to any scale of pay.

F However, keeping in view the peculiar facts and circumstances of this case, we may observe that the State should take steps to fill up the vacant posts, if any, as expeditiously as possible, in which event, the cases of the respondents may be considered together with other eligible candidates. However, age bar, if any, to the extent they had worked with the appellants
G may be relaxed.

The appeal is allowed on the above terms. No costs.

B.B.B.

Appeal allowed.

H