

REGULARISATION OF SERVICE OF TEMPORARY EMPLOYEES-AN ANALYSIS

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Abstract:

There has been change in trend in the concept and the law for regularization of services of temporary employees. There has been a shift (in the attitude and the law laid down by the Courts through their pronouncements) from an era of allowing back door entries to the ad hoc/temporary employees (before Uma Devi ³¹) to an era of treating such back door entries of the ad hoc/ temporary appointments as against the constitutional scheme (after Uma Devi ³²).

CONCEPT OF RECRUITMENT, AD HOC/TEMPORARY APPOINTMENTS & REGULARISATION

Article 309 of the Constitution of India confers the powers to the appropriate authority to regulate the recruitment of the public services of the Union or of the State. It enables the executive to make recruitment rules under the government services. However, this power of the executive is subject to the provisions of the Constitution and of any Statute enacted by the appropriate legislature. The executive may make rules either under the proviso to the Article or by issuing rules/instructions in the exercise of its executive power.³ The executive while framing such rules must act fairly and consistent with the provisions provided under Article 14 and 16 of the Constitution of India and the relevant statutory rules.

Normally the appointments are made through prescribed recruiting agencies. But exigencies of work may sometimes call for making appointments on ad hoc or temporary basis. In *State of Haryana v. Piara Singh*⁴, this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made.

¹ 2006 (4) SCC 1

² *ibid*

³ *State of Haryana vs. Piara Singh*, AIR 1992 SC 2130; *S.K. Mathur vs. UOI*, AIR 1999 SC 129; *Mallikarjuna Rao vs. State of A.P.*, 1990 SC 1251

⁴ AIR 1992 SC 2130

It may be argued that filling up vacancies against sanctioned posts by regularization is against the constitutional provisions of equality of opportunity in the matter of public employment violating the Articles 14 and 16 of the Constitution by not making the offer of employment to the world at large and allowing all eligible candidate equality of opportunity to be considered on merits.

Ad hoc appointments is considered to be most convenient way of entry, usually from back door, at times even in disregard of rules and regulations, are recent innovations to the service jurisprudence. This infection of back door entries is widespread, especially in Government, Semi-Government or State financed departments or institutions.

The courts have also deprecated the practice of regularization of the ad hoc employees through number of judgments. In *Ashwani Kumar vs. State of Bihar*⁵ and *State of Karnataka vs. Umadevi*⁶, the Supreme Court observed that, back door entries for filling up vacancies have got to be strictly avoided. It will amount to regularisation of back door entries which were vitiated from the very inception.

CHANGE IN PRINCIPLES OF REGULARISATION OF THE TEMPORARY EMPLOYEES [BEFORE AND AFTER UMA DEVI (3)]

Prior to Uma Devi (3) the principles were as follows:

- (a) If the ad hoc/casual/ temporary appointments were made against sanctioned posts and the policy of ad hocism is followed for a long period without filling up those posts on a regular basis then the courts will interfere. The reason was given by the Apex Court in *Rattanlal vs. State of Haryana*⁷ that the policy of 'ad-hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer.
- (b) Regularisation might also be the direct effect of statutory provisions including rules. In *Union of India vs Basant Lal*⁸, the Supreme Court while considering the Chapter XXIII of the Indian Railways Establishment Manual Casual Laboureres who had worked continuously for

⁵ AIR, 1997, SC, 1628

⁶ AIR, 2006, SC, 1806

⁷ AIR 1987 SC, 478

⁸ 1992 (2) SCC, 679

more than specified days held that the casual workers had fulfilled the requirement of continuous service and directed the railway authorities to accord the status of temporary employees.

(c) Although the persons concerned might not be entitled to regularisation on any of the principles or for any of the reasons noted above, they might still be entitled to regularisation of their service by preferential opportunity of recruitment i.e. recruitment through appropriate channel against vacancies as and when such vacancies arise subject to their satisfying the requisite qualifications prescribed under the rules. Such vacancies should ordinarily be filled up by regularising such employees and not by deputation of employees who are already employed in the regular establishment.⁹

(d) If there is a valid policy decision by the Government to regularise ad hoc employees, then such employees have the right to enforce the same by approaching the court. In *Jaginder Singh vs. State of Punjab*¹⁰, it was held that if an employee recruited on an adhoc basis fulfils all conditions for regularisation as laid down by the Government in a policy circular and the appropriate authority recommends regularisation on being satisfied that the conditions are fulfilled and that regular vacancies exist.

(e) Regularisation might also be directed if the Court is satisfied that the employer had deliberately indulged in unfair or unhealthy labour practice to deny casual or badli workers a claim for permanency.¹¹ In the case the Supreme Court held that a confidential circular directing the officers that the badli workers should not be engaged continuously and should as far as possible be offered work on rotation basis must be characterized as unfair labour practice. The Supreme Court directed the badli worker to be enlisted as a regular employee. Although H.D. Singh was a case involving the Industrial Dispute Act, 1947, the principle of unfairness on which the provisions of the Act relating to unfair labour practices is based should apply with equal force in situations where for some reason the Act is not applicable.

(f) Lastly, the Supreme Court in *State of Haryana vs Piara Singh*¹² held that if an ad hoc employee is continued for fairly long spell, the authorities must consider his case for regularisation provided, he is eligible and qualified according to the rules and his service

⁹ Sandeeo Kumar vs. State of U.P., AIR 1992 SC 713

¹⁰ 1981 (2) SLR, 792

¹¹ H.D. Singh vs Reserve Bank of India, 1985 (4) SCC, 201

¹² AIR 1992 SC 2130

record is satisfactory and his appointments does not run counter to the reservation policy of the state.

After Uma Devi (3) the principles were as follows:

- a) A claim based on mere legitimate expectation or reasonable expectation without anything more cannot ipso facto give a right to invoke the principles. (Union of India and another Vs. Arul mozhi Iniarasu and others; reported in 2011 (9) SCR 1 Supreme Court). In the decision in Umadevi's case also it is clearly laid down that in such case theory of legitimate expectation cannot be invoked.
- b) There is no fundamental right to be absorbed in service. In Umadevi's case also the Apex Court refused to accept the argument that the right to life protected by Article 21 of the Constitution of India would include right to employment. At present, right to employment itself is not a fundamental right. The absorption certainly would not be a fundamental right.
- c) Absorption, regularization, permanency of casual, daily wagers etc. appointed/recruited de-hors the constitutional scheme of public employment is impermissible and violative of article 14 and 16 of constitution. (Chief Executive Officers, Pondichary Khadi Industry v/s Aroquia Radja – 2013 I CLR 1057- SC). In Umadevi's case also it has been held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. This means proper competition amongst the needy candidates would also be necessary.

DEVIATION FROM THE SETTLED LAW

In Uma Devi 3 (supra) it was clearly held that the courts cannot countenance appointments to public office which have been made against the constitutional scheme and there is no room for back door entry in the matter of public employment. The court clearly drew a distinction between temporary employees, daily-wagers and those who were appointed irregularly in the sense that one time relaxation in para 53 was granted in favour of irregular appointed employees, still the courts after the Uma Devi 3¹³ judgment interpreted it not to be a “one time” measure and granted regularization of service to employees who have completed more than 10 years of continuous service on ad hoc basis.

¹³ 2006 (4) SCC, 1

In *State of Jharkhand vs. Kamal Prasad and others*¹⁴ the Supreme Court while considering the fact that the respondent-employees have continued in their service for more than 10 years continuously and applying the legal principle laid down in Uma Devi's case at paragraph 53 held that the Division Bench of the High Court has rightly held the respondent employees for regularization. The Kamal Prasad judgment (supra) was then followed in number of cases i.e. *Nisha Mathur vs. State of Rajasthan*¹⁵, *Suman Devi vs. State of Jharkhand*¹⁶, *Sisir Kumar Ganguly vs. State of West Bengal*¹⁷ and many more.

In a recent case titled as *Amarkant Rai vs. State of Bihar and others*¹⁸, the Supreme Court deviated from its own settled law in Uma Devi 3¹⁹. The court in Amarkant Rai case (supra) while taking into account the fact the appellant has been working on daily wages for more than 29 years with the respondent-university, directed the respondents to regularize the services of the appellant.

CONCLUSION

The Governments, both the Central and the States have been engaging employees on a temporary basis and after some time regularizing their services, this practice has been held to be bad and contrary to the law of the land by the Supreme Court. The temporary employees have no right of regularization of their service.

The case of Uma Devi (3) (supra), has settled the law that no directions can be issued to regularize or absorb ad hoc, daily wagers and temporary employees appointed without following the procedure prescribed by the Rules applicable for recruitment to such posts and it will amount to violation of Article 14 and 16 of the Constitution of India. The court cannot issue any such directions on the ground of discrimination which is contrary to the constitutional scheme of appointment.

¹⁴ 2014 (6), JT, 243

¹⁵ 2015 (2) SLR, 399

¹⁶ 2014 (4) JCR, 274

¹⁷ 2015 (1) LLN, 97

¹⁸ 2015 (3) SLR, 658

¹⁹ 2006 (4) SCC, 1

The directions made by the Supreme Court in Piara Singh's case run counter to the constitutional scheme of employment recognized in the earlier part of the decision. The judgment cannot be said to have laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

Length of ad hoc, temporary or casual employment is no ground to regularize and absorb in permanent service. Such irregular appointments made in violation to the concept of equality enshrined in our Constitution. Such appointees do not acquire any right enforceable by court of law. Court will not be justified in issuing directions to absorb or make such employees permanent and to issue interim directions on the claim of such persons which run counter to the constitutional mandates and will perpetuate the illegality. Such directions will facilitate the bypassing of the constitutional and statutory mandates.

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