

A PINAKI CHATTERJEE & ORS.

v.

UNION OF INDIA & ORS.  
(Civil Appeal No. 2053 of 2009)

MARCH 31, 2009

B [S.B. SINHA AND DR.MUKUNDAKAM SHARMA, JJ.]

*Service Law – Regularization – Of employees appointed on a casual basis in ex-cadre post for a temporary project –*

C *Held: The appointment was not regular – It was for project work in ex-cadre post and not in conformity with Articles 14 and 16 and recruitment rules framed under proviso to Article 309 of Constitution – Employees not entitled to be regularized – Constitution of India, 1950 – Articles 14, 16 and proviso to Article 309 – Railway Board Circular dated 11.5.1973.*

E **The appellants were directly appointed in Group 'C' posts in Railway Electrification Project. The question for consideration before this court was whether their services could have been regularized in Group 'C' posts.**

**Dismissing the appeal, the Court**

**HELD:1.1. Appellants, indisputably, were appointed as daily rated casual labourers for project work. The said project having been undertaken for electrification of Railways was a time bound one. It did not have its own cadre. Engagement of any casual labour under the said project, therefore, did not amount to any regular recruitment. Appellants furthermore have not been appointed upon compliance of the provisions of Articles 14 and 16 of the Constitution of India and/or the recruitment rules framed under the proviso appended to Article 309 of the Constitution of India. It may be that the Railway Administration had committed serious illegalities**

in making recruitment directly to the said posts, the same A  
by itself would not confer any right upon the appellants  
for being regularized in Group 'C' post. [Para 8] [372-G-  
H; 373-A-B]

1.2. Furthermore, the appellants have not produced B  
their offers of appointment. If they were appointed only  
for the project work and that too in ex-cadre posts, the  
same would never mean that they had been appointed  
on a regular basis. It has not been shown that temporary  
status either had been or could be granted to the  
appellants. [Para 9] [376-C]

1.3. The Board Circular dated 11.5.1973 whereon C  
reliance had been placed by the appellants, had been  
issued long back, however, did not take into  
consideration the limitation of power of a State to make  
appointments in total disregard of mandatory provisions  
of the recruitment rules and/or the constitutional  
provision. [Paras 8 and 9] [373-E-F; 374-G]

Secretary, State of Karnataka v. Umadevi (3) (2006) 4 D  
SCC 1, followed.

A. Umarani v. Registrar, Cooperative Societies and Ors. E  
(2004) 7 SCC 112; Official Liquidator v. Dayanand and Ors. F  
(2008) 10 SCC 1 and Union of India v. Moti Lal (1996) 7 SCC  
481, relied on.

#### Case Law Reference:

(2004) 7 SCC 112	Relied on.	Para 9
(2006) 4 SCC 1	Followed.	Para 9
(2008) 10 SCC 1	Relied on.	Para 10
(1996) 7 SCC 481	Relied on.	Para 11

A 2053 of 2009.

From the Judgment & Order dated 1.04.2003 of the Division Bench of the High Court of Jharkhand at Ranchi in W.P. (C) No. 3377 of 2001.

B S.B. Sanyal and Ranjan Mukhorjee for the Appellant.

K. Amareswari, Shreekant N. Terdal (not present), Anjani Aiyagari, B. Krishna Prasad, Lalit Kohli and Manoj Swarup & Co., for the Respondents.

C The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

2. The right of the appellants herein, if any, to be regularized in Class 'C' Services of the Railways is the question

D involved in this appeal which arises out of a judgment and order of the High Court of Jharkhand at Ranchi whereby and whereunder the writ petition filed by the appellants against the order of the Central Administrative Tribunal, Patna Bench, Circuit Ranchi passed in OA No.604 of 1997 and OA No.398

E of 1998, was dismissed.

3. Appellants were directly appointed in Group 'C' posts except serial No.5 in the Electrical Department of the Railway Electrification Project. As despite working for a long time, their services were not regularized, they filed two original

F applications before the Central Administrative Tribunal, Patna, Circuit Bench, Ranchi, praying, *inter alia*, for a direction upon the respondents to finalise their regular absorption in the services in grade 'C' posts against the sanctioned strength which were marked as OA Nos.604 of 1997 and OA No.398

G of 1998. By reason of a judgment and order dated 5.7.2001, the said original applications were allowed, in part, directing :

H "In the result, the applicants' claim to be regularized in Group 'C' post as asserted in the OAs in hand is not acceptable, instead they were required to be regularized

in feeder cadre in Group-'D' post by providing pay A protection of 'C' post."

4. Appellants aggrieved thereby filed a writ petition in the High Court of Jharkhand at Ranchi. The said writ petition has been dismissed by reason of the impugned judgment, stating B :

"No doubt, the petitioners were casually employed in Grade-C initially and thereafter they acquired temporary status, but the fact remains, and the finding of the fact by the Tribunal is, that the selections of the petitioners were not regular selections. It is, no doubt, true that they had taken a trade test when they were recruited, though casually in Grade-C. But that would not make their selection regular selection. In our view, the ratio of the decision of the Supreme Court that in such promotional posts, there should not be regularization and the regularization could only be in the lower grade, is clearly applicable to the case on hand. We are satisfied that the Tribunal has correctly come to the conclusion that the petitioners in the case on hand could be regularized only in Group-D posts, though protecting their pay and not in Grade-C posts. On going through the order of the Tribunal, we are not satisfied that it suffers from any error apparent on the face of the record justifying our interference. Nor can we accept the argument that the decision is unjust since the pay of the petitioners stood protected, notwithstanding the fact that they are sought to be regularized in a lower post. In this situation, we see no reason to interfere."

5. Mr. Sanyal, learned senior counsel in appearing support G of the appeal, would contend that keeping in view the facts and circumstances of the case the services of the appellants should have been directed to be regularized in Group 'C' posts as they were appointed directly thereto. It was urged that the Tribunal and consequently, the High Court committed a serious error in H opining that the posts in Group 'C' in the Central Government

A were required to be filled up only through promotion and not through direct recruitment. The learned counsel would also contend that from a letter dated 25.8.1997, which was issued by way of a representation made by the appellants to the General Manager, Central Organisation, Railway Electrification, Allahabad, it would appear that they had, except one, were directly appointed in the posts of T.C.M. Electrician Fitter, W/ Driver Grade 'C' posts.

C Learned counsel would contend that it is also not a case where the appellants do not possess the requisite qualification. They had also passed the trade test. It was furthermore urged that the Patna High Court in a similar situation having granted relief, the Jharkhand High Court committed a serious error in refusing to grant the same.

D 6. Mrs. K. Amareswari, learned senior counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment.

E 7. Indisputably, the vacant posts in the Railway Services are required to be filled up in terms of the Recruitment Rules. Respondents in their counter affidavit, stated :

"In reply to this para, it is submitted that the 50% Direct Recruitment quota meant for the post of permanent way Mistry 25% vacancies has been earmarked to be filled up through limited departmental Competitive Examination from amongst Gang Man/Key Man and Mates with the qualification of 10+2 with science & maths and having put minimum of 3 years regular service shortfall of any be made good from amongst Gangman/Keyman/Mates having the qualification of matriculation/HSLC with three years regular service. Further, shortfall, if any, to be added upto the direct recruitment."

H 8. Appellants, indisputably, were appointed as daily rated casual labourers for project work. The said project having been

undertaken for electrification of Railways at Ranchi was a time bound one. It did not have its own cadre. Engagement of any casual labour under the said project, therefore, did not amount to any regular recruitment. It may be that the Railway Administration had committed serious illegalities in making recruitment directly to the said posts, the same by itself would not confer any right upon the appellants for being regularized in Group 'C' post.

The question, however, which arises for consideration is as to whether in the peculiar facts and circumstances of this case, the High Court should have directed regularization of the services of the appellants.

It has not been denied or disputed that Railway Electrification was a temporary project. As noticed hereinbefore, the posts held by the appellants, indisputably, were purely on a casual basis and not against any cadre post.

Appellants furthermore have not been appointed upon compliance of the provisions of Articles 14 and 16 of the Constitution of India and/or the recruitment rules framed under the proviso appended to Article 309 of the Constitution of India.

Our attention has been drawn to a Board circular dated 11.5.1973 wherein, *inter alia*, it was laid down :

"(2) When casual labour are engaged in skilled categories, the relevant scale for the purpose of determining their ages (as per orders regulating wages of Casual labour) will be that applicable to skilled artisans. On attaining temporary status they shall be paid in that scale. Similarly for Project Casual Labour is skilled categories with 180 days continuous service, consolidated wage shall be at the minimum of the scale of pay applicable to artisans plus DA payment on this basis will be admissible, however, from the date of passing prescribed trade test if the same is later than the date of attaining temporary status or date of

A completion of 180 days, as the case may be from whichever date is later. No casual labour in skilled category can be engaged without the approval of an authority lower than a Divisional Engineer.

B (Board's No.E(NG)II/84/CL 58 of 20.12.85)

Note:- Past cases decided otherwise than in term of the letters dated 20.12.1985 cited above or in terms of final orders of a court of competent jurisdiction, shall not be re-opened. Where, however, a person was continuing as a

C casual labour in a skilled category on 20.12.1985 (date of issue of the said letter) his case will be regulated prospectively in terms of the provisions of the said letter (dated 20.12.1985).

D (3). Casual labour engaged in work charged establishment of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period, can straightway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of

E 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labour when are recruited directly in the skilled categories in work charged F establishments after qualifying in the trade test."

G 9. The said circular letter of the Railway Board which had been issued long back, however, did not take into consideration the limitation of power of a State to make appointments in total disregard of mandatory provisions of the recruitment rules and/ G the constitutional provision.

H This aspect of the matter has been considered in *A. Umarani v. Registrar, Cooperative Societies & Ors.* [(2004) 7 SCC 112], holding :

“No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.”

Yet again in a Constitution Bench of this Court in *Secretary, State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1], laid down the law in the following terms :

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold 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. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. *It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.* It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an

A end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. *The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.*"

(Emphasis supplied)

Furthermore, the appellants have not produced their offers of appointment. If they were appointed only for the project work and that too in ex-cadre posts, the same would never mean that they had appointed on a regular basis. It has not been shown that temporary status either had been or could be granted to the appellants.

D 10. We are not oblivious of the fact that some Benches had taken a somewhat contrary view but recently in a Three Judge Bench decision of this Court in *Official Liquidator v. Dayanand & Ors.* [(2008) 10 SCC 1], stated the law, thus :

E "90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch

as the courts at the grass root will not be able to decide A  
as to which of the judgment lay down the correct law and  
which one should be followed.

91. We may add that in our constitutional set up every B  
citizen is under a duty to abide by the Constitution and  
respect its ideals and institutions. Those who have been C  
entrusted with the task of administering the system and  
operating various constituents of the State and who take  
oath to act in accordance with the Constitution and uphold D  
the same, have to set an example by exhibiting total  
commitment to the Constitutional ideals. This principle is  
required to be observed with greater rigour by the  
members of judicial fraternity who have been bestowed E  
with the power to adjudicate upon important constitutional  
and legal issues and protect and preserve rights of the  
individuals and society as a whole. Discipline is sine qua  
non for effective and efficient functioning of the judicial  
system. If the Courts command others to act in accordance  
with the provisions of the Constitution and rule of law, it is  
not possible to countenance violation of the constitutional  
principle by those who are required to lay down the law." F

11. In the facts and circumstances of this case, as noticed  
hereinbefore, in our opinion, the decision of this Court in *Union*  
*of India v. Moti Lal* [(1996) 7 SCC 481] would be applicable  
wherein regularization on a promotable post has been held to  
be impermissible in law, stating : G

"9. So far as the first question is concerned, on examining  
the relevant provisions of the rules as well as the  
administrative instructions issued by the Railway  
authorities we are of the considered opinion that it is not  
permissible to appoint a person directly as a mate and it  
is only a promotional post from Class IV post of gangman  
and keyman. These gangmen and keymen can be  
promoted to the post of mate in Class III subject to their  
suitability and efficiency being tested through trade test. It H

A is no doubt true that these respondents under certain circumstances had been appointed directly as casual mates and they continued as such and further by virtue of their continuance they acquired temporary status but that by itself does not entitle them to be regularised as mates since that would be contrary to the rules in force. In our considered opinion the respondents did not acquire a right for regularisation as mates from mere fact of their continuance as casual mates for a considerable period."

B

12. For the reasons aforementioned, there is no merit in  
C the appeal. The same is dismissed accordingly. No costs.

K.K.T.

Appeal dismissed.