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STATE OF U.P. AND ORS.

V.

REKHA RANI

(Civil Appeal No. 1017 of 2007)

MARCH 30, 2011

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[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Service Law:

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Regularization – Claim for – Writ petition – Held: The High Court in exercise of its power under Article 226 cannot regularize an employee – Constitution of India, 1950 – Article 226.

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Termination – Of respondent-temporary employee – Challenge to – Held: On facts, the respondent's service was not terminated as a measure of punishment, hence, no opportunity of hearing was necessary for terminating her service – Direction for her reinstatement cannot be sustained as she was only a temporary employee and hence had no right to the post – Merely because some others had been regularized did not give any right to the respondent – An illegality cannot be perpetuated – Constitution of India, 1950 – Articles 14 and 16.

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Precedent – Supreme Court dismissing SLP against judgment of High Court – Held: The decision of the Supreme Court did not amount to a precedent as it did not contain any discussion on the merits of the case.

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The respondent, a BAMS (Bachelor of Ayurvedic Medicine and Surgery) degree holder, had been appointed under the *Anshkalik* (temporary) Scheme of the State Government and posted at a Government Hospital. She was terminated from service.

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The respondent filed writ petition before High Court

claiming entitlement to regularization in service and parity in wages as regular employees alleging that the State government had terminated her service arbitrarily. The respondent alleged that *Anshkalik* doctors had filed a writ petition being Civil Writ Petition No. 4886 of 1990 before the High Court which allowed the same on 11.2.1992 holding that there was violation of Articles 14 and 16 of the Constitution, and directed that the claim of the writ petitioners for regularization be considered. The respondent alleged that the said High Court judgment became final when SLP filed thereagainst was dismissed by this Court on 19.2.1996 and that she is entitled to benefit of the said decision. The writ petition filed by the respondent was allowed by the High Court. Hence, the present appeal.

Allowing the appeal, the Court

HELD:1. There is no discussion on the merits in the order of this Court dated 19.2.1996 passed in the SLP filed against the judgment and order of the High Court in writ petition No. 4886 of 1990. Thus, the aforesaid decision of this Court does not amount to a precedent and the respondent can take no benefit from the same. [Para 10] [1159-B]

2. A regular appointment can only be made after selection by the U.P. Public Service Commission. Also, admittedly, the respondent was only a temporary employee and had not worked after 16.4.1991. The High Court in exercise of its power under Article 226 cannot regularize an employee. Merely because some others had been regularized does not give any right to the respondent. An illegality cannot be perpetuated. [Paras 11, 12] [1159-C-E]

State of Rajasthan vs. Daya Lal 2011(2) SCC 429 and *State of Karnataka vs. Umadevi* (2006) 4 SCC 1 – relied on.

- A 3. Also, it is well-settled that a temporary employee has no right to the post. The respondent's service was not terminated as a measure of punishment. Hence no opportunity of hearing was necessary for terminating her service. The direction for her reinstatement is not sustainable as she was only a temporary employee and hence had no right to the post. The impugned judgment and order of the High Court is set aside and the writ petition is dismissed. [Paras 13, 14] [1159-F-H]

- C *State of U.P. vs. Kaushal Kishore Shukla* (1991) 1 SCC 691 – relied on.

Case Law Reference:

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|---|------------------|-----------|---------|
| | 2011(2) SCC 429 | relied on | Para 12 |
| D | (2006) 4 SCC 1 | relied on | Para 12 |
| | (1991) 1 SCC 691 | relied on | Para 13 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1017 of 2007.

- E From the Judgment and Order dated 28.7.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 1213 of 1999.

- F S.R. Singh, Niranjana Singh and Prema Singh, Prema Singh for the Appellants.

Dinesh Kumar Garg for the Respondent.

The Judgment of the Court was delivered by

- G **MARKANDEY KATJU, J.** 1. This appeal has been filed against the judgment and order dated 28.7.2003 in CMWP No. 1213 of 1999 of the High Court of Judicature at Allahabad.

- H 2. Heard learned counsel for the parties and perused the record.

3. The respondent has a degree of B.A.M.S.(Bachelor of Ayurvedic Medicine and Surgery). She alleged in her writ petition filed in the High Court that she had all the requisite qualifications to be appointed as Medical Officer in the U.P. State Services. She was appointed vide order dated 1.8.1997 under the Anshkalik (temporary) Scheme of the State Government and was posted at a Government Female Hospital in Bulandshahar district. A
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4. It is alleged in her writ petition that to avoid the claim of regular service of the writ petitioner the State Government acted against the spirit of law laid down by this Court in *Rattanlal and others vs. State of Haryana and others* AIR 1987 SC 478 and in *Rabinarayan Mohapatra vs. State of Orissa and others* AIR 1991 SC 1286 and other decisions given from time to time by this Court, declaring illegal the policy of making ad hoc appointment having time bound period and thereafter terminating the services of the appointee and after a short interval giving re-appointment. It was alleged that artificial break of service was given by the State Government which is against the spirit of the aforesaid decisions of this Court. The appellant was appointed from 1.8.1987 to 31.7.1988, then from 3.8.1988 to 2.8.1989, then from 4.8.1989 to 3.8.1990 and from 7.8.1990 for a period one year. It is also alleged that the appellant's work was always found to be satisfactory, and certificates to this effect were given by the Chief Medical Officer, Bulandshahar which were marked as Annexure-4 to the writ petition filed in the High Court. It is alleged that others similarly situated were also given artificial breaks in service. It is alleged that Anshkalik doctors filed a writ petition being Civil Writ Petition No. 4886 of 1990 before the Allahabad High Court (Lucknow Bench) which was allowed on 11.2.1992 and the said judgment became final. The High Court held that there was violation of Articles 14 and 16 of the Constitution of India, and that the claim of the writ petitioner(s) for regularization shall be considered within six months from the date of production of copy of the said judgment before the respondent (the State Government). The C
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A writ petitioner (respondent in the present appeal) has alleged that she is entitled to the benefit of the said decision, although she had not filed any individual writ petition.

B 5. The respondent herein did not work after 16.4.1991 in the State service as her services came to an end on that date. She made several representations to the government authorities but to no avail. It is alleged that the State government arbitrarily terminated the service of the respondent on 16.4.1991. It is alleged that she was entitled to regularization in service and parity in wages as regular employees.

C 6. It is alleged that an SLP(C) No. 25503 of 1995 was filed before this Court against the Allahabad High Court judgment and order dated 11.2.1991 passed in writ petition No. 4886 of 1990, but the same was dismissed on 19.2.1996. It is also D alleged that after the dismissal of the said SLP the writ petitioner(s) should have been regularized in service, but that was not done.

E 7. It is alleged that others similarly situated have been regularized e.g. Dr. Sudha Trivedi in pursuance of the order dated 21.3.1996 in writ petition No. 6528 of 1992. Similarly, Dr. Lilawati Tripathi was also regularized in service. Hence, it is alleged that the writ petitioner (respondent herein) has been discriminated against.

F 8. A counter affidavit was filed before the High Court in which it was stated that the respondent herein had been appointed as a temporary employee from time to time, and the last appointment was given on 7.8.1990 for one year. She was not in service w.e.f 16.4.1991. Hence, it was alleged that she G could not claim regularization particularly when Chikitsa Adhikari comes under the purview of U.P. Public Service Commission and regular appointment can only be made on the recommendation of the said Commission.

H 9. Relying on its earlier decision the High Court allowed

the impugned writ petition No. 4886 of 1990 on 11.2.1992. A
Hence, this appeal.

10. We have perused the order of this Court dated 19.2.1996 passed in the SLP filed against the judgment and order of the High Court in writ petition No. 4886 of 1990 and we find that there is no discussion on the merits of the case. B
Thus, the aforesaid decision of this Court does not amount to a precedent and the respondent can take no benefit from the same.

11. A regular appointment can only be made after selection by the U.P. Public Service Commission. Also, admittedly, the respondent was only a temporary employee and had not worked after 16.4.1991. C

12. It has been held in a recent decision of this Court in *State of Rajasthan vs. Daya Lal* 2011(2) SCC 429 following the Constitution Bench decision of this Court in *State of Karnataka vs. Umadevi* (2006) 4 SCC 1 that the High Court in exercise of its power under Article 226 cannot regularize an employee. Merely because some others had been regularized does not give any right to the respondent. An illegality cannot be perpetuated. D
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13. Also, it is well-settled that a temporary employee has no right to the post vide *State of U.P. vs. Kaushal Kishore Shukla* (1991) 1 SCC 691. The respondent's service was not terminated as a measure of punishment. Hence no opportunity of hearing was necessary for terminating her service. The direction for her reinstatement is not sustainable as she was only a temporary employee and hence had no right to the post. F

14. For the reasons aforementioned, the appeal is allowed. The impugned judgment and order of the High Court is set aside and the writ petition is dismissed. There shall be no order as to costs. G

B.B.B.

Appeal allowed. H