STATE OF KARNATAKA & ORS. A

v.

GANPATHI CHAYA NAIK & ORS.

(Civil Appeal No. 795-798 of 2010)

JANUARY 22, 2010 B

[V.S. SIRPURKAR AND DR. MUKUNDAKAM SHARMA, JJ.]

Service law - Regularization/absorption - Daily wagers in continuous service for more than ten years since the date of C *their appointment - Regularization of service - Claim of - Held: Not sustainable since daily wagers were not recruited as per the Recruitment Rules - Order of tribunal as upheld by High Court directing the employer to consider in the cases of daily wagers for regularization, set aside.* D

Plea - New plea - Raising of - Before Supreme Court - Permissibility of - Held: Not permissible.

Respondent-daily wagers claimed regularization of service on the ground that they had been in continuous E **service for more than ten years since their initial appointment. Appellant-State contended that the respondents had not been recruited as per the Recruitment Rules and the scheme of regularization pertained only to those persons who had been working** F **prior to 01.7.1984, whereas respondents were recruited after the said date. Tribunal directed the appellants to consider the cases of the respondents for regularization of their service on merits. High Court upheld the same. Hence the present appeals.** G

Allowing the appeals, the Court

HELD: 1. Merely because a temporary employee or a casual wage worker is continued for a time beyond the

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A **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 the claims**
B **of the respondents for regularization or absorption cannot be sustained. The orders passed by the High Court as also the tribunal is set aside. [Para 6] [811-E-F]**

2. The respondents did not argue about their rights under the Industrial Disputes Act, 1947 at any stage till
C **the hearing of the appeal before this Court. A faint argument was sought to be made by their counsel which, however, was not permitted to be raised as neither there was any pleading in support of the same nor any argument in the Courts below at any stage. Further, even**
D **a case of the said nature has not been pleaded before this Court. Therefore, such a plea could not be raised before this Court by the respondents. Therefore, in these appeals the rights of the respondent under the said Act is not adjudicated upon. [Para 8] [813-H; 814-A-B]**

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Union of India & Anr. v. Kartick Chandra Mondal and Anr. **2010 (1) JT. 206;** *Secretary, State of Karnataka and Others v. Umadevi (3) and Ors.* **(2006) 4 SCC 1;** *Official Liquidator v. Dayanand and Others* **(2008) 10 SCC 1 , relied on.**

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Case Law Reference:

2010 (1) JT. 206	**Relied on.**	**Para 6**
(2006) 4 SCC 1	**Relied on.**	**Para 6**
G **(2008) 10 SCC 1**	**Relied on.**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 795-798 of 2010.

From the Judgment & Order dated 5.1.2004 of the High

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Court of Karnataka at Bangalore in W.P. Nos. 53790, 53804-53806 of 2003. A

WITH

C.A. Nos. 799-805, 806-810, 811-813, 814-817 & 818 of 2010. B

Sanjay R. Hedge, A. Rohan Singh, Amit Kr. Chawla for the Appellants.

R.S. Hegde (for P.P. Singh), Hari Shankar, Sudarshan Singh Rawat, K. Saradai Devi, Rajesh Mahale for the Respondents. C

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave Granted in all the Special Leave Petitions. D

2. The common question which arises for consideration in all these appeals is whether the orders passed by the Division Bench of the High Court of Karnataka, Bangalore in different Writ Petitions filed before it by the appellants herein dismissing the said Writ Petitions and upholding the directions given by the Karnataka Administrative Tribunal, Bangalore ("KAT" for short") to the appellants to consider the cases of the respondents for regularization of their service on merits are sustainable. E F

3. The facts which are necessary to answer the aforesaid question are being culled out here. The respondents in all these appeals were working on daily wages either as plantation watchmen or wireless operators or helpers. The respondents in all these appeals claimed regularization of their service in light of the fact that they had been in continuous service for more than ten years since the day of their initial appointment. The appellants, however, refuted their claim on the ground that the scheme of regularization pertained to only those persons G H

who had been working prior to 01.07.1984.

4. The learned counsel appearing on behalf of the respondents, on the other hand, supported the decision of the High Court of Karnataka.

5. We have heard all the learned counsel appearing for the parties. In light of the submissions made by the counsel appearing for the parties, we have carefully perused the documents available on record. The learned counsel appearing for the appellants submitted that the High Court as also the KAT had erred in allowing the claim of the respondents for regularization of their services as the respondents had failed to establish their rights for regularization. The counsel appearing for the appellants further submitted before us that the claim of the respondents for regularization was not sustainable in view of the fact that they had not been recruited as per the Recruitment Rules and also because the respondents had been recruited after 01.07.1984 whereas the scheme of regularization pertained to only those who had been working prior to the aforesaid date. It was also contended before us by the learned counsel appearing for the appellants that the respondents not being recruited through the proper procedure were back-door entrants into government service, and therefore, regularization of their services would be in violation of Articles 14 and 16 of the Constitution of India.

6. At this juncture, we intend to refer to a few recent decisions of this Court on the issue involved herein. In *Civil Appeal No. 2090 of 2007* which was pronounced on 15.01.2010, one of us (Mukundakam Sharma J.) had the opportunity to deal with a similar question concerning regularization of the casual workers. This Court, while allowing the petition dismissed the claim of the casual workers for regularization or absorption. In coming to the aforesaid conclusion, this Court placed reliance on two recent and landmark decisions of this Court. In *Secretary, State of Karnataka and Others v. Umadevi (3) and Others* reported in

(2006) 4 SCC 1 , this Court, in paragraphs 43 and 45 of the judgment, observed as follows: - A

"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 end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. ....." B C D E F G

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked H

A for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not
B in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the
C view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. ... ...
D .... It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned
E knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of
F the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment
G when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

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7. Subsequent to the aforesaid decision, the issue again arose for consideration before the 3-Judges Bench of this Court in the *Official Liquidator v. Dayanand and Others* reported in (2008) 10 SCC 1 wherein this Court, in paragraphs 68 and 116, observed as follows:-

> "68. The abovenoted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/ engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system."

> "116. In our opinion, any direction by the Court for absorption of all company - paid staff would be detrimental to public interest in more than one ways. Firstly, it will compel the Government to abandon the policy decision of reducing the direct recruitment to various services. Secondly, this will be virtual abrogation of the statutory rules which envisage appointment to different cadres by direct recruitment."

8. In view of the settled position of law in this regard which has been reiterated in a number of judgments of this Court, we hold that the claims of the respondents for regularization or absorption cannot be sustained. Accordingly, we allow the appeals and set aside the orders passed by the High Court as also the KAT. The respondents did not argue about their

A rights under the Industrial Disputes Act, 1947 at any stage till the hearing of the appeal before us. A faint argument was sought to be made by the counsel appearing for the respondents which, however, was not permitted to be raised as neither there was any pleading in support of the same nor
B any argument in the Courts below at any stage. Further, even a case of the said nature has not been pleaded before us. Therefore, such a plea could not be raised before us by the respondents. We have, therefore, in these appeals not adjudicated upon the rights of the respondents under the said
C Act. Liberty is, therefore, granted to the respondents to approach the appropriate forum under the said Act, if such a remedy and right is available to the respondents.

N.J. Appeals allowed.