

Act and hence also under Entry 23 of the First Schedule of the Industries (Development and Regulation) Act, 1951.

(11) Both the questions referred are, therefore, answered in the negative, against revenue and in favour of the assessee and this reference is disposed of accordingly. In the circumstances, however, there will be no order as to costs.

J.S.T.

(FULL BENCH)

Before:—S. S. Sodhi, A.C.J., N. K. Sodhi and R. K. Nehru, JJ.

DHARAM BIR SINGH AND OTHERS,—Petitioners.

Versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 4395 of 1990.

12th November, 1992.

Constitution of India, 1950—Art. 226—Ad hoc/stop-gap appointments—Petitioner appointed for short period of 45 days—Government deciding to make fresh appointments—Right to such appointments on the principle of ‘Last go first come’—Untenable—No vested right accrues to petitioner either to continue in service till regular appointments or to be considered for such appointments.

Held, that on general principles too there is no law, rule or instruction which lays down that once a person is appointed, even on a stop-gap or *ad hoc* arrangement, he acquires thereby a vested right, as it were, to be considered for appointment or given appointment thereafter if and when any similar vacancy arises in the future. Such a proposition would be wholly untenable in law and is not one that can be countenanced. The petitioners, therefore, are not entitled to the relief claimed.

(Para 5)

JAGDISH SINGH V. STATE OF HARYANA, C.W.P. NO. 3674 OF 1990 decided on April 5, 1990. (Punjab and Haryana).

(OVERRULED)

Petition Under Articles 226/227 of the Constitution of India praying that this Hon’ble Court be pleased to :—

(i) *Send for the records of the case;*

- (ii) Issue a Writ in the nature of Writ of Mandamus directing the respondents to allow the petitioners to continue in service as Sanskrit Teachers on the posts to which they were appointed by Appointment Orders, Annexures P-1 to P-3 and treat them to be in continuous employment since their appointments.
- (iii) Issue an ad interim order restraining the respondents Nos. 3 and 4 from filing up the posts held by the petitioners in their respective Schools, till the decision of this Writ Petition and allow the petitioner to Continue as such and issue a direction to the respondents 3 and 4 to allow the petitioners to join their duties with commencement of the Academic Session.
- (iv) To declare the petitioners to be in continuous service with effect from 6th February, 1990 till regular appointee from the Subordinate Services Selection Board is recommended.
- (v) Issue any other appropriate Writ, Direction or Order deemed fit and proper in the case.
- (vi) Dispense with the prior service of notices of motion on the respondents as if the same is insisted upon, the very purpose of the Writ Petition would be frustrated.
- (vii) Dispense with the filing of Certified Copies of documents appended as Annexures.
- (viii) Award Costs of this writ petition to the Petitioners.

(This case was referred to Larger Bench by a Division Bench comprising of Hon'ble Justice S. S. Sodhi, And Hon'ble Mr. Justice J. B. Garg on 24th May, 1990 as their lordships' observe that the matter raised and dealt with by the Division Bench in Jagdish Singh's case (supra) is of obvious general Public importance and in view of their Lordships this judgment deserves reconsideration by a larger Bench. The Larger Bench comprising of Hon'ble the Acting Chief Justice Mr. S. S. Sodhi, Hon'ble Mr. Justice N. K. Sodhi, and Hon'ble Mr. Justice R. K. Nehru decided the matter on November 12, 1992).

Mr. Chander Singh, Advocate, for the petitioners.

Mr. R. C. Setia, Addl. A.G. Haryana, for the respondents.

JUDGMENT

S. S. Sodhi, A.C.J.

Does *ad hoc* or stop-gap appointment of teachers for a short period like 45 days or less render it incumbent upon the Government, if it decides to make fresh appointment otherwise than by

promotion or through the Subordinate Services Selection Board to first, consider and take back such teachers in order of 'Last Go First Come'? This is what was so held by the Division Bench in *Jagdish Singh v. State of Haryana* (1). Reconsideration of this judgment is what has led to the present reference.

(2) In *Jagdish Singh's* case (supra), the petitioners were appointed in February, 1990 for a fixed terms ending on March 27, 1990. This appointment of the petitioners was on a purely temporary basis as a stop-gap arrangement. Before their services came to an end, they approached this Court praying that they be allowed to continue in service till regular appointment is made to the posts held by them either by promotion or through the Subordinate Services Selection Board. Relying upon the judgment of this Court in *Piara Singh v. State of Haryana* (2), it was held, "No right accrues to the petitioners to continue in service except that in case the State Government wants to appoints fresh persons either through Employment Exchange or from outside, other than the recommendees from the Board or by way of promotion, which are the two sources for appointments to the posts in question, it will have to take the petitioners first." The writ petition was consequently dismissed "with a clear indication to the State Government that in case it wants to make any appointments, otherwise than by promotion or through the Board, the petitioners will have to be called first in order of seniority—'last go first come'."

(3) A similar factual position arises in the present case too. The petitioners here were appointed as Sanskrit Teachers in February, 1990. It was a fixed term appointment, coming to an end on March 15, 1990. Relying upon the judicial precedent in *Jagdish Singh's* case (supra), they seek a direction to the respondents to allow them continue in service till regular appointments are made through the Subordinate Services Selection Board.

(4) In dealing with this matter, it must, at the very outset be noted that the judgment of this Court in *Piara Singh's* case (supra) has since been over ruled by the Supreme Court in *State of Haryana and others v. Piara Singh and others* (3). This being so, the very foundation of the judgment is *Jagdish Singh's* case (supra) no longer survives.

(1) C.W.P. No. 3674 of 1990 decided on April 5, 1990.

(2) 1988 (4) S.L.R. 739.

(3) 1992 (4) S.L.R. 770.

(5) On general principles too, there is no law, rule or instruction which lays down that once a person is appointed, even on a stop-gap or *ad hoc* arrangement, he acquires thereby a vested right, as it were, to be considered for appointment or given appointment thereafter, if and when any similar vacancy arises in the future. Such a proposition would be wholly untenable in law and is not one that can be countenanced.

(6) It would also be pertinent to recall here the observations of the Full Bench in *S. K. Verma and others v. State of Punjab and others* (4), with regard to *ad hoc* employees, namely "To our mind, the term '*ad hoc*' employee is conveniently used for a wholly temporary employee engaged either for a particular purpose and one whose services can be terminated with the maximum of ease." It was consequently held, "In the gamut of service law an *ad hoc* employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the *ad hoc* one appears at the lowest level implying that he had been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes."

(7) Such thus now being the settled position in law, we are constrained to hold that the judgment of this Court in *Jagdish Singh's* case (*supra*) does not lay down correct law and is consequently, hereby over-ruled. It follows, therefore, that the petitioners are not entitled to the relief claimed.

(8) This writ petition is consequently hereby dismissed. In the circumstances, however, there will be no order as to costs.

J.S.T.

(FULL BENCH)

Before M. R. Agnihotri, S. S. Grewal and Jawahar Lal Gupta, JJ.

JAGIR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 2402 of 1984.

16th December, 1992.

Constitution of India, 1950—Arts. 226 and 227—Punjab Government Instructions dated 10th December, 1959—Departmental

(4) A.I.R. 1979 Punjab and Haryana 149.