2024 INSC 911

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10800 OF 2024

CHAUDHARY CHARAN SINGH HARYANA AGRICULTURAL UNIVERSITY, HISAR & ANR. **... APPELLANTS**

VS.

MONIKA & ORS. **... RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. The present appeal assails the judgment and order dated 6th December, 2023 passed by the Division Bench of the Punjab and Haryana High Court at Chandigarh[1] in LPA No. 562/2022 (O&M), affirming the decision of the Single Judge whereby the first respondent was directed to be considered

[1] High Court, hereafter

and offered appointment in the first appellant-Chaudhary Charan Singh Haryana Agricultural University[2] on the post of Clerk.

THE QUESTION

2. The short question arising for decision in the appeal is, whether the Single Judge and then the Division Bench of the High Court were in error in treating the first respondent as qualified for consideration and consequent appointment.

RESUME OF FACTS

3. The relevant facts essential to decide the present appeal are as follows:

I. In 1970, the University was established upon enactment of the Haryana and Punjab Agricultural Universities Act, 1970.

II. In 2009, the second respondent-State of Haryana[3] *vide* Circular No. 43/5/2001-IGSI introduced an outsourcing policy relating to engagement of persons on contract basis through service providers[4]. This circular was adopted by the University *vide* memo dated 24.02.2010.

III. In 2014, the SoH issued a further Circular bearing No. 43/5/2001-3GSII relating to issuance of experience certificates to persons engaged under the aforementioned outsourcing policy. This circular too was adopted by the University on 25.06.2014[5].

IV. In 2017, the University invited tenders for the purpose of providing manpower relating to office/hospitality and lab/technical under Part

[2] University, hereafter
[3] SoH, hereafter
[4] Outsourcing Policy, hereafter
[5] Circular dated 25.06.2014, hereafter

I of the Outsourcing Policy. *Vide* Office Order dated 29.03.2017, the contract was awarded to two service agencies by the University. The first respondent was engaged by one of the service agencies, namely, M/s Lavnya Enterprises[6], to work as a clerk-cum-typist as outsourced manpower for the time period between 05.05.2017 and 31.03.2018 in the University.

V. A certificate of experience was awarded to the first respondent by Lavnya dated 01.04.2018. This certificate was countersigned by the Professor and Head of the Department of Soil Science of the University.

VI. *Vide* an advertisement[7], the University invited applications for direct recruitment to various Group-C (non-teaching) posts. Under the criteria for selection, the advertisement prescribed a maximum of five (5) out of hundred (100) marks for 'Experience'. It specified that half a mark (0.5) would be given for experience in the same or higher post in any department / board / corporation / company / statutory body / commission / authority of the Government of Haryana, for each year or part thereof which exceeds six months but limited to a maximum of ten (10) years.

VII. In pursuance of the advertisement, the first respondent had applied and offered her candidature. Admittedly, the first respondent scored 75 marks in the written test and was, accordingly, placed in

[6] Lavnya, hereafter
[7] Advertisement, hereafter

Sl. No 103 and ranked Gen-92 in the merit list, and fell short of selection.

VIII. Aggrieved, the first respondent invoked the writ jurisdiction of the High Court by filing WPC No. 4402/2020 (O&M)[8] impleading the University, the SoH and two selected candidates as the first, second, third and fourth respondents, respectively.

IX. A Single Judge of the High Court by his judgment and order dated 24.05.2022 ruled that the first respondent was eligible for 0.5 mark for the service rendered by her between 05.05.2017 and 31.03.2018. As noted above, this decision was affirmed by the Division Bench.

IMPUGNED JUDGMENTS

4. Since the first respondent had admittedly worked in the University for a period exceeding six months, her Writ Petition was allowed by the Single Judge directing allotment of 0.5 mark to the first respondent. The University was directed to consider her for appointment as well as to offer appointment, without disturbing any selected candidate. Aggrieved, the University carried the judgment and order allowing the Writ Petition in a Letters Patent Appeal. The Division Bench dismissed the appeal presented by the University on the ground that the order of the learned Single Judge does not suffer from any illegality, thereby leaving the University still aggrieved.

[8] Writ Petition, hereafter

5. Having perused the judgment and order of the Single Judge, since affirmed by the Division Bench, we have found the judgment and order of both the writ court as well as the appellate court to be rather cryptic. Exception cannot be taken to any judgment merely on the ground of its brevity but if the judgment is cryptic and conclusions are reached without proper analysis of facts and materials on record, the party aggrieved would be justified in seeking setting aside of such judgment. It is, perhaps, for such reason notice had been issued by a coordinate Bench pursuant whereto the first respondent appeared; and, thereafter, the parties argued their cases fully. However, since focused consideration, due application of judicial mind and clarity of reasoning are the imperatives of a proper judicial decision, we have thought it fit to reflect on the issue arising for decision with the seriousness the same deserves.

CONTENTIONS

6. The impugned judgment has been assailed by the University on the grounds that:

I. Paragraph 1 of Part I of the Outsourcing Policy stipulates that services may be outsourced as and when required partly or completely by the departments where posts have not been sanctioned. Part II deals with engagement of persons on contract basis where the regular posts exist. In the instant case, the first respondent was deputed in one of the universities through a service provider under Part I of the Outsourcing Policy.

II. Since the first respondent was engaged in the University by the service provider, Lavnya, under the Outsourcing Policy for the requirements of office work and not appointed on any regular or sanctioned post of clerk, the experience acquired by her cannot be equated with the experience of working on a sanctioned post of clerk.

III. Considering that the post was not a regular or sanctioned post, the first respondent cannot be deemed to have gained experience of working in the same or higher post, as required by the Advertisement.

IV. Experience Certificate was not issued by the University but rather by Lavnya. Merely because it was countersigned by the Head of the Department does not make it a certificate issued by the University. Attention was drawn to the Circular dated 25.06.2014, which prohibits issuance of an experience certificate by any authority where persons are engaged through a service provider, i.e., under Part I of the Outsourcing Policy.

V. The High Court overlooked the fact that the first respondent's application described her engagement for the concerned time period as contractual employment and that her employer was the University, which is incorrect as the first respondent was neither appointed by the University nor ever worked with the University on any temporary or permanent post.

VI. The first respondent has not submitted the valid experience certificate issued by the department / board / corporation / company / statutory body / commission / authority of the Government of Haryana; therefore, the scrutiny committee has not considered the so-called experience of the first respondent and allotted her marks which is justified on facts and in the circumstances.

VII. The last candidate who was selected (securing 75 marks) is still 8 ranks higher than the first respondent. If the relief granted by the High Court is upheld, then the seniority of the appointed candidates will have to be disturbed. Moreover, the select list having been exhausted, the appointment cannot be given to the first respondent.

7. Based on these grounds, interference with the impugned judgment and order of the Division Bench was claimed by the University.

8. Representing the first respondent, her learned counsel contended that the judgment and order of the Single Judge is well-considered and well-reasoned; hence, it is unexceptionable and no interference is warranted.

9. It was further contended that:

I. The first respondent though had rendered services to the University on contract, she had done the work like other similarly situated persons working under either the outsourcing policy or on regular basis.

II. As per the Policy, the essential requirement of experience is that the candidate must be working in any department of the Government of Haryana irrespective of the mode of recruitment because government institutes can hire manpower in any of the two modes and in both the cases, work is done in the government department.

III. The University did not disclose the fact that the post of Clerk-cum-Typist is a sanctioned post.

IV. Denying marks of experience to the first respondent is unreasonable, arbitrary and violative of Articles 14, 15, 16, 19 and 21 of the Constitution of India.

V. The last candidate selected in the general category secured 76 marks and if the mark (0.5) for experience is granted to the first respondent, she would enter the zone of selection for appointment on the post of clerk.

VI. There are 13 posts lying vacant and the selection list is valid for one year.

VII. That in the case of ***Sachivalaya Dainik Vetan Bhogi Karamchari Union v. State of Rajasthan & Ors.***[9], this Court upheld the policy of the State of Rajasthan for giving weightage to the services rendered by the employees, where services were used by the State either temporarily or on ad-hoc basis.

[9] (2017) 11 SCC 421.

VIII. The University has also issued 2nd Appointment List wherein, two candidates who have secured 75 marks have been selected and appointed for the said post, i.e., the third and the fourth respondent.

10. Learned counsel concluded by submitting that the University read words in the Advertisement to exclude the first respondent from the zone of consideration, which was rightly interdicted by the Single Judge and the Division Bench in its concurrent findings. As a sequel thereto, the appeal deserves outright dismissal.

ANALYSIS AND REASONS

11. The crux of the dispute is whether the first respondent, in terms of the Advertisement, was eligible to be awarded half a mark (0.5) under the category of 'experience' vis-à-vis her engagement as outsourced manpower for the concerned time period, in light of the Rules and Circulars of the SoH as adopted by the University.

12. It is an admitted fact that the first respondent was appointed under Part I of the Outsourcing Policy, which relates only to employment made when no sanctioned post exists. Although the first respondent has urged that the University has not disclosed the existence of a sanctioned post either before the High Court or this Court, nothing turns on it. It is not in dispute that the first respondent was never directly appointed by the University on any sanctioned post of Clerk. Having regard to the Outsourcing Policy, through which the first respondent came to be appointed, we shall proceed with our analysis resting on the premise

that no sanctioned post of Clerk existed at the time when the first respondent was first engaged in the University through the service provider or, even if one existed, the first respondent could not have been accommodated there at the relevant time.

13. The point that would engage our consideration in this case is whether the noun 'post' in the subject advertisement would invariably mean a sanctioned post and whether a candidate would not be eligible for mark for experience if he/she has not worked on a regular/sanctioned post.

14. We have not been referred by the parties to any precedent having a direct bearing on the question arising for decision here. However, prior to looking at the Advertisement, it would be worthwhile to bear in mind what this Court held in the decisions noted below.

15. In ***Dr. Kumar Bar Das v. Utkal University***[10], a case concerning the provision of marks for experience in connection with recruitment, a 3-Judge Bench of this Court noted that one must not apply the words in the advertisement in a technical sense but must rather give effect to the words mentioned in the advertisement:

> "29. No doubt, in clause 9 of the endowment, it was stated that the procedure for selection would be the same as followed for a Professor's selection. This, in our view, was referable merely to the procedure. If the advertisement stressed on the research experience also and not merely the teaching experience, the column in the pro forma for awarding marks when it referred to 'teaching experience' has to be treated as one meant to cover teaching and research experience. The Selection Committee and the Syndicate followed the right procedure but the Chancellor went wrong in confining himself to the actual language of the pro forma and in omitting to give effect to the words 'and/or research experience' contained in the advertisement and the UGC Regulations. This, in our view, is a clear illegality in the order of

[10] (1999) 1 SCC 453.

the Chancellor. The High Court ought to have, therefore, come to the rescue of the appellant and set right the illegality."

(emphasis supplied)

16. ***Dr. (Major) Meeta Sahai v. State of Bihar***[11] arose out of a case where the advertisement provided for the grant of marks for work experience after appointment on a regular/contract basis in the government hospitals. In the advertisement, it was also stated that only work experience in government hospitals of the Government of Bihar would be counted for this purpose. This Court, therefore, in interpreting the term "government hospital" held:

> "20. It is a settled canon of statutory interpretation that as a first step, the courts ought to interpret the text of the provision and construct it literally. Provisions in a statute must be read in their original grammatical meaning to give its words a common textual meaning. However, this tool of interpretation can only be applied in cases where the text of the enactment is susceptible to only one meaning. *[Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, para 13.]* Nevertheless, in a situation where there is ambiguity in the meaning of the text, the courts must also give due regard to the consequences of the interpretation taken.
>
> …
>
> 23. …The phrase 'government hospital' therefore cannot be construed to exclude other non-private hospitals which are otherwise run exclusively with the aid and assistance of the Governments. Additionally given the difference in common usage wherein 'government hospital' refers to all non-private hospitals and not hospitals established by a particular Government, Rules 5 & 6(iii) would not be bound by Rule 2(a)."
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> (emphasis supplied)

17. The first respondent has also referred us to the decision of ***Sachivalaya Dainik Vetan Bhogi Karamchari Union*** (supra). It would be appropriate to delve into the facts in that case before deciding the

[11] (2019) 20 SCC 17.

applicability of the law laid down therein in this present dispute. In that case, the members of the Workers Union were Class-IV employees. The employees filed a writ petition seeking regularisation of service. When the writ petition came up for hearing, it was represented that the dispute was settled out of Court and the terms were reduced to writing. Thereafter, the respondent issued an advertisement inviting tenders from contractors for the supply of Class IV employees. The Workers Union approached the High Court once again by way of a writ petition challenging the advertisement on the ground that those conditions were contrary to the settlement. During the pendency of this writ petition, another advertisement was invited and the respondent decided to provide some weightage in favour of the members of the Union by taking a decision to accord certain bonus marks in favour of those who had been working with the Department on a temporary basis. This decision of the respondent was once more challenged and the High Court ruled that the grant of these marks was arbitrary and directed that a lower weightage be given. Aggrieved, the State of Rajasthan carried the matter to this Court. During its pendency before this Court, an Hon'ble Division Bench of the Rajasthan High Court ruled in the pending writ petition [WP No. 3235/2004] that the settlement entered into between the parties cannot be enforced due to the decision of the Supreme Court in ***Secretary, State of Karnataka v. Umadevi (3)***[12]. While this Court, no doubt, upheld the settlement deed wherein the respondent awarded

[12] (2006) 4 SCC 1

bonus marks to the candidates for working in certain ad-hoc positions, it did so in the background of the complex and labyrinthine facts and circumstances that had played out before the Rajasthan High Court. There is no doubt in our mind that this case must be distinguished from the instant case as it does not lay down a general rule regarding the provision of experience marks while working in a contractual/non-regular post, but rather is limited to the enforcement of an already existing settlement agreement between the State and the concerned contractual employees.

18. In a different context, where promotion was the matter of concern before this Court in ***Union of India v. M. Bhaskar***[13]*,* it was held that:

> "15. The aforesaid decision has been challenged in this appeal by the Union of India by contending that 2 years' period of experience has to be reckoned, not from 11-10-1988, but from 21-9-1989. There is no dispute that the eligibility condition is 2 years' experience in Grade II. Now, this respondent having really started working in Grade II pursuant to the order of 21-9-1989, he could not have gained experience prior to the date he had joined pursuant to this order. The mere fact that his promotion in Grade II was notionally made effective from 11-10-1988 cannot be taken to mean that he started gaining experience from that day, because to gain experience one has to work. Notional promotions are given to take care of some injustice, inter alia, because some junior has come to be promoted earlier. But we entertain no doubt that the person promoted to higher grade cannot gain experience from the date of the notional promotion; it has to be from the date of the actual promotion."

(emphasis supplied)

19. Also, while not a decision related to service jurisprudence, in ***P Kumaraswamy v. State Transport Appellate Tribunal, Madras***[14],

[13] (1996) 4 SCC 416
[14] (1976) 1 SCC 373.

this Court held that the rule that prescribes marks to applicants who have business or technical experience in the road transport service, did not make any distinction between passenger transport or lorry transport. Upon a perusal of the decision, it is clear that a literal reading of the applicable framework is essential for any determination.

20. Taking a cue from the aforesaid decisions, our observation is this. It cannot be gainsaid that even though the modalities for engagement of two individuals for executing similar nature of work could differ, there can be no quarrel that none can gain experience without being asked to work. One vital difference in working on a sanctioned post as a permanent employee and being employed in the exigencies of administration without having a right to post is that in the former, the appointee enjoys procedural safeguards bringing in a sense of security of service in him while in the latter the individual concerned may not have any such sense of security. But, in case, both perform the work of clerks, the experience gained would not be much at a variance subject, of course, that the job requirement is not too different. It would also be relevant to bear in mind stipulations in the advertisement if, at all, they call for any special requirement for marks to be secured for experience, viz. previous service rendered on a sanctioned post or if salary, as is specified, has to be received for service rendered in order to be eligible to apply.

21. Moving on to the Advertisement in this case calling for our attention, we find that it required:

> "(d) Experience: One half (= 0.5) mark for each year or part thereof exceeding six months of experience, out of a maximum of 10 years, on the same or a higher post in any Department/Board/ Corporation/Company/Statutory Body/Commission/Authority of Government of Haryana. No marks will be awarded for a period less than six months.
>
> (a maximum of 5 marks)"

22. A literal reading of the terms relating to experience confirms that marks could be secured by an aspirant for experience gathered while working in the enumerated departments of the Government of Haryana; however, while referring to 'same or a higher post', the term 'sanctioned' as a prefix is conspicuous by its absence. Additionally, neither the Outsourcing Policy nor the Advertisement defines the word "post". What follows is that an aspirant, to secure mark for experience, must prove with documents that he/she has been employed for performing work of the nature required by the same or a higher post. Importantly, it has not seen shown that either the Recruitment Rules or the Advertisement specifically bar(s) aspirants from securing marks for experience sained from contractual / outsourced employment. Thus, we have no hesitation to hold that the mode of employment is not the primary concern. To our mind, the primary concern is the nature of work performed and whether the work undertaken by the candidate has any nexus with the purported work to be undertaken during the course of regular service. That the first respondent had rendered service for a statutory body in excess of six months and is, therefore, covered by the last part of clause (d) does not admit of any doubt and hence, she had a valid claim for securing 0.5 mark for experience.

23. The state policy, specifying that the individual must have worked on a post equal to or higher than the advertised posts in any of the enumerated departments to secure marks for experience, also reflects the state's belief that the experience in such departments is directly relevant to the advertised posts. It is not open for the University to now deny marks on the basis of a technical procedural deviation that the experience certificate was not issued by the University, but rather by the service provider. While we accept the contention raised by the University that the certificate was *per se* not issued by it, the fact that it was countersigned by the Head of the Department validates the first respondent's claim that she had indeed gained certain experience which deserved to be given credit.

24. We also do not agree with the contention of the University that the first respondent did not work on the post of Clerk and rather performed "office work". The certificate awarded to her evidently mentions that the work she was required to undertake is the work of Clerk-cum-Typist. Moreover, the certificate also mentions that her work was found quite satisfactory. The first respondent has also brought on record a memo by the Professor and Head of the Department which specifically acknowledges that she has been designated as a Clerk-cum-Typist during her tenure.

25. The first respondent, thus, cannot be denied the benefit of mark for experience merely because at the time of appointment as outsourced manpower, she was not appointed on a sanctioned post.

26. The true thrust of every selection process ought to be to find out and select suitable candidates, having experience in the related work and fulfilling other criteria, from among eligible candidates and to go ahead with appointing the more meritorious of those found suitable. If indeed an individual without having any security of service performs up to the mark and receives commendation from none other than the Head of the Department, who must have closely watched his/her performance, it would occasion a failure of justice to exclude such individual for no better reason than that he/she did not work on a sanctioned post. If indeed such be the requirement, it had to be made explicitly clear in the Advertisement without any ambiguity so as not to generate false hopes in the minds of individuals aspiring for public employment. Any other view would be against both the principles of equality and non-arbitrariness enshrined in the Constitution as well as principles of natural justice. Tested on the touchstone of Articles 14 and 16, the impugned decision of the University cannot sustain.

27. An underlying current throughout the Constitution is the theme of "social justice". The Preamble, as well as Article 38 of the Constitution, enjoins upon the State instrumentalities the duty to promote the welfare of the people by securing and protecting, as effectively as it may, a social order, in which justice – social, economic and political – shall inform all the institutions of national life and endeavour to eliminate inequalities in status, facilities and opportunities. Whenever a conflict arises between the powerful and the powerless, social justice commands the Courts to

lean in favour of the weaker and poorer sections where the scales are evenly balanced.

28. In this case, for the foregoing reasons, refusal to award any mark for experience to the first respondent would go against the grain of the constitutional duty of ensuring equality and securing social justice for the deprived.

CONCLUSION

29. Bound as we are to apply the Constitutional mandate prescribed in Articles 14 and 16 read with the preambular promise of securing social justice, we hold that non-grant of mark for experience to the first respondent was not proper and legal.

30. For reasons somewhat different from those assigned by the High Court, we concur with the ultimate conclusion and hold that the impugned judgment and order of the Division Bench of the High Court warrants no interference. The same is, thus, affirmed.

31. The appeal is, accordingly, dismissed without any order for costs.

.....J.
(DIPANKAR DATTA)

.....J.
(R. MAHADEVAN)

New Delhi;
November 29, 2024.