



2026:AHC:191492-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1835 of 2012

Balkrishna Sharma

.....Appellant(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Appellant(s)	: Abhinav Gaur, Anoop Trivedi, Vibhu Rai
Counsel for Respondent(s)	: C.S.C.

Reserved
A.F.R.

In Chamber

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SIDDHARTH NANDAN, J.

(Per: Siddharth Nandan, J.)

1. Heard Shri Vibhu Rai, learned counsel appearing on behalf of the appellant and Shri Indra Bhan Singh, learned Standing Counsel for the State-respondents.

2. The present intra court appeal has been filed assailing the judgment and order dated 31.08.2012 passed by the learned Single Judge in Civil Misc. Writ Petition No.44164 of 2000 (Balkrishna Sharma vs. State of U.P. and others).

3. The contention of learned counsel appearing on behalf of the appellant is that the appellant belongs to the general category, and had applied for the post of Junior Clerk and after passing the written examination and appearing in the interview; his name finds place in the select list, issued by the Additional Commissioner (Finance and Revenue, Uttar Pradesh), Bareilly Zone, Bareilly on 31.07.1997, at serial no.2.

4. Thereafter, an appointment letter was issued on 12.09.1997, where admittedly the said appointment was against substantive vacancy but temporary in nature; and the petitioner's appointment was also approved by the District Magistrate and the same was communicated by the Sub Divisional Magistrate on 31.07.1997.

5. He does not dispute that one Shri Syed Akram Ali was selected at serial no.1 and the petitioner was selected at serial no.2, however, subsequently a report was submitted on 18.07.2000 by the Chief Accountant, indicating that the petitioner's appointment was against the leave vacancy being caused by one Smt. Pratima Saxena and since the petitioner's appointment being temporary in nature, after the joining of Smt. Pratima Saxena, the salary of the petitioner also cannot be released; and consequentially vide order dated 13.09.2000, the services of the petitioner were terminated.

6. It is a specific case of the respondents, that the contention of the petitioner that his appointment was against the substantive vacancy in pursuance of the advertisement, has no substance. It is also a specific case of the respondents, that in the report dated 18.07.1997 and 02.09.1997, submitted by the Chief Clerk in the department of District Magistrate, Pilibhit, it was clearly mentioned that the resolution for appointment of the petitioner, was against the leave vacancy and not against the substantive vacancy; and accordingly, the finding of learned Single Judge that the appointment letter dated 12.09.1997 issued by the District Magistrate, Pilibhit being ex-facie illegal, cannot be faulted.

7. The petitioner has also set up a case in the rejoinder affidavit that 2 posts of Junior Clerk fell vacant on account of promotion of 2 Junior Clerks, namely, Shri Deepak Agarwal, the then Assistant Chief Revenue Accountant and Shri Sanjeev Kumar Saxena, the then Typist, Tehsildar Puranpur; but however, from the record, it can be ascertained that against the 2 posts under the General Category, which were shown vacant, one Shri Vimal Saxena was appointed on compassionate ground on 25.07.1997 and the incumbent who was selected at serial no.1 i.e. Syed

Akram Ali was appointed against the second vacant post; and accordingly the approval, was granted by the District Magistrate, Pilibhit; and as far as the petitioner's appointment was concerned, the same was not approved for the appointment, as no post was vacant. It further transpired that the petitioner's appointment was recommended for the appointment against the leave vacancy.

8. In the conspectus of the aforesaid facts what is required to be seen is, whether the post which was advertised and the petitioner being selected against the said post, adhering to the procedure prescribed, entitles the petitioner for a regular appointment or the State action, subsequently terminating his appointment, on account of the fact that this post which was admittedly advertised and the petitioner being selected against the said post, no longer exists.

9. It has not been disputed by the parties that two posts were advertised, in the general category on 11.07.1997 and the respondents did not bring any corrigendum to the said advertisement and proceeded to not only select the petitioner on the post advertised but also issued an appointment order dated 12.09.1997, in his favour and allowed him to join the services. Once the petitioner has been appointed against a regular vacancy being advertised, what is required to be seen is whether the State, in terminating his services on account of the said vacancy being filled subsequent to the date of advertisement, i.e., on 25.07.1997, while still proceeding to make the appointment and create a right in favour of the petitioner, was justified in terminating his services subsequently.

10. The petitioner has also relied upon a recent judgment of the Apex Court in the case of **Jaggo vs. Union of India**¹. For ready reference paragraphs 21, 22 and 25 of the said judgment is reproduced below:-

"21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable

1. 2024 SCC Online SC 3826/Supreme Court

duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

Misuse of "Temporary" Labels: *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

Arbitrary Termination: *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

Lack of Career Progression: *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

Using Outsourcing as a Shield: *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another.*

This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

Denial of Basic Rights and Benefits: *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.”*

11. The perusal of the aforesaid judgment indicates, that the Apex Court has taken cognizance of the fact regarding exploitation of the workers and the arbitrary termination after rendering long long years of services, fulfilling ongoing necessary functions of the State or its instrumentalities; and their termination on the pretext that the vacancy was temporary.

12. However, in the present case, we have to examine, whether the same analogy will apply in case of appointment on non-existent post.

13. In the present case, admittedly the petitioner has worked since his initial date of appointment on 12.09.1997 and as informed across the Bar, that he shall now also retire on 31.08.2026.

14. There is much similarity, in effect, even when Termination is on the ground of non-existence of the Post; and this practice undermines the principles of natural justice and subjects workers to a state of insecurity, regardless of the quality and duration of the service.

15. In the case of **Tej Prakash Pathak and others versus Rajasthan High Court and others**² while examining the issue whether the appointing authority/recruiting authority/competent authority, in absence of Rules to the contrary, can devise a procedure for selection of a candidate suitable to the post; it was held that it may set benchmarks for different stages of the recruitment process including the written examination and interview; but however if any benchmark is set the same should be stipulated before the commencement of the recruitment process, so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

2. 2025 (2) SCC 1

16. In the present case, the admitted position is that a substantive vacancy was advertised and the selection procedure was brought to its logical end, by issuance of an appointment letter and the joining of the candidate; and it is only thereafter that the appointment was sought to be terminated on the ground, that subsequent to the advertisement, an appointment has been made under the dying-in-harness rules, which has resulted in lesser vacancies than advertised; therefore in view of the aforesaid what is to be examined that whether the appointing authority can be given the said leverage, once a third party right has already accrued and on account of their own fault, can the incumbent be made to suffer? For ready reference para-65.4 of the **Tej Prakash Pathak** (supra) judgment is reproduced below:-

“65.4- Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved.”

17. It is a settled law that the Rules of the Game, cannot be changed midway, unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules so permits; and even if such a change is permissible, the same has to be tested on the anvil of Article 14 of the Constitution of India and satisfy test of non-arbitrariness.

18. The Apex Court in the case of **Bholanath Versus State of Jharkhand and others**³, expressed their disapproval on the mechanical application of precedents without engaging with the core constitutional issues involved, thereby reducing the dispute to one of the acceptance of contractual terms, divorced from its larger constitutional context. In the facts of the said case, the contention before the Apex Court was that, the appellants therein were appointed by the respondent-State, against sanctioned post, which were contractual in nature and extendable after end of the contract period; which was also granted from time to time; and referring to the judgment by the Constitutional Bench in **Basheshar Nath vs.**

3. 2026 SCC Online SC 129

Commissioner Income Tax⁴, reiterated the principle that fundamental rights guaranteed under the Constitution are incapable of waiver and consequently, if the action of the respondent-State is found to be in violation of Article 14 of the Constitution of India, the mere fact that the incumbents' engagement was governed by contractual terms and conditions, cannot constitute as a waiver of their fundamental rights.

19. The principle deducible was that Article 14 is intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14.

20. The petitioner with a bona fide believe that his appointment is against a sanctioned post, went through the rigors of the selection process and was even given an appointment letter; and as such he has every legitimate expectation that the State would recognize the services as permanent; and thereafter for an inherent defect of their own decision, the petitioner after rendering a long tenure in service, cannot be pushed into a dilemma and uncertainty, after serving for almost 30 years; without being given the benefit of the long service tenure of almost thirty years.

21. The legitimate expectation operates in the realm of public law, i.e., a plea of legitimate action can be taken when the public authority breaches a promise or deviates from a consistent past practice, without any reasonable cause; and as such for no fault of the petitioner, the court cannot close its eyes to the long service rendered by the petitioner and thus depriving him of the consequential benefits. The Court is also duty bound to balance the equities between the parties. Now after the retirement, the question of 'Post' will lose its importance; and the examination, is to be confined to the right of the Petitioner, to the retirement benefits, which he claims by virtue of the service rendered by him, un-disputedly.

22. The accrual of the right to the retirement benefit is by virtue of the length of service and it is not attached to the post; and as such after

4. 1958 SCCOnline SC 7

taking service for almost 30 years, the denial to the retirement benefit, will be in-equitable; and as such this Court has no hesitation, in molding the relief, in order to do substantial justice between the parties, for the grant of retirement benefit, to the Petitioner.

23. In view of the aforesaid, this Court is of the opinion that now since the petitioner on the verge of retirement, after having served for almost thirty years, without there being any complaint against his discharge of duties; and since this Court also exercises its powers under Article 226 of the Constitution of India, while deciding the intra-court appeal; therefor accordingly, in exercise of the said extraordinary powers, direct the respondent authorities to calculate the retirement benefits of the petitioner including the pension, gratuity, etc., which is normally admissible to a Government employee; and release the same within a period of thirty days from the date of service of certified copy of this order and consequentially the order of the learned Single Judge dated 31.08.2012, is hereby set aside.

24. With the aforesaid observation and direction the Special Appeal stands allowed.

(Siddharth Nandan,J.) (Saral Srivastava,J.)

September 14, 2026
S.Prakash