

2023 LiveLaw (SC) 520

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

B.R. GAVAI; J., J.B. PARDIWALA; J.

CIVIL APPEAL NO(S). /2023 @ SLP(C) No. 7898/2020; JULY 03, 2023

RAMAN KUMAR & ORS. versus UNION OF INDIA & ORS.

Service Law - Act of regularizing the services of only some employees and not of other entitled employees, is discriminatory and violative of Article 14 of the Constitution of India. The Chief Commissioner of Income Tax had found 65 employees entitled to regularization of employment but only 35 could be regularized, since only 35 posts were available. The Income Tax Department to regularize the services of the remaining entitled employees, from the date on which the services of other 35 employees were regularized, and to pay the back wages and other consequential benefits within a period of six months. (Para 8 & 13)

(Arising out of impugned final judgment and order dated 09-12-2019 in MJC No. 4589/2018 passed by the High Court of Judicature at Patna)

For Petitioner(s) Mr. Prashant Shukla, Adv. Mrs. Anushree Shukla, Adv. Mr. Abhinav Ramkrishna, AOR Mr. Varun Singh, Adv. Ms. Alankriti Dwivedi, Adv. Mr. Arvind Kumar, AOR Mr. Ytharth Kumar, Adv. Ms. Smriti Wadhwa, Adv.

For Respondent(s) Mr. Aishwarya Bhati, A.S.G. Mr. Raj Bahadur Yadav, AOR Mr. Deepabali Dutta, Adv. Mrs. Gargi Khanna, Adv. Mr. Akshay Nain, Adv. Mr. B K Satija, Adv.

ORDER

1. Leave granted.
2. The appeal is taken up for final hearing.
3. This appeal challenges the order passed by the High Court dated 09.12.2019, vide which the High Court has disposed of the contempt petition holding that there is no contempt in view of the affidavit of the Deputy Commissioner of Income Tax (Hqrs.) dated 06.12.2019.
4. The matter arises out of regularization of the employees. The Chief Commissioner of Income Tax in his report dated 14.02.2013 found that, in the exercise conducted in pursuance of the judgment of this Court in the case of Secretary, State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1, though 65 employees were found to be entitled for regularization, only 35 employees were regularized. This was done since only 35 vacancies were available.
5. 16 persons out of the remaining 30 employees filed contempt petition(s) alleging that the respondent(s)/department(s) are not regularizing the services of the appellants, thereby committing contempt of Court.
6. It appears that, before the High Court, an affidavit was filed stating therein that the services of the appellants could not be regularized since the posts were not available. On this statement the contempt petition has been filed.
7. In the Constitution Bench judgment of this court passed in Uma Devi (supra), though the Court has held that backdoor entries should not be permitted, it has permitted a one-time measure to be conducted for regularization of the services of these employees who had completed the service of more than ten years.

8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma and Others v. Union of India and Others (Civil Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India.

9. Mrs. Aishwarya Bhati, learned Additional Solicitor General of India appearing on behalf of the respondents, has vehemently opposed the petition. She submits that since posts were not available, and, thereafter, Group 'D' posts have been abolished, the appellants could not have been regularized.

10. We are not inclined to accept the submission on behalf of the respondents. When the Chief Commissioner of Income Tax has himself found that 65 persons were entitled to be regularized, the act of regularizing the services of only 35 employees and not regularizing the services of other employees, including the appellants, is patently discriminatory and violative of Article 14 of the Constitution of India.

11. In that view of the matter, we find that the High Court was in error in not entertaining the contempt petition. However, at this stage, relegating the appellants again to the High Court would unnecessarily cause delay in delivering justice to the appellants.

12. We, therefore, allow the appeal.

13. The services of the appellants are directed to be regularized from the date on which the services of other 35 employees were regularized and the backwages and other consequential benefits etc., to which the appellants would be entitled to, shall be paid to them within a period of six months from today.

14. Pending application(s), if any, shall stand disposed of.

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