

ITEM NO.15

COURT NO.3

SECTION IVB

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12700/2006
(From the judgement and order dated 28/04/2005 in CWP No.
10446/2003 of The HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH)

MUNICIPAL COUNCIL, DERA BABA NANAK

Petitioner(s)

VERSUS

MANPREET SINGH & ORS

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 30/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE DEEPAK VERMA

For Petitioner(s)

Mr. Subramonium Prasad, Adv.
Ms. Varuna Bhandari Gugnani, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s)

Mr. Kuldip Singh, Adv.
Mr. H.A. Raichuria, Adv.
Mr. Lalit Kumar, Adv.
Mr. T.P. Mishra, Adv.

Mr. P.N. Puri, Adv.
Mr. Aashish Chopra, Adv.,
Mr. Dhiraj, Adv.
Ms. Reeta Dewan Puri, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The appeal is disposed of in terms of the signed order.

(KALYANI GUPTA)
SR. P.A.

(PUSHAP LATA
BHARDWAJ)
COURT MASTER

CA @ SLP(C) 12700/2006

[SIGNED ORDER IS PLACED ON THE FILE.]

CA @ SLP(C) 12700/2006

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2009
ARISING OUT OF S.L.P. (C) NO. 12700 OF 2006

MUNICIPAL COUNCIL, DERA BABA NANAK APPELLANT

VERSUS

MANPREET SINGH & ORS. RESPONDENTS

ORDER

Leave granted.

The appellant-Municipal Council, Dera Baba Nanak is before us aggrieved and dissatisfied with a judgment and order dated 28.04.2005 passed by a Division Bench of the High Court of Punjab and Haryana in Civil Writ Petition No. 10307/2004 whereby and whereunder relying on or on the basis of a circular letter issued by the State Government vide communication dated 14.05.2001, a direction had been issued to regularise the services of the respondents. The respondents were contract employees. The State allegedly issued a circular letter directing that those employees of the Corporation who were working for last more than three years continuously

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apart from work charged/daily wage employees were to be regularised as those categories of workmen are said to be covered by Instructions dated 23.01.2001. Legality/validity of the said Instructions issued by the State of Punjab came for consideration before this Court in Punjab Water Supply & Sewerage Board v. Ranjodh Singh And Others (2007) 2 SCC 491 where in it was held that:-

"10. A statutory board is an autonomous body. Nothing has been brought

to our notice to show that under the statute any direction issued by the State shall be binding on it. The State may have some control with regard to recruitment of employees of local authorities, but such control must be exercised by the State strictly in terms of the provisions of the Act. The statutory bodies are bound to apply the rules of recruitment laid down under the statutory rules. They being "State" within the meaning of Article 12 of the Constitution of India, are bound to implement the constitutional scheme of equality. Neither can the statutory bodies refuse to fulfil such constitutional duty, nor can the State issue any direction contrary to or inconsistent with the constitutional principles adumbrated under Articles 14 and 16 of the Constitution of India. The purported directions of the State were otherwise bad in law insofar as thereby the statutory rules were sought to be superseded. A circular letter furthermore is not a statutory instrument. It was not even issued by the State in exercise of the power under Article 162 of the Constitution of India. Even a scheme issued under Article 162 of the Constitution of India would not prevail over statutory rules."

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The aforementioned decision has been followed by this Court in Punjab State Warehousing Corpn., Chandigarh v. Manmohan Singh And Another 2007 (9) SCC 337 in the following terms:-

"12. Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso appended to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution of India the same cannot be done by way of a circular letter.

13. This aspect of the matter is covered by a decision of this Court in A. Umarani v.

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Registrar Coop. Societies wherein the law was stated in the following terms (SCC p. 126, para 45)

"45. No regularisation is, thus, permissible in exercise of the statutory (sic executive) power

conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules."

14. A Constitution Bench of this Court in
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Secy., State of Karnataka v. Umadevi (3) categorically held that any appointment made in violation of the constitutional scheme would be a nullity.

15. Submission of Mr. Nidhesh Gupta,

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learned counsel appearing on behalf of the respondent that having regard to the fact that the policy decision was made as a one-time measure, the scheme in question would come within the protective umbrella of para
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53 of Umadevi (3) could be accepted for more than one reason. Firstly, because the High Court did not proceed on that basis; secondly, if the scheme itself was not applicable in case of respondent 1, even in terms of the said policy decision, as has been clarified by it, the question of invoking the said policy decision, as has been clarified by it, the question of invoking the said paragraph in the instant case would not arise. Moreover, in view of series of decisions of this Court explaining para 53 of Umadevi
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(3), such a scheme could be made out only in respect of such employees whose appointments were irregular and not illegal.

16. This aspect of the matter has recently been considered in Punjab Water Supply &
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Sewerage Board v. Ranjodh Singh in the following terms: (SCC p. 500, para 17)

"17. A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones."

(See also Municipal Corpn., Jabalpur
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v. Om Prakash Dubey)

2 (2004) 7 SCC 112: 2004 SCC (L & S) 918

3 (2006) 4 SCC 1 : 2006 SCC (L&S) 753

4 (2007) 2 SCC 491 : (2007) 1 SCC (L&S) 713:(2006) 13 scale 426

5 (2007) 1 SCC 373 : (2007) 1 SCC (L&S) 256 : 2006 13 SCALE 266

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. However, in

the event the appellant announces to fill up the available vacant posts in terms of the recruitment rules as also upon compliance CA @ SLP(C) 12700/2006

of the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, the case of the respondents shall be considered upon granting them relaxation in regard to their age etc.

The appeal is disposed of in the aforesaid terms.

.....J
[S.B. SINHA]

.....J
[DEEPAK VERMA]

NEW DELHI
JULY 30, 2009.