

कर्मचारी नियुक्तियों पर सर्वोच्च न्यायालय का महत्वपूर्ण फैसला

पृष्ठ 1 का शेष

को दिये फैसले में कहा है "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is

discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself

was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service.

In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required.

The courts must be careful in ensuring that they do not interfere unduly with the

economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates." (Emphasis supplied)

14. However, in paragraph 53 an exception is made to the general principles against regularisation as a one-time measure which is as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

15. In some of the LPAs the Division Bench appears to have followed paragraph 11 in M.L. Kesari (supra) for directing regularisation of service without considering the observations contained in paragraph 7 of the judgment. In paragraph 11, it was observed that "the true effect of the direction is that all persons who have worked for more than ten years as on

10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation within six months of the decision in Umadevi (3) as a one-time measure". However, in paragraph 7 after considering Umadevi (supra) this Court has categorically held that for regularisation, the appointment of employee should not be illegal even if irregular.

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentalities should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular." (Emphasis supplied)

सर्वोच्च न्यायालय के डॉ फैसले के आईने में राज्य सरकार ने आऊट सोर्स कर्मचारियों के लिये जुलाई 2017 को जो नीति बनाई थी उसकी वैधता पर गंभीर सवाल खड़े हो जाते हैं। इसी के साथ यह सवाल भी उठता है कि आऊट सोर्स पर रखे गये कर्मचारी सरकार के कर्मचारी न होकर प्राइवेट कम्पनी या ठेकेदार के कर्मचारी हैं। सरकार के किसी भी नियम के तहत इनको कोई जिम्मेदारी नहीं बनती है और ना ही यह सरकार को कानून जवाबदेह है। ऐसे में क्या इन कर्मचारियों से सरकारी कार्यालयों में कर्लक का काम लिया जा सकता है? क्या आऊट सोर्स कर्मचारी के सजान में दफ्तर की फाईल लायी जा सकती है? शायद नहीं। ऐसे में क्या इन कर्मचारियों के माध्यम से अंतर्राष्ट्रीय सरकारी कार्यालयों में काम करते हैं?

16. इसे में क्या आउट सोर्स कर्मचारी के माध्यम से कर्मचारियों के लिये जासूसी नहीं करते हैं? क्या आए एण्ड पी रूल्ज बदल बिना आऊट सोर्स पर नियुक्तियों की जा सकती हैं?

अन्ना का प्रधानमंत्री कार्यालय के नाम पत्र

प्रति,

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विषय: - 30 जनवरी 2019 महाराष्ट्र गांधी पुष्पतिथि के अवसर पर सरकार बार-बार आश्वासन देकर भी लोकपाल, महाराष्ट्र नियुक्ति नहीं कर रही है इसलिए मेरे गांव राजेणगसिंही में मै मजबूर होकर आंदोलन कर रहा हूँ।

महोदय,

देश में बढ़ते भ्रष्टाचार से जनता बाज आकर देश में 2011 में लोकपाल और लोकायुक्त कानून बने इसलिए करोड़ों लोगों ने रास्ते पर उत्तरकर बढ़ा आंदोलन किया। 16 अगस्त 2011 को मैंने रामलीला मैदान पर अनशन शुरू किया था।



मोदीजी ने पत्र का जवाब तक नहीं दिया। मोदी सरकार पहले के बढ़ती गई की चयन कमेटी में विवेची पक्ष नेता नहीं इसलिए लोकपाल, लोकायुक्त नियुक्ति कर रहे हैं। कृष्ण बढ़ाने बढ़ा कर लोकपाल, लोकायुक्त के नियुक्ति के बारे में तीस बार पत्राचार किया। परंतु

अनशन के 13 दिन बाद देश की जनशक्ति के बढ़ाव के कारण 27 अगस्त 2011 को तत्कालीन सरकार ने लोकपाल, लोकायुक्त की नियुक्ति करने का लिखित आश्वासन देने के बाद मैंने रामलीला मैदान पर रोकतन हो कर नरेंद्र मोदीजी की सरकार सत्ता में आ गई। मोदी सरकार आने के बाद हमने सरकार से लोकपाल, लोकायुक्त के नियुक्ति के बारे में तीस बार पत्राचार किया। परंतु

लोकपाल, लोकायुक्त नियुक्ति के लिखित के लिए किसी भी उत्तर नहीं दिया गया।

सर्वोच्च न्यायालय ने मोदी सरकार को जल्द से जल्द लोकपाल, लोकायुक्त की नियुक्ति करने के समय दिया। सरकार जानबूझकर लोकपाल, लोकायुक्त की नियुक्ति ना करने के कारण चार साल के बढ़ानेवाली के बाद मैंने 23 मार्च 2018 को रामलीला मैदान पर मेरा अनशन शुरू किया। 29 मार्च 2018 को प्रधानमंत्री कार्यालय ने मुझे लिखित आश्वासन दिया कि हम जल्द से जल्द लोकपाल, लोकायुक्त नियुक्ति करेंगे। इस सरकार को जारी लोकपाल, लोकायुक्त की नियुक्ति नहीं की जाती गयी। लेकिन अनशन नहीं किया गया। इसके बाद मैंने 30 जनवरी 2019 तक रुकने का निर्णय लिया था। क्योंकि यह मेरा निजी प्रश्न नहीं है, देश के जनता का प्रश्न है। देश के भ्रष्टाचार पर रोकथाम लगाने का प्रश्न है। प्रश्न चर्चा से छूटते हैं इस पर मुझे विश्वास होने वाले हैं रहा है कि यह देश की जनता से विश्वासात्मक हो रहा है। यह सरकार सत्ता में आकर 4 साल से अधिक प्रतिरक्षा काल जाने के बाद भी लोकपाल, लोकायुक्त की नियुक्ति नहीं कर रही है। यह स्पष्ट होता है कि इस सरकार की लोकपाल, लोकायुक्त नियुक्ति करने की मश्श नहीं है। हार्ट टैक्स आकर मृत्यु आता है। ऐसे मृत्यु आने के बजाए समाज और देश के भलाई के लिए मृत्यु आ गया तो हमारा भाग्य होगा। ऐसी मृत्यु धारणा बन गई है। आप और आप की सरकार ने 29 मार्च 2018 को जो लिखित आश्वासन दिए थे उसको पूरा करें अच्या 30 जनवरी 2019 को मेरे गांव राजेणगसिंही में आंदोलन कर रहा हूँ।

भवानीय,

कि. बा. तथा अन्ना डाजे

