6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 522,526,527, 529 & 531 of 1987

DATE OF DECISION 11.9.87

Sh. Swami Nath Sharma (OA 522/87)
Sh. Manzar Elahi (OA 526/87)
Sh. Guru Agya PalSingh (OA 527/87) Petitioner/Applicants
Sh. Subhash ChandSharma (OA529/87) &
Sh. Babu Lal Yadav (OA 531/87)

Sh. E.X.Joseph Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Sh. P. P. Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

(CH. RAMAKRISHNA RAO)

(S. P. MUKERJI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.Nos. 522/87
526/87
527/87
529/87 &
531/87

DATE OF DECISION : 11.9.87

Sh. Swami Nath Sharma (OA 522/87)
Sh. Manzar Elahi (OA 526/87)
Sh. Guru Gyapal Sinch (OA 527/87) . . Applicants
Sh. SubhashChand Sharma (OA 529/87) &
Sh. Babu Lal Yadav (OA 531/87)

Versus

Union of India and others . . Respondents

Shri E.X. Joseph . . Counsel for Applicants

Shri P. P. Khurana . . Counsel for respondents.

CORAM

The Hon'ble Shri S. P. Mukerji, Administrative Member

The Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member

(Judgment of the Bench delivered by Hon'ble Shri S. P. Mukerji, Administrative Member)

JUDGMENT

Since common and similar questions of facts, law and relief are involved in the aforesaid five applications, the same are disposed of by a common judgment as follows. The applicants in these five cases were recruited on various dates between 1981 and 1984 by the respondents in the Regional Design and Technical Development Centre under the Development Commissioner of Handicrafts in the Ministry of Textiles. The appointments were made in the regular pay scale of the respective posts in a temporary capacity and on probation for a period of two years. The appointment

..2

letters also indicated that "appointment is on purely ad-hoc basis subject to the operation of 'Rangatantra' as Society now transferred from Design Centre." The applicants have been discharging their duties very satisfactorily when by the impugned orders dated 25th March, 1987 in all these cases the services of the applicants were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The respondents have stated that the services of the applicants had to be terminated under the aforesaid Rules because they have been appointed without their names being sponsered by the Employment Exchange.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The operation of the impugned orders had been stayed and the applicants are continuing against their respective posts. According to the learned counsel for the respondents since the appointments of the applicants were made purely on a temporary capacity and on an ad-hoc basis they had no right to the post and the respondents could have legitimately terminated their services because there was an irregularity in their original appointment. He has further argued that since the impugned order was in the nature of termination simplicitor and no stigma is attached and is not founded on any misconduct and is not in the nature of a punishment, Article 311 of the Constitution cannot be attracted. The learned counsel for the applicant on the other hand has stated that the respondents are bound by the principle of 'promissory estoppel' and that the socalled irregularity

..3

of not getting the names of the applicants sponsered by the Employment Exchange is not such as to make the appointments illegal. 3. The question of 'promissory estopel' applicable to the Government has been elaborately dealt with by Supreme Court in M/s Motilal Padampat Sugar Mills Co.Ltd Vs. The State of Uttar Pradesh and others, AIR 1979 SC 621 as follows.

> "Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen."

The court further observed as follows.

> "The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowning or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, however high or low, is above the law. Every one is subjected to the law as fully and completely as any other, and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel? Can the Government say that it is under no obligation to act in manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but, let it be said to the eternal glory of this Court, this doctrine was

emphatically negative in the Indo-Afghan Agencies case (AIR 1968 SC 718) and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine to the promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter this position and public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to close to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to

> exonerate the Government from the liability; the Government would have to show what precisely is the changed policy and also its reason and justification so the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden ....."

Since in the instant cases before us the Government through the letters of appointment had given a positive representation to the applicants that their appointments will continue subject to the operation of 'Rangatantra' a society transferred from the Design Centre and on the basis of that representation the applicants continued to hold the posts with the tacit assent of the respondents, the latter cannot on some undefined and undisclosed ground unilaterally terminate the appointments contrary to the understanding given for the continuance of their ad-hoc appointments. In the overall balance of public equity also we think that the applicants who had admittedly been registered with the Employment Exchange cannot be discharged on the basis of alleged violation by the respondents which is of some administrative instructions. The applicants have been in service for two to three years and even more and some of them may have become over-aged for recruitment to Government service. They have

...6

acquired experience in their respective fields and it will be a sheer waste if they are suddenly thrown out and new hands are inducted. It will also cost them great economic injury if they are removed from service. The demands of equity in these cases are as pronounced as the weight of public interest are dubious. Accordingly we hold that by the doctrine of 'promissory estoppel'the applicants cannot be discharged by the impugned orders.

4. As regards the argument that the applicants cannot enforce 'promissory estoppel' against law, it has been held by various courts that failure to notify vacancies to the Employment Exchange per se does not render appointments against these vacancies illegal. Various rullings on this issue have been optly discussed by the Principal Bench of the Tribunal in Shri Ishwar Singh Khatri and Others Vs. Union of India and Others AIR 1987(1)CAT 502. The following extracts from the judgment delivered in that case will be relevant.

> "19. In Kuriakose V.Cochin Shipyard Ltd and others (1985 (2) All India Services Law Journal - P.13), the Kerala High Court held that the provision of sub-section (1) of Section 4 is not mandatory. The following extracts from the said judgment of the Kerala High Court are relevant :-
>
> > 12. Provision for imposing of penalties cannot be treated as decisive of the legislative intent to make sub-sec (1) of Sec.4 mandatory particularly in the light of sub-sec (4) of Sec.4. Object of the statute is to compel employers to notify vacancies in their establishments to the employment exchange concerned. The statute does not prohibit appointment being made by employers to fill up vacancies occurring in their establishments. The Statute does not contain any provision rendering invalid appointments made otherwise

..7

"than through the employment exchange and without complying with sub-sec.(1) of Sub-Sec.(2) of Sec.4. There is a specific provision which delcares that it is not obligatory on the part of the employer to appoint persons advised by the employment exchange.

"13. On a consideration of the scheme of the Act, object which it is intended to serve and in the light of sub-sec.(4) of Sec.4, I have to hold that sub-sec (1) is not mandatory and appointments made by the employer will not be rendered invalid merely by reason of the employer not complying with the requirements of sub-section (1) or sub-Section 2 of Sec.4. I am strengthened in this view by a decision of the Mysore High Court in Narasimha Murthi V. Director of Collegiate Education (1967(2) L.L.J. 686) and a decision of the Allahabad High Court in Sambhu Nath Tewari V State of Uttar Pradesh and others (1975 S.L.J. 178)".

"20. Again in Madan Mohan Goel, Chief Electrical Inspector, Haryana Government, Chandigarh V. State of Haryana (1975 All India Services Law Journal P.170), the Punjab and Haryana High Court held that "there is no provision in the Act for rendering invalid any appointment made without complying with the requirements of Sub-sections (1) and (2) of Section 4". The observations of the Court extracted below are pertinent:-

"(5) The only provision of that Act which is relevant is Section 4. Sub-Section (1) of Section 4 says :-

4(1). After the commencement of this Act in any state or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchange as may be prescribed."

Sub-section (4) of Section 4 then provides:

4(4). Nothing in sub-sections (1) and (5) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because that vacancy has been notified under any of those sub-section.

It is clear that all that is required is that the vacancies in the public sector should be notified to the employment exchange but because of such a notification it is not incumbent upon the employer to employ only persons receommended by the employment exchange the employer can make appointments direct and such appointments cannot be held to be invalid ....."

21. The same view was held by the Patna High Court in Jogindra Jha V. College Service Commission and others (1983 (3)SLR P.4 as under :-

> "10. The next question which has to be whether is as to another failure to notify vacancy in accordance with section 4(1) will render the appointment null and void, as has been urged on behalf of the petitioner. The purpose of the provision is to inform unemployed persons suitable for the post about the vacancy so that they may become candidates. It cannot be assumed that on account of ommission to notify, suitable candidates are bound to be left behind. In many cases, that might be the result, but not necessarily in every case. In cases where no such person ie excluded from consideration on account of want of notification, there does not appear to be any valid reason for striking down the appointment as void merely for a technical omission."

In view of the above, we find that the termination of the services of the applicants by the impugned orders cannot be upheld in law and equity.

5. Accordingly, we allow these five applications, setaside the five impugned orders dated 25.3.1987 and direct the respondents to continue the applicants in their present posts as if the said orders had not been passed. There will be no order as to costs. A copy of this order may be placed in all the case files.

11.9.87
(CH. RAMAKRISHNA RAO)
JUDICIAL MEMBER

11.9.87
(S. P. MUKERJI)
ADMINISTRATIVE MEMBER