

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.7429 of 2013

Date: 01-6-2015

Between

Yendapally Anand

... Petitioner

and

The Singareni CCL,
Rep. by its Chairman and MD,
Singareni Bhavan, Khairatabad,
Hyderabad;
and 3 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.7429 of 2013

Order:

This writ petition is filed by the petitioner seeking

a Writ of *mandamus* directing the respondents-

The Singareni Collieries Company Limited (the Company, for short) to continue him as Clerk or in any other suitable vacancy in Exploration Division or in any other division of the respondents-Company by taking into consideration of his length of service as he is rendering work as Clerk since 1997 in Exploration Division, Corporate Office, Kothagudem, Khammam district or in any other division of the Company by duly declaring the order passed by the

1st respondent-Chairman and Managing Director of the Company rejecting the request of the petitioner for retention in the Exploration Division, Corporate Office, Kothagudem vide proceedings dated 31-12-2012 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and to pass necessary orders.

2. It is submitted by the petitioner in the Affidavit filed in support of the writ petition as under:

(a) Originally, the petitioner's father Yendapally Benjamin was the employee of the respondents-Company and he worked as Driller in the Corporate Office, Kothagudem. After some time, he was declared unfit to continue in service pursuant to the decision taken by the Medical Board and his services were terminated with effect from 01-11-1995. Thereafter, the petitioner was appointed as General Mazdoor in Exploration Division, Kothagudem vide office order dated 24-01-1997 on initial Pay of Rs.65.40-1-80-52 daily rated by the 2nd respondent.

He joined in the said post. The petitioner had B.Com. Degree from Kakatiya University and also passed English Typewriting Higher examination. After joining service as General Mazdoor, he acquired PGDCA (Diploma) from Nehru Yuva Kendra in the year 1998 and also acquired Stenography Lower in the year 2004.

(b) It is further submitted that in 1997, when the Exploration Division of the Company was in dire need of services of a Clerk, the then General Manager orally asked the then in-charge of Rampur Camp to depute one of the qualified candidates among the General Mazdoors

who were on the rolls of General Mazdoors in his camp for utilizing his services to discharge the duties as Data Entry Operator cum Clerk in Exploration Division. Accordingly, the petitioner was orally directed to report for duty in the Exploration Division, Corporate Office, Kothagudem to work as Data Entry Operator cum Clerk in the office of the

3rd respondent. According to the petitioner, since then he has been working as Data Entry Operator cum Clerk in the office of the 3rd respondent and a Job Performance Certificate dated 30-8-2011 was issued by the then

General Manager, Exploration/Corporate, Kothagudem.

It is submitted by the petitioner that when the vacancies of Clerks arose in the years 2001 and 2005 in the Company, the employees who were working in the Company were considered against those vacancies, but unfortunately he was not selected on two occasions as per merit list. However, his services are being utilized by the Exploration Division as Data Entry Operator cum Clerk from August, 1997 and he had put in 15 years of service as Data Entry Operator cum Clerk and he had acquired all the attributes of a regular Clerk. It is further submitted by him that had he not been deputed as Data Entry Operator cum Clerk to the 3rd respondent Division, he would have been promoted as Senior Rigman. He made several representations to the Grievance Redressal Cell of the Company to consider his case against any suitable post according to his qualifications and length of service rendered by him as Data Entry Operator but his case was not considered.

(c) Nextly, it is submitted by the petitioner that as he did not receive any replies to the representations submitted by him to the General Manager (Personnel), he sent

an E-mail dated 08-5-2012 to the General Manager.

In the said E-mail, he expressed his displeasure not only with regard to not responding to his representations, but also with regard to non-notification of the holidays for Christian festivals. According to the petitioner, that E-mail appears to have caused some displeasure in

the mind of the authorities of the Company and on 30-6-2012 at 04.05 p.m., Sri Pankaj Kula Shreshta, Superintendent Geologist, Exploration Division came and informed him that as per the instructions of the respondents 2 and 3, he has to hand over all the files generated by him during his tenure. Ultimately, the 3rd respondent without issuing any written proceedings orally directed to report before the

4th respondent. When the petitioner insisted to issue proceedings in writing to that effect, apprehending that he would approach the Court of law, instead of issuing any proceedings in that regard, made an endorsement in the Attendance Register as "*Advised to report to AGM(Geo)/KGM*". It is submitted by the petitioner that having extracted his skills as Data Entry Operator cum Clerk for the last 15 years, the decision of the respondents 2 and 3 orally directing him to report to AGM(Geo), Kothagudem to work as General Mazdoor is arbitrary, unfair and unreasonable. It is further submitted that the Company being the instrumentality of the State, all its administrative decisions should be subject to doctrine of equality and fair play as incorporated under Articles 14 and 21 of the Constitution of India.

(d) Nextly, it is submitted that his services are very much required in the division as there is lot of work for his continuation as Clerk in the Exploration Division.

It is further submitted that in the year 1997, a Memorandum of Settlement was arrived at between the Management of the Company and their workmen represented by five JBCCI Unions. In terms of the settlement, there was a demand of regularization of all acting clerks, drivers, mining staff and other workers.

In pursuance of the minutes of discussions held on 03-10-1996, it was agreed to consider the cases of employees acting as Clerks for regularization as a special case as one time measure without forming this as precedent. In case of acting Clerks, the employee should have acted as Clerk continuously for not less than three years as on 03-10-1996. The petitioner was appointed in the

year 1997 but he had no opportunity of getting the said benefit.

(e) It is further submitted that as there was no positive response from the authorities, the petitioner filed W.P.No.22501 of 2012 directing the respondents-Company to consider his case for absorption as Clerk in the vacancy existing in the Exploration Division or in any other division. The interim order dated 24-7-2012 was issued directing the respondents-Company to continue the petitioner as Data Entry Operator cum Clerk in the office of the Chief of Exploration, Exploration Division of the respondents-Company. The respondents-Company filed counter affidavit along with a petition to vacate the interim order. But, this Court by order dated 15-11-2012 made the interim order absolute.

(f) It is further submitted that aggrieved by the said order, the respondents-Company filed W.A.No.1598 of 2012. The Division Bench disposed of the said writ appeal by judgment dated 15-11-2012 with the following observation:

“Having heard the learned counsel for the parties and after considering the facts of the case, it would be appropriate for us, at this stage, to only permit the petitioner to file a representation before the Chairman and Managing Director of the first respondent company within a period of one week from today and it is desirable that the Chairman and Managing Director of the first respondent company shall give a hearing to the petitioner and shall pass a reasoned order, in the matter with regard to the representation of the writ petitioner in the position of data entry operator, within a period of two weeks thereafter. So far as regularization of the services of the petitioner in the said post subsequently is concerned, if any scheme is propounded by the said authorities, his case may be considered along with other candidates standing on the same footing and subject to eligibility criteria.”

(g) Nextly, it is submitted that after receipt of the copy of the above said judgment, the petitioner submitted a detailed representation to the respondents-Company on 19-12-2012 requesting to retain him in the Exploration Division of the Company for utilizing his services as Clerk. He also personally approached the 1st respondent on

29-12-2012. The 1st respondent, however, rejected the request made by the petitioner pursuant to the judgment of the Division Bench in the above writ appeal.

(h) Nextly, it is submitted that the petitioner is fully qualified and eligible to be continued as Clerk till his services are regularized by the Company or till a scheme is framed by the Company. On his enquiry, he came to know that there are about 120 vacancies of Clerks existing in the Company and he is prepared to work as Clerk or in any other suitable post in any of the divisions. It is further submitted that though there are no rules and regulations to extract the work from the employees other than the job in which he was appointed, the respondents-Company admitted that his services were utilized sporadically as Clerk though there is no rule or regulation to extract the work as Clerk when he was appointed against General Mazdoor.

(i) It is further submitted by the petitioner that he came to know that though there is need of services of Clerks, the authorities are engaging the persons on contract basis instead of continuing the persons like him.

He submitted that a list of such persons presently continuing as Clerks is filed as material papers. According to him, one Ch.Partha Saradhi, General Mazdoor,

EC No.0121199 whose date of appointment was 10-10-1996 and who worked in the Exploration Division was absorbed as Clerk on 08-11-1999 along with acting Clerks who were absorbed. It is submitted that on his enquiry, he came to know that the said employee never discharged clerical works in Exploration Division, whereas he worked for

15 years in the Exploration Division.

It is under these circumstances, the petitioner filed the present writ petition seeking the aforesaid relief.

3. The respondents-Company filed a counter affidavit contending, *inter alia*, as follows:

(a) The petitioner comes under the definition of 'workman' under the Industrial Disputes Act, 1947 (the I.D. Act, for short) and he has got an effective and efficacious alternative remedy and as such the writ petition is not maintainable. As far as the absorption of Clerks in the respondents-Company is concerned, the same has to be done as per the settlement reached with the unions under Section 12(3) of the I.D. Act on 03-3-1989, according to which the persons should have qualifications of Degree with English Typewriting and any selection of the candidate in Clerical grade will be as per the recruitment policy of the Company i.e. by way of competitive written test.

The absorption of Clerks is through a selection procedure for which the qualification prescribed is graduation with typewriting. Any employee who possesses the above qualification, irrespective of the post in which he is working i.e. Mazdoors, Coal Fillers can participate in the test and get selected. The petitioner himself clearly admitted in para 4 at page 9 of the Affidavit filed by him in support of the writ petition that in the years 2001 and 2005 when the vacancies arose, he participated in the test but could not be selected. Thus, when the petitioner could not get selected, the question of getting him absorbed in the post on mere fact that he was officiating for certain period is contrary to law and against the settled principles laid down by the Supreme Court in various judgments.

(b) Nextly, it is submitted that during the year 2000, several employees of the respondents-Company who were acting as Clerks filed writ petitions before the High Court seeking direction to regularise their services as Clerks challenging the Circular No.P9PM)4/3208/781, dated 18-5-2000, by which all those employees who were said to be engaged as acting Clerks but not selected by the Selection Committee and consequently their services were not regularized and were reported to substantive posts.

The High Court by common order dated 12-8-2000, dismissed all the writ petitions upholding the selection process of Clerks in terms of Memo of Settlement dated

31-7-1997. It is settled proposition of law that mere acting in a higher grade/category post by the employee will not confer any right to be regularized in the said post.

(c) Nextly, it is submitted that since the petitioner possessed B.Com., Degree and English Typewriting qualifications, he was sparingly used for office work on miscellaneous jobs. Since the petitioner is a degree holder with typewriting qualification, his services were utilized sporadically on miscellaneous works/ministerial works at the time of exigencies. But, no letters of authorization or office order were issued to the effect that the petitioner has been utilized as Data Entry Operator cum Clerk nor any acting allowance was paid to him for doing so by the competent authority. The Job Performance Certificate dated 30-8-2011 referred is a letter which was issued to the petitioner by the then General Manager (Exploration) on his day of laying down the office on superannuation.

The official, who issued the letter, has no authority nor competent to issue certificate of service or certificate of merit. Somehow, the petitioner managed the ex-official and got the certificate signed and numbered in the office records. Therefore, the certificate issued by an officer who has no power to issue such certificate, will have no authenticity or value. Engaging the petitioner on miscellaneous jobs in the office of General Manager (Exploration) is a mere internal adjustment to deploy an educated General Mazdoor on certain supplementary works being carried out in the office, which does not amount to engaging the petitioner on clerical or any higher category jobs as he continued to discharge these duties in the capacity of General Mazdoor only. As a matter of fact, there is no designation called 'Data Entry Operator cum Clerk' in the respondents-Company on which the petitioner claimed to have worked continuously and as such he cannot claim absorption in the said post.

(d) Nextly, it is submitted that whenever any vacancies of

clerical posts arise in the respondents-Company, all internal candidates who possess requisite qualifications will be given opportunity for selection from time to time. Accordingly, during the selections of Clerical Grade-II posts held on 08-4-2007, the petitioner was allowed to take the selection process but he could not qualify in the selections as he secured 54.73 marks and was not within the consideration zone and hence he was not appointed as Clerk Grade-II. The petitioner himself admitted in the Affidavit filed in support of the writ petition that in the years 2001 and 2005, when vacancies of Clerks arose, he participated in the selection but could not be selected. There is no such post of Data Entry Operator cum Clerk and it is the petitioner's own imagination and creation of such post which does not exist in the respondents-Company as there is no such identification of such post in the job nomenclature for NCWA employees as per JBCCI guidelines.

(e) It is further submitted that the petitioner is always at liberty to take the selection process whenever applications are called for, for the post of Clerk through test and can claim his candidature for the post of Clerk based on his merit obtained in the selection. Neither the community of Christianity nor the fact that no holidays are declared for Christian festivals has nexus to his non-selection or non-absorption as Clerk in the respondents-Company.

(f) It is further submitted that the petitioner by virtue of his stay in the office on miscellaneous jobs, misutilised the office paraphernalia by sending personal e-mails to the higher authorities on the issues which were already clarified to him, by concocting frivolous allegations and attributing partisan attitude towards Christian community on the part of higher officials of the respondents-Company. On this issue, he was counselled orally to desist from misusing the office machinery for his personal ends. The posting of the petitioner is purely an administrative action and no *mala fide* intentions can be attached to the officials of the respondents-Company as by designation, the petitioner is

a General Mazdoor and has to perform the works of General Mazdoors wherever he is posted.

(g) Nextly, it is submitted that since the Exploration Workshop is part and parcel of the Exploration Department, the petitioner was asked to work there orally as there is no change of place except the location which is nearer to the Exploration Office. Hence, it is only an internal adjustment of manpower under the same administrative control.

There is no violation of doctrine of 'equality' and 'fair play' as incorporated in Articles 14 and 21 of the Constitution of India. It is further reiterated that mere possession of qualifications does not entitle absorption in a Clerical post and added to this, there is no designation called 'Data Entry Operator cum Clerk' in the respondents-Company as contended by the petitioner. The writ petitions like the present one have been disposed of by the High Court holding that mere acting in a particular job for number of years does not confer any right on the candidates for automatic absorption when the post is a selection post.

(h) It is further submitted that as per the Memorandum of Settlement dated 31-7-1997 entered with the Unions, it was agreed that the employees who are acting as Clerks continuously for not less than 3 years as on 03-10-1996 would be considered for regularisation as one-time measure. Since the petitioner was appointed in the year 1997, he did not have any chance to consider his case under the terms of the settlement cited above.

(i) Nextly, it is submitted that as per the judgment of this Court in Writ Appeal No.1598 of 2012, the petitioner submitted a representation dated 19-12-2012 and also he appeared in person before the 1st respondent on 29-12-2012, the 1st respondent heard the grievance of the petitioner in detail. After examining the representation of the petitioner and also after giving personal hearing to the petitioner, the respondent passed

a detailed reasoned speaking order in compliance with the orders passed by this Court in W.A.No.1598 of 2012 to the effect that the petitioner's claim to retain/continue/absorb him as Clerk (Data Entry Operator cum Clerk) cannot be agreed to as per the rules and regulations of the Company. The petitioner was further informed to report for duty as General Mazdoor at the place of posting i.e. Exploration Workshop, Ramavaram, Kothagudem.

(j) The respondents specifically denied the contention put forth by the petitioner that the respondents-Company continuously utilised the services of the petitioner for

15 years as a Clerk. According to the respondents-Company, the services of the petitioner were used occasionally and he has to compete with other eligible candidates and get himself selected after going through the written test whenever the test is held by the respondents-Company as per its rules and regulations. Thus, the version of the respondents-Company is that there is no substance in the contention urged by the petitioner in the Affidavit filed in support of the writ petition, there is no such post as Data Entry Operator cum Clerk in which the petitioner allegedly worked continuously for 15 years.

In fact, the version of the respondents-Company is that the job nomenclature applicable to the Company does not identify any such post as Data Entry Operator cum Clerk. According to the respondents-Company, all the Company records clearly show that the petitioner has been working as General Mazdoor and as a General Mazdoor he addressed

a letter to the respondents-Company and therefore, he has to continue in the same post till he is selected to the post of Clerk or any other higher post through the selection process adopted by the respondents-Company as per its rules and regulations.

Contending as above, the respondents-Company sought to dismiss the writ petition.

4. I have heard Sri Yendapally Anand, Party-in-person and Sri C.V. Mohana Reddy, learned Senior Counsel appearing for the respondents-Company.

5. The petitioner/Party-in-person relied on several judgments including Appeal (civil) 5873 of 2007 (*C.S. Azad Krishi Evam Prodyogiki Vishwa v. United Trades Congress & Anr.*). But, the facts of the case are entirely different and in none of the cases relied on by the petitioner it has been laid down that if the services of an employee are utilised by the department in a particular post for some time out of administrative exigency, the employee has a vested right to be regularised in the said post notwithstanding the fact that he was appointed in a post of lower cadre. In Appeal (civil) 5873 of 2007 relied on by the petitioner, on evidence and also on a concession made by the learned counsel for the University, the Industrial Tribunal took the view that the employer has been taking work from the concerned worker from 01-11-1991 continuously as a Clerk for a period of nearly 14 years and he is being paid salary on daily wage basis as a daily wage employee which was held to be improper and illegal and accordingly, the Industrial Tribunal considering the nature of his work held that he is entitled to be made as permanent/regular in the post of Clerk/Typist keeping in view the nature of the work the employee was discharging. The matter was carried to Allahabad High Court and the Allahabad High Court taking the view that the finding recorded by the Labour Court is

a finding of fact and that unless and until it is proved beyond doubt that the Labour Court has exceeded its jurisdiction and the finding recorded by the Labour Court is against the evidence on record and is perverse, then the High Court while exercising the jurisdiction under

Article 226 of the Constitution of India has jurisdiction to interfere, otherwise there is very little scope for interference. Then, the matter was taken to the Supreme Court by the University. The Hon'ble

Supreme Court after going through several judgments, held as follows:

“18. Services of Respondent No.2 were not terminated. He has been continuing to serve the University.

We have noticed hereinbefore that in a writ petition filed by other employees on a concession made by the counsel for the University, a purported scheme dated 24.04.2000 has been formulated. Dr. Padia in that view of the matter stated before us that despite the legal position, as noticed hereinbefore, in the event the case of Respondent No.2 comes within the purview of the said Scheme, his services shall be regularized when his turn comes therefore.

19. We place on record the aforementioned statement made by Dr. Padia that as and when Respondent No.2 becomes entitled to be considered for being absorbed in the services of the University pursuant to the said scheme, his case may be considered. If his turn for consideration for regularization has already come, a decision thereupon shall be taken as expeditiously as possible.

20. The impugned judgment is set aside.

The appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of this case, there shall be no order as to costs.”

6. Therefore, even according to the above judgment relied on by the petitioner, he has no vested right to be regularised in the post of a Clerk merely because he was assigned the duties of a Clerk and Data Entry Operator occasionally. In the case before the Supreme Court, it is

a matter of record that there was evidence before the Industrial Tribunal showing that the petitioner continuously worked as a Clerk for a period of 14 years and was paid only daily wages. In this case, the petitioner was appointed as a General Mazdoor and he was confirmed in the said post. The contention of the petitioner is that he has been continuously discharging the duties of Clerk cum Data Entry Operator continuously for a period of 15 years for which there is no proof. On the other hand, it is the contention of the respondents-

Company that basing on the qualifications of the petitioner, his services were occasionally used for the job of Clerk as well as the Data Entry Operator, but he has not worked for a continuous period of 15 years in the said post as contended by him. Even in the judgment relied on by the petitioner in Appeal (civil) 5873 of 2007, the Supreme Court only recorded the statement made by the Standing Counsel for the University which was to the effect that as and when respondent No.2 becomes entitled to be considered for being absorbed in the services of the University pursuant to the scheme, his case would be considered.

7. The Division Bench of this Court in W.A.No.1598 of 2012 disposed of the writ appeal by its judgment dated 14-12-2012, permitting the petitioner to make a representation before the Chairman and Managing Director of the 1st respondent-Company and said that it is desirable that the Chairman and Managing Director of the 1st respondent-Company shall give a hearing to the petitioner and shall pass a reasoned order in the matter with regard to the representation of the petitioner in accordance with the scheme propounded by the Company and to consider the case of the petitioner along with other candidates. Thereafter, the petitioner made a representation and the respondents-Company passed a reasoned order after going through the representation and also affording the opportunity of the personal hearing to the petitioner stating that the petitioner's claim to retain/continue/absorb him as Clerk (Data Entry Operator cum Clerk) cannot be agreed to as per the rules and regulations of the Company. The petitioner was further informed to report for duty as General Mazdoor at the place of posting i.e. Exploration Workshop, Ramavaram, Kothagudem.

8. The specific contention of the respondents-Company is that mere discharging duties in a higher post does not confer any right to

an employee to be regularised in the said post. According to the rules and regulations of the respondents-Company, the post of Clerk is a selection post for which all the employees who are eligible to the post can apply and they will be selected through a written test and the appointments will be made basing on merit. Admittedly, the petitioner appeared for the written test twice but basing on merit his case was not considered by the respondents-Company. Even the petitioner admitted in the Affidavit filed by him in support of the writ petition that he appeared twice for the written examination but he could not be selected. Therefore, when there is a scheme evolved by the respondents-Company for taking an employee of a lower cadre to the post of Clerk by means of a written test and also through selection process by the Selection Committee, in the considered opinion of this Court, it is not open for the petitioner to contend that as he discharged the duties of Clerk cum Data Entry Operator for some time, the respondents-Company is obliged to regularise him in the post of Clerk. The petitioner possesses qualifications required for a Clerk i.e. a Bachelors Degree and Typewriting in English. But, unless he gets through the written test conducted by the respondents-Company, he cannot be appointed as a Clerk which is a selection post.

The respondents-Company specifically contended that as a matter of fact, there is no designation called Data Entry Operator cum Clerk in the respondents-Company on which the petitioner claimed to have worked continuously. Even if it is considered that the petitioner worked in the post of Data Entry Operator cum Clerk, in view of the scheme adopted by the respondents-Company for recruitment to the posts of Clerks, he cannot claim that his services have to be regularised in the post of Clerk without getting through the written test conducted by the respondents-Company.

The respondents-Company mentioned in the counter that during the selections of Clerical Grade-II held on 08-4-2007, the petitioner was allowed to the selection process but could not qualify as he secured 54.73 marks and was not within the selection zone. As can be seen from the contentions urged by both

parties, there are some other employees who have been occasionally discharging the duties of higher post due to the exigencies of the work in the respondents-Company. But, they cannot be regularised in the posts of Clerks unless they are in the merit list of the written test conducted for the said post and are selected by the Selection Committee.

9. For the aforementioned reasons, I absolutely see no merit in the contention of the petitioner and accordingly dismiss the writ petition. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.
No costs.

R.KANTHA RAO, J.

01st June, 2015.

Ak/Ccm

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.7429 of 2013

01st June, 2015.

(Ak)