

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.6133 of 2007

ORDER:

The writ petition is maintained by the petitioner claiming as general workman in Marketing Department of respondent entity M/s. Praga Tools Limited, represented by its Managing Director, Balanagar, for the relief of writ in the nature of mandamus declaring that the petitioner is entitled to be regularized in service with a consequential direction to the respondent to that effect from the date of his juniors were regularized in service and to pass such other just orders.

2. The affidavit averments of the writ petitioner in support of the said relief are that he was appointed as general workman (helper) on casual basis on one 01.10.1983 in the respondent company and have been working continuously without break since then unblemishly, that his PF account No.5505, ESI No.1409693 and his staff No.375, that by 11 of the workmen listed in that writ petition Para 4 even those were juniors to him were regularized but for the petitioner with no reason viz.,

S.No.	Name	T.No.	Designation	Date of initial appointment	Date on which regularized
1.	A. Lakshmi	2047	General Workman III	N/k	01.02.1985
2.	James	2283	General Workman II	N/k	19.06.1987
3.	Namdev	2287	-do-	N/k	23.06.1987
4.	B. Raju	2392	-do-	N/k	20.01.1988
5.	A. Lalitha	2237	-do-	01.09.1983	13.03.1987
6.	E. Sreeramulu	2491	-do-	-do-	02.05.1990
7.	A. Mary	2238	General Workman III	16.06.1984	13.03.1987
8.	U. Gangadhar	2803	-do-	26.07.1984	01.01.2004
9.	T. Murali	2804	-do-	26.07.1984	-do-
10.	M. Subba Reddy	N/K	-do-	05.12.1985	-do-
11.	M. Chandraiah	2805	-do-	11.12.1985	-do-
12.	G. Radheswara Reddy	2806	-do-	18.12.1985	-do-
13.	K. Chandrappanaidu	2807	-do-	18.02.1986	-do-

3. Out of the above, so far as serial No.5 A. Lalitha, T.No.2237, General workman-II and serial No.2491, general workmen-II were joined in service on 01.09.1983 and were regularized with effect from 13.03.1987 and 02.05.1990 and even the subsequent entrant serial No.7 A. Mary, 2238 general workmen-III joined on 16.06.1984 was even regularized on 13.03.1987 and those subsequently joined during July 1984 to February, 1986, were even regularized on 01.01.2004 in serial Nos.8 to 13 supra. Though management has to follow the seniority in regularization of the service of the casual worker, it was chosen in arbitrary manner ignoring the seniors in regularizing junior and the union of the workmen also joining hands with management in not protecting the interest of all and thereby, he is also entitled to be regularized on par with his junior supra with effect from the date on which his juniors were regularized and he did not file any other petition or other legal proceeding for the said relief elsewhere and having no other alternative and efficacious remedy is constrained invoking extraordinary original jurisdiction of this Court under Article 226 of constitution of India, hence to grant the reliefs supra.

4. The petitioner in ESIC was issued identity card No.520093 mentioning as employer's code showing his date of birth in the year 1968 and date of entry 04.01.1988 and his father's name as K.Babu Rao and his wife's name shown as Sunitha and son Pranay in the identity card with particulars along with the writ petition there are no other documents filed even mentioned PF.No.5505, ESI No.1049693 and staff No.375 copies of those were not furnished and the ESI Code.1409693 no doubt tallies with the Code number mentioned in

the identity card referred supra, however it shows the date as 04.01.1988 and not from 01.09.1983 or 01.10.1983.

5. Pending disposal of the writ petition supra, there was an interim direction dated 26.03.2007 in WPMP.No.7845 of 2007 in consonance with the prayer for regulation of service of the petitioner on par with his juniors as per law within 4 weeks from date of receipt of the order.

6. The respondent company filed stay vacate petition in WPVMP.No.3820 of 2008 to vacate the interim order supra with the supporting counter affidavit of the Manager Secretarial and Legal of the respondent company which is also to read as counter to the writ petition averments in opposing the writ petition which reads that:

6(a). The respondent company is public sector undertaking controlled and regulated initially by Ministry of Defence and later regularized by policy decision of Ministry of Heavy Industry and by BIFR as on date of filing counter affidavit and within the man power planning in various categories permanent employees were recruited as per the established recruitment procedure of public employment within sanctioned post and from not policy decision of management depending upon workload and financial capacity to set in motion any recruitment procedure from any need so to notify the vacancies in employment exchange and with vide publicity by fixing eligibility criteria on educational qualifications, age and other particulars which attributes required for any particular post by constitution of Selection Committee by calling for applications and screening the eligibility by preparing shortlist and therefrom called for interview in preparation to available vacancies and after preparation of panel from merit from

the rank being awarded and from the antecedent and police verification and as per reservation criteria within the roster points and initially on probation in the permanent vacancies and but for that procedure no person is entitled for back door method of employment as demanded by the writ petitioner. The respondent company did not violate any rule or regulation which are in statutory force to invoke extraordinary jurisdiction of this Court and that too seek the relief of regularization alleging his juniors were regularized, the relief itself is not maintainable for his having no right to seek such relief, more particularly, from the Constitution Bench expression of the Apex Court in **Secretary State of Karnataka & Others Vs. Uma Devi**¹.

6(b). It is further averred in the counter affidavit that there are no permanent vacancies to the post to appoint or post or regularize the casuals in the respondent company which became sick and could not run and reached a stage for no financial capacity to pay even wages to permanent staff and became sick industry from the unauthorized absenteeism resulting in taking casuals to carry out some skilled or semi skilled or unskilled and clerical works as on those days in the prevailing peculiar circumstances and thereby those casuals are not discharging of duties of permanent employees much less held responsible for production work or fasten with any sought of responsibility and no duty cast on casuals to attend daily, some routine and unskilled jobs not directly relate to production or urgent in need as on that days condition were assigned to casuals who were paid minimum wages as applicable and because of acclimatization of work culture and environment the casuals knowing

¹ 2006 (4) SCC 1

in the various areas of jobs were opted in the event of casual vacancies arose. Every day on various departments basing on unforeseen absenteeism resulting work load, the department officials used to make requisition for man power to do certain jobs and the managerial staff in those days used to go to the gate and those casuals who offered themselves to work and waiting at gates are preferred and casual nature of work was assigned and the petitioner was engaged for certain period as casual and the job of the casual ends by day with liberty to work in any other company or management, apart from mere engaging for any considerable period will not give any legal right to seek regularization or make him permanent in the eye of law. Further the respondent company became sick and declared as sick unit and registered under BIFR as 504/1998 not in a position to pay regular wages to permanent employees on rolls and also there was no such work load to provide employment as on today and this situation is continuing since last 18 years and casuals are not working in sanctioned vacancies and their nature of job is adhoc and temporary from any absenteeism of regulars and no casual employee has vested or legal right to seek any permanent post when there is no sanctioned vacancy and by not following regular recruitment procedure in a public sector undertaking apart from regularization is not as a matter of right and since 1984 several casuals engaged in exigencies of work basing on the need and availability at the gate and the petitioner is one such and there are several casuals like the petitioner who are seniors to petitioner even similarly placed to work intermittently and it has become difficult for the respondent to prepare list of seniority.

6(c). Regularization of any casual employee from any writ petition ordered is to avoid a contempt, that cannot be compared to seek relief by petitioner and obtaining of interim order and continuing in service will not give status of permanent employee. The casual workers in various categories for last 9 years on one or other ground filing writ petitions obtaining interim directions and started continuing in service and demanding for regularization and more than 70 employees similarly placed raised industrial disputes before the Central Industrial Tribunal-cum-Labour Court, Hyderabad.

6(d). It is denied of respondent company not followed principles of seniority and continuing the seniors as casuals by regularizing juniors in service is distorted version and any regularization is as per the Supreme Court orders and by then BIFR revival scheme was not finalized and the matters are pending in Courts.

6(e). The principles laid down in **Chandigarh Administration and Another Vs. Jagjit Singh**² that was followed in W.A.No.884 of 2006 are squarely applicable to the facts of the case as mentioned in the decision viz.,

“Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose.

² AIR 1995 SC 705

Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

6(f). The writ petitioner has no legal right to make a claim and the original writ petition itself is an illegal claim and question of granting consequential reliefs does not arise when there is no legal sanction of post from the Board or from the Government and regularizing service is opposing to policy of public employment and such an error cannot be perpetrated.

6(g). The respondent company initially under Ministry of Defence and on administration grounds brought under supervision of Ministry of Heavy Industry and tried to monitor it closely but still the financial position of the company was bad year after year, from share capital and assets got eroded and came to verge of closure and for administration and supervision and control it has been merged with HMT and unfortunately even HMT became sick. Apart from that the respondent company as sick unit by BIFR registered No.504/1998 as stated supra not even in a position to pay statutory amounts like PF contribution, ESI contributions as well as sales tax and central Excise etc. On studying overall financial implications and expenses, the Board found of excess man power and unnecessary expenditure and certain policies are not in tune with present marking conditions so Department of Public Enterprises as well as Board of Directors of Company and Ministry of Heavy Industries felt if the company has to be come healthy, it has to reduce wasteful expenditure and excess manpower and Government introduced voluntary retirement scheme and spent Rs.16 crores towards VRS and arrears of salary and wages and reduced the man power from 2249 in the year 1990 to 475 up to July 2008 and suggested various austerity measures to revive. The management of the company chooses to sell the lands to discharge statutory debts so that it can work without hindrance and paid

minimum salary to workmen till it comes out of sickness. BIFR stayed all the debts and keeping its performance since 1999 to 2005 sanctioned a rehabilitation scheme until it comes out of sickness and there was no sanction for permanent vacancies or for regularization of casuals.

6(h). In Uma Devi Supra at Para 47 it was observed that:

“When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

6(i). The initial appointment when irregular, question of regularization of services of such employees who have to be considered on merits and the services of such irregularly appointed who worked for ten years and more on duly sanctioned posts, but not under the cover of orders of Courts or Tribunals. Regular recruitment are undertaking to fill those vacant sanctioned posts though required to fill up in case of daily waged or temporary employed. Para 44 of Uma Devi Supra lays down that previous judgment of the Supreme Court in SLP Civil No.16784 of 2004 dated 06.01.2006 and of this Court in W.A.Nos.966 and 1006 of 2004

cannot be treated as precedents for seeking relief on the alleged ground that juniors are engaged and thereby seniors have to be regularized as in the case of casuals question of junior and senior does not arise. The illegal appointments even otherwise are deemed to be void ab initio. The respondent company filed W.A.No.322 & 323 of 2008 and obtained stay against the orders of Single Judge and C.C.No.657 of 2008 moved by the petitioner to implement order of the Single Judge is contrary to the writ appeal orders. The Government not even appointed Managing Director for the respondent company and there is no official holding any post to take any policy decision and all works standstill. Hence, sought for to vacate the interim direction and to dismiss the writ petition.

7. In the counter affidavit filed by the respondent it was not disputed the factum of the petitioner was working since 1984 as casual workman, the ID card filed shows and substantiates the fact with date of entry from 04.01.1983 or 1988 not legible and the ESI No.1409693 appended therein allotted by then also substantiates and these are not in dispute and it is the claim of the petitioner he has been working regularly and continuing under the interim orders as the stay vacate petition after hearing both sides at length was ended in dismissal on 24.02.2009. It was the observation therein of the interim order to consider the regularization of service on par with juniors as per law when respondent vacate petitioner not specifically contradicted the writ petition averments particularly Para 4 of the writ petition affidavit detailed the juniors to the writ petitioner were regularized there is no flaw in the interim direction and no way requires to vacate.

8. In fact the W.A.No.323 of 2008 maintained by respondent-entity with WAMP.No.695 of 2008 was in the W.P.No.18031 of 2006 filed by 4 petitioners i.e., D. Hanumantha Rao & others and not covered the case of K.Narsing Rao, the petitioner herein. No doubt there was an observation saying disputed questions of fact involved regarding seniority of employees of the company and in the circumstances and from the expression in Indian Drugs & Pharmaceuticals Limited Vs. Workmen, Indian Drugs & Pharmaceuticals Limited, the Bench is of the opinion of no direction with regard to regularization should have been given by suspending interim order of Single Judge to that effect. In fact in W.P.No.13915 of 2005 by order dated 07.09.2007 filed by 4 employees D. Satyanarayana & others claiming as working since 1986 continuously and without following seniority juniors were regularized and referring to earlier writ petition orders in W.P.No.17116 of 1996 dated 16.02.2006 regularization was ordered of the petitioners therein for juniors to them were already regularized and even W.A.No.445 of 2006 filed by the company there was no interim stay and interim stay application in WAMP.No.1026 of 2006 was ended in dismissal therefrom ordered regularization of petitioners therein with effect from date of regularization of their juniors though not entitled to arrears of wages but for notional increments for fixation of scales. However, that does not prevent the company from reducing its man power according to law. WAMP.No.1026 of 2006 supra dismissal order speaks that the order no way puts any financial burden on the company, thereby no way warrants exercise of discretion to grant interim suspension pending appeal. In fact, said W.A.No.445 of 2006 was disposed of by a Division Bench of this Court on 04.12.2014

saying appellant company even became sick and merged with HMT that in turn resulted in substantial reduction of workforce. The fact however remains that considerable number of employees were being continued and by taking these aspects when learned Single Judge directed regularization of services of the employees and for no interim stay pending appeal the services were regularized by order dated 25.07.2006 it was observed no further adjudication required by dismissing the writ appeal. In fact the Apex Court in Uma Devi Supra practically at Paras 53 & 54 held as follows:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore Vs. S.V. Narayanappa (1967 1 SCR 128), R.N. Nanjundappa Vs. T. Thimmiah (1972 1 SCC 409), and B.N. Nagarajan Vs. State of Karnataka (1979 4 SCC 507), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize 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 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 regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running

counter to what we have held herein, will stand denuded of their status as precedents.”

9. From the above, it is clear that irregular appointments which are not illegal appointments of those duly qualified shall have continued to work and for 10 years or more than without intervention of orders of Courts or Tribunal, regularization of services of such employees may have to be considered on merits. The Union of India, the State Governments and their instrumentalities in that context should take steps to regularize as a one time measure. In the case on hand, the claim of the petitioner of he is in service since 01.09.1983 was not disputed by respondent entity and in the counter affidavit, it is stated that since 1984 several casuals engaged and petitioner is one such and it is difficult for the entity to prepare list of seniority for regularization and whoever regularized were pursuant to the orders of the Courts to avoid threat of contempt. Therefrom it is clear that the petitioner put up by the date of expression in Umadevi supra 10 years service for all practical purposes so to calculate. From what is discussed supra and entitled to have been regularized pursuant to that direction. Leave it as it is in **A. Manjula Bhashini Vs. The Managing Director, A.P. Women's Co-operative Finance Corporation Limited**³, the Apex Court held that once the employee be NMR/Daily wage/consolidated/contingent worker completed 5 years with continuing service as on 25.11.1993 would be within the zone of eligibility for regularization even as per G.O.Ms.No.212 dated 22.04.1994 by referring to Uma Devi supra.

10. Having regard to all the facts and in view of the interim direction already given by the Court to regularize the service of the

³ 2009 (8) SCC 431

petitioner on 26.03.2007 and there is no vacation of the stay all through despite the application filed, in the factual matrix, it is just to direct the respondent entity to regularize the service of the petitioner at least from the date of filing of the writ petition and however, the petitioner is not entitled to arrears of wages but for in fixation of pay to give any notional increments. It is made clear that this order shall not preclude the entity from reducing its surplus man power in accordance with law equally of the petitioner if any on regularization.

11. Accordingly and in the result, the writ petition is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 26.12.2016
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JUSTICE Dr. B.SIVA SANKARA RAO

