

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

WA.No.900 of 2008

Between:

APSRTC, repled by its
Managing Director, Musheerabad,
Hyderabad and another.

... Appellants

And

Lal Mohammed @ Lal Ahmed,
S/o Shaik

... Respondent

JUDGMENT PRONOUNCED ON 17.8.2016

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

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> Head Note:

! Counsel for the appellants: Mr. A.Ravi Babu

Standing Counsel for TSRTC

^ Counsel for the Respondent: Mr. A.K.Jaya Prakash Rao

? Cases Referred:

1. 1998(2) ALT 447
2. 2004(3) ALD 1 (SC)
3. (2013) 10 SCC 324
4. AIR 1992 SC 2130

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Counsel for the appellants: Mr. A.Ravi Babu

Standing Counsel for TSRTC

Counsel for the respondent: Mr. A.K.Jaya Prakash Rao

The Court made the following;

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Appeal is filed by the erstwhile APSRTC (presently Telangana State Road Transport Corporation) feeling aggrieved by order, dated 15.3.2005, in Writ Petition No.22859 of 1999.

A perusal of the impugned order shows that the Writ Petition filed by the respondent was allowed with a direction to reinstate him (regularise his services) from the date of his initial appointment i.e., 02.6.1984. This order was passed following an order, dated 01.9.1998, in Writ Petition No.24417 of 1998.

For adjudication of this Writ Appeal, brief facts need to be stated. The respondent was initially engaged as a Conductor on contract basis on 02.6.1984. His contract appointment was terminated on 18.01.1985, following a check while he was on duty. He has filed Writ Petition No.11656 of 1985 questioning his termination. The said Writ Petition was allowed by order, dated 31.10.1986 following an earlier order, dated 09.7.1986 in Writ Petition No.1082 of 1986 and the respondent was directed to be reinstated into service without payment of any back wages. Following the said order, the respondent was reinstated on 29.4.1987. In terms of the policy decision of the Corporation, the services of the respondent were regularised with effect from

01.8.1988, vide the Corporation's proceedings No.E1/255(56)/95:RM:ADB, dated 20.7.1996. Three years thereafter, the respondent filed Writ Petition No.22859 of 1999. As noted above, following order, dated 01.9.1998 in Writ Petition No.24417 of 1998, the learned single Judge allowed the said Writ Petition.

Before proceeding further, it needs to be noted that while the prayer of the respondent in the afore-mentioned Writ Petition was to regularise his services with effect from 1985, the learned single Judge has directed to reinstate the petitioner from the date of his initial appointment i.e., 02.6.1984.

Mr. A.Ravi Babu, learned Standing Counsel for TSRTC, submitted that the services of the respondent were terminated on 18.01.1985; that he was out of service till 29.4.1987; and that, as every temporary/contract employee has to necessarily work for 240 days for regularisation, the services of the respondent were regularised, after 240 days of his reinstatement, with effect from 01.8.1988. He has further submitted that the learned single Judge has committed an error in directing reinstatement of the respondent from the date of his initial appointment as, by the time of his termination, the respondent has not put in 240 days of continuous service; that admittedly, he was out of service from 18.01.1985 to 29.4.1987

and that, therefore, he was not entitled to regularisation of his services during the period when he was not in employment. He has further submitted that the learned single Judge has relied upon the order, dated 01.9.1988 in Writ Petition No.24417 of 1998, which order, in turn, was based on the judgment of a Division Bench of this Court in *APSRTC Vs. P.T.Rao and Ors*¹ which in turn was specifically disapproved by the Supreme Court in *The Divisional Manager, APSRTC and Ors. Vs. P.Lakshmoji Rao and Ors*²

Learned Standing Counsel has, accordingly, submitted that the order under appeal, which was based on an order which is, ultimately, based on the judgment in *P.T.Rao* (1 supra), is liable to be set aside.

Per contra, Mr. A.K.Jaya Prakash Rao, learned counsel for the respondent, strenuously submitted that while his client may not be entitled to regularisation with effect from the date of his initial appointment, i.e., 02.6.1984, as directed by the learned single Judge in the impugned order, he is entitled to regularisation at least from 28.8.1985, i.e., when the services of three other employees, viz., P.Gangaram, A.Rajeswar and T.J.Rao, who are also appointed at about the same time as his client was initially appointed, were regularised. He has further submitted

¹ 1998(2) ALT 447

² 2004 (3) ALD 1 (SC)

that though there was no specific direction for continuity of service of the respondent in Writ Petition No.11656 of 1985, he was, admittedly, entitled to the benefit of continuity of service as held by the Supreme Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Ors*³.

He has invited our attention to notification, dated 01.12.2014, of the appellants retiring the respondent, whereunder they have shown his continuous service without any break.

We have carefully considered the rival contentions of the learned counsel with reference to the material on record.

The fact that the respondent was initially appointed under a contract for a specified period is not in dispute. Before the period of contract expired, his services were terminated on 18.01.1985. Writ Petition No.11656 of 1985 filed by the respondent was allowed following order, dated 09.7.1986, in Writ Petition No.1082 of 1986. We have called for the said order and perused the same. Two Writ Petitions, viz., W.P.Nos.1082 and 689 of 1986 filed by two Conductors, who appear to be similarly situated as that of the respondent, were allowed and their termination orders were set aside on two grounds, viz., (1) that though they were appointed on contract

³ (2013) 10 SCC 324

basis, termination of their contract before the expiry of the contract amounts to 'retrenchment' within the definition of Section-2(o) of the Industrial Disputes Act, 1947; and (2) that the nature of termination of their services was not termination simplicitor, but, the same was based on the alleged cash and ticket irregularities, for which no enquiry was held. While allowing the said Writ Petitions, the learned single Judge directed the petitioners therein to be re-employed on contract basis forthwith, while directing payment of half back wages to them with effect from 01.02.1986. A further direction was issued that the petitioners therein shall be continued for the remaining period as per their latest order of appointment.

As far as the respondent is concerned, though the learned single Judge disposed of Writ Petition No.11656 of 1985, following the order in Writ Petition No.1082 of 1986, he did not allow back wages and there was also no direction for continuity of the services of the respondent. Though notification, dated 01.12.2014, relied upon by the learned counsel for the respondent, shows as if the respondent has worked as Conductor at various places, from 25.5.1984 till 01.12.2014, without any break being shown, the fact, however, remains and the same is not disputed by the learned counsel for the

respondent that he was out of service from 18.01.1985 till 29.4.1987.

In the afore-mentioned facts of the case, the issue that needs to be decided is whether the respondent is entitled for regularisation of his services with effect from the date anterior to 01.8.1988.

A Division Bench of this Court in *P.T. Rao* (1 supra) while holding that the High Court cannot issue a blanket direction for regularisation of the services of the employees on completion of a particular period, following the judgment of the Supreme Court in the *State of Haryana Vs. Piara Singh*⁴, and while purporting to modify the orders of the learned single Judge, directed that the workmen are entitled to regularisation of their services to such post on completion of 240 working days from the date of their initial appointment. The Division Bench further directed that if there are number of claimants seeking regularisation, the same can be done only in a phased manner. The judgment in *P.T.Rao* (1 supra) came in for severe criticism by the Supreme Court in *Divisional Manager* (2 supra) and referring to the afore-mentioned directions issued by the Division Bench, it observed as under:

⁴ AIR 1992 SC 2130

"The problem was compounded by another Division Bench decision of the High Court in Writ Appeal No. 1108 of 1997 APSRTC Vs. P.T. Rao [1998 (2) ALT 447]. That was an appeal against the order of the learned single Judge directing regularization keeping in view the directions given in writ appeal No. 705 of 1995 (supra). The learned Judges after referring to the decision of this Court in State of Haryana Vs. Piara Singh [AIR 1992 SC 2130] observed: "Thus, it is clear that the High Court cannot issue a blanket direction to regularize the services of the employees on completion of a particular period. If we examine the cases of the respondents-workmen here in the light of the principles laid down by the Supreme Court in State of Haryana Vs. Piara Singh (supra), we have to hold that the order of the learned single Judge requires modification."

Having said so, curiously, the following order was passed in the next paragraph which is the operative part of the judgment:

"Therefore, the order of the learned single Judge is modified to the effect that the respondents-workmen are entitled to the regularization of their services from the date of their initial appointment to such posts on completion of 240 working days. If there are number of claimants seeking regularization, the same can be done only in a phased manner. In so far as the claim of the workmen for arrears or backwages is concerned, having regard to the facts and circumstances of this case, we hold that the respondents-workmen are not entitled to the same.

With the above modification, the Writ Appeal is disposed of."

The direction given in paragraph 5 is not quite consistent with what was held in the previous para of the judgment after referring to the law laid down in Piara Singh's case. The concept of 'continuous service for a period of one year' as per [Section 25B](#) of the I.D. Act has been imported by this Division Bench also. Moreover, it is difficult to reconcile the two directions in para 5 (contained in the first two sentences). Perhaps, what the learned Judges meant was that the employees' claim for regularization should be considered on completion of 240 working days and if they are otherwise eligible, they should be absorbed on regular basis to the extent of vacancies available. In the event of such regularization, it would take effect from the date of initial appointment.

It is difficult to follow the logic or the reason behind the law laid down by the Division Bench. If the regularization has to take place in a phased manner subject to availability of vacancies etc., the question of according regular status to the employees right from the date of initial appointment on daily-wages does not arise. Moreover, if the services of respondents in the writ appeal have already been regularized and they claim regular status from the date of initial appointment, the High Court should have addressed itself to the specific question whether the regularization after some period of daily wage service was legally correct and recorded a finding thereon. The observations made and the directions given have only added to the dimension of controversy rather than solving the problem. How and in what manner the said judgment in [1998 (2) ALT 447], which is sought to be relied upon by the appellants, was implemented is not known. No details are available in this regard.

However, it is difficult to construe the judgment in the said writ appeal as upholding the contention of the appellants excepting the passing observation that the regularization could be done in a phased manner.

In the light of the above discussion, we are of the view that the law laid down or the directions given in various writ petitions/writ appeals are not legally sustainable for more than one reason. Firstly, wrong criterion based on [Section 25B](#) of I.D. Act was applied in case after case. Secondly, the respondents and other similarly situated employees approached the Court under [Article 226](#) long after their regularization, thereby unsettling the settled position. Thirdly, on the facts of these cases, it is evident that the services of the employees who were recruited as Conductors were regularized within a reasonable time. The respondent- employees were therefore treated fairly. No service rule or regulation or any other principle of law has been pressed into service by the respondents to claim regularization from an anterior date i.e. right from the date of their initial appointment as daily wage employees.”

Having, thus, disapproved the reliefs granted by the High Courts in scores of cases for regularisation on completion of 240 days, the Supreme Court, however, took judicial notice of the long delay in the Corporations approaching the Courts by way of appeals and held that in view of the peculiar situation referred to in paragraph-18 of the judgment and in order to avoid the anomalies that may otherwise ensue, the relief was moulded to the effect that if any of the Conductors junior to the

respondents in the relevant seniority list of the Division/region concerned have got the benefit of seniority and regularization or are entitled to get the same by virtue of the judgments that have become final, then the respondents who are seniors to them, shall be given the same benefit on the same principle.

Thus, the whole substratum on which Writ Petition No.11656 of 1985 filed by the respondent was allowed was completely removed by the Supreme Court in *Divisional Manager* (2 supra). However, going by the relief moulded by the Supreme Court in the said judgment, if we examine the facts of the present case, the respondent failed to plead that any person who is junior to him was given seniority over him. On the contrary, all the three persons with whom the respondent has claimed parity, viz., P.Gangaram, A.Rajeswar and T.J.Rao were initially engaged on 24.5.1984, 24.5.1984 and 02.3.1984 respectively, while he was initially engaged on 02.6.1984. The services of the said three persons were regularised with effect from 28.8.1985, while the services of the respondent were regularised with effect from 01.8.1988.

Learned Standing Counsel has drawn distinction between those three persons and the respondent by stating that while the said three persons were in continuous service without any break, the respondent's services were terminated on 18.01.1985

and he was not in employment till he was reinstated on 29.4.1987.

Though the learned counsel for the respondent has placed heavy reliance on the judgment in *Deepali Gundu Surwase* (3 supra), on the facts of this case, the said judgment have no relevance because the said case did not relate to the claim for regularisation and the issue that was considered therein related to the benefits of continuous service following the order of reinstatement. As held by the Supreme Court in *P.Lakshmoji Rao* (2 supra), the workman has no vested right for regularisation merely on the ground of completion of 240 days of service.

In normal course, the respondent would have been entitled to regularisation with effect from 28.8.1985 as in the cases of P.Gangaram and two others, but, he not being in service from 18.01.1985 to 29.4.1987, cannot be permitted to claim regularisation for the period during which he was not in service at all and more so, in the absence of any direction to treat him as being in continuous service by this Court in Writ Petition No.11656 of 1986.

Another aspect which disentitles the respondent to claim the benefit of retrospective regularisation is that while the regularisation order was made on 20.7.1996, he has

approached this Court three years thereafter. Thus, the Writ Petition itself suffers from laches.

Learned Standing Counsel placed before us the Service Register of the respondent, which shows that after his reinstatement on 29.4.1987, he has suffered more than six punishments including the order of removal from service, which was confirmed in Appeal, but, was set aside in a Review. These facts, which are borne out from the Service Register are added factors to disentitle the respondent to the benefit of regularisation from any date anterior to 01.8.1988.

For all the afore-mentioned reasons, the order under appeal is set aside and the Writ Appeal is allowed.

As a sequel to disposal of the Writ Appeal, interim order, dated 17.11.2008, in WAMP.No.1858 of 2008 is vacated and WAMP.1858 of 2008 is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

17th August 2016

Note:

LR copies to be marked.

B/o

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