

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT APPEAL No. 736 of 2016

JUDGMENT: (*Per VRS,J*)

The State Tourism Development Corporation has come up with the present writ appeal, challenging an order of the learned Judge rejecting the prayer for regularization, but granting the respondents 1 and 2 herein, the benefit of equal pay for equal work.

2. Heard Mr. G. Vidya Sagar, learned senior counsel appearing for the appellant, and Mr. G. Vasantha Rayudu, learned counsel for the respondents 1 and 2.

3. The respondents 1 and 2 filed a writ petition in W.P.No.18550 of 2014 on the file of this Court, claiming that they were appointed as Drivers for heavy motor vehicles on contract basis in the appellant Corporation with effect from 01.12.2014, and that by virtue of the continuity of service for the past more than 10 years, they were entitled to be regularized. When the writ petition came up for final disposal, the learned Judge found that the claim of the respondents 1 and 2 for regularization, may not be acceptable. Therefore, the learned counsel appearing for the respondents 1 and 2 requested the

Court at least to grant an alternative relief of equal pay for equal work.

The said prayer was granted by the learned Judge, forcing the appellant Corporation to come up with the above writ appeal.

4. The contentions of Mr. G. Vidyasagar, learned senior counsel appearing for the appellant Corporation, are two-fold, namely, (a) that the only prayer made by the respondents 1 and 2 in the writ petition was for regularization and that, therefore, another relief, which was not sought for, could not have been granted, and (b) that the respondents 1 and 2 were not the employees of the appellant Corporation, but were the employees of an Agency, to whom the work was outsourced, and, hence, the principle of equal pay for equal work may not apply, when two different establishments were involved.

5. We have carefully considered the above submissions.

6. There is no prohibition in law for the petitioners in a writ petition to give up the prayer for a larger relief and seek lesser relief. It may be true that the respondents 1 and 2 herein have also filed another writ petition for regularization. But, the moment the prayer for regularization in the writ petition, out of which, the present appeal arises, is given up, we do not know how the respondents 1 and 2 could press for a similar relief in the other writ petition. Therefore, it is the respondents 1 and 2 who should bother about their action of giving up

the larger relief in the present writ petition, and not the appellant. Hence, the first contention is rejected.

7. Insofar as the second contention is concerned, little more details are necessary. It is seen from the counter affidavit filed in the writ petition by the appellant Corporation that a notification for recruitment of 70 HMV Drivers was issued by the appellant Corporation itself on 01.12.2004. In other words, it was the appellant Corporation who selected the respondents 1 and 2 for appointment. Thereafter, their services were enlisted through a manpower Agency. In other words, it was not a case where a manpower Agency was selected and work was entrusted to them, leaving it entirely to the discretion of the manpower Agency to recruit people of their own choice. It is a case of selection of candidates by the appellant Corporation and thereafter sending a list of selectees to the manpower Agency.

8. Paragraph Nos. 3, 4 and 5 of the counter affidavit filed by the appellant Corporation may be of relevance and, hence, they are extracted as follows:

“3. It is submitted that a Press Notification was released in Newspapers on 01.12.2004 for filling up of 70 vacancies of HMV Drivers on contract basis at a remuneration of Rs.2,000/- (Basic) + Rs.100/- daily attendance incentive. In response to the notification, the petitioners have applied for the said post. Against the

requirement of 70 HMV Drivers a panel of 136 HMV Drivers was prepared. It is submitted that the services of the petitioners are utilized by the Corporation as HMV Drivers through Manpower Agency, based on the requirement of operation of tours. It is also submitted that in addition, they are paid D.A. night driving allowances, double duty expenses etc. on par with the regular/contract/manpower agencies Drivers, whenever the duties of petitioners as HMV Drivers are utilized.

4. *It is true that they have been working in the Corporation through Manpower Agency since 2005.*

5. *It is submitted that consequent to the notification, there was ban on recruitment. The Corporation has approached the Government in regard to future recruitment based on the recruitment. It is submitted that in the minutes of the meeting held on 30.05.2005 with the Hon'ble Chief Minister of Andhra Pradesh, instructions were issued to take employees on contract basis for supervisory/managerial category and explore the possibility of outsourcing services below the managerial category as far as possible. Accordingly, services below managerial category are outsourced since then."*

9. Therefore, it is clear that the smokescreen of an outsourcing agency was used only for the purpose of denying the relationship of employer and employee. Hence, the learned Judge was right in lifting the veil and directing the grant of equal pay for equal work.

10. Moreover, in Paragraph No.6 of the counter affidavit, the appellant Corporation itself had conceded that there was a decision taken by the Board of Directors to grant equal pay for equal work.

Paragraph No.6 reads as follows:

"It is submitted that the Board of Directors in the 152nd meeting held on 28.06.2012 has agreed to implement the

proposal for equal pay for equal work to contract employees on par with regular employees. Accordingly, proceedings No.APTDC/Admn/P2/42/2012, dated 20.01.2013 was issued. This concept of equal pay for equal work is applicable to only contract employees of the APTDC who were on rolls as on 28.06.2012, i.e., the date of Board Resolution and is implemented from 01.01.2013.”

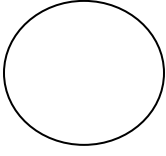
11. Though it is contended that the decision of the Board of Directors would apply only to contract employees and not to persons engaged through outsourcing Agencies, we do not agree for the very same reasons stated above. Even recently, the Supreme Court has held in *State of Punjab and others Vs. Jagjit Singh and others (Civil Appeal No.213 of 2013, dated 26.10.2016)* that the grant of equal pay for equal work has a constitutional foundation, and that though Article 39(d) is only in Part IV of the Constitution, the same could be enforced, in view of the application of Articles 14 and 16. Therefore, we find no grounds to interfere with the order of the learned Judge. Hence, the Writ Appeal is dismissed.

Consequently, miscellaneous petitions if any pending in the writ appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

U. DURGA PRASAD RAO, J.

6th December, 2016
cbs



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