

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

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(21.04.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.12609 of 2016

Between:

Union of India, rep.by its General Manager,
South Central Railway, Secunderabad and 2 others

..... PETITIONERS

AND

N.Bhushanam

.....RESPONDENT

Counsel for the Petitioners : **Mr.P.BHASKAR**

Counsel for Respondent :

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.12609 of 2016

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

The respondent was engaged as a Driver from the year 1990 and was given pay scale of Rs.950-1500. However, seven years thereafter, he was given provisional pay with lien on the post of Gangman and posted in the scale of Rs.775-1025, only on the ground that in the Construction Division there were no sanctioned posts of Driver and that he was not recruited as per the recruitment rules and only on the basis of local arrangement to meet the requirement of driver. The respondent has therefore approached the Central Administrative Tribunal, Hyderabad Bench, at Hyderabad (for short "the Tribunal") by filing O.A.No.395/2012 for a direction to the petitioners to regularize/confirm his services as Grade-C Driver in the scale of Rs.3050-4590 with effect from 20.12.1990 in terms of Railway Board's letter dated 08.04.1997 and also effect the MACP Scheme in terms of DOPTs letter dated 19.05.2009 for 10, 20 and 30 years of service and fix his seniority on par with his juniors who were promoted earlier in Grade-C and pay arrears and service benefits.

A counter affidavit was filed by the petitioners, wherein it was *inter alia* averred that the services of the respondent were utilized as *ad hoc* driver purely on local arrangement without following seniority and reservation rules, that all the posts operated in Electrical Construction Unit are only work charged posts and after completion of works they will be repatriated back to their parent unit.

Having regard to respective stands taken by the parties, the Tribunal examined the issue in detail. It has placed reliance on the judgment of the Supreme Court in ***Secretary, State of Karnataka and others v. Umadevi and others***^[1] wherein it was *inter alia* held that the recruitment to public offices should be through constitutional scheme of things, however, exigency of administration may some time call for *ad hoc* or temporary appointment to be made, that if for any

reason, an *ad hoc* or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The Tribunal has followed the ratio laid down in the said judgment by narrating the facts of the case and giving reasons for accepting the claim of the petitioner as under:

“The appointment of the applicant in the Construction Unit against work-charged post was as per the approved arrangement which has been duly reflected in paras-5(vii) (a) & 6. The Railway Board was sensitive to the fact that such employees should be absorbed and regularized against sanctioned posts in the Open Line Division and with this end in view they issued guidelines dated 08.04.1997 as reflected in Para-5 (iv) (b) above. As per the aforementioned guidelines steps were taken by the respondents to conduct Trade Test of employees working in the Construction Division, so that they can acquire the necessary Trade Test qualification required for their absorption and subsequent regularization against sanctioned post in the Division allotted to them. The respondents took the steps indicated in Railway Board’s guidelines by allocating the applicant to the Engineering Division of S.C.Railway. Subsequently they also conducted the Trade Test for Drivers way back in 1994, but curiously enough the respondents are silent as to what steps are taken by them subsequently to absorb the applicant against the post of a Driver. In this contest letter of Dy.CPO dated 30.05.1997 is also relevant in which the quota for regularizing such employees was also indicated. When we talk about absorption and subsequent regularization, we naturally keep in mind that the employee who has been working for a long period in a particular post would be absorbed and regularized against an equivalent post. The action taken by the respondents was also in keeping with this as all along they were trying to regularize him against the post of Driver. However, in October 1997 they provided him lien i.e, they regularized him against a

post of Gangman which was lower than the Group-C post of a Driver that he was holding. The applicant's case for regularization against an equivalent post of a Driver in the regular scale therefore merits consideration and it is in keeping with the letter and spirit of Railway Board's guidelines dated 08.04.1997. Accordingly, we agree in principle with the relief sought for by the applicant that he should be absorbed and regularized against the equivalent post of Driver, however, we do not agree with the claim of the applicant that he should be regularized from the date he was posted to work as Driver vide order dated 20.12.1990. We are of the opinion that the date from which the applicant ought to be absorbed and regularized against a sanctioned post of a Driver in the Open Line Division is best left to the respondents to decide as per their own instructions as reflected in Railway Board's guidelines dated 08.04.1997 and as per our observations in this matter and the case law cited."

Based on the above noted facts, the Tribunal directed the petitioners to decide from which date the respondent should be absorbed and regularized against the post of Driver, that once the date of regularization is decided by the petitioners, his terminal benefits and pension would be fixed accordingly. The Tribunal further directed the petitioners to take necessary action to grant the respondent MACP as per his eligibility and to grant all consequential benefits.

In our opinion, the order of the Tribunal is supported by rational and convincing reasons and on a careful consideration of the same, we are of the opinion that no interference therewith is called for.

For the above mentioned reasons, the writ petition fails and the same is accordingly dismissed. No order as to costs.

As a sequel to dismissal of the Writ Petition, WPMP No.15803 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 21.04.2016
Dsr

[\[1\]](#) (2006) 4 SCC 1