

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

W.P. No.6161 OF 2007

ORDER:

This Writ Petition is filed under Article 226 of Constitution of India by the petitioners, who are 19 in number of whom 1st petitioner is A.P.S.R.T.C Employees Union, represented by its General Secretary and the others are the individual employees attached to the said union, against six respondents viz., 1) Presiding Officer, Labour Court-I, Hyderabad, 2) A.P.S.R.T.C., represented by its Managing director, Musheerabad Hyderabad, 3) Chief Civil Engineer-II, A.P.S.R.T.C, Musheerabad, Hyderabad, 4) Executive Engineer (Projects), A.P.S.R.T.C, Musheerabad, Hyderabad, 5) Executive Engineer (Hqrs), A.P.S.R.T.C, Musheerabad, Hyderabad and 6) Executive Engineer (Rural), A.P.S.R.T.C, Musheerabad, Hyderabad, for the following relief:

“...to issue an order or direction or more particularly one in the nature of Writ of Certiorari and after calling for the records in I.D. No.28 of 2001 dated 22.08.2005 on the file of Labour Court, Hyderabad quash the same and consequently direct the respondents to regularize the services of the petitioners with all consequential benefits from the date of their initial appointment and pass such other order or orders in the interest of justice.”

2) In seeking the aforesaid relief, the General secretary of 1st petitioner Union on behalf of the petitioners filed the supporting affidavit, stating that the petitioners 2 to 19 supra were being engaged and working as Man Mazdoor (non technical) and Man Mazdoor (Technical) in Civil Engineering Department of APSRTC for construction of Bus Depots, Office Complexes and Kalyana Mandapam etc., and also for maintenance of the office building of

the Corporation including Kalyana Mandapam situated at Hyderabad and they were being paid on daily wages in terms of Standard Schedule rates notified by the Corporation as per the circulars issued from time to time and they were working continuously from the year 1988 and the Corporation has also issued a circular for issue of Identity Cards to the workers working in the Civil Engineering Department, vide circular No.1/2000-LD, dated 15.03.2000 and again by Circular PD.No.37/2000, dated 28.06.2000, and they were also shown in the list submitted by the Executive Engineer (Projects) vide letter No.A3/232(i)/96-EE (P) dated 15.11.1996. The said list was prepared in terms of Circular No.PD-8/93, dated 20.01.1993 directing all the Executive Engineers to submit a comprehensive report with regard to engagement of the workmen in Civil Engineering Department. Although, petitioners workmen are functioning directly under the control of the Assistant Engineers of the respective Departments concerned, they were being termed as 'contract labour', though there is no contractor engaged for execution of aforesaid works, in which the petitioners workmen are working, and it shows only to deprive the regularization of their services, the term 'contract labour' is used.

3) It is submitted that earlier when the workmen concerned along with others filed W.P. No.4139 of 1998 for regularisation of their services in the Corporation, the respondent Corporation has taken a stand that the petitioners were engaged by the Contractor and there is no liability for the Corporation to regularise their services and this Court on a consideration of the rival contentions and the legal position, dismissed the said writ

petition by order dated 13.07.1999 directing the petitioners therein to approach the Labour Court/ Industrial tribunal for appropriate relief. Pursuant to the said orders, the Union has taken up the matter by raising a dispute under Industrial disputes Act, 1947 before the Assistant Commissioner of Labour, Circle-III, Hyderabad, wherein conciliation proceedings ended in failure. Thereafter, Government of A.P vide G.O Rt.No.2495, dated 05.12.2000, was pleased to refer the following dispute for adjudication to the Labour Court, Hyderabad as to whether 22 workmen as shown in the annexure are justified in demanding regularization of their services from the date of their initial appointment in the Corporation, if not to what relief the workmen are entitled to, and the said dispute was registered as I.D. No.28 of 2001 before the Labour Court, Hyderabad, wherein the 1st petitioner Union filed a detailed claim statement stating that there are no contractors in between the petitioners workmen and the management and that they are working for the Corporation and the Corporation is paying their salaries in terms of the circulars issued from time to time under Standard Schedule Rates notified and they also pleaded that they are being paid salaries directly by the corporation and they were also issued with Identity Cards for attending their duties and the nature of work performed by them is permanent and perennial in nature, hence sought for regularization of their services from the date of their initial appointment with all consequential benefits.

4) In fact, before the Labour Court, the Corporation in its counter submitted that the civil works are being undertaken by allotting the same to the contractors on tender basis and the same

was followed even for maintenance of the buildings and structures of the Corporation and that the contractors are engaging the workmen concerned to perform the works and they are being paid as per the Standard Rates published by the R & B Department from time to time. The Corporation also admitted that the petitioners were issued with temporary Identity Cards, though they are not the staff members and thereby they are not entitled to claim as employees of Corporation and temporary issuance of I.D cards is only for the purpose of better identification as a security measure, since they would be handling the departmental material and nothing more and mere possession of Identity Cards or bus passes does not give any right much less to claim any employer and employee relationship with the Corporation.

5) The said award of the Labour Court-I, Hyderabad dated 22.08.2005 in I.D. No.28 of 2001, dismissing the claim for regularization of their services is by holding that they are not entitled for the reasons that they got no written appointment orders, if at all to claim as employed by the respondent—Corporation and also failed to prove their appointment by respondent—RTC, there is nothing even to show either they have been appointed as employees of the Corporation or the salaries have been paid by Corporation directly to them, that too, without showing any initial appointment of them by the Corporation and continuity of service under the Corporation, they are not entitled for reinstatement or regularization of their alleged services as they are not the employees of the Corporation.

6) It is impugning said award of the Labour Court, the grounds urged in the writ petition vis-à-vis the oral submissions in the course of hearing are:

(a) that the award of the Labour Court is illegal, arbitrary and baseless and outcome of failure to appreciate the reference made by the Government with regard to payment for regularisation of services of workmen from the date of initial appointment in the Corporation. Whereas Labour Court in its first paragraph of the award refers that the reference made is only to resolve the Industrial Dispute raised by the workers to reinstate and regularize their services in the respondent organization. This itself would show the total misconception and the also misconstruing the evidence available on record, including Exs.W1 to W60 proceeded on the presumption that the issue of identity cards, allotment of work schedule, experience certificate do not confer any right of employment with the respondent—Corporation, which is nothing but a failure to appreciate the said documentary evidence, which demonstrate that they are working with respondent corporation for it is not even the case of the Corporation that they have not been working under them and the only stand of Corporation is that the petitioners/ workmen are engaged through contractors, whereas the Labour Court proceeded on a divergent assumption and the findings of the Labour Court are self-contradictory, inasmuch as, at one stage, it proceeded to record that the petitioners are carrying out works at Civil department under the control of Executive Engineer (Projects), but the work executed by them is not as an employee of the respondent—Corporation, but being the employees of the contractors.

b) The Labour Court thereby failed to appreciate that no list of contractors produced to demonstrate that they are workmen through the contractors and the witness examined on behalf of the management also failed to produce any record or any names are referred to under whom the petitioners workmen are working, which show that there is no contractor engaged and petitioners are working only in Civil Engineering Department and the Corporation, has to disprove the list of contractors under whom the petitioners are working, if at all to support their version .

c) The Labour Court erred in observing that the petitioners failed to prove their appointment by the respondent Corporation, though reference is only for regularisation of their services and nothing beyond, that too, for the reason after appointment letters are issued, the question of raising an industrial dispute for regularisation would not arise that even there is no written appointment letter to show that they have been employed by the Corporation, the work allotment of schedule, issue of identity cards and experience certificates would demonstrate that they have been employed for the Corporation and executing the works, thereby the lower Court erred in holding that there is no record to show that they have been appointed as employee of the Corporation and their salaries have been paid by the Corporation directly having failed to note all the facts.

d) In the case on hand, it is not the case of the Corporation that there was a contractor and tenders were offered to said contractor through whom the workmen were working, and on the other hand, it is demonstrably proved that they were

engaged for the services of the Corporation and there is no other intermediary between the workmen and the Corporation, except a bare statement that the workmen are being entrusted through contractors

e) It is also the contention referring to the expression of the Apex court in **Ram Singh vs Union of India**¹ that in determining the relationship of employer and employee all relevant facts and circumstances are required to be considered including the terms and conditions of contract with pragmatic approach instead of going by sole 'test of control' and mere fact of former employment by an independent contractor will not relieve the master of liability where the servant is in fact in his employment.

f) The other expression of the Apex Court relied upon is in **Hussainbhai, Calicut vs Alath Factory Thozhilali**², wherein it was held that wherever a worker or a group of workers to produce goods or services and those goods and services are for the business of another, that another, in fact, is the employer and the presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequences.

g) The other decision relied upon the Apex Court is in **Bharat Heavy Electricals Limited vs State of U.P.**³ wherein it was held that when appellant management did not produce records to show that the workmen were engaged through contractors, saying records are not available, adverse inference has

¹ 2004 (1) SCC 126

² 1978 (4) SCC 257

³ 2003 (6) SCC 528

to be drawn against the employer and the Labour Court ought not to have drawn adverse inference in relation to union and contractor.

7) Whereas it is the submission of the learned counsel for respondents to the writ petition by supporting the order/ award of the Labour Court that when there is no employer and employee relationship, the question of regularization of service under the Corporation does not arise, leave about from what date and after the Constitution Bench expression of Uma Devi's case in the year 2005-06, the earlier expressions have no sanctity to serve as precedents contra to Umadevi (supra).

8) Heard both sides as referred supra and perused the material on record.

9) Undisputedly, the reference made by the Government to the Labour Court is on entitlement of the 22 workers for regularization, if any and from what data. The list prepared in terms of circular No.PD-8/93, dated 20.01.1993 contain names of petitioners not in dispute despite specific plea in the writ petition, if at all to rebut the same. It shows their services are engaged since prior to it to say since 1988 according to them. Undisputedly, ID cards also issued as employees of the Corporation. Further, on 18.12.2006, the management issued cheques to the workmen involved in the present dispute, recommending exercise of PF contribution and the Deputy Executive Engineer, Ranga Reddy District, issued certificate dated 18.01.2007 indicating casual employees working under his control including the names of the petitioners, to show that the petitioners

are working under the Corporation. There is an interim order dated 26.03.2007 passed in W.P.M.P. No.7881 of 2007 directing the respondents to continue the petitioner in service by suspending the operation of the award of the Industrial Tribunal in I.D. No.28 of 2001 dated 22.08.2005.

10) Before the Labour Court-I, Hyderabad, on behalf of the petitioners representing by Union, witness Nos.1 to 3 were examined and Ex.B1 to B60 were marked which contains I.D cards, bus passes for traveling to the work place and certificates of experience; and on behalf of the management Mws.1 to 3 were examined and MO No.1 to 6 were marked. Petitioner No.18 was examined as WW.1. According to him, in the month of June, 2000 they have requested conciliation officer for his intervention into the matter for non regularisation of their services, upon which the conciliation officer had convened a meeting and conciliation failed. He submitted that he is working as Inspector (non-technical) and his post is equivalent to clerk, but they have not been paid salaries on par with other working employees of Corporation, though performing the same kind of work. WW-2 deposed that he is working as a technical Mastery in the Deputy Executive Engineer, Office of the Executive Engineer (Projects) Division of APSRTC, Musheerabad and relied on a bunch of Xerox copies of Identity Cards and Bus passes vide Exs.W-1 to W-99. WW-3 is also one of the petitioners, who is working as a Man Mazdoor. He deposed that despite representations to the Corporation, Corporation turned with a deaf year to their claim for regularization. However, WWs.1 to 3 admitted categorically in their cross examination that to their claim that they have been appointed by the Corporation,

there are no appointment letters issued by RTC. MW.1—Deputy Executive Engineer also deposed that the Corporation never appointed any of these petitioners and they were not in the administrative rolls of the Corporation at any time and they were never paid salaries by the Corporation and there is no employer and employee relationship between them and the Corporation. He further deposed that in order to execute Civil Engineering works, as per the terms, he prepared estimates after taking approval from the competent authority, thereafter tenders were called for from the registered contractors and the work was allotted to the lowest bidder. Depending on the value of work, the contractor has to employ technical and non-technical persons to carry out the work. MW.2, who is working as Executive Engineer and MW.3, who is working as Deputy Executive Engineer in the Corporation also deposed in similar lines. However, none of them stated why they issued ID cards, why they made PF contribution, what are the duration and nature of works of what contractor and if so under whom any of them worked and if so what is bar to issue ID cards as workers under a specific contractor. It is not a case of none are qualified and or no vacancies.

11) Coming to the Constitution Bench expression of the Apex Court in **Secretary, State of Karnataka and others vs Uma Devi**⁴ requires reference. The Apex Court in Uma Devi (supra) at Paras 53 & 54 it was clearly 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.

⁴ 2006 (4) SCC 1

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.”

12) From the above, in the case on hand, the claim of the petitioners is that they are in service since prior to 01.09.1988 was not disputed by respondent Corporation. Leave it as it is, in ***A. Manjula Bhashini Vs. The Managing Director, A.P. Women's Co-operative Finance Corporation Limited***⁵, 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).

13) Having regard to all the facts and in view of the interim direction already given by the Court on 26.03.2007 to continue the

⁵ 2009 (8) SCC 431

petitioners in service and there is no vacation of the stay all through despite the direction supra and when same is complied with and in the factual matrix, it is just to direct the respondents to regularize the services of the petitioners at least from the date of filing of the writ petition and however, it is made clear that the petitioners are 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, if any, in accordance with law with attendant benefits equally of the petitioners, if any, on regularization.

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

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date:03.03.2017
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