

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 6711 of 2007 and 7081 of 2007

COMMON ORDER:

1) The present writ petitions came to be filed by the Chief General Manager, Telecom, B.S.N.L., A.P.Circle, Hyderabad and General Manager, Telecom District, B.S.N.L., Karimnagar SSA, seeking issuance of writ of mandamus to declare the award dated 20.11.2006 passed in I.D.Nos.111 of 2004 and 112 of 2004 on the file of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as void, illegal and not maintainable.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioners herein engaged casual labour intermittently for urgent works for specific periods and time bound works and thereafter disengaged them. Vide instructions No.270/ 6/ 684-STN, dated 30.03.1985, the petitioners herein imposed ban on engagement of casual labour except in Project establishment. The said ban was extended from time to time and ultimately total ban was imposed vide Lr.No.269-4/ 93-STN, dated 12.02.1999 except for a period of 60 days, which was later extended to 100 days. The 1st respondent in both the writ petitions (herein after referred to as "Workmen") claimed that they were engaged as casual labour from 01.01.1985 to 31.08.1987 onwards in connection with Railway Electrification Project relating to electrification of Railway Line between

Vijayawada and Ballarshah. Based on such engagement, they sought continuance in the territorial Secondary Switching Area of Karimnagar and were accordingly engaged by the S.D.O.P., Karimnagar. It is stated that an enquiry was held on the basis of communication vide Lr.No.15W/ C.L./ 89-90 dated 17.07.1990 received from Accounts Officer, O/o C.G.M., Telecom (RE), Nagpur, alleging that the workmen produced false and fake certificates. Having regard to the findings arrived at, the workmen were disengaged from 20.07.1993 as casual labour, based on the communication dated 17.07.1990 received from R.E Projects, Nagpur. The same was challenged by the workmen vide O.A.No.1014 of 1993. The said O.A. was disposed on 26.08.1993 with a direction to conduct an enquiry after giving reasonable opportunity. Since the workmen could not substantiate their case, their services were terminated vide order, dated 24.07.1998. Challenging the same, the workmen filed W.P.No.21586 of 1999 which was disposed on 22.11.2000 with the following directions:

“It is now ordered that the respondent management shall engage these petitioners afresh as casual labourers from this day and pay them the wages and other emoluments payable to the casual labourers from this day. Regarding regularization of these petitioners it shall depend upon the future exigency, any scheme to be launched by the management, the suitability of the workmen etc.”

3) Complying with the said directions, the workmen were re-engaged on 17.12.1999 as fresh entrants and are being continued as casual labours. While things stood thus, the workmen raised industrial disputes vide I.D.Nos.111 of 2004 and 112 of 2004 before the Assistant Labour Commissioner (Central), Mancherial claiming conferment of temporary status and regularization based on their past service in Railway Electrification Project at Karimnagar. Pending the said Industrial disputes, W.P.No. 10363 of 2005 came to be filed, questioning the Central Government Notification dated 20.08.2004 (which was issued basing on the report of the Conciliation Officer, Government of India, Ministry of Labour). However, the said writ petition was disposed of directing the petitioners therein to raise the said pleas in I.D.Nos. 111 and 112 of 2004. During the course of trial, in I.D.No.111 of 2004, the workmen examined himself as WW1 and got marked Exs.W1 to W6. On behalf of the management, MWs.1 and 2 were examined and Exs.M1 to M12 were marked. In I.D.No.112 of 2004, the workmen examined himself as WW1 and got marked Exs.W1 to W4. On behalf of the management, MWs.1 and 2 were examined and Exs.M1 to M16 were marked.

4) After considering the oral and documentary evidence and the rival submissions made, the Labour Court passed a common award in both the I.D.s directing the respondent therein to grant temporary status to the workmen and to regularize their services on par with one Ch.Subba Reddy, from the date of he getting

temporary status ie. 01.10.1989. Challenging the same, both the writ petitions came to be filed by the Management/ petitioners.

5) By an order, dated 09.04.2007, this Court suspended the said award but however, directed the petitioners not to disturb the services of the workmen during pendency of the writ petition.

6) Counters came to be filed by the workmen opposing the same. It is their case that they were appointed as Casual Mazdoor under the control of petitioners with effect from 02.01.1986 and since then they are working in the said post without any complaints. It is stated that without giving temporary status and regularization, in terms of the policy, their services were terminated with effect from 29.04.1998 on the ground that they have submitted bogus work days certificate. The same was challenged before the Central Administrative Tribunal and later before this Court in W.P.No.21586 of 1999 wherein this Court suspended the termination orders. The said writ petition along with a batch was disposed of on 22.11.2000. It is their case that though they have completed morethan 240 days service, the authorities deprived the benefit of temporary status and regularization, in terms of the policies and directions of the Apex Court. It is also stated that the petitioners regularized the services of similarly situated persons like Ch.Subbareddy, N.Shyam Sundar Rao and G.P.Pangaiah, who have also filed writ petitions along with them.

7) Learned counsel for the petitioners submits that in view of the orders of the Supreme Court in S.L.P.(C) No.14397 of 1994 which came to be filed by the Department, questioning the regularization of the casual labour, the workmen are not entitled for any relief. He submits that the case of Subbareddy which is subject matter of challenge before this Court is a case of fraud and the documents in the said case are fabricated documents. He further submits that in view of the earlier orders passed by this Court, the workmen have been continuing as casual labour and as per the scheme their services cannot be regularized or a temporary status cannot be given to them. It is stated that the petitioners have taken a policy decision with regard to left out cases of casual labourers from 30.03.1985 to 22.06.1998 and continuing as such on 01.10.1989 with breaks and those casual labourers, who have put in 240 days of service prior to 01.09.1998 have been considered for grant of temporary status and regularization as one time measure. Learned counsel for the petitioners further submits that though the respondents are equating their case to that of Subbareddy but, the said Subbareddy is continuing basing on the interim orders passed by this Court and that a vacate stay application also came to be filed which is pending consideration.

8) On the other hand, learned counsel appearing for the workmen opposed the same. Learned counsel for the workmen relied upon the judgments of the Apex Court in *State of*

*Karnataka and others v. M.L.Kesari and others*¹ and in *Amarkant Rai v. State of Bihar and others*² to show that as the workmen are working as casual labourers without any blemish since more than 10 years, their services have to be regularized in view of the judgment of the Apex Court in *State of Karnataka v. Umadevi*³. Relying upon the judgment of this Court in *M.V.Chalapathi and another v. Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad and others*⁴ he submits that since the services of some of the employees, who stand on the same footing as that of the workmen were regularized, the request of the workmen, have to be accepted.

9) In order to appreciate the rival arguments, it would be useful to refer to the contents of the award. The claim of the workmen is that they were appointed as Casual Mazdoor under the control of petitioners with effect from 02.01.1986 and since then they are working in the said post without any complaints. It is stated that without giving temporary status and regularization in terms of the policy, their services were terminated from 29.04.1998 on the ground that they have submitted bogus work days certificate. The same was challenged before the Central Administrative Tribunal and later before this Court in W.P.No.21586 of 1999 and this Court suspended the termination orders. The said writ petition along with batch was disposed of on 22.11.2000.

¹ (2010) 9 SCC 247

² (2015) 8 SCC 265

³ (2006) 4 SCC 1

⁴ (1999) 3 ALD 644 (D.B.)

10) It is their case that though they have completed more than 240 days service in a year, but the authorities deprived the benefit of temporary status and regularization in terms of policies and directions of the Apex Court. It is also stated that the petitioners regularized the services of similarly situated persons namely Ch. Subbareddy, N. Shyam Sundar Rao and G. P. Rangaiah, who have also filed writ petitions along with them.

11) The petitioners herein denied the claim of the workmen that they worked in R.E. Projects. Vide letter dated 17.07.1990 the Railway Electrification Authorities of Nagpur, furnished the working period of the workmen as nil. Hence, the plea of workmen that they were engaged in the Railway Electrification Project is false. As such their services were terminated by issuing notice. It is also admitted that the workmen approached the Central Administrative Tribunal and also this Court. It is also stated that the claim of the workmen could only be considered on their engagement as casual labour subject to availability of vacancy with reference to their age and qualification. It is stated that the workmen are not entitled for seniority or consequential benefits since their engagement was afresh, as per the orders of this Court.

12) As stated earlier, the main ground urged by the learned counsel for the workmen is that one Subbareddy, who was similarly placed as that of the workmen, was given temporary

status and his services were regularized as casual labour and subsequently promoted as telephone mechanic.

13) A perusal of the impugned award would show that in support of their claim, the workmen in I.D.No.111 of 2004, examined himself as WW1 and got marked Exs.W1 to W6. In I.D.No.112 of 2004, the workmen examined himself as WW1 and got marked Exs.W1 to W4. As against this, the writ petitioners/ management produced MWs.1 and 2. MW.1 could not be produced for cross-examination as such his evidence was eschewed. Then the affidavit of MW.2 came to be filed and number of documents came to be marked. In the cross examination MW.2 admitted that he does not know the confirmation of temporary status of Subba Reddy, Shyam Sunder, Sudhakar Reddy and G.P.Rangaiah and their absorption.

14) Placing reliance on the documents, it was urged that the workmen are alleged to have filed false and fake certificates which lead to their termination. But it is to be noted that against the orders of the termination, the workmen approached the Central Administrative Tribunal and thereafter filed writ petitions before this Court. Ch.Subba Reddy filed W.P.No.23456 of 1998, while the workmen herein filed W.P.Nos.21586 of 1999 and W.P.No.21579 of 1999. A common order came to be passed on 22.11.2000 allowing the writ petitions holding as under:

“The petitioners have worked as casual labourers (Mazdoor) under the respondent-management for such

a long period ranging from 1985-86 till date, though pursuant to the interim direction granted by this Court, and many of them might have already crossed the age eligibility and without taking into consideration the genuineness or otherwise of the certificates produced by them, it is now ordered that the respondent-management shall engage these petitioners afresh as casual labourers from this day and pay them the wages and other emoluments payable to the casual labourers from this day. Regarding regularization of these petitioners, it shall depend upon the future exigency, any scheme to be launched by the management, the suitability to the workmen, etc.”

15) The impugned order would show that Ch.Subbareddy, who was similarly placed as that of workmen and who is also alleged to have produced false certificate regarding his service before Railway Electrification, Nagpur, was initially given temporary status, which was later regularized and then promoted as telephone mechanic.

16) In *M.V.Chalapathi and another v. Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad and others* (4 *supra*) this Court observed that no discrimination can be shown among the employees in regularizing them from a particular date by pick and choose method. It is further held that when a writ petition is filed by some of employees seeking regularizing from a particular date, the Corporation did not oppose it and it cannot refuse to give the same benefits to the persons, who are similarly placed.

17) Coming to the case of contract labourers, the Apex Court in *State of Karnataka and others v. M.L.Kesari case (1 supra)* while referring to Para No.53 of Umadevi case (3 supra) held as under:

“The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons on daily-wage/ ad-hoc/ casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within sixmonths of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.”

18) In *Amarkant Rai v. State of Bihar and others*(2 supra) the Court again refer to the judgment of the Apex Court in *Umadevi* case (3 supra) held as under:

“As noticed earlier, the case of the appellant was referred to Three Members Committee and Three Members Committee rejected the claim of the appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in *Umadevi's* case (supra). In *Umadevi's* case, even though this Court has held that the appointments made against temporary or ad-hoc are not to be regularized, in para 53 of the judgment, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken one time measure to regularize them.

In para 53, the Court observed as under:- "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 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 the courts or of tribunals. The question of regularisation 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 aboveresferred 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 regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

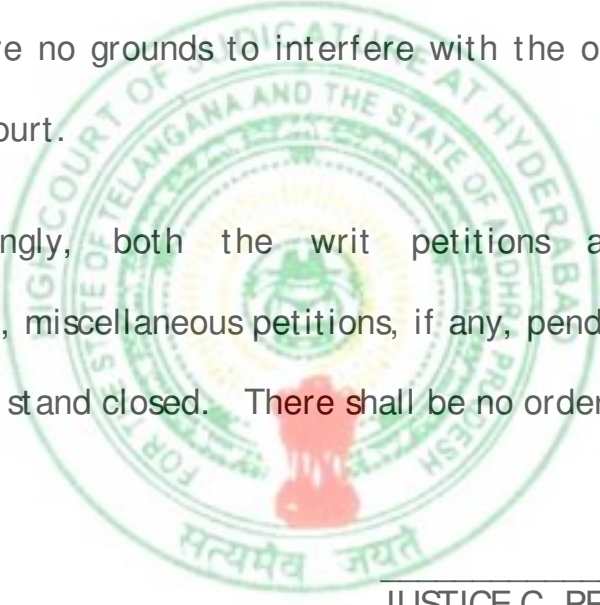
The objective behind the exception carved out in this case was prohibiting regularization of such appointments, appointed persons whose appointments is irregular but not illegal, ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years.”

19) Form a reading of the judgments referred to above it is clear that if the case of the workmen stand on the same footing as that of the other employees, who were given temporary status and whose services have been regularized, the request of the workmen cannot be rejected. In the instant case, the allegation of submitting false certificates was also made against Subba Reddy, but he was given temporary status, then his services were regularized and later promoted as telephone mechanic.

Therefore, the findings of the Labour Court on this aspect cannot be said to be perverse or illegal, warranting interference. Secondly, the workmen herein entered into service in the year 1986 and since then they have been working on contract basis without any blemish or break and they have worked more than 240 days continuously in a year.

20) Having regard to the judgment of the Apex Court in Umadevi case (3 supra), this Court is of the view that their services need to be regularized. Viewed from any angle this Court is of the view that there are no grounds to interfere with the order passed by the Labour Court.

21) Accordingly, both the writ petitions are dismissed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.



JUSTICE C. PRAVEEN KUMAR

17.03.2017
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