

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.21603 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioners against the 1st respondent-Andhra Pradesh State Road Transport Corporation (APSRTC) represented by its Managing Director and its other officers is filed to direct the respondents to regularize the services of the petitioners from the dates of their respective initial appointments and grant consequential benefits including pay fixation and arrears of pay.

2. I have heard the submissions of *Sri P.Govindarajulu*, learned counsel appearing for the petitioners and of *Sri S.V.Ramana*, learned Standing Counsel appearing for the respondents/ Corporation. I have perused the material record.

3. The case of the petitioners and the submissions made on their behalf, in brief, are as follows: "The petitioners were initially appointed as Sweepers/ Scavengers/ Cleaners in the Corporation in the years 1982-83 on daily wage basis; and thereafter, their services were regularized in the years 1986-87 after a lapse of 3 to 4 years. All the petitioners were selected by a Selection Committee and were appointed under the scheme of deceased employee's spouse/ children quota. They were all appointed in clear vacancies on casual basis. Though they have completed 240 days of service, their services were not regularized. The respondents regularized the services of the petitioners after lapse of 4 to 5 years instead of, from the respective dates of initial appointments of the petitioners. The cases of some of the employees who were juniors to the petitioners and who were similarly placed as the petitioners were considered and such junior employees' services were regularized from the dates of their respective initial appointments. One such case is of, Mohd. Ibrahim S/o Ghouse Mohinddin; he was initially appointed, on 30.11.1983, with

Employee No.108119 at RS/ Vizianagaram and his services were regularized with effect from 30.11.1983, i.e., from the date of his initial appointment though he was junior in service to the petitioners herein. Thus, the cases of the petitioners were ignored for such similar consideration. The petitioners made representations for regularization of their respective services from the dates of their respective initial appointments. There is no justification on the part of the respondents in not considering the case of the petitioners for regularization from the dates of their respective initial appointments and in considering cases of the other individuals, who are juniors to the petitioners, for such regularization from the dates of their respective initial appointments. On account of such discrimination, the petitioners herein suffered financial problems and loss of salaries and were deprived of promotions to which they were eligible. Hence, this writ petition is filed.”

4. The case of the respondent-Corporation, as stated in the counter affidavit of the Law Officer, in brief, is this: The petitioners were engaged on casual basis under the deceased employee's spouse/ children quota. Their details are as follows:

Sl. No.	Name	Date of initial engagement
1.	Ch. V. V. A. Swamy	16.09.1982
2.	C. D. Saiamma	16.09.1982
3.	D. Rambabu	12.12.1983
4.	C. Raju	13.12.1983
5.	K. A. K. V. Raju	25.11.1983
6.	K. Suri Babu	22.02.1982
7.	M. Bangara Raju	13.12.1983
8.	L. V. Ramana	16.09.1982
9.	K. Satrughana Rao	16.09.1982
10.	V. Nagamani	16.09.1982
11.	G. Varahamma	13.07.1984

The Selection Committee consisting of Works Manager, Regional Workshop, Vizianagaram, Controller of Stores, Vizianagaram, and Personnel Officer, Regional Workshop, Vizianagaram, met, on 15.05.1986, and interviewed under Phase-III for decasualization and selected them except the candidates mentioned at serial Nos.4, 7 and 11 since their names are not included in the

approved list of the Head Office. The Regional Manager approved the list of casual Sweepers/ Scavengers selected by the Selection Committee consisting of the Personnel Officer, office of the Regional Manager, and communicated the list through his letter dated 01.08.1986 directing to regularize their services as indicated against each individual with effect from 18.08.1986 and stated that they may be appointed on pay of Rs.340/- in the time scale of Rs.340-10-430-15-505-20-565 with usual allowances admissible from time to time, as per rules in force. As per the orders of the Regional Manager, Vizianagaram, the Personnel Officer, Regional Workshop, Vizianagaram, issued order dated 19.08.1986 decasualizing their services with effect from 19.08.1986. The Head Office has decided to regularize the services of the casual employees who completed 240 days as on 31.12.1983 and also existing casual labour on rolls as on 31.03.1984 in III Phase and the eligible list of casuals for decasualization has been sent by Head Office in Annexure A & B of Circular, dated 13.02.1986. Further, in the circular it was stipulated that the regularization should be restricted only to those casual labour, whose names are found in Annexure A and B. Accordingly, the Selection Committee met, on 15.05.1986, and selected 21 casual Sweepers/ Scavengers/ Khalasis, as per Circular No.PD-20/ 1986, dated 13.02.1986, and issued proceedings. One Md. Ibrahim S/o Ghouse Mohiuddin was one of the candidates among the selected casuals who were initially decasualized with effect from 19.08.1986 along with some of the petitioners as per the orders, dated 01.08.1986, of the Regional Manager, Vizianagaram, communicated by the Personnel Officer, office of the Regional Manager, Vizianagaram. Basing on the directive received from the Regional Manager, Vizianagaram, the order dated 19.08.1986 was issued. Only as per the orders of the Executive Director, one Md. Ibrahim was decasualized with retrospective effect. The petitioners did not choose to give any representation to the competent authority. Only one E.D.Sayamma, the 2nd petitioner herein, made a representation, dated 21.05.2001. The same was rejected, by order dated

02.08.2005. The petitioners raised this issue after a lapse of 20 years. Therefore, the writ petition is liable for dismissal on the ground of laches only. The allegations that the petitioners are facing financial problems and they are deprived of their promotions and that they are entitled for regularization of their services from the dates of their initial appointments are not correct. The services of Md. Ibrahim, who was appointed along with the petitioners, were regularized in the post of Khalasi from the date of his initial appointment considering his representations, dated 01.02.2000 and 19.12.2000, after examining the circular instructions on the subject. There are no representations as such from the petitioners to the authority. Further, Md. Ibrahim was promoted to the post of routine Clerk depending upon his qualification after his services were regularized as he possessed the requisite qualifications for promotion even prior to his joining in the Corporation. Except Sayamma, C.Raju, V.Nagamani and G.Varahalamma, i.e., petitioners 2, 4, 10 and 11, the remaining petitioners have been promoted to the higher post by virtue of their passing Trade Test etcetera and they have been enjoying all other financial benefits, viz., monthly incentives and other financial benefits in addition to the salary as admissible from time to time. Therefore, the petitioners are not put to any financial loss. The writ petition may be dismissed.

5. The learned counsel for the petitioners and the learned Standing Counsel made submissions in line with the pleadings of the parties, which are extracted supra.

6. I have bestowed my attention to the facts and the submissions.

6.1 The particulars of the petitioners with regard to their respective dates of appointments and regularizations, as mentioned in the counter, are as follows:

S.No.	Name of the Party	Employee No.	Date of Appointment	Regularized Date
1.	C.H.V.V.A.Swamy	108110	16-9-82	19-8-86
2.	C.D.Saiamma	108121	16-9-82	19-8-86
3.	D.Ramababu	108118	12-12-83	19-8-86
4.	C.Raju	450346	12-12-83	17-10-86
5.	K.A.K.V.Raju	108114	25-11-83	19-8-86
6.	K.Susribabu	108115	25-11-83	19-8-86
7.	M.Bangaraju	450347	12-12-83	17-10-87
8.	L.V.Ramana	102289	15-9-82	04-07-85
9.	K.Strughna Rao	108111	16-9-82	19-8-86
10.	V.Nagamani	108105	16-9-82	19-8-86
11.	G.Varahamma	458489	22-6-91	1-4-92

As per the statement in the counter of the respondents, the petitioners 2, 4, 10 and 11 having not possessed required qualifications and having not passed Trade Tests etcetera are not eligible for promotion. However, the other petitioners are promoted and their present designations, as per the averments in the counter, are as follows:

S.No.	Name	Staff No.	Present Designation	Unit
1.	Ch.V.V.A.Swamy	108110	Trimmer	VZM Depot
2.	D.Rambabu	108110	Mechanic	ZWS: VZM
3.	K.A.K.V.Raju	108114	Coach Builder	ZWS: VZM
4.	K.Suri Babu	108115	Mechanic	Waltair Depot
5.	M.Bangarraju	450357	Vulcanizer	TRS: VZM
6.	L.V.Ramana	102289	Coach Builder	Ravulapalem
7.	K.Satruguna Rao	108111	Hammer Man	Ravulapalem

7. From the facts and submissions, it emerges that one Ibrahim, whose case the petitioners have referred to in their pleadings, and the petitioners were all initially decasualized with effect from 19.8.1986 along with some others. The services of the petitioners were regularized on the dates mentioned in column No.(5) in the table No. 1 [out of the two preceding tables] supra, but not from the dates of their respective initial appointments. Whereas, the services of the said Mohd. Ibrahim were regularized from the date of his initial appointment is not in dispute. The reason for such singular consideration of the case of Mohammed Ibrahim as per the averments in the counter of the respondents is that he made representations on 01.02.2000 and 19.12.2000 and, therefore, as per the orders of the Executive Director, dated 31.01.2001, and as per circular

instructions his decasualization and regularization were done with retrospective effect from the date of his initial appointment. The respondents also contend that since the petitioners herein did not submit such representations, their cases were not considered for regularization from the dates of their respective initial appointments. Be that as it may, the 2nd petitioner, Sayamma, made a representation, dated 21.05.2001, is not in dispute. However, her representation was rejected by an order dated, 02.08.2005, without considering her case on par with the said Ibrahim. In this context, it is necessary to refer to the Official Memorandum issued by the Executive Director (Administration), which reads as hereunder:

ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION

Office of the Managing Director
Mushirabad, Hyderabad -20

No.P1/684(13)/95-PO (IV)

Dt.12-12-1995

MEMORANDUM

Sub: RECRUITMENT –Recruitment of Children/Spouse of employee died in harness against Direct Recruitment posts – Appointment of selected persons on regular basis in next available vacancy –Instructions reiterated –Reg.

Ref: 1) Circular No.64/1988, dt.13-7-1988
2) Circular No.135/1989, dt.18-10-1989.

* * *

In accordance with the existing instructions, whenever a case of dependent of employee died in harness is considered for suitable post under Bread Winner Scheme, the appointment has to be made on regular basis and in the first available vacancy. The objective of these instructions is to come to rescue of the bereaved family in the shortest possible time.

It has come to the notice of the Head Office that in some cases the dependants of employees died in harness are being appointed on casual basis. It has also come to the notice that the applications of dependants of employees died in harness are registered and recruitment is being done only along with others in spite of having clear sanctioned vacancies.

It is therefore, reiterated that the case of dependant of employee died in harness shall be considered in accordance with the existing instructions and appointed against the first available vacancy. Once the dependent of employee died in harness is found suitable for the post, appointment shall be made on regular basis, but not on casual basis.

These instructions shall be adhered to strictly.

Sd/-
Executive Director (Admn.)

The contents of the above memo clearly make it manifest that whenever a case of dependant of an employee, who died in harness, is considered under the 'Bread Winner Scheme', the appointment has to be made in accordance with the existing instructions and on regular basis and in the first available vacancy. The said memo was issued as it has come to the notice of the Head Office that in some cases, the dependants of employees, who died in harness, are being appointed on casual basis. As the case of the petitioners herein stands on the same footing as that of Ibrahim, the respondents ought to have extended the same benefit to the petitioners, which was extended to the said Ibrahim; and the petitioners' services ought to have been regularized with retrospective effect from the dates of their respective initial appointments. When there are clear instructions that initial appointments have to be made on regular basis, but not on casual basis, on the ground that the representations were not submitted by the petitioners, their cases for regularization from the dates of their respective initial appointments cannot be denied. On the above analysis, this Court finds that the petitioners are entitled to regularization of their services from the dates of their respective initial appointments.

8. Before parting with the case, it is to be noted that admittedly, the petitioners approached this Court in the year 2006 by way of this writ petition. Considering that this writ petition was filed nearly after lapse of 20 years after the initial appointments of the petitioners in the years 1982-1983, the learned Standing Counsel for the respondent Corporation vehemently contended that the writ petition is liable for dismissal on the ground of laches and delay. He placed strong reliance on the decision in P.V. Narayana and Ors. etc. etc. Vs. A.P. State Road Transport Corporation and Ors. etc¹ wherein a Full Bench of this Court held as follows:

From the decisions of the Supreme Court, it is seen that no limitation is prescribed for filing a petition under Article [226](#) of the Constitution and there is no rule of universal application for

¹ 2013 (3) ALT 711

condoning the delay. Though there is no period of limitation prescribed for filing a petition under Article [226](#), a person aggrieved should approach the court without loss of time and if there is delay, then cogent explanation should be offered for the same. The line of decisions of the Supreme Court on the issue would be indicative that the Courts have evolved self imposed restraints in enquiring into belated or stale claims. Though it is open to the High Court to exercise its own discretion to grant any relief in stale or belated claims, before going to exercise such discretion, the Court has to enquire whether the party is guilty of laches for a reasonable period of delay in approaching the Court. The exercise of such discretion would depend upon different circumstances and facts and may be different from case to case. In a case delay of six months or so may be treated as inordinate and fatal in the facts and circumstances of the case and the Court may decline to condone the delay but in another case delay of five years or so though may be treated as inordinate but not fatal in the fact situation the Court may condone the delay as an exception to meet the ends of justice. Therefore, it all depends upon facts of each case.

9. In the case on hand, as already noted, the memo was issued in the year 1995. Further, in the case of Mohd. Irbahim, the order, dated 31.01.2001, reads as follows:

“Having gone through the above recorded evidences and Circulars as there are clear instructions that the dependent of the deceased shall only be appointed on regular basis, but not on casual basis; the Executive Director, Vizianagaram zone has ordered that the services of Sri Md. Ibrahim, E.108119 (presently working as Routine Clerk) be regularized w.e.f 30.11.1983 retrospectively in the post of Khalasi and allowed all consequential benefits.”

Having come to know of the benefit extended to Ibrahim, one of the petitioners made a representation on 21.05.2001 claiming similar benefit. The same was rejected by order dated 02.08.2005. Therefore, the petitioners approached this Court in the year 2006. Therefore, the contention of the respondents that there is delay on the part of the petitioners cannot be countenanced. Moreover, when there is a circular and also clear instructions for appointment of the dependant of the deceased employee, who died in harness, on regular basis, but not on casual basis, the respondents ought to have regularized the services of the petitioners on their own accord without insisting on any representations from them.

10. On the above analysis, this Court finds that the writ petitions are entitled to succeed and their writ petition deserves to be allowed. Be it noted

that some of the petitioners having attained the age of superannuation have retired from service while some others are still working in higher posts on promotions. However, the services of the petitioners who retired from service also can be regularized for extending notional service and actual monetary benefits.

11. In the result, the Writ Petition is allowed and the respondents are directed to regularize the services of the petitioners herein with retrospective effect from the dates of their respective initial appointments in their respective initial posts and to extend all consequential benefits as was done in the case of Mohd. Ibrahim.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

20th March, 2017
RAR



M. SEETHARAMA MURTI, J