

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No 26770 of 2010

Date : 8.6.2017

Between :

G Sankaraiah S/o G Mallaiah
O/o S.E Operations, APSPDCL,
Kadapa and others

Petitioner

And

The CMD, AP Transco, Vidyut Soudha, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioners were engaged as Watchman cum Security Guard for various purposes mentioned in the affidavit filed in support of the writ petition. First petitioner was engaged on 1.5.1988, second petitioner was engaged on 1.6.1989 and so on. It appears petitioners are engaged through a contractor, however, petitioners continued to work in various posts they are engaged and in this writ petition petitioners seek direction to regularize their services as Watch and Ward Personnel/ Security Guard or any other post and pay them allowances as payable to any other regular service employee.

2. Heard learned counsel for petitioners and learned standing counsel for respondent company.

3. Learned counsel for petitioners submitted that though petitioners services were utilized through contractor but that is only a camouflage and they have been continuously working with the respondent company and respondent company is their employer. Duties and responsibilities entrusted to them are of perennial nature and respondent company requires watch and ward staff permanently so long as company continues its activities. All the petitioners are qualified, however, though their services are continuously engaged and though they have been rendering their services without any blemish, they are being paid paltry amounts as wages and they are not granted other service benefits as applicable to regular employees.

4. He further submits that the respondent company is governed by the Contract Labour (Regulation and Abolition) Act, 1970; that contract employment is prohibited and there cannot be any employment on contract basis. In spite of abolition of the contract labour system, respondent company continued to resort

to the contract employment method only to avoid conferment of service benefits to petitioners.

5. He further submits that earlier persons similarly situated to petitioners have invoked the jurisdiction of this Court by filing W P No. 29592 of 1998, learned single Judge did not grant relief in favour of petitioners therein, aggrieved thereby, petitioners filed W A No. 1478 of 1998. Following the principle laid down by the Supreme Court in Secretary, H.S.E.B.Vs. Suresh¹, Division Bench allowed the writ appeal and authorities were directed to consider the cases of the appellants therein for absorption and regularization as watch and ward/security guards. Learned counsel for petitioners submitted that the said judgment was affirmed by the Supreme Court and consequently their services were regularized. He further submits that similar issue has come up for consideration in W P No. 21947 of 1999 and following the earlier Division Bench judgment (supra), writ petition was allowed and respondents were directed to take up the case of the petitioners and other similarly placed employees for regularization against the vacant post of watchmen/security guard. Following the judgment of the Division Bench in W A No. 1478 of 1999, Writ Appeal No. 615 of 2013 preferred against the orders passed in W P No. 21947 of 1999 was dismissed by judgment dated 25.7.2013. S.L.P. (Civil) No. 11910 of 2014 preferred against said writ appeal judgment was dismissed by the Supreme Court by order dated 28.4.2014. Said judgment was also implemented. He would submit that even though learned single Judge directed to grant similar benefits to all similarly situated persons but the same are denied compelling the petitioners to invoke the jurisdiction of this Court.

6. The claim of the petitioners is opposed by respondents on the ground that the company has not engaged the petitioners; contract was entered into with a contractor for watch and ward of the respondent company offices and contractor engaged the petitioners and as the petitioners are not engaged by company and

¹ 1999 (3) SCC 601

they were engaged by contractor in pursuant to the contract entrusted to the contractor, claim for regularization cannot be granted.

7. Learned standing counsel reiterated the stand of the respondents and contends that since petitioners' services are utilized by the contractor, they cannot claim regularization. He would further submit that there are no regular vacancies of the posts in which petitioners claimed to have been working. Thus issue of regularization does not arise.

8. Facts on record make it clear that petitioners are engaged on contract basis as watch and ward staff. It is not in dispute that watch and ward staff services are required continuously for the respondent organization. Thus, duties and responsibilities entrusted to petitioners are of perennial nature. The only premise on which claim of the petitioners is opposed by the respondent company is petitioners were engaged through contractor. This very issue was considered by the Division Bench in W A No. 1478 of 1999. Following the decision of the Supreme Court in Suresh, Division Bench observed that statutory body should not be permitted to violate the statute with impunity and same would amount in unfair labour practice. Division Bench observed that only to avoid the statutory liabilities, the respondent company put-forward an argument that appellants are engaged as watchmen under a contractor. Division Bench further observed that corporation cannot be permitted to employ contract labour against a regular post especially when the work is of perennial nature. consequential directions were issued to regularize their services. Similar view is taken by learned single Judge in W P 21947 of 1999, which view is now affirmed and writ appeal as well as S.L.P are dismissed. In fact, learned single Judge has directed consideration of regularization of all similarly situated employees.

9. It is the categorical assertion of the learned counsel for petitioners that petitioners are similarly situated to the petitioners in the earlier round of litigation, whereas, the relief is granted to only to those persons and petitioners

are driven to the Court for no fault of them. This specific assertion of the petitioners is not denied.

10. The principle laid down by the Division Bench in Writ Appeal 1478 of 1999 has attained finality and same principle applies to the petitioners and petitioners are entitled to similar relief as granted to the writ appellants therein. Having regard to the directions issued by this Court in W P No. 21947 of 1999 which directions have become final, action of respondents in not extending the benefit of regularization to all similarly situated persons and compelling the individuals to invoke jurisdiction of this Court cannot be appreciated. The respondent company, being a company involved in public service and a wing of the State, should stand as a model employer and cannot be permitted to resort to such kind of tactics and force individual employees to litigate on the issue which has become final.

11. It is also not in dispute that petitioners have been working for the last more than 20 years; no adverse remark against them is placed on record. Thus, it can be safely concluded that they have rendered satisfactory service all along and service rendered by them is perennial in nature.

12. The writ petition is allowed. Respondents are directed to consider the cases of the petitioners for absorption and regularization as Watch and Ward /Security Guards as expeditiously as possible, preferably within a period of two months from the date of receipt of copy of this order. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 8.6.2017
TVK

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