

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.2807, 2832, 2833, 2889 & 2892 OF 2011

Date: 04.07.2017

W.P.No.2807 of 2011:

Between:

The Managing Director, A.P. Central Power
Distribution Co.Ltd., Vidyut Soudha,
Somajiguda, Greater Hyderabad and another.

.....Petitioners

and

J.Venkata Ramana, S/o. J.Venkatesulu,
Aged about 46 years, Occu: Employee,
r/o D.No.5/235, V Road, Anantapur Town]
and District and another.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.2807, 2832, 2833, 2889
& 2892 OF 2011

COMMON ORDER:

A.P. Central Power Distribution Company Limited (the company) challenges the common order passed by the Industrial Tribunal-cum-Labour Court, Anantapur, on 14.09.2009 in E.P.Nos.13 to 16 of 2002 and 402 of 2003, directing the company to pass order of regularization of services of the petitioners therein (party respondents in these writ petitions) as prayed by them.

2. Heard Sri K.R.Koteswara Rao, learned counsel for petitioner company, Sri Nuthalapati Krishna Murthy, learned counsel for respondent-employees and learned Government Pleader for Labour Department (AP) for respondent No.2.

3.1. Learned counsel Sri K.R.Koteswara Rao, for petitioners, contended that Labour Court exceeded its jurisdiction in grant regularization of services in execution petitions filed seeking implementation of the award passed. The original dispute raised was against the termination of services. Labour Court declared the termination as illegal, directed reinstatement with continuity of service, but denied back-wages and attendant benefits, but there was no direction to grant regularization of services. Thus, in Execution Petition, Labour Court cannot direct regularization of services, which is not the claim in the industrial dispute.

3.2. He further pointed out that the prayer sought in the Execution Petition was enforcement of the award. Labour Court formulated the question for consideration as to whether the

judgment-debtor can be directed reinstatement of the Decree-holder with continuity of service. Contrary to the point determined for consideration, Labour Court gave direction to regularize. He, therefore, contended that the Labour Court traveled beyond the award and exceeded the jurisdiction in granting relief, not even sought in the execution petition.

3.3. The workmen were originally employed by the agency. However, in view of the findings recorded by the Labour Court and affirmed by this Court and Supreme Court, the workmen were inducted into service of the petitioner-company and granted appropriate benefits to which they are entitled. The claim of regularization of services is entirely different from the alleged illegal termination and consequential benefits. He would submit that claim of regularization is not consequential to the award passed and, therefore, no such direction could have been issued. He submitted that temporary employees' regularization is prohibited by the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 1994). The exemption granted by the Act is to the persons who had completed five years of service by 25.11.1993 and grant of regularization shall be subjected to fulfillment of other conditions mentioned in the Scheme and workmen have not fulfilled the said conditions and, therefore, they are not entitled to regularize their services.

3.4. In support of his contention that no direction for regularization of illegal appointments can be given by the Courts, he placed reliance on the decisions of the Supreme Court in,

Divisional Manager, A.P.SRTC and others v. P.Lakshmoji Rao and others¹, Secretary, State of Karnataka and others v. Umadevi and others², Gangadhar Pillai v. Siemens Ltd³ and State of M.P. and others v. Lalit Kumar Verma⁴.

4.1. Per contra, learned counsel for workmen Sri Nuthalapati Krishna Murthy contended that having regard to the history of litigation, the direction issued by the Labour Court has to be seen. In the long drawn litigation, the workmen have been fighting against their illegal termination and grant of consequential benefits since the year 1991. They were subjected to several rounds of litigation. In spite of directions issued, there was delay in payment of wages, reinstatement into service and to grant consequential benefits. The petitioner-company accepted to provide suitable employment and employment is provided. Since termination of workmen services were held to be illegal, workmen are entitled to entire service from the date of their appointment as continuity of service and what is directed has to be seen as granting of benefits by treating the service as continuous. The officer representing the company admitted before Labour Court to provide suitable employment. Taking note of the correspondence brought on record the direction was issued. He therefore submitted that there is no illegality committed by the Labour Court in directing regularization of services.

4.2. The direction granted by the Labour Court has to be seen having regard to the history of the litigation. He therefore

¹ (2004) 2 SCC 433

² (2006) 4 SCC 1

³ (2007) 1 SCC 533

⁴ (2007) 1 SCC 575

submitted that principle laid down by the Supreme Court against regularization of services, has no application. In the cases on hand, workmen appointment was not illegal. Therefore, the said decisions are not applicable to the facts of these cases.

4.3. He has drawn the attention of this Court to the findings recorded by the learned single Judge in the judgment in W.P.No.24052 of 1996 and batch, which were filed against the orders in M.P.Nos.13 of 1991 and ID Nos.120 of 1991 and batch. He submitted that as corollary to setting aside the termination of service and granting of continuity of service, the entire service of the workmen has to be treated as regular and are entitled to all the consequential benefits.

5. The only issue for consideration in this batch of writ petitions is whether the direction issued by the Labour Court, impugned in these writ petitions, is in excess of jurisdiction of the Labour Court and whether Labour Court erred in directing regularization of services ?

6. To appreciate the rival submissions, it is necessary to scan through the litigation that has history of more than 25 years. The history of litigation unfolds as under:

6.1. Services of the employees, who are respondents herein, were terminated with effect from 01.03.1991. Aggrieved by the order of termination, industrial disputes were raised by them before the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.Nos.120 to 124 of 1991. The workmen claimed that they are the employees of petitioner-company and without following due procedure, their

services were terminated and the same is illegal. Petitioner-company opposed the claim of the workmen by contending that these workmen were not engaged by the petitioner-company; work was entrusted to private agency for preparing and issuing of electricity bills and workmen were employed by the private agency to undertake the job and, therefore, there is no relationship of master and servant between the petitioner-company and the workmen. Labour Court passed common award on 25.04.1996 holding that workmen are employees of the petitioner-company, that their termination is illegal and directed to reinstate them into service with continuity of service. However, Labour Court denied the back-wages and other attendant benefits.

6.2. During the pendency of the IDs, workmen also filed Miscellaneous Petitions under Section 33 (C) (2) of the Industrial Disputes Act to pay the amounts to them. In the award, Labour Court directed payment of amounts by applying the principle of equal pay for equal work and directed payment of arrears to the workmen.

6.3. Aggrieved by the award, petitioner-company filed W.P.Nos.25052 to 24058 of 1996 and 24060 of 1996. The said writ petitions were dismissed by judgment dated 10.03.1998, affirming the decision of the Labour Court. Aggrieved thereby, petitioner filed W.A.Nos.1645 of 1998 and batch. Those writ appeals were also dismissed by judgment dated 18.07.2000 affirming the decision of the learned single Judge. Petitioner filed Review WPMP No.889 of 2001 and batch seeking to review the decision in the writ appeals. The said review petitions were

dismissed by order dated 21.06.2001. Not satisfied with the concurrent findings of the High Court in the writ petitions and writ appeals, petitioner carried the matter to the Supreme Court. Supreme Court also dismissed the SLP No.2448 of 2003 by decision dated 13.04.2004. Thus, the award passed by the Labour Court on 25.04.1996 stood confirmed.

6.4. The workmen filed E.P.Nos.13 to 16 of 2002 and 402 of 2003 seeking implementation of the award passed by the Labour Court and attachment of the properties of the petitioner. On 26.09.2003, on elaborate consideration, Labour Court ordered implementation of the award. However, Labour Court extended the time for compliance of the direction issued in the award and to pay amounts mentioned in the EPs. The order passed by the Labour Court in E.P.Nos.13 to 16 of 2002 and 402 of 2003 were challenged before this Court in W.P.No.23256 of 2003 and batch. The plea raised by the petitioner was that the workmen were engaged by the agency, whereas claim for payments of amounts are made only against the petitioner and the same is illegal. In other words, it was contended that petitioner-company cannot be mulcted only. The said contention was rejected by this Court and dismissed the writ petitions by judgment dated 27.11.2003. Petitioner filed W.A.No.2178 of 2003 and batch challenging the decision of the learned single Judge. Division Bench dismissed the writ appeals by order dated 26.03.2004.

6.5. Petitioner-company filed E.A.No.8 of 2004 before the Labour Court on the common order dated 14.09.2009 in E.P.No.13 of 2002 and batch, seeking clarification from the Labour Court with

regard to mode of implementation of the award. The plea raised was, there are no corresponding posts in the petitioner company as compared to the post the workmen claimed to have worked under the agency. During the pendency of the said E.A., Labour Court directed the petitioner-company to furnish proposals of posts to which workmen were entitled, which are equivalent to the post of Billing Clerk. The workmen were also directed to furnish their educational qualifications. In response, the workmen furnished their qualifications and on behalf of the petitioner-company, Memo was filed giving particulars of Posts in which the workmen would be accommodated. It was suggested that alternative employment would be provided till vacancies arise in equivalent posts. Labour Court accepted the proposal to provide alternative employment of lesser in rank to that of Billing Clerk. Labour Court rejected the stand of the petitioner-company that wages payable under Section 17(B) of the Act be as applicable to the post offered and directed that they be paid as per the wages payable to the post of Billing Clerks. Labour Court further directed the petitioner-company that as and when the posts of Record Assistants or LDCs are available, the workmen should be immediately converted into those posts. This direction was made applicable to four workmen. Insofar as Mr. P. Hussain was concerned, Labour Court directed verification of his educational qualifications and appointing him to the post to which he was entitled and till such exercise was undertaken to appoint him as Watchman. Labour Court also held that workmen are entitled to all the benefits as per the award. The amount as directed by the Labour Court was paid. The workmen

were reinstated in pursuant to the order, dated 07.12.2004 by creating Supernumerary Posts.

6.6. The workmen filed MP Nos. 18 to 22 of 2005 under Section 33 (C) (2) of the Industrial Disputes Act to compute monetary benefits due to the workmen and to pay the same. By common order dated 23.09.2009, Labour Court allowed the petitions, however denied the payment of interest. Challenging the same, petitioner-company filed WP No.24928 of 2010 and batch. Though by order dated 05.10.2010, this Court granted interim stay of the orders passed, by judgment dated 28.01.2016, writ petitions were dismissed.

6.7. E.P.No.13 of 2002 and batch were finally disposed of by order dated 14.09.2009 directing the petitioner-company to regularize the services of the workmen, under challenge in this batch of writ petitions.

7. The history of the litigation as noted above would show that though Labour Court declared that workmen are employees of the petitioner-company and their termination was held illegal, directed reinstatement and granted continuity of services, the benefits flowing out of the award were not granted to them and they were made to fight litigation at every stage.

8. It is not in dispute that consequent to the directions issued by the Labour Court from time to time in the process of enforcing its award and after unsuccessful challenge before this Court and Supreme Court, three workmen were appointed as LDCs and two as Record Assistants. Record discloses that petitioner-company

filed E.A.No.8 of 2004 before the Labour Court, expressing difficulty in complying with the directions on the ground that posts which workmen claimed as working prior to the termination were not available and, therefore, not possible to induct them into service to the said posts. Labour Court called for proposals of posts to which workmen are entitled, preferably equivalent to the posts of Billing Clerks. The workmen were also directed to furnish their educational qualifications. Four workmen furnished their educational qualifications and, therefore, they were accommodated to the posts equivalent to the Billing Clerks. With reference to the fifth candidate, as he was not having requisite qualification, he was accommodated in lower post.

9. The petitioner-company sought to deny the wages applicable to the posts to which they were appointed. This stand of the petitioner company was rejected and Labour Court directed payment of pay and allowances under Section 17(B) as applicable to the post equivalent to the post of Billing Clerk only, for the period before their appointments to posts mentioned above and after the award was passed and accordingly, those amounts were also paid.

10. The assessment of events and the record would disclose that except on the issue of adjustment in appropriate posts, the petitioner-company never contested on the nature of appointment of workmen as daily wage/seasonal/contractual/contingent. The appointments of workmen were treated as regular. Mr. P.Hussain (party respondent in WP No.2889 of 2011) and Sri K.Srinivasan (party respondent in WP No.2892 of 2011) were promoted as Senior

Assistants and Mr. P.Hussain was allowed to retire from services on attaining the age of superannuation w.e.f. 31.12.2016, as applicable to the post of Senior Assistant, he was holding on that date. It is also appropriate to note at this stage, as informed by learned counsel for petitioner, Mr. G.Krishtappa, respondent in W.P.No.2832 of 2011 was removed from service by order dated 04.12.2013 on the ground of unauthorized absence/absenting from duties w.e.f. 19.02.2007. He was removed after following due procedure. These measures could not have been taken unless workmen are treated as regular employees.

11. Once continuity of service is granted by declaring the termination as illegal, it is deemed that the workmen are in employment continuously from the date/dates of their initial employment. The Labour Court only denied back-wages and attendant benefits. The denial of back-wages would mean that for the period of out of service the workmen are not entitled to claim the wages; attendant benefits would mean that grant of benefits that may flow as consequent to the grant of reinstatement and continuity of service. Thus, there is no dispute about the relationship of employee and employer between the petitioner-company and the workmen and their continuing in service as regular employees.

12. In view of the history of litigation, it cannot be said that the nature of appointment of workmen was on daily-wage or contractual. The question of regularizing their services would arise only if their appointments were not treated as regular and they were continued only on daily-wage/contract employees/contingent

employees. The findings recorded by the Labour Court and confirmed by this Court and the Supreme Court and affirmation of further directions issued by the Labour Court in EPs, it is crystal clear that their appointments are regular.

13. At this stage, it is also appropriate to note the statement made by the deponent in ground-iv of the affidavit filed in support of the W.P.No.2807 of 2011. It reads as under:

“iv. The 2nd respondent erroneously passed the impugned order under writ petition though the petitioners have complied with the award made in I.D.No.120/91 and batch by depositing a sum of Rs.3,04,207.25 and absorbed the 1st respondent along with 4 other workmen in to regular service by creating supernumerary post vide proceedings dated 28.01.2005, hence the impugned order is erroneous and unsustainable in the eye of law.”

14. Thus, the understanding of the petitioner all along is that the workmen have been working regularly against regular posts and were granted all the benefits to which they are entitled in terms of the award.

15. At this stage, it is useful to understand what is meant by word ‘regular’. Word ‘regular’ originated from French ‘reguler’ (=ecclesiastical guidance), latin ‘regularis’ (rules for guidance) and regula (rule) (Collins dictionary). It has different connotation depending on the situation/circumstance in which the word is used. In its origin in French, it is referable to religion. ‘Regular’ means ‘constant’ also. At this stage, definition of word ‘regular’ as defined in leading dictionaries may be noticed.

15.1. In **Dictionary.com, Collins Dictionary** and **Merriam Webster Dictionary**, word 'regular' is defined as 'usual; normal; customary (adjective)'.

15.2. 'Regular' is used to mean 'normal; officially qualified or recognized; a professional long term serviceman; a person who does something regularly (**Collins dictionary**).

15.3. In **Oxford English Dictionary**, it is recorded that word 'regularisation' is derivative of word 'regular'. It defines word 'Regular' as "properly trained or qualified and pursuing the full time occupation".

16. The issue of 'regularization' is considered in several decisions by the Supreme Court.

16.1. In **B.N.Nagarajan v. State of Karnataka**⁵, Supreme Court held as under:

"23. Firstly, the words "regular" or "regularisation" do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments.

16.2. In **R.N.Nanjundappa v. T.Thimmiah**⁶, Supreme Court held as under:

"26. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which

⁵ (1979) 4 SCC 507

⁶ (1972) 1 SCC 409

does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

16.3. The principle laid down in **B.N.Nagarajan** was re-affirmed by the Supreme Court in **Umadevi**. The word ‘regularisation’ is used in normal service law parlance to deal with contingency of making an appointment otherwise illegal as valid. This normal understanding and use of word ‘regularization’ need not be imported to the cases on hand. As noted from the definition of word ‘regular’, in the cases on hand, it is normalising the relationship of master and servant between petitioner-company and 1st respondent in each of the cases burying the litigative relationship of the past. Thus, Act 2 of 1994 and the decisions of the Supreme Court relied by the learned counsel for petitioner is not attracted.

17. Learned counsel for petitioner sought to contend that the prayer sought in EPs filed by the workmen was for implementation of the award, reinstatement of the workmen and payment of arrears payable to them. They did not ask for regularization of their services in EPs also. The point framed by the Labour Court was also not on the question of regularization and, therefore, Labour Court could not have granted regularization.

18. To appreciate this contention, it is useful to extract the observations made by the Labour Court in paragraph-12. It reads as under:

“12. Ex.W.10 is a letter from the Superintending Engineer (O), Anantapur to this Court to the effect that the petitioners are entitled to the post as mentioned in the said annexure attached to the said letter, P.Hussain who has got qualification of B.A., and Typewriting lower grade, he is working as Billing Clerk and he is entitled to the post of LDC/RC. So also, J.Venkataramana, P.Srinivasan, G.Krishtappa, who are graduates and are working as Billing Clerks. So far as S.Md.Salar qualification is shown as Intermediate discontinued and he is entitled to the post of Record Assistant. Ex.W.17 is a memo dated 16.12.2008 issued by Joint Secretary (I.R) to the Superintending Engineer (O), Anantapur directing the later to examine the representation of the decree holders wherein and for taking necessary action urgently as per rules and report compliance. Now there is no hurdle for R-2 Superintending Engineer (O) to pass necessary order as prayed for by the petitioner in the EPs for regularization of their services. By this order this Court directs the R-2 judgment debtor to regularize the services of the petitioner as mentioned by him in Ex.W.10 referred above within 30 days from the date of this order.”

19. Labour Court was referring to Ex.W-10. Ex.W-10 is a letter of Superintending Engineer (O), Ananthapur addressed to the Chairman cum Presiding Officer, Industrial Tribunal cum Labour court, dated 08.06.2010. Superintending Engineer informed the Labour Court the qualifications possessed by the workmen, their nature of work and their entitlement to the posts mentioned therein. Therefore, Labour Court observed that since all hurdles are removed and workmen were already appointed, there is no impediment in regularizing their services and, therefore, directed petitioner-company to regularize the services of the workmen as mentioned in Ex.W-10.

20. In this context, it is also useful to refer to the letter of very same Superintending Engineer addressed to the Chief General Manager (HRD) dated 22.01.2009. He informed the Chief General Manager for the payment of arrears of amounts to the workmen, reinstatement of the workmen and appointment of those workmen against various posts mentioned therein respectively. He refers to the request made by the workmen for regularization and continuing their services from the date of award passed and sought for instructions to avoid further legal complications.

21. Thus, by the time Labour Court finally disposed of EPs filed by workmen all stages of implementation was completed. Therefore, the Labour Court observed to grant regularization. The direction issued by the Labour Court, impugned in these batch of writ petitions, has to be seen in the back ground of the litigation and the understanding of the respondents on giving effect to the directions of the Labour Court. Thus, order of regularization passed by the Labour Court would mean treating the services from the date of their initial appointments as continuous and grant of service benefits flowing there from and not a case of regularizing the daily-wage/contractual appointment/ illegal appointment.

22. The true implementation of the award would mean treating the services from the date of initial appointment, ignoring the termination and the break in service during the pendency of the industrial disputes before the Labour Court and till its implementation as continuous and thus, regular. In other words 'normalizing' the relationship of employer and employee coming out

of litigative relationship and to integrate workmen into stream of employment, without further hindrance.

23. A narrow, pedantic approach is adopted by petitioner-company. Instead of accepting the award and giving quietus to the controversy, it went on litigating causing hurdles at every stage and subjecting the workmen to long drawn litigation spanning two and half decades. These writ petitions are instituted only magnifying the word 'regularization' used by Labour Court, ignoring the historical background of the litigation and their own statements extracted above and taking hyper technical objection. It is nothing but vexatious litigation thrusting on the workmen. Even assuming there is transgression by Labour Court or Labour Court erred in directing regularization, in the conspectus of facts and circumstances of these cases and fact that the litigation spanned more than two and half decades, this Court is not inclined to set aside the directions issued by the Labour Court on that ground. More so, except for urging that Labour Court could not have given such directions and referring to principles laid down in precedent decisions on the issue of 'regularisation', it is not shown how petitioner suffered adversely by the impugned directions and prejudice caused to the petitioner when petitioner treated the status of workmen as regular. Thus, on merits also no case is made out. However, it is suffice to note that ordinarily Labour Courts should not give directions which are not flowing out of the claims made by workmen.

24. I, therefore, see no error in the order passed by the Labour Court warranting interference by this Court. In the facts of this

case I am also of the considered opinion that the petitioner be saddled with costs for drawing the workmen to this Court without valid cause and resorting to litigation on sundry issues. It is an avoidable litigation pursued. The writ petitions are accordingly dismissed with costs of 5,000/- (Rupees five thousand only) in each of the writ petitions, payable to respondent no.1 in each of the writ petitions.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

Date: 04.07.2017
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JUSTICE P.NAVEEN RAO



HON'BLE SRI JUSTICE P.NAVEEN RAO



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