

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.7528 of 2011

Date : 7.2.2017

Between :

J Peddaiah S/o Y Yesu
Chirala Depot, Prakasam dist and others

Petitioner

And

The SPSRTC
Rep by VC & MD, Bus Bhavan
Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Heard Sri M.Ravindranath Reddy, learned counsel for petitioners and Sri P.Durga Prasad, learned standing counsel for APSRTC for respondents.

2. Petitioners were selected and appointed as daily wage conductors between 10.4.1986 to 5.11.1986 respectively. However, their services were regularized with effect from 1.8.1987. Praying to grant retrospective regularization from the dates of their initial appointment, petitioners and 13 others have filed W.P No. 20135 of 1996. The said writ petition was disposed of by order dated 24.9.1996 by following the orders of the Division Bench in W.A No. 705 of 1995 dated 24.7.1995. By order dated 26.2.1997 respondent corporation granted regularization to all the petitioners from 1.3.1987 only, though their claim was from an interior date. 5 out of 18 petitioners in the writ petition, filed C.C. No. 2011 of 1999 alleging non compliance of the directions of the learned single Judge. At that stage, respondent corporation filed W.A. No.786 of 2000. It appears, initially there was an order of status quo but finally the writ appeal was disposed of by order dated 25.7.2005 by following the directions issued by Supreme Court in **DIVISIONAL MANAGER, A.P.S.R.T.C Vs. P.LAKSHMOJIRAO AND OTHERS**¹. This was subsequently modified by order dated 18.11.2005 in WAMP No.3785 of 2005. Aggrieved thereby, respondent Corporation filed SLP No.3761 of 2016. No interim order was granted in favour of the Corporation and the said SLP was finally dismissed by common order dated 2.8.2013.

¹ (2004) 2 SCC 433 = 2004 (3) ALD 1 (SC)

3. Petitioners contend that by order dated 23.1.2006 retrospective regularization from the dates of initial appointment was granted in favour of 5 persons who filed CC No. 2011 of 1999, but same benefit was not extended to these petitioners. Provisional seniority list was drawn up in October 2010. Final seniority list was published in February, 2011. In the final seniority list, 3 out of 5 petitioners in whose favour retrospective regularization was granted were assigned seniority placement at serial Nos. 69, 76 and 79, whereas petitioners are shown at serial Nos. 366, 378, 336, 415 and 381 respectively. At this stage, petitioners filed present writ petition. Petitioners seek implementation of the directions passed by this Court in W.A No. 786 of 2000.

4. It appears there were several writ petitions instituted in this Court on the issue of retrospective regularization and against the directions issued by the learned single Judges, appeals were filed and thereon SLPs were also filed in Supreme Court.

5. In W.A.No.705 of 1995 Division Bench of this Court passed the following order:

“Heard learned counsel for the appellants and learned counsel for the respondents.

We do not think there is any mistake in the direction issued by the learned Single Judge except that a clarification is required to reckon the date of continuous appointment and thus regularization in the post held by the petitioner-respondents from the date of continuous appointment for the purpose of both emoluments as well as seniority.

We accordingly clarify that the date of initial appointment as indicated in the order of the learned Single Judge will be read as the date of continuous appointment as defined under Section 25-B of the Industrial Disputes Act. Such continuous service of the petitioner-respondents shall be counted for all benefits in the service in accordance with law.

With the clarification as above, the appeal is dismissed.”

6. In **P.LAKSHMOJI RAO**, Supreme Court found fault with the directions issued by the Division Bench in W.A.No.705 of 1995. Supreme Court held that the question of granting retrospective regularization did not arise since their appointment was not against regular vacancy; it was a daily wage appointment and appointments on regular basis were made as and when vacancies were available. However, having regard to the peculiar facts of the case, Supreme Court passed the following order:

“18. In view of this peculiar situation and in order to avoid the anomalies that might otherwise ensue, while we hold that the respondent employees have failed to establish their legal right to get the status of regular employees right from the date of their initial appointment on daily-wage basis and the respective dates of regularization assigned to the respondents cannot be legally faulted, we are inclined to mould the relief in modification of the directions given in the judgments under appeal and direct as follows:

If any of the conductors, junior to the respondents in the relevant seniority list of the concerned Division/Region, have got the benefit of seniority and regularization **OR** are entitled to get the same by virtue of the judgments that have become final, then the respondents who are seniors to them, shall be given the same benefit on the same principle.”

7. Some more writ petitions instituted before this Court were disposed of following the decision in **P. LAKSHMOJI RAO** and writ appeals filed by the corporation were dismissed. Corporation again went in appeal before the Supreme Court.

8. In case of **REGIONAL MANAGER, APSRTC Vs N SATYANARAYANA**², Supreme Court found fault with the subsequent decisions of this Court, misreading the directions issued by the Supreme Court in **P. LAKSHMOJI RAO**. Supreme Court found fault with the entertainment of the writ petition after long lapse of time from date of regularization granted.

² (2008) 1 SCC 210

9. By placing heavy reliance on the decision of the Supreme Court in **P. LAKSHMOJI RAO** and **N.SATYANARAYANA** learned standing counsel contended that petitioners are not entitled to claim retrospective regularization, as such regularization is not valid and therefore the writ petition is liable to be dismissed.

10. Learned standing counsel also contended that the writ petition is liable to be dismissed on the ground that claim made is belated and there are unexplained latches on the part of the petitioners in invoking the jurisdiction of this Court in the year 2011 asking for retrospective regularization from their respective dates of appointment in the year 1986. He also further submitted that the present writ petition is not maintainable as same issue was decided by this Court in earlier round of litigation and on that ground also writ petition is liable to be dismissed.

11. The short point for consideration is whether petitioners are entitled for grant of retrospective regularization from the dates of their initial appointment.

12. In the earlier round of litigation, petitioners have succeeded before this Court on their claim for retrospective regularization from the dates of their initial appointment and said decision has become final, after SLP was dismissed on 2.8.2013. Thus, in so far as petitioners and respondent corporation are concerned, inter-parte, that decision has become final and binding on both the parties. Thus, though, in subsequent decision, Supreme Court found fault with the decisions of Division Bench of this Court and held that retrospective regularization is not permissible and also dismissed the claims of some conductors similarly situated to petitioners on the ground of inordinate delay in invoking the jurisdiction of this Court, the claim in this writ petition cannot be rejected, in view of the earlier direction of this Court.

13. It is also appropriate to note at this stage that out of 18 petitioners, under the guise of pending contempt proceedings, retrospective regularization was granted to 5 petitioners who filed C C No. 2011 of 1999 in accordance with directions issued in WP NO. 20135 of 1996 and W A No. 786 of 2000. Thus, among the petitioners who are parties to WP No. 20135 of 1996 directions issued in their favour were implemented to some of them, but not implemented to others. Selective implementation is not justified. It also amounts to arbitrary and discriminatory treatment on the part of the respondent corporation on an issue which concerns all of them.

14. Further more, in this case, petitioners are only seeking for enforcement of the directions issued in the earlier round of litigation. Respondent corporation is bound by the said decision. Thus, it cannot lie in the mouth of learned counsel for respondent to raise the plea of non-maintainability of the writ petition on the grounds noted above.

15. In the instant case, plea of delay is also not attracted for one other reason. S.L.P No. 3761 of 2006 preferred by the respondent corporation against the orders in W A No. 786 of 2000 was dismissed on 2.8.2013 and only then the directions issued by Division Bench attained finality.

16. There is no bar for a person in whose favour decision is rendered to seek enforcement of the orders passed by instituting another writ petition. It is for the writ Court to consider the prayer having regard to the facts of the case. No doubt a person in whose favour Court has passed orders can complain of disobedience of the orders by invoking the provisions of the Contempt of Courts Act, 1971. But, the provisions of Contempt of Courts Act are to discipline the erring persons violating the orders of the Courts and it may result in conviction and/or sentence of such person but it does not result in granting relief to the petitioners.

Further, in the instant case, there was huge time gap between the directions issued by this Court in 2005 and petitioners asking for its implementation, which may also mitigate against instituting contempt case. In the peculiar facts of this case, the writ petition cannot be thrown out on the ground that the petitioners ought to have taken recourse to the Contempt of Courts Act. It would result in greater injustice. It does not lie in the mouth of respondent Corporation to raise plea against maintainability of the writ petition.

17. Thus, for all the above reasons, I see no justification in not complying with the directions issued by this Court. The writ petition is allowed accordingly. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:7.2.2017
TVK



P NAVEEN RAO,J

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