

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.7379 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner-workman-driver against the respondents-Corporation is filed questioning the action of the Corporation in regularising his services with effect from 19.04.1994, by proceedings, dated 19.04.1994, instead of with effect from 01.07.1992 on par with his junior colleague drivers viz., T. Ramulu, Y. Raghu, S. Kishan, P. Prabhakar and to direct the respondents to regularise the petitioner's service with effect from 01.07.1992, that is, from the date of completion of 240 days service from the initial date of joining service, that is, 22.05.1991 and grant him all consequential benefits.

2. I have heard the submissions of *Sri V. Narasimha Goud*, learned counsel for the writ petitioner, and of *Sri N. Vasudeva Reddy*, learned Standing Counsel representing the respondents. I have perused the material record.

3. The facts and chronological events that surface from the pleadings of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner joined the services of the Corporation as a driver, on 22.05.1991, after his selection as per due process. While working in the Corporation he was removed from service, on 24.09.1998, as per the orders of the Depot Manager, Sangareddy. He raised an industrial dispute in ID.No.27 of 1999 and filed a claim petition before the Labour Court-II, Hyderabad. By Award, dated 04.01.2002, the said order of removal from service was set aside and the Award was duly published in the Gazette of the Government on 22.02.2002. As per the Award, the petitioner was reinstated into service, on

08.03.2002, with continuity of service but without back wages. He was given notional increment benefit covering the period of removal. As he completed 314 days of service by 16.12.1992, he was requesting the management to regularise his services with effect from 01.07.1992, on par with his aforesaid colleagues. Such a request was made mainly on the ground that he had completed 240 days of service by 30.06.1992. In fact the other persons, who were regularised, completed less number of working days than the petitioner. The Corporation adopted a method of pick and choose and discriminated the petitioner.

4. However, the case of the Corporation is as follows:

The petitioner was engaged on daily wages as casual driver at Sangareddy depot with effect from 15.05.1992 vide proceedings, dated 19.05.1992. Subsequently his services were regularised on 19.04.1994 vide orders dated 19.04.1994 along with the services of the other employees namely V. Balraj, A. Narsimhulu, S. Kishan, P. Prabhakar and few others. The claim of the petitioner that he joined services, on 22.05.1991, is denied. The petitioner was removed from service, on 24.09.1998, on the ground of absenteeism. It is true that the petitioner raised an industrial dispute and the order of removal passed by the disciplinary authority was set aside and the petitioner was reinstated into service with continuity of service. On such reinstatement the petitioner reported to service, on 08.03.2002. It is incorrect to state that the petitioner completed 314 days of service as on 16.12.1992. The petitioner was initially engaged only, on 15.05.1992, at Sangareddy depot. Therefore, the question of the petitioner completing 240 days or 314 days as on 16.12.1992 does not arise for consideration. The services of the petitioner herein and other employees, V. Balraj, A. Narsimhulu, S. Kishan, P. Prabhakar and a few others were regularised along with the petitioner with effect from 19.04.1994. The services of T. Ramulu,

driver, and Y. Raghu, driver, were regularised with effect from 01.07.1992. Insofar as S.Kishan is concerned, his services were regularised with effect from 01.07.1992, pursuant to the orders of this Court in W.P.No.9684 of 1999. The other employees approached this Court within a reasonable time with regard to change in date of their regularisations whereas the petitioner approached this Court after lapse of more than 12 years. There is no explanation for the delay. The petition filed in the year 2006, that is, after lapse of 12 years, challenging the action in not regularising the services of the petitioner with effect from 01.07.1992 has to be dismissed on the sole ground of laches.

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

6. To begin with, it is to be first noted that the grievance of the petitioner is that his services ought not to have been regularised with effect from 19.04.1994 and ought to have been regularised with effect from 01.07.1992 on par with his colleague employees. In the first place, the Corporation denies that the petitioner served the Corporation for 240 days or 314 days as on 16.12.1992 and specifically contends that the services of the petitioner were initially engaged only, on 15.05.1992, at Sangareddy depot. But the fact of the matter is that the petitioner along with the writ petition filed a copy of statement, said to have been signed by the Depot Manager, Zaheerabad Depot, showing the attendance particulars of all casual drivers of Zaheerabad depot who have completed 240 days as on 16.12.1992. The correctness of the said statement is not denied by the Corporation. In the said statement, apart from the name of the petitioner, the names of Hanmanth Rao, G.B. Reddy, S. Anand, K.R. Prasad, S.Kishan, Prabhakar, Hasan, A. Laxman, A. Narasimulu and V. Balraj find place. The said statement also shows that the petitioner worked for total number of 314 days as on 16.12.1992. Therefore, there is *prima facie* proof that the petitioner

completed 240 days of service as claimed in the writ petition. Admittedly, the services of T. Ramulu and Y. Raghu were regularised with effect from 01.07.1992; insofar as S. Kishan, whose name finds place in the said statement referred to supra, though his services were not initially regularised from 01.07.1992, his services were later regularised with effect from the said date pursuant to the orders of this Court in W.P.No.9684 of 1999. The above said statement filed by the petitioner reflects that as on 16.12.1992 the said S. Kishan worked 280 days whereas the petitioner worked for 314 days. Further, the petitioner produced a copy of office order, dated 19.04.1994, whereunder services of certain casual drivers (direct recruitment) were regularised with effect from 19.04.1994; and, also a copy of the office order, dated 29.05.1993, whereunder the services of T. Ramulu, Y. Raghu working on casual basis in Medak depot as drivers were regularised with effect from 01.07.1992, inter alia, observing that they had completed 240 days and more number of days of service as on 30.06.1992 and are entitled to be eligible for regularisation of their services as against the recruitment 2.6 norm and the rules held by the division as on 31.07.1991. Further, the copy of the office order, dated 07.10.1999, said to have been issued by personnel officer, Medak region, Sangareddy, relating to regularisation of services of S.Kishan, driver of the said depot, on a perusal discloses that his services though were earlier regularised with effect from 19.04.1994, later by the said orders his services were regularised with effect from 01.07.1992 as he completed 240 days as on 30.06.1992 and as this Court in WP.No.9684 of 1999 directed to regularise his services from the said date. Therefore, there is sufficient material brought on record to substantiate the plea of the petitioner that he is entitled for regularisation of his services with effect from 01.07.1992 instead of from 19.04.1994.

7. One of the alternate contentions of the Corporation is that the others who had grievance about their regularisation of services approached this

Court promptly and, therefore, their services were regularised with effect from 01.07.1992 by following the orders of this Court but the petitioner herein approached this Court after a long lapse of 12 years challenging the action in not regularising the services of the petitioner with effect from 01.07.1992 and that the long delay of 12 years is itself sufficient to dismiss the writ petition on the ground of laches. Therefore, what remains for consideration is as to whether the delay is fatal to the case of the petitioner.

7.1 Learned Standing Counsel for the Corporation placed reliance on the decision in *Regional Manager, APSRTC v. N. Satyanarayana and others*¹ wherein the facts and ratio are as follows: 'The respondents were appointed as Conductors with effect from 31.06.1986 on daily wage basis; their services were to be regularised in a phased manner as and when sanctioned vacancies arose; the services of the respondents were regularised with effect from 01.08.1987; after passage of more than a decade, the respondents filed writ petition seeking regularisation of their services from the date of initial appointment and sought for all consequential benefits; a learned single Judge disposed of the writ petition along with other cases allowing the writ petitions purportedly following the decision of the Supreme Court in *Divisional Manager, APSRTC v. P. Lakshmoji Rao* [(2004) 2 SCC 433]; a Division Bench of this Court dismissed the writ appeal; therefore, the Corporation filed the civil appeal before the Supreme Court. The Supreme Court noted that the regularisation was done with effect from 01.08.1987 and the writ petitions were filed in the year 1999 without offering any explanation for the delayed approach.' In that setting of facts, the Supreme Court having held that the writ petitions should have been dismissed on the ground of delay and laches and that the learned single Judge and Division Bench of this Court lost sight of the said fact, eventually allowed the appeal of the Corporation.

¹ (2008) 1 SCC 210

7.2 He also placed reliance on the judgment, dated 10.08.2007, of this Court in Writ Appeal No.623 of 2007 (Between: APSRTC rep., by its Regional Manager, Adilabad Town: And: Sd.Esa Ali). The facts and the ratio in the decision are as follows: - 'The Depot Manager after conclusion of a departmental enquiry imposed a punishment; a writ petition was filed by the workman-respondent after a long gap of more than 13 years with a prayer for quashing the said order of punishment dated 29.11.1993; it was contended on behalf of the respondent-workman that the order of learned single Judge granting the relief to him after setting aside the punishment imposed by the Depot Manager may not be disturbed by the Division Bench because the relief was granted keeping in view the judgments of the Supreme Court and a Division Bench of this Court. However, the Division Bench of this Court did not agree with the said contention and held that the unexplained delay of 13 years was fatal to the case of the respondent and that the learned single Judge ought not to have entertained the writ petition much less allowed the same and modified the order of punishment more so, as in the affidavit filed by him, he did not make an endeavour to explain the delay and the learned counsel also could not offer any justification for his client's silence for more than a decade and, therefore, it is not possible to sustain the order under challenge.' Accordingly the Division Bench allowed the appeal and set aside the order of the learned single Judge and dismissed the writ petition.

7.3 Learned counsel for the petitioner-workman while drawing the attention of this Court to the cited judgment of the Division Bench in Sd. Esa Ali, urged as follows: - 'In this very decision, this High Court held that power of judicial review vested in the High Court under Article 226 is not hedged with any condition of limitation and that its amplitude and reach is very wide and that no straight jacket formula has been evolved so far for deciding whether a petition should be thrown out on the ground of delay or the petitioner should be non suited on the premise that he is guilty of laches and

that, therefore, each case has to be decided on the facts and circumstances of the case. In the case on hand, the petitioner is still in service. He is a person without worldly wisdom. He is discharging his duties as a driver regularly without any complaint from any quarter. The orders of regularisation with effect from 01.07.1992 in the case of S. Kishan were passed on 07.10.1999 by the Corporation following the order of this Court in W.P.No.9648 of 1999. On coming to know of the said fact, the petitioner, who is a gullible person realised about the statutory position and his entitlement to regularisation with effect from 01.07.1992. Further, he was also removed from service on the ground of absenteeism by proceedings dated 24.09.1998. Therefore, he was facing great hardship at that time. He was required to raise an industrial dispute. Only after his success in the ID, his removal order was set aside and he was reinstated into service, on 08.03.2002. Therefore, he was not in a position to promptly approach this Court and seek the present relief. Nevertheless, within a reasonable time thereafter, he filed the present writ petition in April, 2006. Therefore, the delay in the case is not abnormal and not on account of lack of diligence. Further, in the writ petition, the writ petitioner has clearly stated that due to removal from service he could not immediately approach the Court and prayed for condonation of delay, if any, in approaching this Court. In view of the facts peculiar to the case, this Court is satisfied that the explanation for the delay offered by the petitioner merits consideration and that on the ground of delay and laches, the relief cannot be denied to the petitioner more particularly when the petitioner is still continuing in service and as his juniors who have put in less number of working days than him were granted the benefit of regularisation with effect from 01.07.1992.

8. As it is established and it is not disputed that the Corporation has followed the rule of regularisation of the employees on completion of 240 days of continuous services from the date of initial appointment and as such a

benefit was extended to S. Kishan on 07.10.1999 following the orders of this Court in W.P.No.9648 of 1999 and as the petitioner has come up with this writ petition seeking modification of date of his regularisation from 19.04.1994 to 01.07.1992 and as this Court repeatedly held that the Corporation cannot pick and choose in regularising its employees and as the delay in the instant case is excusable in the peculiar facts and circumstances of the case, this Court holds that the petitioner is entitled to regularisation of his services with effect from 01.07.1992 as he has completed 240 days of continuous service. Hence, the contentions of the Corporation that the petitioner failed to establish his entitlement to the relief claimed and that the writ petition is liable to be dismissed on the ground of delay & laches are devoid of merit and need no countenance.

9. In the result, the Writ Petition is allowed as prayed for and the respondents-Corporation is directed to pass orders regularising the services of the petitioner with effect from 01.07.1992 instead of from 19.04.1994 and pay him all the consequential benefits to which he would become entitled to as a result of such regularisation. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

20.04.2017

Vjl