

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 1307 of 2010

Date :26.12.2017

Between :

G Sayanna S/o Gangadhar
41 years
Nirmal Depot, Adilabad district

Petitioner

And
The A.P.S.Road Transport Corporation
Rep by its Managing Director,
Musheerabad, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner claims to be belonging to B.C-B community. He responded to the notification issued by the respondent-APSRTC to the post of conductor and undergone selection process, having found meritorious, he was selected. However, he was appointed as conductor on daily wage basis with effect from 5.3.1990 and his services were regularized with effect from 1.8.1994 by order dated 25.8.2009. While so, he along with few other similarly situated persons filed W P No. 23032 of 2008 praying to direct the respondents to regularize their services from the dates of their initial appointment. The said writ petition was disposed of by order dated 15.11.2008 granting liberty to the petitioners therein to submit detailed representation seeking regularization of their services from the dates of initial appointment and on making such representation, respondents were directed to consider the same as per the rules and instructions and to pass orders. In pursuance to the said directions, by order dated 25.8.2009 impugned in this writ petition, the request of the petitioners therein to grant retrospective regularization is ~~negated~~ and decision to grant him regularization from 1.7.1994 as contained in the order dated 25.8.1994 was upheld. The present order is in continuation to the earlier decision and confirming the earlier decision.

2. Learned counsel for petitioner contends that as petitioner has undergone regular process of selection, his appointment made with effect from 5.3.1990 should be treated as regular and denying the period from 5.3.1990 to 1.8.1994 is erroneous. In support of his contention, he sought to place reliance on the decision of the Supreme Court in **Secretary, State of Karnataka Vs.Umadevi(3)**¹ and **Regional Manager, APSRTC Vs N Satyanarayana and others**².

¹ (2006) 4 SCC 1

² (2008) 1 SCC 210

3. Learned standing counsel would submit that the prayer sought in the writ petition is not maintainable on the sole ground that though services of petitioner were regularised from 1.8.1994 by order dated 25.8.1994, he instituted the writ petition in the year 2008 without assailing the said order and the claim in the writ petition is liable to be rejected on the sole ground of delay and latches. He further submitted that as held by the Supreme Court in **Divisional Manager, A.P.S.R.T.C Vs. P.Lakshmojirao and others**³ and **N Satyanarayana**, belated claims for regularization cannot be granted and retrospective regularization from the date of temporary appointment, cannot be granted.

4. 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.”

5. 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.

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

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.”

6. In **N SATYANARAYANA**, 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.

7. It is not in dispute that the order regularizing the services of the petitioner from 1.8.1994 was made on 25.8.1997. Even in the writ petition No. 23032 of 2008, petitioner did not challenge the said decision but sought general relief of regularization from retrospective date. The Court has not expressed any opinion but only granted liberty to make a representation and direction to consider such representation. In the order impugned herein, respondents reiterated their decision to regularize only prospectively.

8. As noticed from the two decisions of the Supreme Court concerning the very same issue, Supreme Court found fault with the High Court entertaining writ petition to grant retrospective regularization, on instituting writ petitions after long lapse of time, Supreme Court also held that no right vests in the employee to seek regularization from an anterior date.

9. It is the categorical assertion of the respondents that no junior was regularized and regularization was granted as per need and necessity of service by observing roster principle. As per the roster and requirements of employment, the services of the petitioner were regularized from 1.8.1994 and it is not possible to grant regularization retrospectively.

10. Even assuming that there is merit in the contention of petitioner that he is entitled to regularization from the date of initial appointment, petitioner ought to have availed appropriate remedy as available in law, when regularization was granted prospectively by order made in the year, 1997. No reasons are forthcoming as to why petitioner has not availed appropriate remedy immediately thereafter. In the facts of this case, the order passed on 25.8.2009 impugned in this writ petition, cannot give him a cause of action to agitate the grievance of retrospective regularization.

11. More over, retrospective regularization may have an impact on other employees who are already working but no such employee is impleaded. Further, even assuming that there are some juniors whose services are regularized, it is not open to the petitioner to seek retrospective regularization after long lapse of time and in the absence of so called juniors/affected persons arrayed as respondents.

12. In view of the principle governing the field concerning the services of the respondent corporation, in the two decisions of Hon'ble Supreme Court referred to above and for the aforesaid reasons, the claim of the petitioner for retrospective regularization has no merit. The writ petition is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 26.12.2017
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