

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO. 11610 OF 2004

ORDER:

This Writ Petition is filed seeking to declare the proceedings dated 16.9.2003 issued by the 1st respondent rejecting the claim of the petitioner for regularization of his services as arbitrary, illegal, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India and to direct the respondents to consider the case of the petitioner for regularization in any existing vacancy of either Watchman or Attender with all consequential benefits.

2. Heard Sri M.Pandu Ranga Rao, learned counsel for the petitioner and Sri C.Bucchi Reddy, learned Standing Counsel for the 1st respondent.

3. It is the case of the petitioner that he was initially appointed as a Watchman by the Revenue Divisional Officer, Nirmal vide proceedings dated 16.6.1988 with effect from 1.6.1988 on daily wage basis. The petitioner was continued upto 30.4.1990 and his services were terminated vide orders dated 30.4.1990. Again the petitioner was appointed as a Watchman after a gap of nearly two years vide proceedings dated 27.4.1992 and even since he has been continuously working under the control of the respondents.

4. The grievance of the petitioner is that though he is continued for more than 2½ decades, the respondents are not considering his case for regularization. When his services were not regularized, the petitioner along with others filed W.P.No.8297 of 1995 and the said Writ Petition was disposed of vide orders dated 25.6.2003 directing the respondents therein to regularize the services of the petitioner along with others. Immediately, the petitioner along with others, submitted a representation

to the respondents seeking regularization of their services and the respondents vide proceedings dated 16.9.2003 rejected the claim of the petitioner along with others. Challenging the same, the present Writ Petition is filed.

5. Learned counsel for the petitioner contends that the case of the petitioner was rejected on the ground that there are no sanctioned posts to regularize his services. Learned counsel for the petitioner further contends that having continued the petitioner for more than 2 ½ decades on NMR basis, the respondents cannot reject the case of the petitioner on the ground that there are no sanctioned posts. The fact that the petitioner was allowed to continue for more than 2 ½ decades itself proves that there is a perennial nature of work with the respondents and contends that as per the judgment in the case of *STATE OF KARNATAKA vs. UMA DEVI* ¹, the respondents are bound to consider the case of the petitioner for regularization of his services.

6. Learned Standing Counsel appearing for the respondents contends that after bifurcation of the State, the 1st respondent is not being entrusted with any construction work and due to dearth of work, the employees of the 1st respondent Corporation are being deployed to other departments/Corporations for work. Learned Standing Counsel further submits that as there are no sanctioned posts, the case of the petitioner cannot be considered for regularization and hence, there are no merits in the Writ Petition and the Writ Petition is liable to be dismissed.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that the respondents have rejected the case of the petitioner only on the ground that there are no sanctioned

¹ 2006 (4) SCC 1

posts. But because of the fact that the petitioner was allowed to work for more than 2 ½ decades and is still being continued, the respondents cannot turn back and say that there is no sanctioned post. The continuation of the petitioner even as on today, itself demonstrates that there is perennial nature of work with the respondents and the post is deemed to have been sanctioned.

8. In view of the above, this Writ Petition is disposed of directing the respondents to consider the case of the petitioner for regularization of his services by duly taking into account the fact that the petitioner has rendered more than 2 ½ decades service and is still being continued on NMR basis.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI ,J

Date:18.12.2018

KPM

