

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 24198 of 2010

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 2nd respondent in treating the petitioners as contract drivers even after 5 years of continuous service, as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. A consequential direction is also sought to the respondents to regularize the services of the petitioners as Heavy Motor Vehicle Drivers and pay them all the pay and allowances on par with regular drivers.

Heard Sri G. Vasanth Rayudu, learned counsel for the petitioners, and learned standing counsel for the respondents.

It has been contended by the petitioners that the 2nd respondent issued a notification dated 01.12.2004 inviting applications from eligible candidates for filling up the posts of Drivers. They had responded to the said notification, as they were fully eligible and qualified. Subsequently, they had participated in the selection process and after undergoing regular selections, they were selected and appointed as Drivers and since then they have been discharging their duties without any complaint. It has been further contended that though they were appointed in pursuance of the regular selection process, they are being continued on contract basis and they are being paid only Rs.7,060/- per month as consolidated wages. To this effect,

they had submitted a representation dated 19.04.2010 to the respondents seeking regularization of their services, but the respondents have not yet passed any orders. In those set of circumstances, they filed the present writ petition.

Learned standing counsel for the respondents has contended that the respondents had issued a notification on 01.12.2004 for filling up of 70 vacancies of HMV drivers on contract basis. However, as against the notified posts of 70 vacancies of HMV drivers, 136 HMV drivers were short-listed and selected and the petitioners were initially appointed on contract basis against the panel of 136 drivers but not against the 70 notified vacancies. Thus, their appointment was not made against any sanctioned posts. Further, there was a ban to engage services of employees on contract basis in the year 2005. Once the contract of the petitioners ceases, their services are utilized on outsourcing basis through a contractor on daily wage basis as per the requirement for operation of tours. Therefore, there is no master and servant relationship between the petitioners and the respondents and the question of considering their case for regularization would not arise. There are no merits in the writ petition and the same is liable to be dismissed.

In the case of *Secretary, State of Karnataka V. Umadevi*(3)¹ the Apex Court held as under:

¹ (2006) 4 SCC 1

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified person in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

In view of the judgment of the Apex Court referred to supra, this Court is of the considered view that the case of the petitioners can be considered for regularization as they were appointed through a proper selection committee and also appointed in pursuance of a notification issued by the 2nd respondent.

Accordingly, the writ petition is disposed of directing the respondents to consider the case of the petitioners for regularization of their services in terms of the judgment of the Apex Court cited supra, if the petitioners are otherwise found eligible and qualified, and pass

appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

15th November, 2018
cbs



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(disposed of)

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