

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Petition No.40190 of 2014

Order: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This Writ Petition is filed by a fifty seven year old Sweeper, who is due to retire from service in the next few months. She seeks a writ of mandamus from this Court to declare the action of the respondent-Corporation in not paying her minimum time scale of pay, as per the Judgment of the Division bench in W.A. No.252 of 2015 dated 10.03.2015, as arbitrary and illegal.

Facts, to the limited extent necessary, are that the petitioner was appointed as a Casual Sweeper in the respondent-Corporation on 30.9.1991. The Trade Union raised a dispute regarding failure on the part of the respondent-Corporation to regularise the services of the petitioner. The Government, thereafter, made a reference to the Industrial Tribunal, Hyderabad. The reference reads as under:

“Whether the action of the depot manager, APSRTC, Dilsukhnagar Depot, Hyderabad in not regularizing the services of Smt. Nagamma, Casual worker, even though she had continuous service from 1995 to 1997 with the management of APSRTC and put her services without her consent under the contract labour is justified ?

If not, to what relief Smt. Nagamma is entitled?”

The dispute was numbered as I.D. No. 26 of 2005 (old I.D. No. 72 of 2003). The Industrial Tribunal rejected the claim of the Trade Union, and dismissed the ID. Aggrieved thereby, the petitioner invoked the jurisdiction of this Court. A learned Single Judge of this Court, in his order in W.P. No. 15010 of 2007 dated 31.1.2014, held that the petitioner has been working in the respondent-Corporation for more than two decades, discharging the functions of a Sweeper; she has been directly engaged by the Corporation; and the independent

contractor or outsourcing agency is only a smoke screen adopted by the respondent-Corporation to negate its statutory liability; even in terms of **Secretary, State of Karnataka and Others vs. Umadevi and Others**¹, any deficiency in the initial entry of the petitioner into the service of the respondent-Corporation would not be illegal but, at best, irregular; and the impugned award suffered from incurable legal infirmities. The Writ Petition was allowed.

Aggrieved thereby, the APSRTC carried the matter in appeal to a Division Bench of this Court which, in its order in W.A. No. 252 of 2015 dated 10.3.2015, observed that both the learned counsel for the appellant (RTC) as well as the learned counsel for the 1st respondent (the writ petitioner) had produced before the Court a copy of the order dated 18.11.2014 in W.A. No. 1095 of 2014, and had submitted that the Division Bench had passed the following order:

“..... We, therefore, direct that the appellants shall treat the respondent as their permanent employee by extending the pay scale to her, in conformity with the wages stipulated under the Minimum Wages Act or the scale attached to the post of Sweeper in the Corporation, if it exists.”

The Division Bench also recorded that the learned counsel for the appellant-Corporation had agreed that the same order be passed in the present case also. The Division Bench, thereafter, observed that, in view of the consent expressed by both the counsel, it was inclined to dispose of the writ appeal by directing the appellant (RTC) to treat the 1st respondent (writ petitioner) as their permanent employee by extending the pay scale to her, in conformity with the wages stipulated under the Minimum Wages Act or the scale attached to the post of Sweeper in the Corporation, if it exists.

¹ (2006) 4 SCC 1

By its proceedings dated 10.12.2015, the TSRTC informed the petitioner that she was treated as a permanent employee of the Corporation, and she should be continued on the rolls of the Corporation till her age of superannuation, ie, till 31.10.2018; and she should be paid the wages notified under the Minimum Wages Act. On the ground that all permanent posts of Sweepers were abolished after 2004, and the petitioner could not be treated as having been appointed on a permanent basis as a Sweeper, the RTC extended to her the wages payable to a contract labourer in terms of their Circular dated 4.1.2016.

Sri A.K. Jayaprakash Rao, learned counsel for the petitioner, would submit that minimum wages have not been prescribed for the post of permanent Sweepers in the RTC; and in terms of Circular No. PD-04/11 dated 12.1.2011, issued by the erstwhile Andhra Pradesh State Road Transport Corporation, the scales of pay applicable to the post of Sweeper/Scavenger was Rs.5670-15100; after completion of 12 years, the Special Grade Pay Scale applicable to these posts was Rs.6260-17005; and after completion of 20 years, the Special Grade Pay Scale applicable for the post of Sweeper was Rs. 6430 - 17615. Learned counsel would submit that, since the petitioner had already put in more than two decades of service, she is entitled to be paid the Special Grade Scale of pay attached to the post of a Sweeper in terms of Circular dated 12.1.2011 ie, Rs.6430 - 17615.

The fact that the order of the Division Bench, in W.A.No.252 of 2015 dated 10.3.2015, required the RTC to appoint the petitioner on a permanent basis is not in dispute. The very fact that the Corporation issued proceedings dated 10.12.2015, directing that she should be treated as a permanent employee of the Corporation, is proof that the

Corporation also understood the order of the Division Bench as requiring them to appoint the petitioner on a permanent basis.

Sri N. Vasudeva Reddy, Learned Standing Counsel for TSRTC, would submit that, since the Corporation had abolished the posts of permanent Sweepers after 2004, the petitioner could not have been appointed in the post of a Sweeper. This contention urged by the Learned Standing Counsel is not tenable firstly, because the order of the Division Bench, in W.A. No.252 of 2015 dated 10.3.2015, is a consent order, and it is at the request, of both the RTC and the writ petitioner, that such an order was passed. As the petitioner was working as a Sweeper ever since she was initially appointed in 1991, the order of the Division Bench required the Corporation to appoint the petitioner in the permanent post of a Sweeper.

It is evident from the order of the Division Bench that the respondent-RTC (Appellant in W.A. No. 252 of 2015) was required to treat the 1st respondent (the writ petitioner) as their permanent employee. The option given by the Division Bench to the RTC was only with regards extension of the pay scale to the petitioner. The RTC was required to extend the petitioner, the pay scales either (1) in conformity with the wages stipulated under the Minimum Wages Act or (2) the scale attached to the post of Sweeper in the Corporation, if it exists. The words “if it exists”, in the order of the Division Bench, refer only to the pay attached to the post of Sweeper. These words cannot be understood to mean that it is applicable only if a permanent post of Sweeper exists in the Corporation for, in the absence of a permanent post in existence in the Corporation, no direction could have been issued to appoint the writ petitioner as a permanent employee of the Corporation in a non-existent post.

The contention now urged before us, that there is no permanent post of a Sweeper, does not merit acceptance as the order of the Division Bench is a consent order; and the Division Bench has specifically recorded that the learned counsel for the Corporation had agreed for such an order to be passed. It must, therefore, be held that the Corporation had agreed to appoint the petitioner in the permanent post of Sweeper taking into consideration the circular issued by the APSRTC dated 12.1.2011, any subsequent amendments or modifications made thereto.

The minimum wages applicable to a contract labourer could not have been extended to the writ petitioner, a permanent employee of the Corporation, as a contract labourer is not even an employee of the Corporation. He is an employee of the contractor with whom an agreement is entered into, by the RTC as the principal employer, to provide contract labour in the Corporation. The relationship of master and servant exists between a contract labourer and the contractor, and not with the principal employer ie the RTC. On the other hand, appointment of a person on a permanent basis would bring about a master and servant relationship between the Corporation and the employee concerned. The minimum scales applicable to a contract labourer cannot be made applicable to a permanent employee of the Corporation. It is not even contended before us, by Sri N. Vasudevareddy, learned Standing Counsel for the TSRTC, that minimum wages have been fixed for permanent Sweepers in the respondent-Corporation. It does appear from the Circular dated 12.1.2011, referred to hereinabove, that pay scales have been fixed for Sweepers in the Corporation.

While Sri A.K. Jayaprakash Rao, learned counsel for the petitioner, would request us to fix the petitioner's pay-scales in the

Special Grade of Pay applicable to Sweepers/Scavengers, we must bear in mind that the obligation to fix the pay scales of its employees lies with the Corporation; and it would be inappropriate for us to take upon ourselves the task which the Corporation is required to undertake.

Suffice it, therefore, to dispose of the Writ Petition directing the respondent-Corporation to fix the petitioner's pay in the scale of pay attached to the post of a Sweeper in the Corporation. The entire exercise, culminating in the petitioner's pay scales being fixed and in her being paid arrears of salary from the date of the order of the Division Bench i.e. 10.03.2015, shall be completed with utmost expedition and in any event on or before 31.7.2018.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

7th June, 2018

Note:

Furnish c.c. in one week.

b/o

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