

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 14991 of 2010

Date : 13.3.2018

Between:

K Srinu S/o late K Samuel
32 years
R/o Ibrahimpatnam, Ranga Reddy district

.....Petitioner

And

Govt of A P
Rep by its Principal Secretary,
Department of Transport, R & B (Tr.II)
Secretariat, Hyderabad and others

.....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.14991 of 2010

ORAL ORDER:

On 10.10.1999 recruitment notification was issued for recruitment to the post of Drivers, Conductors and Shramiks in Hyderabad city Region and Ranga Reddy Region. Petitioners responded to the said recruitment notification, selected, empanelled and were subjected to training. It appears, petitioners have also worked during the strike period when regular employees went on strike for more than 21 days. They were employed on daily wage basis in the year 2001-02 as conductors on various dates as mentioned in paragraph 3 of the affidavit filed in support of the writ petition. They continued in service on daily wage basis till their services were regularized w.e.f. 1.7.2009. In this writ petition, petitioners challenge orders of the Government in G.O.Ms No. 145 Transport, Roads & Buildings (Tr.II) Department dated 1.7.2009 directing regularization prospectively and consequential orders of the respondent corporation regularizing services prospectively and consequently, petitioners seek direction to regularize their services from the date of their initial appointment or from date of completion of 240 days as extended to other similarly situated persons.

2. Heard learned counsel for petitioners Sri V.Narasimha Goud and Sri Pravin Kumar appearing on behalf of Sri Vasudeva Reddy, learned standing counsel for respondent corporation.

3.1. According to learned counsel for petitioners, petitioners were subjected to regular selection process and empanelment. Recruitment was against existing vacancies. Their

appointment though described as daily wage, it should be treated as regular and continuous and therefore their services ought to have been regularized from date of their initial appointment on daily wage basis. Thus, regularizing their services only with effect from 1.7.2009 is ex-facie illegal, amounts to arbitrary exercise of power and authority and is illegal. Learned counsel would also contend that batch-mates of petitioners who were similarly recruited and appointed were also regularized from date of appointment on daily wage basis and not extending the same benefit to petitioners amounts to discrimination among the same class of people and therefore arbitrary. It also amounts to unfair labour practice.

3.2. Learned counsel would alternatively submit that respondent corporation granting regularization on completion of 240 days and said policy must be extended uniformly to all similarly situated persons and therefore the services of petitioners ought to have been regularized on completion of 240 days.

3.3. By placing reliance on decision of the learned single Judge of this Court in W.P. 20440 of 2000 dated 24.2.2003, he would submit that this Court directed regularization of services of persons similarly situated to petitioners on completion of 240 days. The said decision was affirmed by the Division Bench in W.A.No.1897 of 2003 dated 28.9.2011 and SLP (C) No.002417 of 2012 was dismissed on 30.1.2012. Principle laid down by this Court in the said writ petition ought to be extended to petitioners.

3.4. He would further submit that there is no provision to appoint employees on daily wage basis in the services of the

respondent corporation and alien concept cannot be introduced and same was introduced only to deprive the service benefits to which a regular employee is entitled to. The manner in which services of petitioners were utilized would amount to exploitation of labour and respondent corporation being an entity of the State cannot indulge in such practices. The services of the petitioners were required and their services are utilized continuously until their services are regularized. Thus, there was requirement of their services and such requirement was continuous and regular, that being so, denying the service rendered by petitioners before 1.7.2009 is ex-facie illegal.

3.5. Learned counsel for petitioners would therefore submit that condition imposed by the Government in G.O.Ms.No.145 dated 1.7.2009 directing regularization only prospectively and consequential orders are liable to be set aside. He would submit that as no counter affidavit is filed opposing prayer of petitioners to set aside cut-off date in the GO, it is deemed that respondent Government has opposed contention of petitioners, therefore the clause fixing cut-off date is liable to be declared as illegal and therefore consequently petitioners are entitled to computation of entire service as regular service.

3.6. In support of his contentions, learned counsel for petitioner placed reliance on decision of the Supreme Court in

U.P. State Electricity Board Vs Pooran Chandra Pandey and others¹, Jivanlal Vs. Pravin Krishna, Principal Secretary and others².

4.1. *Per contra*, Sri Pravin Kumar, appearing for respondent corporation would submit that initial recruitment itself was on daily basis; petitioners never protested when they were appointed on daily wage basis and continued in said post till their services were regularized. But for order of the Government in G.O.Ms No. 145 dated 1.7.2009, their services could not have been regularized. He would submit that the Government earlier granted permission to the corporation vide G.O.Ms No.285 Transport, Roads and Buildings (Tr.II) Department dated 5.10.2007 to regularize casual employees working for long time in 3750 posts then available. In terms of the Government orders, services of casual employees were regularized. In the process, 603 posts remained unfilled for various reasons. Further, as some more casual employees were demanding for regularization, permission to regularize casual employees in the resultant unfilled vacancies and some other vacancies subsequently available was granted vide G.O.Ms No. 145 dated 1.7.2009.

4.2. He would submit, retrospective regularization claim of petitioners cannot be granted as then existing vacancies were filled up by regularizing services of casual employees working much prior to joining in service by petitioner and were all seniors.

¹ (2008) 1 SCC (L&S) 736

² (2016) 15 SCC 747

4.3. By placing reliance on the judgment of learned single Judge in W P No. 14783 of 2010 and batch, he would submit that this Court only granted regularization of services with effect from date when employees selected in pursuant to notification dated 10.10.1999 were regularized in terms of G.O.Ms No. 285 dated 5.10.2007. Petitioners herein were also appointed in pursuant to the very same recruitment notification and their services are regularized in the consequent vacancies in pursuant to G.O.Ms.No. 285 dated 5.10.2007 and as per orders in G.O.Ms No. 145 dated 1.7.2009.

4.4. Learned standing counsel placed reliance on decisions of Supreme Court in **State of Haryana and others Vs Jasmer Singh and others³**, **Registrar General of India and another Vs V.Thippa Setty and others⁴**, **Union of India and others Vs Sheela Rani⁵**.

5. In reply, learned counsel Sri Narasimha Goud would submit that W.P. No. 14783 of 2010 and batch was dealing with G.O.Ms.No.285 dated 5.10.2007 therefore has no relevance to the present case. He would further submit that judgment in **Sheela Rani** relied on by learned standing counsel for respondents dealt with back-door entrants whereas petitioners are not back-door entrants.

³ (1996)11 SCC 77

⁴ (1998) 8 SCC 690

⁵ (2007) 15 SCC 230

6. Issue for consideration is whether petitioners are entitled to retrospective regularization from the date of initial daily wage appointment/ from the date of completion of 240 days?

7. It is appropriate to note facts which are relevant and crucial to the issue. Recruitment notification dated 10.10.1999 specifies that recruitment would be on daily wage basis and their services would be regularized subsequently. In terms thereof, petitioners were selected and appointed on daily wage basis and their services were regularized w.e.f. 1.7.2009. Further, as per order of the Government in G.O. Ms No. 285 dated 5.10.2007 persons who were appointed on daily wage/casual basis who have been recruited up to 1999 were regularized w.e.f. 5.10.2007. As can be seen from proposal sent by respondent Corporation and orders of the Government in G O Ms No. 145 dated 1.7.2009, the corporation proposed to regularize services of casual employees who have been working by utilizing unfilled vacancies permitted by the Government in G.O.Ms.No.285 dated 5.10.2007 and vacancies that arose thereafter. Petitioners were appointed after 1999. Accordingly, services of petitioners were regularized prospectively.

8. As per assertion of the respondents in their counter affidavit, ban was imposed by the Government on making recruitment. The corporation was also under financial stress and Government was insisting the corporation to make it profitable. It appears, various policy decisions were taken by the respondent corporation to improve the profitability. One such decision was to reduce ratio of employees per bus and to bring it down to 6.10 per bus. All this would necessarily result in less recruitment.

Employer cannot be faulted if he implements austerity measures and reduces employment. These facts cannot be ignored to direct retrospective regularization.

9. There is no merit in the contention of learned counsel for petitioners that since Government has not filed counter, challenge to G.O.Ms.No.145 should succeed. Only ground urged by petitioners on G.O.Ms.No.145 is by not granting retrospective regularization/regularization on completion of 240 days, Government acted arbitrarily. G.O.Ms.No.145 was issued by Government based on proposals made by the respondent Corporation. Corporation produced correspondence with Government leading to Government issuing G.O.Ms.No.285 and G.O.Ms.No.145. Counter-affidavit of respondent corporation also explains various aspects on the issue of regularization. Thus, background facts would disclose that permission granted in G.O. Ms. No. 145 to regularize some more daily wage/casual employees is in continuation to G.O.Ms.No.285. In G.O.Ms.No.285 also regularization was granted prospectively. Thus, G.O.Ms.No.145 cannot be seen in isolation. Further, the cutoff date to regularize daily wage/ casual service is in built into scheme to regularize and cannot be seen in isolation.

10. It is settled principle of law that regularization of services cannot be retrospective. In **Sheela Rani**, Supreme Court held regularization of an employee can only be done as per relevant rules and from the date on which regular vacancy/post is available for such regularization. Further held that regularization is a policy decision and that retrospective regularization will upset the

seniority of the employees already working. In **Registrar General of India**, Supreme Court held regularization of casual/daily wage workers must be done prospectively and regularization from back date will disturb seniority of regularly appointed employees in that cadre.

11. Decision in **U.P State Electricity Board** do not come to the aid of petitioners. The society where petitioners were working on daily wage basis was taken over by the electricity board in year 1997 along with those petitioners in the '*same manner and position*' as in the society. The electricity board passed order dated 28-11-1996 seeking to regularize services of its employees working on daily wages before 4.5.1990. This benefit was not extended to those petitioners claiming they were not working in the Board as on the cutoff date. Learned Single judge held that there was no ground for discriminating the two sets of employees since the employees of the society have become employees of the Electricity Board. The same view was upheld by the Division Bench of the High Court. Supreme court upheld the view taken by the High Court and held that services rendered by those employees in the society cannot be ignored since employees of the society are now deemed to be employees of the electricity board and therefore they must be entitled to the benefit of the order dated 28-11-1996. Thus, the facts in that case are not similar to the facts of this case. In **Jivanlal**, Supreme Court held as policy of regularization was violated many times, the Appellants cannot be discriminated as there cannot be pick and choose policy. In facts of this case, said decision also do not come to the aid of petitioners.

12. It may be true that Supreme Court was dealing with delay in setting up a claim for regularization in **Divisional Manager, APSRTC Vs. P.Lakshmoji Rao and others⁶** and **Regional Manager, APSRTC Vs. N. Satyanarayana and others⁷**, as contended by learned counsel for petitioners. However, the observations and directions in **P.Laxmojirao** are relevant for this case also. The Supreme Court held that employee has no legal right to claim regularization retrospectively.

13. In **P.Laxmojirao** supreme Court observed as under:

“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.”

14. In the case on hand also, petitioners have no legal right to claim retrospective regularization.

15. Employment notification indicated that appointment would be made on daily wage basis and services would be regularized later. Thus, petitioners cannot contend to treat their service from initial date of appointment as regular. Petitioners did not protest to the condition imposed in the employment notification nor did they protest against treating their appointment on daily wage basis and continued to work on daily wage basis till

⁶ (2004) 2 SCC 433

⁷ (2008) 1 SCC 210

their services were regularized prospectively. Having regard to the terms of notification and nature of their appointment, it cannot be said that petitioners were illegally treated in the matter of regularization.

16. Further, claim of the petitioners is to grant retrospective regularization from dates of their appointment/ completion of 240 days. Granting of this relief would mean petitioners would have to be shown as seniors to persons whose services were regularized in pursuant to orders in G.O.Ms.No.285 dated 5.10.2007 as they were also granted regularization only prospectively. In their absence no relief of retrospective regularization can be granted. None of them are parties before this Court. They were appointed on casual basis prior to petitioners.

17. Petitioners relied on isolated cases of retrospective regularization to claim same relief. Merely on the ground some similarly situated persons were granted retrospective regularization, no such relief can be granted. More over, there is no legal right to claim retrospective regularization. Further, decision in W.P.No.20440 of 2000, dated 24.02.2003, heavily relied by learned counsel for petitioners, was prior to G.O.Ms.No.285. Further, granting relief of retrospective regularization would only open a Pandora's box.

18. For all the afore stated reasons, there is no merit in the claim of petitioners. Writ Petition is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 13-03-2018
tvk/kkm

HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION NO.14991 OF 2010

Date : 13.03.2018

Tvk/kkm