

(2022) 06 KL CK 0306
In the High Court Of Kerala
Case No : Writ Appeal Nos. 745, 747 Of 2022

Ammini

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 27-06-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(f)

Citation : (2022) 06 KL CK 0306

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : Abraham Vakkanal, Paul Abraham Vakkanal, Vineetha Susan Thomas, Rohith C., Bijoy Chandran

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P., J

1. These Writ Appeals are filed by the writ petitioners being aggrieved by the dismissal of their writ petitions that sought to quash the Government Orders which fixed the upper age limit of 60 years on the basis of which their services were discontinued. The petitioners are daily wage cleaning staff members appointed by the Superintendent of Kottayam Medical College and they contended that they were doing the same job for the past 34 years. The petitioners alleged that there was discrimination in fixing the upper age limit of 60 for them alone while the daily wage employees recruited through the other four sources namely, Daily wages employees engaged by Hospital Development Society (HDS), Daily wages employees engaged by Hospital Management Committee (HMC), Daily wages employees engaged by Hospital Development Committee (HDC) and Daily wages employees employed under projects funded by Rashtria Swasthya Bima Yojana 100 projects,(RSBY) would retire only at the age of 65. Thus, it is the contention of the appellant/ Writ petitioners that all these persons recruited from different sources were doing the same job and earning the same income though they came from different sources, and thus

fixing an upper age limit for the petitioners alone is discriminatory.

2. The petitioners submit that the Additional Chief Secretary to Government had issued a letter, Ext. P12 dated 28-11-2017 to the Superintendent of Medical College Hospital, Kottayam directing that from among the 104 employees working on daily wage basis, the services of those who turn 60 years as on 31-10-2017 should be terminated and a fresh proposal was to be submitted with respect to others. The 2nd respondent passed orders on 12-12-2017 (Ext. P2) terminating the services of 20 employees who had completed 60 years of age. Apprehending similar treatment, the petitioners in W.P.C. 26876/2020 filed a Writ Petition in which a direction was issued to the Government to consider their representation (Ext. P2) which was considered by the Government and rejected by Ext. P3 order. It is Ext. P3 which was challenged in the writ petitions.

3. Petitioners also relied on the judgment in *Kerala Brahmana Sabha v. Vamana Prabhu & Others* [2019 (3) KLT 438] to support their contention that there were no reason forthcoming in the impugned orders and thus they are bad. They also alleged discrimination as according to them, the other workers engaged through different sources were allowed to work even up to the age of 70. Petitioners also claimed that in the event of their termination being upheld, there may be a direction to pay compensation to them under Section 25 (f) Industrial Disputes Act, as the termination amounted to retrenchment. The Government, on the other hand, contended that the petitioners have no legal right to seek continuance as they were engaged on daily wages by the 2nd respondent when there was a shortage of cleaning staff and such engagement was not to any sanctioned post or after conducting any selection process. These aspects were considered by the Government while passing Ext.P3 order which is a speaking order. Government also contended that the petitioners cannot seek parity with the service conditions of the other part-time contingent employees in the Government or the contractual employees appointed by the Hospital Development Society, as those employees were engaged in the sanctioned posts after a due selection process and thus they were not similarly situated.

4. The learned Single Judge who considered the matter found that the petitioners were appointed on daily wages without undergoing any selection procedure and such engagements will not confer them any right for continuance or for regularization in service going by the principles laid down by the Supreme Court in *State of Karnataka v. Umadevi and Other* [(2006) 4 SCC 1] and the decisions that followed Umadevi. The argument that Ext. P12 order is a not a reasoned order cannot stand in view of Ext. P3 order of the Government passed pursuant to the direction issued by this Court. Thus, accepting the stand of the Government and without prejudice to the right of the petitioner to approach the appropriate forum for raising their claims, if any under the Industrial Disputes Act, the Writ Petitions were dismissed.

5. In the appeals before us, the learned Senior counsel Mr. Abraham Vakkanal submitted that the petitioners had been working for more than 20 years and

some of them even for 30 years and they had rendered valuable service during the period of covid pandemic. It is the submission that there is a requirement for the job and that similarly placed daily wage workers coming from different streams had an upper age limit of up to 70 years as opposed to 60 years being implemented on the petitioners. The learned Senior Counsel vehemently argued in the alternative that even if the petitioners had no legal right as such, on humanitarian considerations, they should be allowed to continue up to the same age of similarly situated daily wage workers.

6. The learned senior counsel also argued that one set of daily wagers cannot be replaced by another set of daily wages. It was also the submission of the learned senior counsel that considering the age of the petitioners and there being no chance of getting any other employment, a lenient view may be taken directing continuance of their service.

7. Having heard the learned senior counsel for the petitioners the learned government Pleader and perusing the records, we do not find any reason to interfere with the judgment of the learned Single Judge dismissing the writ petitions. As rightly found by the learned Single Judge, the petitioners were not appointed to any sanctioned post or on the basis of any selection procedure, the continuance of daily wages will not confer on them any right either for continuance or for regularisation in service going by the principles in *Umadevi* (supra) and the subsequent decisions. We also notice that Ext. P3, the order passed by the Government pursuant to the direction issued by this of this Court contained reasons and the argument that Ext. P12 does not contain a reason cannot be accepted in view of the well reasoned order , Ext. P3. The stand of the Government that the petitioners were appointed on daily wages to tide over the shortage of cleaning staff and that they cannot be equated with the contingent employees in government service or the contractual employees appointed by the Hospital Development Society following the selection procedure has to be accepted. In such circumstances, we cannot accede to the request of the learned senior counsel for the appellants that on humanitarian grounds, the petitioners should be allowed to continue. We are afraid that, we can only render justice in accordance with law and not in violation of it. We have also taken a similar view in *Kannan P.A. & Others v. State of Kerala and Other* (W.P.C. No. 640 of 2022) by our judgment dated 15th June, 2022, wherein we have considered the rights and status of similarly placed daily wagers while rejecting the request for continuance and regularization and we are bound by the same. We make it clear that the dismissal of these appeals will not stand in the way of the appellants pursuing their remedies, if any, under the Industrial Disputes Act, if they are so advised.

In the result, these appeals fail and it is accordingly, dismissed.