
(2012) 03 RAJ CK 0127
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3588 of 2010

Ammini P.T. (Smt.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 4 RLW 2892

Hon'ble Judges : Arun Kumar Mishra, C.J.;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Gayatri Rathore, for the Appellant; M.S. Raghav, for the Respondent

Final Decision : Allowed

Judgement

Narendra Kumar Jain-II, J.—Heard learned counsel for the parties. Petitioner has preferred this writ petition challenging the order dated 12.10.2006 passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur, whereby Original Application No. 20/2006, filed by petitioner for issuing direction to respondents to regularise the services of applicant on the post of Staff Nurse or any other suitable post with all consequential benefits and further to direct the respondents to relax condition which deprived the applicant in regularisation, has been disposed off.

2. Briefly stated the facts of the writ petition are that the petitioner filed an Original Application before the Central Administrative Tribunal with the averments that she possessed the qualification of 1st pre-degree from the University of Kerala and final from the International Nursing Institute, Thiruvalla, Kerala State. She was appointed as Staff Nurse on daily wage due to emergency against regular post on 17.09.1985 in P & T Dispensary No. 2 with the condition that pay and allowance on minimum scale will be allowed till regularisation. It was averred that petitioner continued on the post with the hope that her services will be regularised against vacant post. Since petitioner was being paid only minimum scale plus D.A. without other allowance, therefore, she preferred

Original Application No. 161/1990 before the Central Administrative Tribunal, which was allowed vide order dated 08.12.1994 with a direction to respondents to consider the case of applicant for appointment as a Staff Nurse on regular basis in accordance with the P & T Department Nurses (non-resident) Recruitment Rules, 1978 (for short "the Recruitment Rules, 1978"). The petitioner was allowed minimum scale of the regular pay scale. She made a request for regularisation of her services from time to time, but her services were not regularised, therefore, she again filed Original Application No. 20/2006, which was disposed off by the Tribunal vide order dated 12.10.2006, which is under challenge in this writ petition.

3. The respondents, in their reply to writ petition, admitted that petitioner is working as Staff Nurse in P & T Dispensary No. 2, Jaipur w.e.f. 17.09.1985. She passed 1st pre-degree examination in April, 1981 from the University of Kerala and final examination from the International Nursing Institute, Thiruvalla, Kerala State and she completed the course of nursing and midwifery. She was appointed as Staff Nurse on daily wages and she is drawing the minimum of the pay scale 4000-6000 plus usual D.A. The case of petitioner for appointment on the post of Staff Nurse was examined as per the directions of Tribunal, given vide order dated 08.12.1994, and it was found that petitioner does not fulfill the conditions, required for the post for regular appointment, as laid down in the Recruitment Rules, 1978. It was further averred that in order to provide relief up to certain extent, the Chief Post Master General, Rajasthan Circle, Jaipur has referred the case of petitioner to the Director General, Department of Posts, New Delhi for approval of the Directorate to grant temporary status treating her as full-time casual labourer in P & T Dispensary No. 2, Jaipur, vide letter dated 28.04.2004. However, the Director General (Posts), New Delhi, vide its letter dated 19.04.2006, informed that the case of petitioner has been considered in consultation with the Department of Personal and Training and DOP & T have not agreed to the proposal as the petitioner does not possess the mandatory educational qualification/experience.

4. The learned Tribunal vide its order dated 12.10.2006, held that the applicant is not entitled to a relief regarding regularisation of her services on the post of Staff Nurse, but observed that the applicant was allowed to continue as Staff Nurse even after the judgment rendered by the Tribunal in Original Application, decided on 08.12.1994. This fact proves that work is available with the Department and it will be highly inequitable if the services of applicant, who by this time has put in about 20 years of services, is dispensed with simply because Tribunal has declined grant of relief for regularisation on the post of Staff Nurse to the applicant. The Tribunal further clarified that the applicant may be allowed to continue in the said capacity till the post of Staff Nurse is filled up in the light of the observation made by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , or such time till the work of the nature which the applicant performed is still available with the respondents, whichever is earlier.

5. Being aggrieved with the above order passed by the Central Administrative Tribunal dated 12.10.2006, declining the prayer for regularisation of her services, the petitioner has preferred the present writ petition.

6. Learned counsel for petitioner submitted that petitioner was appointed as Staff Nurse way back on 17.09.1985 on daily wages; she was allowed minimum scale of the regular pay scale; her Original Application was allowed way back on 08.12.1994 and a direction was issued by the Tribunal to the respondents to consider her case for appointment on regular basis on the post of Staff Nurse under the Recruitment Rules, 1978; her services were continued as there was no complaint against her and her work was found to be satisfactory. It is further submitted that till now petitioner has served the respondents for about 27 years, therefore, required qualification, as per rule, should have been ignored/dispensed with and the case of petitioner should have been considered for regularisation as till now in last about 27 years, she has acquired so much experience of the said post.

7. It was further submitted that the Tribunal has declined to pass an order in favour of petitioner for regularisation on the basis of the judgment of the Hon''ble Apex Court in Umadevi's case (supra), but even as per the judgment of Hon''ble Apex Court in Umadevi's case (supra), it is clear that the Hon''ble Apex Court gave a direction to formulate a scheme for the persons, who are working for more than 10 years and to consider the case of those persons for regularisation. The petitioner is working for last about 27 years, therefore, the judgment of Hon''ble Apex Court in Umadevi's case (supra) was not coming in the way of petitioner for consideration of her case for regularisation, rather this judgment was supporting the case of petitioner.

8. In support of her submissions, the learned counsel for petitioner has relied upon the judgments of this Court in (i) Gulab Ram and Others Vs. The State of Rajasthan and Another, , (ii) Prabhu Dayal Sharma vs. State of Raj. & ors., 1991 (2) R.L.R. 171, (iii) Harki Bai Vs. State of Rajasthan and Others, and (iv) Kailash Meena vs. The State of Rajasthan and Others, 2011 (2) Western Law Cases (Raj.) 173 : 2011 (3) RLW 2013 and the judgments of Hon''ble Apex Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, and Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, .

9. Learned counsel for respondents supported the order passed by the Central Administrative Tribunal and prayed for dismissal of the writ petition. He submitted that since petitioner was not qualified, therefore, her services cannot be regularised. In support of his submissions, he referred the judgments of Hon''ble Apex Court in Umadevi's case (supra) and in State of Rajasthan and Others Vs. Daya Lal and Others, .

10. We have considered the submissions of learned counsel for the parties and examined the impugned order passed by Tribunal and other facts and documents, available on the record.

11. The facts of the case are not in dispute that petitioner was appointed as Staff Nurse on daily wages on 17.09.1985; subsequently she was granted minimum scale of the regular pay scale and she is continuously working on the said post for last about 27 years. She possessed the qualification of 1st pre-degree from the University of Kerala and final from the International Nursing Institute, Thiruvalla, Kerala State. She filed Original Application No. 161/1990 before the Central Administrative Tribunal, which was allowed vide order dated 08.12.1994 and a direction was given to respondents to consider her case for regularisation on the post of Staff Nurse, in accordance with the Recruitment Rules, 1978. Her services have not been terminated as there was vacant post and there was no complaint against her work and she is continuously working on her post. In 2006, she again filed Original Application No. 20/2006, which has been disposed off by the Tribunal vide order dated 12.10.2006, placing reliance on the judgment of the Hon''ble Apex Court in Umadevi's case (supra), holding that petitioner is not entitled to a relief of regularisation, however, Tribunal made the following observations in para 7 of its order:-

Before parting with the matter, it may be stated that the applicant was allowed to continue as Staff Nurse (non-resident) on daily wage basis against the vacancy of Staff Nurse even after the judgment rendered by this Tribunal in earlier OA decided on 8.12.1994. This fact proves that work is available with the department and it will be highly inequitable if the services of the applicant who by this time has put in about 20 years of service is dispensed with simply because this Tribunal has declined grant of relief for regularisation on the post of Staff Nurse to the applicant. It is further clarified that the applicant may be allowed to continue in the said capacity till the post of the Staff Nurse is filled up in the light of the observation made by the Apex Court in the case of Uma Devi (supra) or such time till the work of the nature which the applicant performed is still available with the respondents, whichever is earlier.

12. The question for our consideration is "as to whether a direction can be issued to respondents to consider the case of petitioner for regularisation on the post of Staff Nurse, treating her to be qualified as she has already got an experience of the post in last about 27 years continuously, without any complaint against her work."

13. Before considering the question, it will be appropriate to refer the case law, cited at the bar by the parties.

14. In Bhagwati Prasad vs. Delhi State Mineral Development Corporation (supra), the Larger Bench of the Hon''ble Supreme Court considered the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. Hon''ble Apex Court noted that petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Hon''ble Apex Court observed that practical experience would always aid the

person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Hon''ble Apex Court in para 6 of the judgment, held as under:-

.....Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years'' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation.....

15. In Smt. Gulab & ors. vs. State of Raj. & ors. (supra), this Court relied upon the judgment of Hon''ble Apex Court in Bhagwati Prasad vs. Delhi State Mineral Development Corporation'' case (supra), and held that petitioners, on the basis of their experience, are entitled for regularisation of their services.

16. In Prabhu Dayal Sharma vs. State of Raj. & ors. (supra) also, this Court relied upon the judgment of Hon''ble Apex Court in Bhagwati Prasad vs. Delhi State Mineral Development Corporation'' case (supra), and directed to confirm the petitioners.

17. In Harki Bai vs. State of Rajasthan and Ors. (supra), this Court considered the writ petition filed against the notice of termination of petitioner on the ground that she did not possess requisite educational qualification of eligibility for appointment on the post of cook and further prayer that respondents be directed to regularise her services as Class IV from the date of initial appointment. This Court held that ordinarily, eligibility conditions in matter of any appointment should be adhered to but some variance therefrom would be permissible in exceptional circumstances, particularly when State Government had been given power to make such relaxation and it had already made such relaxation in several such similar cases in past. It was further held that petitioner''s vast experience of working on such post should now be taken to have made up deficiency of eligibility condition and accordingly, quashed the notice of termination.

18. In Gujarat Agricultural University vs. Rathod Labhu Bechar & Ors. (supra), the Hon''ble Apex Court was considering the appeal against direction to frame scheme to regularise daily workers, the scheme was already framed for the

workers, who are working for more than ten years with a condition requiring possession of educational qualification, the Hon''ble Apex Court modified the scheme that even after completion of ten years of service, the said condition is untenable, working continuously for 10 years without complaint itself is a ground for relaxation of educational qualification. With some modification, the scheme was approved and a direction was issued to implement the scheme regarding regularisation of workers.

19. In *Kailash Meena vs. The State of Rajasthan and Others* (supra), this Court was considering the writ petition seeking direction to respondents to consider the case for regularisation on the post of Ward Boy/Class IV in regular pay scale as per the judgment of the Division Bench dated 21.03.2006 in *State of Rajasthan and others vs. Smt. Naurati Devi and others*, DBSAW No. 243/1997. The Division Bench of this Court in *State of Rajasthan and others vs. Smt. Naurati Devi and others* (supra), held that in case the respondents were not discharging their duties efficiently, their services would have been terminated long back. It seems to us that their qualifications have not come in the way of discharge of their duties. This Court took a view that qualification is to be looked into at the time of entry in service and not to be given much weightage after 23 years of satisfactory service at the time of regularisation.

20. In *Umadevi's case* (supra), the Hon''ble Apex Court held that High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme and merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service. Similar view has been taken by the Hon''ble Apex Court in the case of *State of Rajasthan and Others vs. Daya Lal and Others* (supra).

21. From the above discussion on case law, it reveals that the Larger Bench of Hon''ble Apex Court in *Bhagwati Prasad vs. Delhi State Mineral Development Corporation* case (supra), held that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In *Umadevi's case* (supra) and in *Daya Lal's case* (supra), the Hon''ble Apex Court held that the High Court, in exercising power under Article 226 of the Constitution, will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts.

22. It is relevant to mention that in Umadevi's case (supra) itself, the Hon'ble Apex Court further clarified that there may be cases where irregular appointments have been made and employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by the Court. Hon'ble Apex Court directed the Union of India, State Governments and their instrumentalities, to 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 courts or of tribunals and should further ensure that regular appointments are undertaken to fill those vacant sanctioned posts that require to be filled up.

23. So far as the case in hand is concerned, it is not in dispute that petitioner was appointed in the year 1985 and was allowed minimum scale of the regular pay scale. Her case for regularisation was ordered to be considered way back in the year 1994 by the Tribunal. There is no complaint against her and her work was found to be satisfactory in last about 27 years and even after the order of 1994 of Tribunal, the services of petitioner were allowed to be continued or the same were not dispensed with. Even as per the judgment of the Hon'ble Apex Court in Umadevi's case (supra), a scheme was ordered to be framed to regularise the services of those persons, who are working for ten years or more. As per the judgment of the Hon'ble Apex Court in Bhagwati Prasad vs. Delhi State Mineral Development Corporation" case (supra), practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Petitioner has been allowed to work continuously for last about 27 years by the respondents and not under any interim order of any Tribunal or Court. Petitioner has passed Ist Pre-degree examination from the University of Kerala and final examination from the International Nursing Institute, Thiruvalla, Kerala State and she has completed the course of nursing and midwifery. Her qualifications have not come in the way of discharge of her duties. In these circumstances, it will be a failure of justice, in case a direction is not issued to respondents to consider the case of petitioner for regularisation of her services on the post of Staff Nurse treating her to be qualified.

24. Consequently, we allow the writ petition and set aside the impugned order of Tribunal and direct the respondents to consider the case of petitioner for regularisation of her services on the post of Staff Nurse treating her to be qualified on the basis of her continuous satisfactory work of 27 years of the said post, as observed by Larger Bench of Hon'ble Apex Court in Bhagwati Prasad's

case (supra) that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The necessary exercise be done, as early as possible, but not later than a period of three months. Cost is made easy.