

(2000) 11 AP CK 0063
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8464 of 1996

Chunduri Balaji

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2000) 6 ALD 714 : (2000) 6 ALT 412

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. Y. Venkat Sastri, for the Appellant; Mr. K. Subrahmanya Reddy for Mr. C.V. Rajeev Reddy and Mr. T.V. Prabhakar Rao, for the Respondent

Judgement

1. The petitioner in this writ petition prays for issuance of an appropriate writ, particularly, one in the nature of mandamus directing respondents 1 to 3 herein to absorb, regularise and confirm the services of the petitioner as Scientific Assistant Grade-A. The petitioner also prays for according all consequential and attendant benefits as regards salary, allowances and other benefits on par with regular employees in the second respondent-establishment.

2. It may be necessary to notice the relevant facts leading to filing of this writ petition : The petitioner is a science graduate. He is a diploma holder in Computers from NIIT, Hyderabad. He was initially appointed as a Lower Division Clerk (Junior Assistant) under the 4th respondent on 23-1-1985. In the present writ petition, we are really not concerned with his appointment and continuation for some time as Junior Assistant under the 4th respondent.

3. The third respondent herein by a notification dated 10-1-1992 invited applications for filling up of the vacancies of Scientific Assistants in the NRSA. The petitioner submitted his application through the proper channel. He was called for an interview on 30-3-1992. The petitioner was declared successful in the said interview. He was accordingly appointed as a Scientific Assistant for a period of three months on a consolidated pay of Rs.2,000/ per month. The

petitioner, accordingly, joined the establishment of the second respondent on 24-4-1992. The second respondent, thereafter, renewed the appointment of the petitioner from time to time and every time for a period of three months. However, the second respondent by Memorandum dated 19th July, 1994 consequent on the expiry of project appointment, awarded contract appointment to the petitioner for a period of one year on payment of Rs.28,800/- per annum. The payments were made on monthly basis upon certification by the Project Manager. The contract was being renewed from time to time up to 31st May, 1996.

4. It is submitted by the petitioner that the respondents have issued a notification on 15-4-1996 stating that technical personnel working under the third respondent will henceforth be engaged on work order basis. The petitioner contends that the action of the respondents is deliberately ill motivated and vitiated by mala fides and ulterior motives so as to dispense with the services of the petitioner and persons like him who have put in nearly five years of service in the hope of being confirmed, absorbed and regularised in a regular vacancy of a Scientific Assistant.

5. It is also stated that there are three posts of Scientific Assistants and the same are being filled up by engaging the personnel on periodical basis without any justification. It is the case of the petitioner that there is sufficient work warranting employment of regular Scientific Assistants. But the respondents for the reasons known to themselves are extracting the work by paying consolidated pay by making the appointments on contractual basis. The action on the part of the respondents is arbitrary, irrational and violative of constitutional rights guaranteed under Articles 14, 16 and 21 of the Constitution of India.

6. It is also the case of the petitioner that he was appointed on regular basis after going through the process of selection, and in the circumstances, his appointment cannot be held to be a temporary or ad hoc one. It is also contended that the petitioner had put in four years of service without any break, and therefore, he is entitled for absorption into the service of the respondent-establishment on permanent basis.

7. It is the case of the petitioner that as per the notification three Scientific Assistant Posts were recruited, out of which two persons have resigned and he is only working in Arial Survey Digital Photogrammetry division. The projects at NRSA and operations thereof are continuous in their nature. It is stated that he had gained sufficient experience entitling him for regular absorption in the respondent-establishment. This is all the case of the petitioner.

8. Now, let us notice the stand taken by the respondents in opposing the claim of the petitioner. It is submitted that various Governmental departments/Ministries refer some technical matters for a detailed study/ report to NRSA. The NRSA deals with such matters, as it has necessary expertise and infrastructure. It is the case of the NRSA that when such studies are undertaken, there will

sometimes be an additional workload temporarily which cannot be managed with the existing employees. It is under those circumstances, the NRSA calls for the applications and appoints the qualified personnel on temporary or ad hoc basis. Once the study is completed and report is submitted to the concerned department/Ministry, the activity comes to a close and the need for additional hands ceases to exist. This has been the position and practice with NRSA for a very long time.

9. It is under those circumstances, NRSA invited applications for the post of Scientific/Technical Assistant on a consolidated monthly salary of Rs.1,800/-. The advertisement itself clearly mentions that the posts are purely temporary for a period of six months initially. The petitioner submitted an application for the post of Scientific/Technical Assistant pursuant to one such notification issued during January, 1992. He was accordingly found suitable for a particular work in connection with a study undertaken by NRSA. He was accordingly appointed purely on temporary basis for a period of three months. The petitioner having accepted the terms and conditions of offer given by NRSA, joined as Scientific Assistant on 24-4-1992.

10. It is the case of the NRSA that the services of the petitioner were extended depending upon the availability of project work entrusted to it by various departments/ Ministries.

11. Thereafter, the petitioner was given job order on contract basis with defined terms and conditions, which were agreed to by the petitioner. The latest such job order was issued by the NRSA on 20th June, 1995 which is for one year from 1-6-1995 and the contract comes to a close by 31-5-1996. It is the plea of NRSA that since, the work has come to a close; NRSA had decided to dispense with the services of the petitioner with effect from 31-5-1996.

12. It is contended that the NRSA has made it very clear to the petitioner every time that he was taken into the work, which is purely temporary, and at no point of time, even a slightest indication of either making him permanent or absorbing him on regular basis was given to the petitioner.

13. Sri K Venkat Sastri, learned Counsel for the petitioner strenuously contends that the stratagems adopted by the respondent-establishment are violative of petitioner's fundamental rights guaranteed by the Articles 14/16 and 21 of the Constitution of India. It is contended that it is an instrumentality of the State. All its actions are required to be in conformity with doctrine of equality enshrined under Articles 14 and 16 of the Constitution of India. The learned Counsel contends that its actions are susceptible to be judicially reviewed by this Court on the touchstone of Articles 14 and 16 of the Constitution of India. The respondents have devised a method to defeat the valuable rights and legitimate expectations of its temporary employees. In nutshell, it is contended that the petitioner is entitled for absorption and regularisation of his services in the establishment.

14. Sri K. Subrahmanya Reddy, learned senior Counsel submits that the writ petition is totally misconceived and not maintainable. It is submitted that there is no post into which the petitioner has been selected and appointed as such. It is submitted that the continuance of the petitioner depends upon the availability of the work. The very action of the respondents in extending the services of the petitioner periodically would reveal that the petitioner had been retained subject to availability of work. It is submitted that the petitioner accepted the terms and conditions of the contract and the contract came to an end by 31-5-1996.

15. The notification issued by NRSA itself would reveal that the appointment in the post of Scientific/Technical Assistant is purely on temporary basis for a period of six months initially. The appointment order of the petitioner itself says that his appointment is purely on temporary basis for a period of three months against a project. The appointment order further reads that the offer of appointment is for an important and time bound project. The proceedings extending the appointment of the petitioner as a Scientific Assistant would also reveal that it was for a specified period of three months from time to time. Finally, by proceedings dated 19th July, 1994, the petitioner has been awarded contract appointment. The very Memorandum dated 19-7-1994 would disclose that such an appointment was made on contract basis on expiry of project for which the petitioner has been initially appointed by NRSA. The contract would disclose that it was for a period of one year on payment of Rs.28,800/- per annum payable in every month upon certification by the Project Manager. The nature of contract relates a particular work specified therein. The petitioner accepted the terms and conditions and accordingly accepted the Award of contract appointment. It is thus clear that there is no post into which the petitioner has been appointed as such.

16. However, Sri Y. Venkat Sastri, learned Counsel for the petitioner would place reliance upon a Division Bench judgment of Punjab and Haryana High Court in *Rajni Bala v. State of Haryana* 1996 (1) SLR 271, in support of his submission that the employer cannot be permitted to use his prerogative to lay down the terms and conditions of employment by incorporating a condition that the service of the employee shall stand terminated on a particular date. It is true, it was also the case where the petitioner was appointed as Language Teacher in the prescribed pay scale on purely ad hoc basis for a fixed term ending on 30-6-1995 with a condition that her service would stand terminated on 30-6-1995. The Punjab and Haryana High Court in the said decision, on the facts available, came to the conclusion that "vacant posts of Language Teachers were available in the department and the petitioner and others were appointed against those vacant posts after their names had been sponsored by the Employment Exchange and their suitability for ad hoc appointment was adjudged by the Selection Committee". But, it is clear from the facts that in that case posts were in existence. Under those circumstances, the Punjab and Haryana High Court held that the incorporation of condition that the appointment was limited for a period of three months was held to be arbitrary and oppressive amounting to violative

of Articles 14 and 16 of the Constitution of India.

17. Reliance is also placed upon a Division Bench judgment of this Court in AVSNB Shankaran v. CIEFL 1997(1) ALD 154. In my considered opinion, the principle and the ratio laid down in the said decision have no application and relevancy to the facts on hand. It was a case where an employer engaged the services of employees for work of permanent nature by introducing intermittent break in service and keeping them thus as temporary employees without any just reason. It is clearly held in the said decision that for all practical purposes, the employees therein are recruited for work, which has continuously been available, and they have been working continuously and breaks in service were introduced deliberately, and it intended only to distinguish them from those who are given substantive appointment. It was noticed in the said case that those who are sponsored by the Employment Exchange later to the petitioners therein were given substantive appointment while appointing the petitioners therein on temporary basis though their names were sponsored by the Employment Exchange much prior to those who are appointed on substantive basis. Again it was a case where intermittent breaks were resorted to though continuous work was available and the posts were in existence. Under those circumstances, it was held by this Court that the procedure adopted by the employer to keep its employees on tender hooks would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Under those circumstances, it was held by this Court that "for all purposes the employees therein have been recruited for permanent work and they have continued in service to entitle them to reckon their engagement as substantive and permanent".

18. In Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , it is held by the Supreme Court that "in case where an appointment was purely temporary and ad hoc and on a contractual basis for a limited period, the right to remain in the post comes to an end by expiry of the period". In such case, the question of regularisation as such does not arise.

19. In Union of India and others Vs. Dinesh Kumar Saxena and others, , the Supreme Court observed, "the persons employed temporarily to handle the work which was of a limited duration cannot be directed to be absorbed into the services on permanent basis". It is also held that "the employees who had been engaged on a contract basis for a limited and fixed duration and on fixed pay could not be directed to be absorbed in any other department of the Government". It was a case where for the purposes of the census conducted in the year 1981, approximately 932 temporary Classes C and D posts were created in the Directorate of Census Operations, U.P., and temporary appointments were made to such Classes C and D posts. Those posts were continued up to 30-6-1984 and all those appointments were terminated as the work connected with the 1981 census was closed. It was contended on behalf of the employees therein that they were entitled for regular absorption and regularisation in the

Census Department since they have worked in the Department for six years. The Supreme Court under those circumstances held that the directions as prayed for cannot be granted.

20. This Court in *M.V. Ravi Prasad Vs. Director, National Remote Sensing Agency and Others*, , observed, "this Court in exercise of the power under Article 226 of the Constitution of India cannot compel an employer to continue an employee beyond the period of contract". It is held by this Court that "in the absence of any statutory requirement, Courts do not ordinarily force an employer to retain an employee in service not required by the employer". In the said case, the petitioner therein was appointed on a contract basis by the same NRSA for one year on 20-11-1994. The period of contract has been expired on 20-11-1995. This Court following the decision of the Supreme Court in *Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and others*, , held that "this Court in exercise of the power conferred under Article 226 of the Constitution of India cannot force an employer to retain in service an employee not required by the employer".

21. This Court in *Dr. P.R. Krishna Reddy and another Vs. Director, National Remote Sensing Agency, Balanagar, Hyd. and others*, , observed, "in the case of temporary posts even if the person concerned may have to serve in different departments, the term of service ends with the term of the post. On the other hand in the case of permanent posts a person may be appointed temporarily in which case he may seek regular post if he is qualified to hold that post and has been regularly recruited". This Court made a pertinent observation that when the temporary post is converted into contract basis all that is required is to put the employees on notice that their services are co-extensive with the term of the posts itself and they have no right to continue after the end of the contract. It is observed by this Court that the employees having accepted the contracts are bound to leave the jobs when the contract ends. The Court observed that it is not possible for the Court while exercising its jurisdiction under Article 226 of the Constitution of India to declare that the contract is a camouflage to terminate the services of the employees and that they are deemed to be in employment in regular posts when the fact is that the posts as advertised are only temporary posts. The decision squarely applies to the facts on hand.

22. It is required to notice that the post of Scientific Assistant advertised by NRSA is a purely temporary post. The duration of the said post and the appointment into the said post itself is for a period of six months. The said post itself was later converted into a contract. The petitioner entered into a contract subject to the terms and conditions mentioned therein. In the circumstances, there is absolutely no difficulty whatsoever to hold that the petitioner herein has no right for regularisation in that post.

23. However, the learned Counsel for the petitioner contends that the NRSA issued a notification on 15-4-1996 stating that the technical personnel engaged by the third respondent will henceforth be engaged on work order basis. The

move, according to the learned Counsel for the petitioner, is to dispense with the services of the persons like the petitioner, who have put in five years of service in the establishment. In its explanation, the NRSA brings to the notice of the Court that such an advertisement was issued inviting applications from the reputed and registered agencies for registration and award of work orders as and when needed for undertaking short-term works. The notification does not relate to the existing work. It is difficult to appreciate the grievance of the petitioner in this regard. There is no attempt as such to fill up the post of any Scientific Assistant as such. The post itself is not a permanent one. The notification, pursuant to which the petitioner has been appointed, itself would reveal the temporary nature of the post and its duration. Admittedly, after the project work was over, the petitioner herein was awarded appointment on contract basis subject to certain terms and conditions mentioned therein. The duration of the contract was fixed at one year. It is thus clear that at no point of time the petitioner has been selected and appointed into any regular post as such on any regular pay scales. Therefore, no directions could be issued compelling the respondents to absorb and regularise the services of the petitioner.

24. However, this Court in *T. Bupal v. Director, NRSA 1997 (4) ALT 500* having upheld the termination of services of an employee of the very same respondent-organization appointed on ad hoc/contract basis observed that "in case there is any future vacancy, the petitioner's experience must come to his aid and he should not be denied consideration for ad hoc/temporary/ regular appointment only because he has become over aged.

25. Following the said decision, liberty is given to the petitioner to apply in the event of any vacancy in future, and the respondents shall not deny the consideration of the petitioner's case for ad hoc/temporary/ regular appointment only because he has become age barred.

26. No oilier relief could be granted to the petitioner.

27. It is true that the petitioner is being continued in service pursuant to the interim directions of this Court. The Court may have its sympathy, but that itself would not be enough, as this Court is bound to decide the matter in accordance with law. Such considerations by themselves cannot form basis to pass an order contrary to the law and settled legal principle.

28. No other point is urged.

29. For all the aforesaid reasons, I do not find any merit in this writ petition and the same shall accordingly stand dismissed. No order as to costs. Consequently, the interim order earlier granted by this Court shall stand vacated.