

(1997) 11 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27112 of 1995

Dr. P.R. Krishna Reddy and another

APPELLANT

Vs

Director, National Remote Sensing Agency, Balanagar, Hyd.
and others

RESPONDENT

Date of Decision : 01-11-1997

Acts Referred:

Citation : (1998) 4 ALD 577 : (1997) 6 ALT 614

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : Mr. O. Manohar Reddy, for the Appellant; Mr. C.V. Rajiva Reddy, for the Respondent

Judgement

1. The petitioners in this Writ Petition seek regularisation of their services. The 1st respondent is a Society registered under the Societies Registration Act, admittedly a wing of the Central Government. It had advertised for the posts of Project Scientists, the minimum qualification being M.Sc. or M.A. in the relevant subject. The post was purely temporary for a period of one year against a Project and carried a consolidated monthly salary. The petitioners applied for the posts. The 1st petitioner was appointed on 4-9-1991 and the 2nd petitioner on 4-8-1991 as Project Scientists (Geography). Their term was extended for a further period of one year and subsequent extensions were given. Later, on 6-6-1994, they were appointed on contract basis with periodical extensions upto 2-12-1995 in the case of the 1st petitioner and upto 30-11-1995 in the case of the 2nd petitioner. The petitioners claim that conversion of the jobs into a contract was only a camouflage for the purpose of defeating the claim of the petitioners for regularisation. The petitioners, therefore, filed the Writ Petition seeking a direction to the respondents to absorb them in regular vacancies.

2. In the counter-affidavit it was stated that the appointments are temporary appointments against a contract work and when the work ceased the services of the petitioners had to be terminated. It was also stated that the petitioners

should not question the termination by reason of the contracts coming to an end and since they are not in service the question of regularising their services could not arise. It was also stated that the petitioners while working under contract have also applied for regular posts but were not successful. It was also stated that there is not enough work to justify the extension of the contracts in the case of the petitioners as the work was being attended to by the regular incumbents.

3. The petitioners thereupon filed additional affidavit stating that the respondents have additional works in view of implementation of action plans and the respondents have also published their on-going projects which required extra hands. In the additional affidavit they claim that there was sufficient work-load even on the date of removal of the petitioners and hence the termination was mala fide. The petitioners have also filed a reply-affidavit giving details of the ongoing projects and claiming that they are not been appointed for any particular project and since they have been utilised for different projects at different times it could not be said that they were employed only for a particular project. It was also stated that inspite of their long experience and meritorious track record they were removed and they faced the same interview committee which selected them temporarily and which recruited the candidates for permanent posts. They had been ignored as ineligible by having a cut-off mark which was not relevant to them. The respondents filed an additional counter-affidavit stating that the petitioners cannot compare themselves with regular incumbents and further that the petitioners have been duly considered for recruitment in the regular posts, but unfortunately they did not fare well in the interview. In the second additional counter-affidavit it was stated that though there were ongoing projects the policy of the organisation was to handle them with regular Scientists with adequate man-power and execute them more efficiently and not to rely upon the ad hoc Project Scientists or temporary hands. However, it is stated that the petitioners may apply to the National Remote Sensing Agency as and when vacancies are notified and their applications will be duly considered in accordance with the Rules.

4. The learned Counsel for the petitioners submitted that in a similar case viz. G.Srinivas v. Union of India 1997 (4) ALD 68, which came up for consideration in this Court, a learned single Judge came to the conclusion that the respondent was unfairly refusing to regularise the services of one of the employees. He pointed out that the Court deprecated the practice of appointing the persons on temporary basis after continuing them by extending their terms dispensing with their services on the pretext that the appointments are temporary. The learned Counsel for the petitioners also submitted that it was an unfair labour practice to convert a regular appointment into a contract system which was done on the basis of some legal advice only to defeat the rights of the petitioners and relied on the decision reported in Chief Conservator of Forests v. J.M.Kondhare 1996 (1) SLR 56. He submitted that in the other cases which have come to Court the respondents had regularised their services and therefore it will be discriminatory not to give the same benefit to the petitioners. According to the learned Counsel

for the petitioners when they joined the services they have a legitimate expectation that their services will be regularised, and hence the recruitment of others for a regular vacancy by making the petitioners ineligible was unsustainable.

5. The learned Counsel for the respondents submitted that the decision of the learned single Judge in the case of G.Srinivas (*supra*) was distinguishable. He pointed out that the petitioner in that case had been appointed temporarily in a permanent post and infact there was a provision to regularise his services, but yet he was terminated. He submitted that it was in that background that the learned Judge thought that it was a camouflage to defeat the rights of the petitioner in that case and went to the extent of declaring that if he is not regularised within a time limit he shall be deemed to have been regularised. He submitted that in the present case the posts itself are temporary posts which were subsequently changed to contract basis and when the contract ended there was no question of any regularisation of the persons concerned. He also submitted that there was no work for such Project Scientists and since the work is being done with regular employees, the only way for the petitioners to get permanent employment was to apply for any vacancies that may arise, which, however, will be considered taking into account their experience, provided they are qualified for the posts. The basic fact in this case is that the posts which were advertised for which the petitioners applied are temporary posts of Project Scientists which were for a period of one year against a contract. Subsequently they have been converted into a contract basis. It is the case of the petitioners that there was no particular Project for which these posts are recruited and that the conversion of the same into contract basis was only to defeat the rights of the petitioners for permanent service but this loses its effect when we remember that posts are classified particularly in Government service as temporary posts and permanent posts. 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. It is this basic distinction which we have to bear in mind. When the temporary post in this case was converted into contract basis all that has happened is to put the petitioners 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. The contention of the learned Counsel for the petitioners that it is unfair labour practice to have contract when regular work is available is a matter for collective bargaining and is not a matter of legal principle. It depends upon the approach of the Department in different situations as to whether they will have regular posts for some work or whether they will have only contracts for getting the work done. The petitioners having accepted the contracts, are bound to leave the jobs when the contract ends. It is not possible for this Court to declare that the contract is a camouflage to terminate the services of the petitioners 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 case of G. Srinivas, (supra) relied on by the petitioners is, in contrast, a case of permanent post where that petitioner was appointed temporarily and therefore he had a claim for regularisation. In the present case, the posts itself being temporary and later converted into a contract, I am convinced that the petitioners have no right for regularisation in that posts. In fact I have myself upheld such a position in another decision reported in B. Pandurangarao Vs. Union of India (UOI) and Others, and the Bench also has taken the same view in T.Bhupal v. Director, N.R.S.A. 1997 (4)ALT 500. The learned single Judge in the case G.Srinivas, (supra) has rightly distinguished those cases because the case of G.Srinivas was not a case of contract but a case of temporary appointment in a permanent post and hence the petitioners here cannot claim that they are discriminated or that they are entitled to the same benefit that was given to G.Srinivas.

6. The latest decision of the Supreme Court in Santosh Kumar Verma and others Vs. State of Bihar and others, , underlines this position and declares that a person appointed in a temporary post has no right to be regularised.

7. The learned Counsel for the petitioners high-lighted the difficult situations in which the petitioners are placed by reason of the fact that they have been given appointments against contracts for short periods, renewed from time to time so that prime years of their lives are spent without any guarantee of permanent service because even when they applied for regular posts they have to compete with fresh candidates and if a higher cut-off mark is given they will not be able to secure jobs. He pointed out in the present case at the time of appointment as Project Scientist temporarily the 1st petitioner was selected as he had a Doctorate in Remote Sensing which is pre-essential to the work which he was carrying-out, whereas at the time of interview for the regular post he was taken to be ineligible because the cut-off mark with the basic qualification of M.Sc. was kept at 65.5 and he had obtained 64.8. The learned Counsel for the respondents pointed-out that for the direct recruits the cut-off mark was 72 and for inservice candidates it was kept at lower figure and yet unfortunately the petitioners could not make out. I am able to appreciate the anguish of the petitioners who have served the organisation for a long time hoping to be permanently absorbed, but faced the difficulty at the time of the interview for the regular posts; perhaps if their specialised experience in the particular field is taken into account they may have better chances. But it is for the organisation to consider whether they should lose the services of those who are qualified and who are regularly carrying-out the work without any blemish. The Court can only hope and trust that other things being equal the petitioners who have served the organisation so well will be given preference and efforts will be made to retain their services without leaving them in the lurch. Since the respondent had stated in the counter-affidavit that the petitioners will be allowed to apply for regular posts and they will certainly be considered, I am sure the petitioners cases will have sympathetic considerations whenever they apply for regular posts. I may also

observe that the respondent will do well to relax the age limit for the petitioners in view of the observations of this Court in B.Panduranga Rao's case (supra) and T.Bhupal's case (supra) as well as the decision of the Supreme Court in Santosh Kumar Verma's case (supra).

8. With these observations the writ petition is disposed of.