

(2000) 11 AP CK 0054
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6922 of 1994

G. Aagamaiah

APPELLANT

Vs

Director, NRSA, Hyderabad and others

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226
Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 2 ALD 205 : (2001) 1 ALT 651 : (2002) 4 LLJ 325

Hon'ble Judges : I. Venkatanarayana, J

Bench : Single Bench

Advocate : Mr. K.G. Krishna Murthy, for the Appellant; Mr. C.V. Rajeeva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

1. The erstwhile Helper in National Remote Sensing Agency (for short "NRSA") invoked jurisdiction of this Court under Article 226 of the Constitution of India by filing this writ petition seeking for a declaration that the action of the respondent in preventing the petitioner to attend the duty as illegal as it offends Articles 14 and 16 of the Constitution of India. He further seeks declaration that he is entitled to be regularised in the cadre of Helper from the date of his original appointment as NMR Helper with all consequential benefits.

2. The factual matrix leading to the filing of this writ petition is set out as hereunder:

The writ petitioner was temporarily appointed as Helper by the respondent agency on a consolidated salary of Rs.750/- per month and since then he has been continued as Helper with break of one or two days for every six months. The petitioner was qualified to be appointed as Helper and in accordance with the recruitment rules he has submitted his application for regular appointment as an in-service candidate and he attended the interview held on 14-9-1992 and the petitioner understands that the respondent had prepared a panel among the

candidates who are selected and it would appear that his name was included in the said panel. On verification he was also informed that his case would be considered basing on the seniority and the vacancy position in the organisation. On 6-4-1994 the respondent agency has issued instructions to the security people that the petitioner should not be allowed inside to attend the duty. The conduct of the respondents in not permitting him to attend the duties without any written instructions or without any written orders is assailed in the present writ petition. In other words, he is entitled to be appointed as Helper at earth station in the respondent agency.

3. A detailed counter was filed on behalf of the respondents NRSA. It is contended on behalf of the respondents that the petitioner sent an unsolicited application on 6-1-1990 for a post and he was offered temporarily the post of Helper by letter dated 9-4-1990 on a consolidated salary of Rs.750A per month for a period of six months specifically mentioning that his appointment was upto 8-10-1990. It was also stated that his services were liable to be terminated without assigning any reasons at any time during the tenure of appointment. He accepted the terms and conditions of appointment and joined duty on 16-4-1990 and he was posted to work at Satellite Earth Station at Shadnagar. His term of appointment was extended upto 15-4-1991 with effect from 16-10-1990 on the same terms and conditions stipulated in the letter dated 9-4-1990 and for a further period of six months from 16-4-1991 and for another six months period from 16-10-1991 upto 15-4-1992. He was converted into daily waged person from 16-4-1992 at Rs.30/-per day for six months and his period on daily wages was extended by six months from 16-10-1992 and by another three months upto 14-7-1993 and a final extension was given for a further period of six months from 15-7-1993 upto 15-1-1994 on daily waged basis. The petitioner was informed orally to continue upto 31-3-1994 and he was paid wages upto 31-3-1994 and he was specifically informed on 31-3-1994 that his services were not required with effect from 1-4-1994. It is the contention of the respondents that the office of the respondents was declared as prohibited area under Official Secrets Act, 1923 and as such only the employees on roll and persons connected with day to day functioning of the respondent agency were only authorised to enter into the premises. It is further contended that this Court by an interim order in WPMP 8478 of 1994 directed the third respondent to permit the petitioner to continue to work as Helper provided his juniors were retained pending further orders. In pursuance of said orders the petitioner requested the respondents to issue orders of reinstatement into service. The respondent agency informed the petitioner that no NMR Helper junior to the petitioner has been continued in the agency beyond 5-4-1994. In the counter a reference was also made to his economic status that the petitioner is a man of means owning a house of his own at Annaram village of Shadnagar and he is having wet land of Ac.3-23 guntas in Annaram village bearing S.No.199/2 and he is carrying on business in tailoring and his elder brother is working in a nationalised Bank at Medak. It is also contended that the petitioner contested in the elections as a

Sarpanch of Annaram village and lost the election prior to his joining as Helper in NRSA. It is further submitted that in the interview conducted earlier the petitioner could not get himself qualified for the post of Safaivala and he was not found suitable to the post of Helper but he was found suitable for the post of Attender and he was kept in serial No.3 in the panel and as there were only two posts for Attenders were available during the currency of the panel of persons the persons in serials 1 and 2 were appointed. The case of the petitioner was also considered by the Selection Committee for the post of Safaivala and he was found not suitable.

4. Sri K.G. Krishnamurthy, learned Counsel for the petitioner contends that the respondent NRSA has violated the provisions of Section 25-F of the Industrial Disputes Act before orally instructing him not to come to duty.

5. Sri C.V. Rajeev Reddy, learned Counsel appearing for the respondent agency submits that in matters of contractual appointments the writ petitioner cannot invoke jurisdiction under Article 226 of the Constitution of India and on this ground alone the writ petition is liable to be dismissed. He further submits that the petitioner being a contractual appointee has no right to be regularised. Even then the respondent agency provided every opportunity and considered him for absorption. He further submitted that Section 25-F of the Industrial Disputes Act has no application for daily waged earners and hence the writ petition is misconceived.

6. Taking into considerations the rival submissions the points that fall for consideration are:

1. Whether the writ petition is maintainable against the respondents and whether it has come within the definition of State as contemplated under Article 12 of the Constitution of India?

2. Whether the respondents have violated the provisions of Section 25-F of the Industrial Disputes Act in orally instructing the petitioner not to attend duties?

Points 1 and 2:

On the question of maintainability of the writ petition a Division Bench of this Court in the decision reported in *The Director National Remote Sensing Agency v. G. Reddeppa* 1991 APLJ 243, held that the respondent agency is an instrumentality of the State falling within the ambit of other authority and therefore it is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. Following the above cited judgment I hold that the writ petition is maintainable against the respondents.

7. Section 25-F of the Industrial Disputes Act contemplates the procedure for retrenchment of workman. Section 25-F of the Act envisages that for a workman employed in the industry who has been in continuous service for not less than one year has to be retrenched by one months notice in writing indicating the reasons for retrenchment and the workman has to be paid in lieu of such notice

wages for the period of the notice. In the present case, it is in evidence that the petitioner was not in continuous service and he has been on daily wages. In other words, he has been a contract labour. The Apex Court in the judgment reported in *Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others*, , held that daily wage employees are not appointed against rules against any posts and they are appointed according to the need of the work and hence they have no right to hold a particular post. The Apex Court has held as follows:

"The petitioners who were appointed on daily wages as Assistant Driver and Peon in Co-operative Training Institute under the State Government, were terminated from service. They contended that they were retrenched from service in violation of Section 25-F of the Industrial Disputes Act, 1947. Rejecting this contention.

Every Department of the Government cannot be treated to be industry. When the appointments are regulated by the statutory rules, the concept of industry to the extent stands excluded. The petitioners were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment therefore cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and have no right to the posts their disengagement is not arbitrary."

Dealing with the principle of regularisation of daily rated workman the Supreme Court in the decision reported in *Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others*, , has held that services of workman can be regularized only when there is regular vacancy available for him and in case where he is being continued on the rolls on humanitarian grounds inspite of the facts that there being no work the workman has no right to claim of regularization. In another judgment reported in *T. Bhupal v. Director of NRSA, Hyderabad* 1997 (4) ALT 500, a Division Bench of this Court, while dealing with the issue relating to termination of service of the employee of the respondent agency has held that the termination of an ad hoc or temporary employee was not bad and it was open to the agency to consider for regular appointment in the future vacancy having regard to his past satisfactory service. In another judgment in *Rajendra and Others Vs. State of Rajasthan and Others*, , the Apex Court held that where the services were terminated since the posts itself were abolished taking into consideration the lack of funds it was held that the termination cannot be held to be bad. In any event, in the present case the petitioner is a daily waged worker and he cannot claim right to be regularized in the absence of a regular vacancy. In another judgment reported in *State of H.P., through The Secretary (Rural Development) to the Govt. of Himanchal Pradesh, Shimla Vs. Ashwani Kumar and Others*, , the Apex Court held that where workers were engaged on daily wages on muster roll basis and subsequently they were terminated since the project itself was shelved, it was held that the workers cannot claim any vested right.

8. Taking into consideration the factual matrix of the present case and in circumspection of the judgments rendered by the Apex Court I am of the considered opinion that the writ petitioner has no vested right to claim regularisation.

9. Writ petition is devoid of merits and it is accordingly dismissed. No costs.