
(2022) 10 TEL CK 0057
In the Telangana High Court
Case No : Writ Petition No. 13137 Of 2022

Gummadadala Venkataramaiah

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Citation : (2022) 10 TEL CK 0057

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : Srikanth Ch

Final Decision : Dismissed

Judgement

1. This writ petition is filed seeking a Writ of Mandamus declaring the Notification issued by the respondents vide Advt.No.01/TRAC/2022 dt.07.03.2022 for filling up the positions indicated in the Notification on the premise of vacancies arrived, while the petitioners are rendering their services in very similar projects with identical qualifications and are in expectation of regularisation of their services on the verge of longevity of their services with the respondents, as illegal, arbitrary and unconstitutional and against the principles of natural justice and consequently to set aside the said Notification and to direct the respondents to consider the petitioners' representation dt.25.01.2022 for regularisation and absorption into the respondent organization on permanent basis and to pass such other order or orders as this Court may deem fit and proper in the interest of justice.

2. Brief facts leading to the filing of this Writ Petition are that the respondents 2 and 3 are the representatives of the Telangana State Remote Sensing Application Centre (TRAC) (for short, "the organisation"). TRAC is a society established with a purpose to set up and run Telangana State Remote Sensing Application Centre, a registered society under the Telangana State Societies Registration Act, 2001 and it is the Nodal Agency for providing remote sensing and GIS technology

application services in the State. The services include mapping, monitoring and management of natural resources and infrastructure at District as well as State level using remote sensing and GIS technology sponsored by both Central and State Governments and public and private organizations. The writ petitioners have been engaged by TRAC and are working in the organisation. Some of the petitioners have been appointed in the year 2013 and they continued in service till 2018 and subsequently, they were reappointed pursuant to the Notification dt.31.08.2018 vide Advt.No.2/TRAC/2018 and are continuing as such, while others were appointed in the year 2018 only. It is submitted that the 2nd respondent had called for applications from eligible candidates and after scrutinising the applications, had shortlisted the eligible candidates who were then invited for interviews and those who were selected in the interviews were appointed to hold their respective posts and their appointments are indicated as on "hired basis" and the candidates have entered into service agreements with the 2nd respondent. It is submitted that all the petitioners have been selected in the above manner and have been continuously rendering services in the said posts. It is submitted that the 2nd and 3rd respondents have not issued updated ID cards to the petitioners with an intention to deny the petitioners any claims pertaining to their employment and this method is adopted by the respondents only with an intention to deprive the petitioners of the benefit of regularisation of their employment in the organisation. It is submitted that the appointees are also deprived of the benefit of social security laws like the gratuity, pension, ESI, etc. It is submitted that, in spite of the petitioners working for the past 10 years, and having contributed their might for the organisation, the petitioners are being paid only consolidated pay and the projects in which the petitioners were working are still in progress, and though the petitioners are qualified and eligible to execute any other projects undertaken by the respondents, the respondents have issued the Notification for engaging fresh candidates. Therefore, the petitioners are challenging the fresh Notification in Advt.No.01/TRAC/2022 dt.07.03.2022 issued by the respondents calling for applications from Remote Sensing and GIS professionals for executing works/activities of the projects taken up by TRAC. The petitioners apprehend that their services will be terminated by the respondents by hiring fresh candidates with low payouts and also deprive the petitioners of any benefits that accrue to them owing to their long service of nearly 10 years. It is submitted that the petitioners have submitted a representation dt.25.01.2022 to the 2nd respondent requesting him to restore their service conditions prevalent prior to 2018 and though the same is under consideration with the respondents since then, no action has been taken thereon. The petitioners allege that the respondents are resorting to unfair methods to victimise the petitioners and if the posts advertised through the Notification in Advt.No.01/TRAC/2022 dt.07.03.2022 are filled up, the petitioners will be deprived of their rightful position in the organisation. Therefore, they have filed the present Writ Petition challenging the Notification issued by the respondents in Advt.No.01/TRAC/2022 dt.07.03.2022.

3. This Court, vide orders dt.23.03.2022, had allowed I.A.Nos.1 and 3 of 2022, suspending the impugned Notification and also directed the respondents not to disengage the services of the petitioners. Seeking vacation of the interim directions granted above, a stay vacate petition i.e., I.A.No.4 of 2022 has been filed along with counter affidavit by the respondents.

4. The petitioners have also filed a reply affidavit along with the employment details of all the petitioners.

5. Learned counsel for the petitioners, Sri Ch. Srikanth, has also referred to the Notification in Advt.No.01/TRAC/2022 dt.07.03.2022 to demonstrate that it has been issued for appointment of remote sensing and GIS professionals for executing works/activities of the projects taken up by the TRAC for the period coterminous with the project duration of 1 to 2 years. He referred to various posts advertised therein and submitted that the petitioners herein are already working in similar posts with similar duties and responsibilities. He has also referred to the earlier Notification in Advt.No.2/TRAC/2018 dt.31.08.2018 which was issued for hiring suitable professionals/ manpower for a period of 1 to 3 years on project mode or on consultancy basis or on deputation basis both from the State and Central Government Organizations for executing space technology application project taken up by TRAC. The duration of the projects was estimated to be in the range of 1 to 3 years and their services were to be extended for further period depending on the duration of the project and subject to their performance. Therefore, he submits that since the subject Notification does not mention specific projects but only indicates certain broad activities likely to be undertaken by the 3rd respondent, the petitioners who possess necessary qualifications are also eligible for executing the projects for which the present advertisement has been given by the respondents. It is submitted that the reason mentioned for issuing the second Notification is to engage the candidates in respect of specific project assignments and since the details of the projects are not given, the intention of the respondents does not seem to engage the professionals with respect to specific projects but is only to deprive the petitioners herein, who also possess the necessary qualifications, of the benefits of their long service in the organisation. The petitioners submitted that though the petitioners have also submitted their applications online in respect of the above advertised vacancies and the respondents had stated that the petitioners' applications will also be considered, the petitioners have not been called for interview and therefore, the respondents are not likely to consider their candidature. It is further submitted that the petitioners should be considered as contract employees and as held by the Hon'ble Supreme Court, contract employees cannot be replaced with other contract employees. In support of his contention, the learned counsel for the petitioners placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Manish Gupta and another Vs. President, Jan Bhagidari Samiti and others 2022 SCC OnLine SC 485. It is further submitted that the subject Notification also suffers from lack of authority as the Notification has no sanction from the Governing Body of the society which

is a mandatory procedure required according to the Memorandum of Association dt.22.12.2009. It is further submitted that the projects for which the petitioners were hired in 2012 are still continuing and therefore, the contention of the respondents that the petitioners have been appointed and are working on project based employment is untrue since the petitioners are working on several projects from time to time or at the same time. The learned counsel for the petitioners also drew the attention of this Court to the Service Rules of Andhra Pradesh State Remote Sensing Applications Centre (APSRAC), which are also applicable to TRAC. He referred to the term 'direct recruitment' as defined in the Rules, according to which, a candidate is said to be recruited directly to a post, class or category in a service, in case his first appointment thereto is made otherwise than

(i) by promotion from the lower post, category or class in that service or from a lower grade of any such post, category or class, or

(ii) by appointment by agreement or contract.

It is submitted that all the petitioners have been appointed by direct recruitment by agreement or contract after following the due process of selection. It is submitted that Rule 8 (d) of the Service Rules provides for termination of service by the employee by giving a notice in writing of his intention to leave or discontinue the service. The period of notice required shall be

(i) During probationary period: (a) One day during the first month, and (b) One month during the rest of the probationary period.

(ii) After confirmation: (a) Three months in case of an employee as categorized under Class I and (b) One month in the case of an employee in any other class.

Sub-Rule (2) of Rule 8 provides for termination of the service of any employee by the Society on giving him for 3 months notice or pay in lieu of notice thereof and the power to terminate the service of an employee shall be exercisable by the Director General only after satisfying the Chairman that it is in the interests of the society to do so and with the prior approval of the Governing Body. He referred to Rule 11 which refers to appointment by agreement or contract. He further submitted that appointments have to be made only by approval of the General Body, whereas in the present case, there is no approval for issuance of the subject Notification. It is submitted that the petitioners have been working for more than 10 years and terminating their services at this stage of life would cause severe hardship to them as most of them would be age barred and would not be able to find suitable alternative employment. Thus, the learned counsel for the petitioners submitted that the Notification in Advt.No.01/TRAC/2022 dt.07.03.2022 is issued only with an intention to terminate the services of the petitioners and not with an intention to provide employment to others on the basis of any project and hence prays for a declaration that the Notification is not only illegal but also arbitrary and also to direct the respondents to consider regularising their services and absorbing them into the services of TRAC.

6. Learned Special Government Pleader, Sri M.V. Rama Rao, on the other hand, submitted that the Writ Petition is not maintainable as the petitioners have not made the TRAC as party respondent. He submitted that the officers of the respondent organization have been made as parties, whereas the challenge is to the advertisement issued by the organization and hence, the Writ Petition is not maintainable on this ground alone. He further submitted that the petitioners have been employed on contract basis for a particular project and on completion of the said project, their services automatically get terminated. It is submitted that the Notification in Advt.No.01/TRAC/2022 dt.07.03.2022 has been issued in respect of certain projects in hand and since the petitioners also have applied for the same, their applications will also be considered. It is submitted that the agreements of service entered into by TRAC and the petitioners in the year 2018 clearly stated that their services are being hired for a specific period mentioned therein and it is purely the project work which is time bound but not employment. He further submitted that the extension of tenure is depending purely on the duration of the project or subject to the satisfactory performance of the candidate and the extension of the tenure would be solely at the discretion of the competent authority of the organization. It is submitted that the term of the employees engaged for the project is coterminous with the project for which they are engaged. It is submitted that the allegation made by the petitioners that the impugned Notification issued vide Advt.No.1/TRAC/2022 dt.07.03.2022 is with an intention to deprive the petitioners of their appointments, is incorrect. It is submitted that the petitioners herein have also applied for fresh project works under the Notification in Advt.No.01/TRAC/2022 dt.07.03.2022 and the eligible candidates have been called for interviews phase-wise basis and due to the interim direction given by this Court, the other candidates have not been called for interview and the entire process has been stalled. It is further submitted that the petitioners have been allotted project works through Notification No.2/TRAC/2018 dt.31.08.2018 and they have given voluntary consent agreeing to all the terms and conditions of the agreement and therefore, they cannot now turn around and claim regularisation of their services or seek absorption into the organisation. It is submitted that, whenever a new project is undertaken by the organization, a Notification is issued and if the petitioners are found to be qualified and eligible, they are at liberty to submit their applications and their cases will also be considered in accordance with the requirements of the project. Therefore, he submitted that the petitioners have no right whatsoever to seek consideration of their case for appointment or regularisation of their services and absorption into the organisation on the ground that they have been working in the organisation for a long period, i.e., over 10 years. He also placed reliance upon the judgment of Hon'ble Supreme Court in the case of State of Gujarat and others Vs. R.J. Pathan and others (2022) 5 SCC 394 for the proposition that where the candidates were appointed in a temporary unit which is not a regular establishment and the posts in which they were appointed and continued to work were not sanctioned posts, directing the State to consider the case of the said candidates for regularisation sympathetically and if necessary, by creation of

supernumerary posts is not sustainable and is without jurisdiction. The Supreme Court has also taken into consideration the fact that the candidates therein have continued for 17 long years pursuant to the interim order passed by the High Court which period needs to be excluded.

7. Having regard to the rival contentions and the material on record, this Court finds that the petitioners herein have all been appointed in the earlier years on contractual basis and are continuing to render their services as on today. The learned Government Pleader has submitted that the projects for which their services have been engaged have either been completed or nearing completion and therefore their services may not be required further. It is submitted that due to the stay granted by this Court in recruiting other candidates, the respondents have not been able to recruit other candidates and are not able to execute the projects that they have been entrusted with. After going through the offer letter of appointment, it is noticed that it does not confer any right on the petitioners for continuation of their services beyond the period of contract. The petitioners are recruited for a particular project titled "Space Based Information Support for Decentralised Planning (SIS – DP) Project" purely on temporary basis for a period of one year and their service period was extended from time to time due to the extension of the project period and the extension is at the discretion of competent authority. In view of the above facts, particularly that the letter of offer itself clearly stipulated that it is contractual appointment for a period of one year, this Court is of the opinion that the petitioners have no right to claim regularisation or absorption of their services in the respondent organisation. It is also seen that some of the petitioners, though were engaged in the years 2007 and 2012, have been continued from time to time till 2018. In the year 2018, pursuant to a Notification issued for engagement of professionals for a particular project, the petitioners herein have been engaged and they are continuing since the project is yet to be completed. The respondents being the employers are at liberty to issue Notifications for hiring of professionals as per their requirement and for the tenure of their project. They cannot be compelled to absorb or regularise the services of such employees. The petitioners being temporary employees, engaged on contract basis, cannot claim absorption/regularisation of their services as a matter of right. The fact that they have also been deputed to various other organisations to discharge their duties or that they have also been given EPF Nos. and contributions were deducted from their salaries, would not bestow any additional rights in their favour. As per the contentions of the learned Government Pleader, there are no regular sanctioned posts in the organisation and engagement of the services of the employees/ candidates is purely project based. Therefore, the employment/ engagement of the employees seems to be coterminous with the project as is evident from the Notifications issued on the earlier occasions as well. Even the Rules of Andhra Pradesh State Remote Sensing Applications Centre also provide for engagement of services of the professionals as per the requirements of the project on agreement/contract basis. It also provides for termination of service by issuing three months notice

or pay in lieu of such notice. In the case of the petitioners, the termination notices have not been issued. However, apprehending that their services will be terminated because of the recruitment proposed by the Notification vide Advt.No.01/TRAC/ 2022 dt.07.03.2022, the petitioners have filed this Writ Petition. In the case of similarly placed persons who filed W.P.No.5830 of 2019, this Court vide orders dt.06.12.2019 had dismissed the case by observing as under:

"7. Based upon the above judgments, counsel for petitioners contends that the action of respondents in not renewing the contract service of petitioners is arbitrary and illegal and prayed that appropriate directions be granted in the writ petition directing the respondents to renew the contract service of petitioners with all consequential benefits.

8. The Additional Advocate-General appearing for respondents has contended that the petitioners were engaged on contract basis in SIS-DP project, and as the said project has come to an end on 20.12.2018, the services of petitioners were no more required. Since the appointment of petitioners was co-terminus with the project, the services of petitioners were deemed to have been terminated on 20.12.2018. The petitioners have no legal right to seek for their continuation beyond the project period. The learned Additional Advocate-General has drawn the attention of this Court to the counter affidavit, wherein, it was categorically stated in paragraph 6 at page No.6 that the Governing Body of the Society, in its meeting held on 28.01.2017, has extended the SIS-DP project upto 20.12.2018 and that the co-terminus services of petitioners, had to be terminated on 20.12.2018 as the tenure of the project ends on the said date. It is also stated in the counter affidavit that AKS, J W.P.No.5830 of 2019 6 the petitioners were never discriminated and the persons who were continued beyond December 2018, were working in some other project, but not in SIS-DP project, therefore, the petitioners cannot compare themselves with the other Technical Officers/ Junior Technical Officers working on other projects.

9. Counsel for petitioners has drawn the attention of this Court to page No.149 of the additional material papers filed by them to the effect that the respondents have furnished information under the Right to Information Act stating that the SIS-DP project has come to an end in the month of December 2016 itself and the petitioners must be continued on par with other contract employees, inspite of the fact that the SIS-DP project has come to an end in December, 2016.

10. This Court, having considered the rival submissions made by the parties, is of the considered view that when the petitioners were appointed on contract basis in SIS-DP project co-terminus with the said project and when the project has come to an end in December, 2018, this Court cannot give a direction to continue the petitioners on contract basis in other projects, where, similarly situated persons are continued. If the contention of the petitioners that the SIS-DP project has come to an end in 2016 itself but not in December, 2018, then, the continuation of petitioners upto December 2018 itself would be contrary to the

project. Therefore, no reliance can be placed on the proceedings issued by the respondents under Right to Information Act, when, admittedly, the respondents have specifically stated in the counter affidavit that in the 23rd Governing Body meeting of the Society held on 28.01.2017, the tenure of SIS-DP project was extended only upto 20.12.2018. As the project itself has come to an end on 20.12.2018, the services of petitioners cannot be extended beyond the said date.

11. The judgments relied upon by the counsel for petitioners have no relevance to the facts of the case, as all those judgments relate to arbitrary exercise of power. In the instant case, the petitioners have not established the arbitrary action of respondents, as admittedly, the respondents have not passed any termination orders terminating the services of petitioners. As the project has come to an end, the services of petitioners are deemed to have been terminated. Since no orders have been passed terminating the services of petitioners, they cannot also contend that it is the case of termination simplicitor or stigmatic termination. Therefore, the writ petition is liable to be dismissed on this ground also.”

8. Further, when the petitioners therein challenged the above order in W.A.No.935 of 2019, a Division Bench of this Court, vide orders dt.20.12.2019 has confirmed the order in W.P.No.5830 of 2019 by observing as under:

“Although the appellants have claimed that the project was continued even after 20-12-2018, they have not produced any evidence to buttress the said claim. Moreover, the appellants have claimed that the resolution dated 28-01-2017, passed by the 23rd Governing Body, is a forged one. However, the said plea was not raised by the appellants in the rejoinder filed by them in the writ petition. Moreover, no iota of evidence has been produced to establish the fact that the said resolution is a forged document. Therefore, there is no reason to believe that the resolution dated 28-01-2017, passed by the 23rd Governing Body, is a forged/fabricated document. Therefore, the learned Single Judge was justified in concluding that in fact the SIS-DP Project was continued till 20-12-2018. Considering the fact that the appointment was co-terminus with the continuation of the project, the learned Single Judge was justified in concluding that once the project is over on 20-12-2018, the appellants cannot claim any right to be continued in their service. By efflux of time, and due to the contract entered between the appellants and the respondent-Department, their services have come to naught.”

9. The decisions relied upon by the learned counsel for the petitioners are distinguishable on facts and are therefore not applicable to the case on hand. In the case of C. Dhanamjaya Vs. Venkateswara University 2013 0 Supreme (AP) 344 : 2014 1 ALD 448, the A.P. High Court was considering the issue of alteration of service conditions when matter is sub judice before the Court and the learned counsel for the petitioners has relied upon the observations of the Court on the employment conditions in India and not on the findings of the Court on the issue. Further, in the case of Manish Gupta and another Vs. President, Jan Bhagidari

Samiti and others (2022 SCC OnLine SC 485 supra), the Hon'ble Supreme Court was considering the case of appointment of teachers as guest faculty from year to year and it was in these circumstances that the Hon'ble Apex Court has held that an ad hoc employee cannot be replaced by another ad hoc employee and that he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. In the case before this Court, the petitioners were appointed for a project and this Court has already held that at the end of the project, the coterminous employment also comes to an end.

10. In view of the above facts and circumstances, and the orders of this Court in similar cases, this Court does not find any merit in this case and it is accordingly dismissed. In view of the above finding that the petitioners have no right to continue beyond the period of their project, the other grounds urged by the learned counsel for the petitioners are not being adjudicated. Even the preliminary objection of the respondents about the maintainability of the Writ Petition for non-joinder of proper and necessary party is also left unadjudicated.

11. The Writ Petition is accordingly dismissed. No order as to costs.

12. However, since the petitioners also claim to have applied for the posts advertised and in the counter affidavit, it is averred that their candidature would also be considered, the respondents are directed to consider the candidature of the petitioners herein for appointment pursuant to Notification vide Advt.No.01/TRAC/2022 dt.07.03.2022 if they are otherwise eligible and qualified.

13. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.