
(2006) 04 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 4351 of 2006

H. Balakrishnegowda

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 141, 142, 16, 226

Citation : (2007) 3 KarLJ 239

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Ramachandrachar, for Malikarjun S. Adagol, for the Appellant; L.K. Srinivasa Murthy, AGA for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner claims to be working on an ad hoc/daily wage basis as a "Gang man" for the past 17 years having reported for duty on 1.1.1988 and claims to be working in the same capacity as of now.

2. Petitioner's efforts to get his employment regularized or made permanent having not been favourably ordered by the Panchayath Authorities or the State Government, the present writ petition is for issuing directions to the respondents to consider and regularize the services of the petitioner.

3. Submission of Sri. Ramachandrachar, Learned Counsel for the petitioner, is that a good number of similarly situated persons had filed writ petitions before this Court; that such writ petition have been allowed and this Court has issued directions to the respondent- State and other public authorities to regularize the services of persons like the petitioner, who had put in more than 10 years of temporary service that in the present case also the petitioner having worked for 17 to 18 years in such temporary capacity, seeks for directions to be issued to the respondents to regularize the services of the petitioner and in this regard has reliance on a recent government order dated 19.07.2002. Where under Learned

Counsel submits that the State Government had issued directions for regularization of as many as 141 daily wage workers, who had put in long years of service; that though such order was passed in terms of the directions issued by this Court in writ petitions filed by such persons, the government having not passed such an order for regularization, Learned Counsel for the petitioner urges for issue of directions to pass like orders in the case of the petitioner also, who is similarly situated and at any rate having put in more than 10 years of service and therefore, the government should be compelled to do so, as the respondents are not regularizing the services of the petitioner by themselves and in such circumstances the present writ petition is for issue of a writ of mandamus to the government.

4. Notices had been issued to the respondents. Particularly State Government and Sri. Srinivasa Murthy, learned AGA appearing for the respondents had been called upon to clarify the government order dated 19.07.2002 as to under that circumstances such an order had been issued and as to whether it is one such order which provides for regularization etc.

5. Sri. Srinivasa Murthy, learned AGA on behalf of the respondent submits that the government order had been issued only to give effect to the order that had been passed by this Court in the earlier writ petitions, which was affirmed by this Court in W.A.Nos. 2765 to 2905/2000 dated 23.1.2001; that the government order was Confined to the case of the petitioners covered therein and not a government order in general; that it cannot be relied upon for seeking regularization as a matter of right in other subsequent cases also.

6. It is also the submission of the learned AGA that regularization is not a law; that the petitioner has no right for seeking regularization in the light of the government order cited above. Regularization of temporary services of ad hoc employment was for the first time effected pursuant to the directions of the Supreme Court in the case of The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., , that there after much water has flown; that though many High Courts purporting to follow the decision of the Supreme Court in the case cited above had issued similar directions for regularization of daily wage workers/temporary employees/ad hoc employees, later Supreme Court has clarified that the High Courts are not enabled to issued such directions particularly as a direction that had been issued by the Supreme Court in the above cited case and some similar other cases by the Supreme Court is not a law laid down within the meaning of Article 141 of the Constitution of India; that such order/direction had been issued by the Supreme Court in the Exercise of its extraordinary jurisdiction; under Article 142 of the Constitution of India that such power was not available to the High Courts", that the High Courts purporting to follow the law laid down by the Supreme Court passing similar orders or issuing directions for regularization was not permitted on the premise that the High Courts have to only follow the law laid down by the Supreme Court within the meaning of Article 141 of the

Constitution of India; that this aspect of the matter having been categorically clarified as laid down by the Supreme Court in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., as observed in paragraph 11 of this order which reads as under:

11. This Court in Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, , gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before October 1, 1984. It is a directions under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ration in Dr P.P.C. Rawani and Others Vs. Union of India (UOI) and Others, , is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularise the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implementation the order issued, under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India (UOI) and Others Vs. Dr Gyan Prakash Singh, this Court by a Bench of three judges considered the effect of the order in A.K. Jain's case and held that the doctors appointed on ad hoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment in H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, , this Court while holding that the appointment to the posts of clerk etc., in the subordinate Courts in Karnataka State without consultation of the PSG are not valid appointments, exercising the power under Article 142. directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years service. It is to be noted that the recruitment was only for clerical grade (Class-in post) and it is not a ratio under Article 141. In State of Haryana and others Vs. Piara Singh and others etc. etc., , this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to complete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employees. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a

temporary or ad hoc employee continued for a family long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only Class-II or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules. and such aspects and developments having been noticed and considered by a Division Bench of this Court in the case of *State of Karnataka v. Casual Daily Wage Workers Union* ILR 2001 KAR 1178 and the Division Bench of this Court having an occasion to examine the very impact of the order passed by another Division Bench of this Court in the very W.A. Nos. 2765 to 2905/2000 for implementation of which the government order dated 19.07.2002, directions had been issued and the Division Bench of this Court in the case of *State of Karnataka v. Casual Daily Wage Workers Union* reported in ILR 2001 KAR 1178 having specifically indicated that the directions issued by the other Division Bench was obviously per incuriam the law laid down by the Supreme Court as contained in paragraph 47 of the judgment of this Court reported in ILR 2001 KAR 1178 which reads as under:

47, Yesterday when these matters were listed for pronouncement of this reserved judgment, Learned Counsel appearing for the respondents brought to our notice a judgment of this Court delivered on 23.1.2001 in W.A.2765-2905/2000, which is in relation to 141 daily wage employees of some of the local bodies, wherein an other Bench of this Court has held that:

We are entirely in agreement with the order passed by the Learned Single Judge. The very fact that the respondents have worked for 10 years continuously show that the need is permanent. The claim for regularisation of their services has to be considered after framing the scheme. The Learned Single Judge has rightly issued directions in these terms.

In our considered opinion, the above view taken by the other Bench of this Court is clearly per incuriam in view of the judgments of the Supreme Court in the cases of *State of Punjab v. Surinder Kumar* and *J and K Public Service Commission v. Narindar Mohan*."

7. This writ petition has only to be dismissed as a writ of mandamus for regularizing the services of the petitioner cannot be issued.

8. The further submission of the Learned Additional Government Advocate is that

this is the law that is required to be followed and on such premise the writ petition is liable to be dismissed.

9. An examination of the legal position clearly reveals that there is no law for regularization in fact regularization; of improper/ad hoc temporary appointment is frowned upon by the constitution and it is impossible to direct the State which is under constitutional mandate to provide equal opportunity to all citizens, to act in any other manner including issue of directions for regularization of ad hoc employees or daily wage workers not engaged in terms of the relevant rules and regulations governing such appointment. Issue of such directions virtually amounts to compel the State to violate the mandate contemplated under Article 16 of the Constitution of India, as it is nothing but a back door entry to employments under the State. It will be a travesty of constitutional position and law if the Courts particularly the High Courts in exercise of their constitutional jurisdiction under Article 226 should embark upon issuing directions to the Government and other authorities which are treated as State within the meaning of Article 12 to regularize any improper, temporary or ad hoc appointment on the premise that such persons have worked for some length of time. In fact the Supreme Court had occasion to consider even such appointments and had also distinguished that an order for regularization can only be in situations where the service of the official was fully in consonance with the prescribed procedure and the persons being eligible and an opportunity having been accorded to all eligible persons and wherein confirmation having been postponed only for want of an existing vacancy of any other technical defect.

10. While this Court in fact frowns upon and has made it clear that an action on the part of the State in appointing persons public posts under the State without affording equal opportunity to all eligible persons is an action which is violative of Article 16 of the Constitution of India, a petition for issue of such directions by this very Court to compel the State Government to regularize otherwise improper initial appointment whether it is temporary or otherwise is nothing short of blasphemy for this Court. It is not the function of a constitutional Court to issue directions to the executive wing of the State to act contrary to constitutional mandate. The prayer as sought for by the petitioner for issue of direction to regularize the service of the petitioner, cannot be granted.

11. No occasion for issue of a writ of mandamus. This writ Petition is dismissed.