

(2020) 11 KL CK 0135

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 32163 Of 2018 (U)

Haridas And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 11 KL CK 0135

Hon'ble Judges : Gopinath P., J

Bench : Single Bench

Advocate : Sreedhar Ravindran, Aparna Rajan, Rekha C Nair

Judgement

1. This writ petition has been filed challenging Ext.P15 order of the Government of Kerala rejecting the request of the petitioners for regularisation of

their services under the 3rd respondent namely, the Chief Engineer (Irrigation and Administration), Thiruvananthapuram.

2. The brief facts are that the petitioners are unskilled manual labourers working in various Gardens attached to the Malampuzha Dam in Palakkad

District. Though the Malampuzha Dam is under the control and supervision of the Irrigation Department, the Gardens were being maintained by the

District Tourism Promotion Council (DTPC). The District Collector, Palakkad is the Chairman of the DTPC. Exhibits P1 & P2 are communications

dated 06-12-2005 and 28-02-2006 issued by the Executive Engineer, Irrigation Division regarding the regularisation of the petitioners. Following Ext.P3

judgment dated 17- 03-2008 the District Collector held that since the workers were engaged by the Irrigation Department he had no authority to direct

their regularisation. This order of the District Collector (Ext.P4) led to representations being filed before the Chief Engineer seeking the benefits of

regularisation under various Government orders. It appears that list containing service details of petitioners and those similarly placed was prepared by

the Curator of the Malampuzha Gardens and this list contains the names of the petitioners herein.

3. Through Ext.P8 judgment in W.P (C) No.2215/2009 filed by the petitioners and other similarly situated this court directed the Government to take a

decision in the matter. Exhibit P9 order was thereafter issued by the Government rejecting the claim for regularisation on the ground that the benefits

of paragraph 7 (iv) of G.O (P) No.106/85/PW & T dated 17-09-1985 which provided for regularisation of SLR /CLR workers on the basis of seniority

could not be extended to the petitioners and others as they were engaged only after 19-05-1983, which was the cut-off date prescribed by the

Government order dated 17-09-1985. Exhibit P9 order came to be challenged before this court through W.P (C) No.21499/2011. That writ petition

was disposed of holding that notwithstanding the rejection of their request for regularisation through Ext.P9 the petitioners and others are free to raise

an industrial dispute regarding their claim. The judgment of the learned Single Judge in W.P (C) No.21499/2011 Was however reversed in an intra

Court appeal through Ext.P13 judgment in WA No.130/2008. After noticing the facts this court held as follows: -

â??12. As has been rightly pointed out by the learned Government Pleader, it would not be within the province of this court, while acting under Article

226 of the Constitution of India, to direct the Government to evolve a policy or to pursue it with respect to the question of regularisation of workers. It

is certainly left to the wisdom of the Government, taking into account the relevant criterion, to decide whether any such policy is required to be

contemplated and if so, of what kind. We do not propose to say anything conclusively on this. However, we are certainly of the view that the

Government had earlier taken a decision with respect to the regularisation of employees similarly placed, as is clear from Ext.P9 Government Order, it

would be enjoined upon them to consider the case of the appellants also, taking into account the criteria that was evolved by the Government earlier or

based on the criteria that may be taken by them in future. We are only saying that the denial of the appellants' claim merely because 1990

Government Order did not apply to them, cannot appeal to our conscience. The question as to whether they are entitled to the benefit of the 1990

Government Order or whether they are entitled to a similar benefit to be given through a subsequent order has not been considered by the

Government in Ext.P9 and, therefore, we are certainly of the view that the appellants should be allowed such a consideration. To pave way for such

consideration of the claim of the appellants at the hands of the Government, we deem it appropriate to strike down Ext.P9, to the extent which it

relates to the appellants.

13. Ext.P9, is therefore, quashed to the above extent and this writ appeal is disposed of directing the competent authority in the Government to

reconsider the claim of the appellants for regularisation, based on such relevant criteria as was earlier fixed or to be fixed by the Government in its

wisdom and then to decide whether any such benefit, as given to their predecessors in service through Government Order dated 20.1.1990 can be

extended to them also. This exercise shall be completed by the Government as expeditiously as possible but not later than six months from the date of

receipt of a copy of this judgment, after affording an opportunity of being heard to one among the appellants or their duly authorised representative.â??

3. It appears that when the matter was pending before this court Ext.P14 a Government order (G.O (MS) No.6/2013/WRD dated 16-01-2013) was

issued extending the benefit of regularisation to persons who had completed 500 days of service as on 01-01-2011 subject to certain conditions. It is

not necessary to notice all the conditions set out in Ext.P14 in view of the manner in which I propose to dispose of this writ petition. Following the

reconsideration of the matter in the hands of Government, as directed in Ext.P13 judgment, Ext.P15 order was passed by the Government taking into

consideration the terms of Ext.P14 Government order dated 16-01-2013. A reading of Ext.P15 shows that the claim of some of the petitioners was

rejected on the sole ground that they did not satisfy the condition of having 500 days of service as on 01-01-2011 While that of others was rejected on

the ground that they did not satisfy the condition of having 10 years of service as on 1-1-2011. This writ petition is filed challenging Ext.P15 order.

4. I have heard Sri. P. Ravindran, learned Senior counsel appearing on the instructions of M/s Aparna Rajan and Sreedhar Ravindran and Smt.Rekha

C Nair, the learned Government Pleader appearing for the respondents.

5. The Learned Senior Counsel appearing for the petitioners would submit that

Ext.P15 order is ex-facie illegal and unsustainable in law. He would refer to Ext.P11 Which is a list of HR/CLR workers in Head Works Sub Division, Malampuzha as on 01-01-2011 and submit that it is evident from Ext.P11 that the petitioners have put in more than 11-12 years of service as on 01-01-2011. Though he would also contend that even though the petitioners had a larger number of years service than what is recorded against their names in Ext.P11, that issue is really not required to be adjudicated since even taking into account that service set out against their names in Ext.P11 they satisfy the conditions in Ext.P14 Government order. He would submit that the finding in Ext.P15 that the petitioners had not completed 500 days service as on 01-01-2011 is only for the purpose of denying the benefits of Ext.P14 Government order and it seems highly improbable that the persons have worked 11-12 years would not have completed 500 days of service. He would also submit that there is nothing in Ext.P15 which would suggest that the finding therein that the petitioners had worked only for the days specified against their names was determined on the basis of some reliable record.

6. Per contra, the learned Government Pleader would submit that the petitioners are not entitled to the benefit of Ext.P14 Government order. She specifically refers to paragraph 7 of the counter affidavit dated 07-06-2019 filed by the Executive Engineer, Irrigation Division, Malampuzha. The Learned Government Pleader would also refer to paragraph 5 of the counter affidavit dated 19-09- 2019 filed on behalf of the 1st respondent herein where it is stated as follows;

â??5. It is submitted that it was decided to prepare seniority list of HR/CLR workers in Irrigation Department. Exhibit P11 is not the seniority list of HR/CLR workers in irrigation department. But only the list of HR Workers in Malampuzha Garden. The petitioners are never denied casual works.

After the bifurcation of PWD into PWD and Irrigation Department on 01.04.1990, Government have decided to absorb HR Workers in Irrigation Department as SLR Workers. In order to find out the eligible HR Workers, who depend only on the casual works of Irrigation Department, the following four conditions as on 01.01.2001 and o1.01.2011 as cut off dates have been framed.

a) Those who have at least 500 duty days as on 01.01.2011

b) Those who have completed 10 years service as on 01.01.2011.

c) Those who are presently working as HR/CLR Workers.

d) Those who have not crossed the age of 58 as on 01.01.2011.

6. Thus 834 HR Workers who satisfy all the above four conditions have been regularized as SLR Workers vide G.O. (MS)06/13/WRD dated

16.01.2013. 1st & 2nd, 4th & 5th petitioners are having less than 500 duty days as on 01.01.2011. Since they do not satisfy the condition (1) of the

G.O(MS)06/13/WRD dated 16.01.2013, they are not eligible to be regularized as SLR worker. 3rd and 6th petitioners have not completed 10 years of

duty and worked for less than 500 days as on 01.01.2011. Since they do not satisfy the condition 1 and 2 of the G.O. (MS)06/13/WRD dated

16.01.2013, they are also not eligible to be regularized as SLR workers. As per G.O(MS)06/13/WRD dated 16.01.2013, it may be noted that even

though all the petitioners have started their casual works in Irrigation Department well before the date of order of regularization ie. 16.01.2013 they did

not complete 500 duty days as on 01.01.2011. Hence their request for regularization cannot be considered.

She submits that the petitioners are clearly not entitled to the benefit of Ext.P14 and that there is no merit in the Writ Petition and it is only to be

dismissed.

7. I have considered the contentions raised by either side. A reading of the judgment of the Division Bench of this court (Ext.P13) shows that the

Division Bench was clearly of the view that even if the petitioners were not entitled to the benefit of the Government order issued in 1990 relating to

workers who had been engaged prior to 19- 05-1983 that alone may not be a ground to deny them the benefits if they are otherwise entitled to a

similar treatment. Exhibit P11 list shows that all the petitioners except the 4th petitioner (Sri. Hari. V) have been shown as having completed 11-12

years as on 01-01-2011. As is rightly pointed out by learned Senior Counsel appearing for the petitioners it is highly improbable that persons who had

worked 11-12 years as on 01- 01-2011 Would not have completed 500 days of service in total during the entire period of their service even if they

were being engaged intermittently. Exhibit P15 Government order does not set out any detail regarding the basis of which it was determined that the

service of some among the petitioners was less than the required number of

days as on 01-01-2011. Further, the basis on which it was found in Ext.P15 that Sri. K.R. Baby and Sri. V. Wilson (3rd petitioner and 6th petitioner) had not completed 10 years of duty as on 01-01-2011 is not disclosed. The service particulars of Sri.K.R. Baby set out in paragraph 4 of the very same Government order, reveals that he was first engaged in June 2001 and had a break in service in the year 2003. Similarly, Sri. V. Wilson was engaged in August 2001 and had a break in 2003. In respect of others, the objection is that though they had completed more than 10 years of service as on 01-01-2011 they have not completed the requisite period of 500 days of service as on that date. Three among the petitioners are stated to have entered service for the first time in the year 1996 and one of them in December 2000. Only the aforesaid K.R. Baby and V. Wilson are stated to have entered service in 2001. As already stated it is quite improbable that these persons having long years of service would not have completed 500 days of service as on 01- 01-2011. In the case of K.R. Baby and V. Wilson Ext.P15 is silent as the period during they were not engaged in the year 2003. This court will not, normally, in the exercise of jurisdiction under Article 226 of the Constitution of India enter into any finding regarding disputed questions of fact. However, I cannot but hold that Ext.P15 Government order does not appear to have considered the case of the petitioners in a proper manner. I, therefore, quash Ext.P.15. I direct that a competent officer of the 1st respondent shall determine the issue as to whether the petitioners are entitled to benefits of Ext.P14 Government order. The officer concerned will advert to all necessary facts and examine all necessary documents to determine whether the petitioners are entitled to the benefit of Ext.P.14. If it is found, in respect of any of the petitioners, that they do not qualify in terms of Ext.P14 either on account of not having completed 500 days of service as on 01-01-2011 or on account of not having completed 10 years of service as on 01-01- 2011, such findings shall be rendered with specific reference to the records which establish those facts. The petitioners shall be given an opportunity of being heard and right to produce any documents which would show that they are entitled to the benefit of Ext.P14 Government order. Considering the fact that the claim of the petitioners have been pending before this court and the Government for a fairly large number of years, I direct that the exercise, as directed above,

shall be completed within 2 months from the date of receipt of a copy of this judgment.