
(2011) 08 KL CK 0033

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23096 of 2011

Indira C.A. and Others

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2011) 4 KLJ 289

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Advocate : V. Chitambareesh, T.C. Suresh Menon, Jibu P Thomas, P.S. appu, A.R. Nimod, C.A. Anoop and Mathews Raju, for the Appellant; Smitha Sukumar (GP), for the Respondent

Final Decision : Dismissed

Judgement

C.T. Ravi Kumar, J.—The petitioners were temporary appointees under Rule 9(a) (i) of Part II of the Kerala State and Subordinate Services Rules, 1958 (for short "the Rules"). They were appointed as Junior Public Health Nurse at various Primary Health Centers under the Health Department. In the year 1999 their services were terminated. Similarly situated persons assailed the order of termination. Ultimately the said matter went up to the Hon"ble Apex Court. The entitlement of such person for appointment was considered by the Hon"ble Apex Court as per Ext. P1 order dated 22.4.2003. Admittedly, the petitioners were not parties before the Hon"ble Apex Court. The appeals and the write petition were disposed of as hereunder:-

1. The services of those appellants/petitioners, whose services were terminated after filing the special leave petitions, will be regularised in terms of the order dated 11.7.2001 extracted above.
2. The services of those appellants/petitioners, whose services were terminated before they approached this Court, they may apply afresh and approach the

Competent Authority for their appointment. In case they apply, their cases will be considered without placing age-bar against them.

We make it clear that in case vacancies are available to accommodate such appellants/petitioners, subject to their satisfying their eligibility and other conditions of service except the age, it is open to the State Government to consider their cases having regard to the fact that similar cases have been considered.

We also make it clear that, in any event, the appellants/petitioners shall not be entitled to claim any pay or arrears of salary, etc. as indicated in the order dated 11.7.2001.

Pursuant to Ext. P1, persons who fall under first category in Ext. P1 were all regularised in service. Claiming extension of the benefits granted to second category, as per Ext. P1 order, the petitioners submitted Exts. P2 and P3 representations. On account of their inaction on the said representations the petitioners were constrained to approach this Court by filing W.P. (C) No. 14608 of 2007. The said writ petition was disposed of as per Ext. P4 judgment dated 31.1.2008. Based on Ext. P4, the said representation were taken up for consideration, but the claims were the rejected by the first respondent as per Ext. P5. Order dated 26.9.2008. Subsequently, on coming to know that certain similarly situated persons were given regularization in services they again approached the first respondent through Ext. P6 representation Ext. P6 representation dated 11.6.2011 submitted seeking reappointment was rejected as per Ext. P7. It is challenging Exts. P5 and P7 that this writ petition has been filed. The further payers of the petitioners is for issuance of a writ of mandamus commanding the respondents to reinstate them in service as Junior Public Health Nurses in the light of Ext. P1 order of the Hon"ble Apex and Court for the a declaration that they are entitled to equal treatment as that of the petitioners in Ext. P1 order of the Supreme Court.

I have heard the learned counsel appearing for the petitioners and also the learned Government Pleader.

2. As already noticed hereinbefore, the petitioners herein were not parties to Ext. P1. However, it is claiming extension of the benefits granted to the second category of the appellant/petitioners in Ext. P1 order that a approached the respondents. Pursuant to Ext. P4 judgment, the claims of the petitions were considered and as per Ext. P5 dated 26.9.2008 the same were rejected. However, the petitioners have not chosen to challenge the same within a reasonable time. They have again approached the first respondent on getting information that certain similarly situated persons were given regularization. Ext. P6 representation submitted thereafter, seeking re-appointment was rejected as per Ext. P7 dated 20.6.2011. As stated earlier, the petitioners were appointees under Rule 9 (a)(i) of part II of the Rules, Their services where terminated as early as in the year 1999. Thereafter, they had not challenged the order of

termination in time. They moved the Government seeking appointment the said claim was rejected as per Ext. P5 dated 26.9.2008 and thereupon, they fell in slumber. It is the news of regularization of certain allegedly similarly situated persons that acted as the waker. However, that was also a vain attempt. It is thereafter, that this writ petition has been filed. In that context, it is to be noted that the Hon''ble Apex Court in Ext. P1 order issued only a direction for consideration in case of availability of vacancies even in the case of those who were parties before the Hon''ble Apex Court but approached the Court only after termination of service viz., the second category. It is true that the claim of the petitioners were directed to be considered in accordance with law, by this Court as per Ext. P4 judgment. Obviously, after such consideration, it was rejected as per Ext. P7 order dated 20.6.2011. The claim of the petitioners is, admittedly, founded on Ext. P1 order which was rendered by the Hon''ble Apex Court on 22.4.2003, prior to the decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and also the claim that some similarly placed persons were given regularization subsequent to Ext. P5. In the context of the contentions, it is relevant to refer to the decision of the Hon''ble Apex Court in Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., . It was held therein that mere directions given in a case without laying down a principle of law did not constitute a precedent and such directions could only be treated as one given under Article 142 of the Constitution of India. As regards the decision of Hon''ble Apex Court in Umadevi (3) (supra) undoubtedly, it is binding on all parties in view of India. It was rendered by the Hon''ble Apex Court after considering such claims in the light of the constitutional scheme for public employment. Going by the decision in Umadevi (3) (supra) the petitioners cannot legally claim for re-appointment or for regularization in service. In fact, the petitioners did not dispute this position. In the context of the case, it is also relevant to refer to the decision of the Hon''ble Apex Court in Pinaki Chatterjee and Others Vs. Central Administrative Tribunal and Others, . In fact, that was a case where regularization relying on departmental instructions issued prior to and contrary to the law laid down in Umadevi (3) (supra) was sought. It was held that concern Railway Board Circular which supported the case, issued long before law laid down in Umadevi (3) case, could not be relied on to effect recruitment contrary to statutory recruitment rules and in violation: of Articles 14 and 16 of the Constitution of India. The contention that similarly situated persons have been appointed/absorbed cannot be a reason for issuance of a writ of mandamus as the petitioners got to legal right and the State got to corresponding obligation and there cannot be equality in illegality. After considering the decision in Umadevi (3) such a view was taken by the Hon''ble Apex Court in Union of India (UOI) and Another Vs. Arulmozhi Iniarasu and Others, . In this case, it is stated in Ext. P7 that in tune with the relevant recruitment rules ranked lists have been drawn and published by the Kerala Public Service Commission for appointment to the Concerned post and they- are in force. In the light of the above discussion, I am of the considered view that the petitioner cannot legally claim for re-appointment. I am also persuaded to come to the same conclusion claim on the

decision of this Court in State of Kerala v. Thirumeni In the latter decision, it was held that those who have not challenged the impugned action even if similarly placed, would not be entitled to the benefits as they have slept over their right. In this case, the petitioners were terminated from service as far back in the year 1999, It is without challenging their termination at the appropriate time that the petitioners now, seek reappointment relying on Ext. P1. For the forgoing reasons, the petitioners are not entitled to the reliefs sought for. There is no merit in this writ petition, Accordingly, it is dismissed.