

(2011) 07 KAR CK 0158

In the Karnataka High Court

Case No : Writ Petition No. 47084 of 2004 (S-RES)

K. Gopal

APPELLANT

Vs

The Managing Director Karnataka Power Transmission
Corporation Limited, Cauvery Bhavan, Bangalore 560 009
and Others

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Citation : (2011) 07 KAR CK 0158

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V.S. Naik, for the Appellant; Latha Prasad, Advocate for Respondents 2-4, Shri P.S. Dinesh Kumar, Advocate for respondent No. 1 (NOC), Shri Pramod Kathavi - Advocate for 1st respondent, Shri Somahekar, Advocate for M/s. S.N. Murthy Associates - Advocate for Respondents 5 and 6 and Shri Raghavendra G. Gayathri HCGP for respondents 7 to 10, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The petitioner files an application for amendment today. Counsel for the respondents have no objection.

2. Hence, the application is allowed and the amended petition is taken on record.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent as well as the learned Government Pleader.

4. The facts briefly stated are as follows:

The petitioner was appointed by the erstwhile Karnataka Electricity Board as a peon and later as a Laboratory Attender, on temporary basis, for a period of three months on a consolidated pay of Rs. 250/- per month. The order of appointment was dated 29.7.1989. His appointment was made pursuant to an interview conducted by the authorities. He had reported for duty in the Karnataka Electricity Board Pre-University College, Jogfalls. The petitioner's

appointment was treated as temporary and on contract basis. The petitioner was sought to be relieved from time to time and was re-appointed. The pre-university college was and is run for the benefit of children and relatives of the employees working in the erstwhile KEB and now the Karnataka Power Transmission as well as other local people. The affairs of the college are managed by a Managing Committee headed by the 3rd respondent who is the ex-officio Chairman of the Committee. The services of the petitioner was continued from 1989 and his salary was enhanced from time to time. This was, however, paid on a consolidated basis without other allowances to which he was entitled. He was paid Rs. 250/- per month in the year 1989 and it was nominally enhanced from time to time and as of the year 2000, the petitioners salary was raised to Rs. 3600/- per month, which was, without ceremony, reduced to Rs. 3000/- in the very same year. The petitioner was drawing a sum of Rs. 3000/- as consolidated pay on the date of the present petition. The petitioner was allotted quarters and he was residing in the same paying a monthly rent. The petitioner was not provided with any other service benefits. The Karnataka Power Transmission Corporation took over the affairs of the Karnataka Electricity Board. In respect of the power generating unit, one more Company was formed under the name of "Visvesvaraya Vidyuth Nigama Neyamitna" (Hereinafter referred to as "VVNL" for brevity) and the services of the petitioner came to be assigned under the said Company.

5. The petitioner contends that he had learnt as to the 1st respondent having accorded permission to respondent no.3 to fill up vacant posts in September 2000, in the High School and College run by VVNL and Karnataka Power Corporation, jointly. There was also a direction issued to share the expenditure towards the salary and other emoluments paid to the employees in the institution. Insofar as the pre-university college was concerned, sanction was accorded for 2 posts of attender by fixing a monthly expenditure at Rs. 2600/-. As already stated the petitioner was continuously working since 1989 though he was initially appointed as peon and thereafter in January 2004, he was designated as Lab Assistant/Attender. The petitioner claims that his services have been without blemish and there has been no complaint from any quarter as to his conduct and services. Though the respondents have continued his services, with the breaks of relieving him at the end of every academic year and then reappointing him is evident from several orders produced as per Annexures B to K. By an order dated 15.5.2000 when he was sought to be appointed, as was the usual practice, he was informed that he would have a consolidated salary of Rs. 2500/- per month. But by a subsequent order dated 10.8.2000, he was appointed on salary comprising of Basic Pay and Dearness Allowance. The petitioner was continuously requesting that his services be regularised and his services be confirmed and it is his belief that the 4th respondent had recommended the case of the petitioner for regularisation of services. But the petitioner's services having been treated as temporary he was informed, accordingly, in the letter of appointment issued dated 19.8.2004, which stated

that his appointment was temporary and that his services could be terminated without any notice. The petitioner therefore made a representation that since he had put in more than a decade and a half of service, his services could not be treated as temporary and sought for regularisation. However, to the petitioner's dismay, his order of appointment was sought to be amended to read as if it was for a shorter period than was originally intended and it was stated that his appointment was from 1.6.2004 to 30.11.2004 instead of up to 31.12.2004 and the petitioner further fearing that his services would be dispensed with, immediately made further representations but to no avail and it is in that background that the petitioner had approached this Court and in the first instance, an interim order was granted as prayed for and the petitioner is continued in service till date.

6. It is his further contention, which is incorporated by way of an amendment, that the 4th respondent which is under the Karnataka Power Transmission Corporation viz., 5th respondent and the 4th respondent- institution which is under the management of the said respondent as well as the 3rd respondent, is governed by the Grant-in-Aid Code and the staff working in the college, both teaching and non-teaching staff, are also covered under the Grant-in-Aid Code and the employees both teaching and non-teaching staff, except the petitioner, are working in the college on deputation from the Karnataka Power Corporation since the erstwhile MSEB High School at Jog falls and Shivanasamudram having been merged with the present high school run by the respondents herein. However, it is the complaint of the petitioner that respondents have not taken any action to extend the benefit of the Grant-in-aid to the petitioner and to regularise his services and the respondent/management having extended the benefit to persons who were appointed much after the petitioner was appointed and inducted into service, the denial of the same to the petitioner is arbitrary and wholly illegal and therefore. he seeks an appropriate direction to the respondents to forward the proposal to extend the benefit of Grant-in-Aid to the petitioner and with a further direction to consider the same and accord necessary approval in pursuance of a Government Order, a true copy of which is produced.

7. The respondents have entered appearance and have filed statement of objections, to primarily contend that it is not in dispute and it is candidly admitted by the petitioner that he has been treated as a temporary employee from inception and he has never been treated as a permanent employee even as per the petitioner. Hence, the question of recommending his case by sending a proposal to the Government to extend the grant-in-aid would be negated as the petitioner himself claims to be a temporary employee and therefore, the question of recommending his case without being regularised in service is redundant and would be futile since the records would indicate that he has always been treated as a temporary employee.

8. The learned Government Pleader would also contend that in the absence of any proposal by the management for consideration of the case of the petitioner,

it would not be for the State Government to take action by itself unless there was a proposal in the first instance and the petitioner was treated as a permanent employee for the petitioners case being considered for grant-in-aid. In the absence of which it is futile for the petitioner to seek any such direction insofar as the State Government is concerned, Given the above facts and circumstances, it is evident that the management has continued the services of the petitioner though seeking to characterize his appointment as temporary. The fact that he has been employed since 1989 on a continuous basis though with illusory breaks in order to maintain the status of the petitioner as a temporary employee is not in dispute. He has, however, been continuously employed for every single academic year throughout, from the year 1989. This would certainly afford a permanency to his appointment. Hence, there should be no impediment for the respondent to regularise his services in employment and also to recommend his case for extension of Grant-in-aid. As a first step, the management which has no complaint as to the petitioner's conduct or service, shall regularise the services and thereafter taking into account the length of service would seek extension of Grant-in-aid from the State Government. Then, it is for the State Government to consider the case of the petitioner for extension of Grant-in-aid and also the date from which such grant-in-aid could be extended. It goes without saying that the management which has had the benefit of the services of the petitioner would extend him such nominal benefit with retrospective effect which in its wisdom would adequately compensate the petitioner for having denied the allowances and benefits which he would be entitled in case he was a permanent employee and thereafter, recommend his name for extension of the Grant-in-aid treating the petitioner as a permanent employee. The State Government shall thereafter consider the petitioner's case in accordance with law. With these observations, the petition stands allowed.