
(2003) 10 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 596 of 1999 and C.M.P. No. 6124 of 1999

Kamakannan P. and Others

APPELLANT

Vs

St. Thomas Mount Panchayat Union

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 LLJ 476 : (2003) 3 MLJ 745

Hon'ble Judges : S.K. Krishnan, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : T.S. Ramaswamy, for the Appellant; K.R. Tamizhmani, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Krishnan, J.—Aggrieved by the order of the learned single Judge dated February 17, 1999, passed in W.P.No.4447 of 1991, the

petitioners had filed this writ appeal under Clause 15 of the Letters Patent.

2. The facts, in brief, giving rise to this appeal, are as follows:

The appellants herein had worked under the respondent as workmen from 1985 to 1991 and thereafter, they had been ousted from their services

by the respondent Panchayat Union. Since the appellants had worked for a long time under the respondent and they had been terminated from

their services, invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the appellants filed a writ petition in

W.P.No.4447 of 1991, which was dismissed by this Court. Aggrieved by the same, the appellants have come forward with this appeal.

3. Heard the learned counsel for the appellants as well as the respondent.

4. It is contended by the appellants that they used to be employed continuously for a period of 90 days and then ousted for a few days and again re-employed for a further period of 90 days. This had been the routine procedure; adopted by the respondent from 1985 to 1989. Therefore, the appellants are entitled to claim that their services have to be regularised and the respondent is bound to do the same since the appellants had worked under the respondent from two to five years continuously.

5. Denying the contention raised by the appellants, the respondent has stated that these appellants were appointed as mazdoors at the time of cholera outbreak to assist the Health Inspector in chlorination of drinking water wells in the villages and that those appointments were purely temporary.

6. It is pointed out that initially in the year 1986, five persons were appointed as cholera mazdoors even though there was no cholera outbreak in the respondent Panchayat Union area. Thereafter, local body elections were held to the respondent Panchayat Union and the Chairman and the Councillors assumed office on March 3, 1986. Thereafter, the Chairman and the Councillors of the respondent Panchayat Union appointed 10 persons as cholera mazdoors on the recommendations of the Health Inspectors and the said proposals were considered by the District Health Officer and the same were approved. It is further pointed out that even though the District Health

Officer was aware of the fact that there was no cholera outbreak from 1985, he approved the list, which was forwarded by the Health Inspector of the respondent Union.

7. According to the respondent Panchayat Union, the District Health Officer initially gave concurrence only for three months and after completion of three months, fifteen persons were given break for sometime. Again, the said 15 persons were asked to attend the same work on the recommendations made by the Health Inspector and the same were endorsed by the District Health Officer.

8. It is seen that the period of appointment of 10 cholera mazdoors was over by February 2, 1991 and five persons by March 7, 1991. Since there was no cholera outbreak in any part of the Panchayat Union, there was no need to re-appoint such mazdoors.

9. It is contended that the appellants were not appointed in the sanctioned posts and that they are not entitled for any service right to claim the same. They are also not entitled for any service rights for having worked in a post sanctioned for a specified period. Further, when there is no necessity for cholera mazdoors, there is no constitutional obligation on the part of the Government to appoint them and regularise their services in the absence of sanctioned posts.

10. The learned counsel appearing for the appellants would point out that the appellants had worked under the respondent Panchayat Union from 1985 to 1991. Since these appellants attended the work continuously under the respondent Panchayat Union, their services should have been regularised. It is emphasised that in such circumstances, necessary directions have to be issued to the respondent Panchayat Union to appoint these appellants in the permanent establishment of St. Thomas Mount Panchayat Union. These appellants were given work continuously for a period of 90 days and after a break, they were given work for a further period of 90 days and this practice was adopted by the respondent Panchayat Union till 1999. In such circumstances, the appellants are entitled to claim entertain legal rights for appointing them in the permanent establishment of the respondent Panchayat Union and for regularisation of their services.

11. In support of his contention, the learned counsel relied on the decision in K. C. Rajeevan and fifteen others v. State of Kerala and two others 1991 (1) SCC 31.

12. Per contra, the learned counsel appearing for the respondent would contend that the respondent Panchayat Union had assigned some work to the appellants to meet certain emergency work as per the recommendations made by the Health Officers, of the respondent Panchayat Union. It is pointed out that even though the appellants were given some work for a particular period, their services were not required by the respondent Panchayat Union as the scheme was already over. It is stated that though there was no cholera outbreak in the respondent area, considering the conditions of the appellants sympathetically by the respondent Union some work was given to them even though the allotment of work to them was considered as contrary to the rules. It is further pointed out that since the appellants were not appointed against any sanctioned post, they are not

entitled for any service rights for having worked in a post sanctioned for a specific period.

13. According to the respondent Panchayat Union, when there is no necessity for cholera mazdoors, there is no constitutional obligation on the

part of the respondent Panchayat Union to appoint them again and regularise their services in the absence of any sanctioned post. It is seen that the

appellants were given some particular work to meet out the emergency work. Since the emergency work was over, their services were no longer

required for the respondent Panchayat Union. In such circumstances, the appellants were not re-employed again from 1991 onwards.

14. The learned counsel would emphasise that these appellants were appointed only on temporary basis and the services have been utilised only at

the time of outbreak of cholera. After 1991 onwards, no necessity had arisen to the respondent Panchayat Union to utilise the services of the

appellants. Even though the learned counsel appearing for the appellants referred to certain particulars With regard to the work attended by the

petitioners from 1985 to February 22, 1991, the learned counsel would"" point out that the appellants are not at all entitled to claim any right legally

based on the work attended by them for a specified period and that too & specified work.

15. It is to be noted that except some particulars obtained from the respondent Union with regard to attending the work, which is enclosed in the

typed set, the appellants have not furnished any other documentary evidence to establish their case that they are in service continuously under the

respondent Panchayat Union. Since the appellants had not established their case before the learned single Judge of this Court, considering their

case, the learned Judge has held as follows:

The further argument placed before the Court by the learned counsel for the petitioner that it is established beyond doubt that although they were

working for a number of years either five years or 15 years, the mandatory provision as required under law that the workman should continuously

work for 240 days in a calendar year of 480 days in two calendar years is not made out by virtue of their] affidavit. Therefore, on this legal aspect,

the petitioners have no case at all.

16. It is to be noted that the learned Judge was of the view that these petitioners

have no legal status to claim any relief for their re-appointment as well as for regularisation of their services.

17. The learned counsel appearing for the appellants emphasised that since these appellants attended the work under the respondent Union for many years, it is an obligation on the part of the respondent to appoint them in the sanctioned post.

18. In support of his claim, the decision relied on by the learned counsel for the appellants is not at all applicable to the case on hand for the following reasons. In the decision cited by the learned counsel for the appellants, the Apex Court, while dealing with the regularisation of the employees, who subsequently employed under the Kerala Water Authority, observed as follows:

That means it was wholly unnecessary on the part of the Authority to make the recommendation it made by the resolution of January 30, 1987 to

the State Government for the regularisation of the ex-PHED employees serving on its establishment on that date. To us the position, therefore,

appears crystal clear that it is for the Authority and the Authority alone to regularise the services of such employees without waiting for a nod from

the State Government. The sphinx-like silence on the part of the State Government for now over three years from the date of the resolution is

indeed disturbing and betrays total lack of concern for this pressing human problem.

From the observations made by the Apex Court with regard to the regularisation of services and other aspects, it is made clear that the decision

superior is not applicable to the case on hand for the reason that these appellants have no locus standi to reach for the relief of appointment in a

permanent post and also for regularisation of their services.

19. In the light of the discussions held above, we are of the view that the appellants have no locus standi for claiming appointments in the

permanent establishment of the respondent Panchayat Union for the reason that they are only temporary workers employed for a limited period

and for a specific purpose. Since the scheme was over even in the year 1991, the services of the appellants were no longer required by the

respondent Panchayat Union and that there ends the matter.

20. In the above circumstances, we are not inclined to interfere with the order of

the learned single Judge of this Court. Accordingly, the writ appeal fails and is dismissed. No costs. Consequently, connected C.M.P. is also dismissed.