

(2014) 11 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition Nos. 47281-284 of 2014 and 49755-759 of 2014 (S-KAT)

L. Prasanna Kumar

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)

Citation : (2014) 11 KAR CK 0009

Hon'ble Judges : Rathnakala, J;N.K. Patil, J

Bench : Division Bench

Advocate : Shwetha Anand, Advocate for the Appellant; M.I. Arun, AGA, Advocate for the Respondent

Judgement

N.K. Patil, J.—The petitioners, assailing the correctness of the impugned Order dated 05/06/2013 passed by the Karnataka Administrative Tribunal, Bangalore, in Application Nos. 4860, 4862, 4864 and 4867/2013 connected with other connected matters produced vide Annexure D, have presented these petitions. Further, petitioners have sought to direct the respondents to extend initial basic pay to the petitioners- Contract Engineers from the date of initial appointment as Contract Engineers and Junior Training Officers, on par with the Contract Teachers absorbed under and in terms of Annexure "A1" A6", B1 to B4 and in view of the order and observation of the Tribunal in the order vide Annexure A4" made in Application No. 270/1993 dated 14/12/1994 and order dated 27/03/2007 in Application No. 6730/2001 C/w. Application Nos. 2676 to 2631/2003 and application Nos. 4011 to 4016/2003 produced vide Annexure "A10" expeditiously.

2. The brief facts are as under:

"The petitioners joined the services of the respondent -Government in the Department of Irrigation on Contract basis in the year 1987. During 1991, they were absorbed and their services were regularized as permanent employees of the Irrigation Department. When things stood thus, the respondents have

published a Notification in the Gazette on 20.2.1991 extending the pay fixation, seniority, leave and pension and other service benefits to the Contract Teachers in the Education department from the date of their appointment as Contract Teachers. Further, the respondents have published a Notification in the Gazette on 19.3.1991 extending the pay fixation, seniority, leave and pension and other service benefits to the Contract Engineers in the Irrigation Department from the date of their regularization instead of from the date of their initial appointment. Aggrieved by the discrimination made by the Government, the Engineers who have been employed on Contract Basis are struggling from 1993 for the said benefits and one D.S. Devaraju, Assistant Engineer, has called in question the illegality committed by the respondents in Application No. 270/1993 and the Tribunal has observed the anomaly and discrimination made between the Government employees by the respondents, has directed the respondents to consider the case of Contract Engineers on par with the Contract Teachers and to modify the provisions of Rule 4 of the Notification dated 19.3.1991 by order dated 14.12.1994. Thereafter, several applications were filed by several Contract Engineers who have been regularized subsequently, calling in question non extension of benefits on par with the Contract Teachers under Rule 4 of the notification dated 19.2.1991. However, the respondents, without considering the grievance of the petitioners misled the Tribunal by not assisting the Tribunal properly and by filing false affidavit stating that the said benefits given to the Contract Teachers/Lecturers have been withdrawn by notification dated 8.10.1999."

3. Further, it is the case of the petitioners that, the respondents have no intention to treat the petitioners equal among equals as enshrined under Articles 14 and 16 of the Constitution of India and each time, the Engineers have been deprived of their legal rights guaranteed under the Constitution. The issue for a direction for extending equality treatment in the matter of fixation of pay, seniority and other service benefits from the date of their initial appointment as Contract Engineers in comparison with Contract Teachers/Lecturers has been watered down because of the false affidavits sworn by the respondents taking undue advantage of the Notification dated 8.10.1999, even though the said notification has not been given effect to. Therefore, the petitioners have filed their applications before the Karnataka Administrative Tribunal, Bangalore in Nos. 4860-4868/2009. The said matters had come up for consideration before the Tribunal on 5.6.2013. The Tribunal, after hearing the learned counsel appearing for both the parties, after careful perusal of the records and other materials available on file and following the judgment of the Supreme Court in the case of State of Orissa and another v. Mamatha Mohanty reported in 2001 (3) SCC 436, has observed that, the absorption of such contract employees is only on humanitarian ground that after many years of service as contract employees they should not be driven out of jobs. It is a compassionate step by the Government. Such persons are entitled to the benefits which are available in the Absorption Rules and no more. Since the concerned Rules of Absorption did not

provide for fixation of pay on the basis their earlier service and the benefit given to the teachers in such matters has already been withdrawn by the amendment of Absorption Rules, it cannot be said that there is any discrimination and accordingly, dismissed the applications holding that there is no ground to interfere in the endorsement. Being aggrieved by the impugned order passed by the Tribunal, the petitioners have presented these petitions.

4. The principal submission canvassed by the learned counsel Smt. Shwetha Anand, appearing for the petitioners, at the outset is that, the Tribunal, has erred in declining to grant the relief sought in the application accepting the false affidavit filed by the respondents stating that as per the Notification dated 8.10.1999, the benefit cannot be extended even though the said notification has not been given effect to till date. She further submits that, the petitioners have been dragging from pillar to post, time and again when the respondents are extending the benefits to the other Contract employees of the other departments like Education Department and showing discrimination towards the petitioners without any justification and even though they have rendered services to the institution sincerely and honestly and therefore, she submitted that the respondents ought to have extended the said benefits to the petitioners in par with the others. But this aspect of the matter has not been looked into or considered and the reasoning given in para-8 and the finding recorded in para-10 of the order impugned by the Tribunal cannot be sustained and is liable to be set aside at threshold. Further, she vehemently submitted that, now the Government has issued a communication dated 10.1.2014 vide Annexure-E extending the benefit to the teachers who are working on temporary basis and those who have served more than 20 years by modifying the notification dated 8.10.1999 bearing No. DPAR:12:SRE:97. Therefore, she submitted that, in the light of the communication dated 10.1.2014 vide Annexure-E bearing No ED.237.DGD.2013, the prayer sought by the petitioners may be allowed and appropriate direction may be issued to the respondents to extend the benefit in par with contract teachers/lecturers working in the Education department by allowing these petitions

5. After careful consideration of the submission made by learned counsel appearing for the petitioners, on perusal of the grounds urged in the memorandum of writ petitions and the order impugned passed by the Tribunal, we do not find any error, much less material irregularity as such committed by the Tribunal in passing the said order. The Tribunal, after due consideration of all the materials available on file and also considering the relevant provisions and placing reliance on the judgment of the Apex Court and by assigning valid and cogent reasons in para-8 of the order, has declined to grant the relief sought by the petitioners on the ground that they have not made any good grounds to interfere in the notification issued by the respondents.

6. Further, it is significant to note that, it is the specific case of the petitioners that in respect of some teachers/lecturers the benefit as per the modified Rule

has not been withdrawn and therefore, there cannot be any direction to frame a rule akin to the unamended rule relating to contract teachers. The Tribunal has further observed that, entry into Government services has to be as per the Recruitment Rules and as mentioned by the applicants the method of appointment on contract basis itself was pernicious contract denounced by the Supreme Court and various other courts as violation of Articles 14 and 16(1) of the Constitution and the absorption of such contract employees is on the humanitarian ground that after many years of services as contract employees they should not be driven out of jobs. It is a compassionate step by the Government. Such persons are entitled to the benefits which are available in the Absorption Rules and no more. Since the concerned Rules of Absorption did not provide for fixation of pay on the basis their earlier service, and the benefit given to the teaches in such matters has already been withdrawn by the amendment of Absorption Rules relating to Contract Teachers/Lecturers, it cannot be said that there is any discrimination and accordingly, dismissed the said applications holding that, they do not find any ground to interfere in the endorsement and consequently, dismissed the applications. The reasoning given by the Tribunal is well considered and well founded one and therefore, we do not find any illegality in the same. Even the petitioners have not made out any good grounds to entertain the relief sought in these petitions. Hence, these writ petitions are dismissed.

However, it is needless to clarify that, it is very much open for the petitioners to redress their grievance before the respondents taking advantage of the communication dated 10.1.2014 vide Annexure-E bearing No.ED.237.DGD.2013 by giving detailed consolidated representation requesting them to grant the benefits to them in par with others, if so advised or if need arises.