
(2014) 04 KL CK 0050
In the High Court Of Kerala
Case No : W.A. No. 2005 of 2010

Laila	Vs	APPELLANT
State of Kerala		RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 2 ILR 841 : (2014) 2 KHC 395 : (2014) 3 KLJ 112 : (2014) 3 KLT 754 : (2014) LabIC 2721

Hon'ble Judges : T.B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, Advocate for the Appellant; M.J. Rajasree, Senior Government Pleader, Advocate for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Writ petitioners are the appellants. While regularising their service as Leprosy Inspectors in the Health Service Department, Government ordered that such regularisation can only be prospective and that their past service would not be counted for any service benefits, including pension. Their challenge against such restrictions imposed as per Ext. P-1 Government Order was turned down by the learned Single Judge. Hence, this appeal.

2. Sri Kaleeswaram Raj, the learned counsel for the appellants, argued that the conditions imposed in the impugned Ext. P-1 that regularisation will have only perspective effect and that past service would not be counted for any service benefits including pension, are arbitrary and unreasonable on the facts and circumstances of the case. He criticized such restrictions as amounting to indignation of the appellants, who are marginalised people; their pathetic situation being reflected even in the Government Orders which have ultimately been issued on "humanitarian" consideration.

3. Per contra, Sri Noble Mathew, the learned Senior Government Pleader, referred to the decision of the Hon"ble Supreme Court of India in State of Haryana and others Vs. Piara Singh and others etc. etc., and argued that the creation and abolition of post is the prerogative of the executive and the materials disclose that the writ petitioners and others had joined as provisional recruits being fully aware of the situation in which they would be placed. He also referred to the decision of the Apex Court in K. Madalaimuthu and Another Vs. State of Tamil Nadu and Others, to point out that period of temporary service prior to regularisation is irrelevant even to determine the seniority.

4. Apart from the materials on record before the learned Single Judge, three additional documents have been admitted in evidence in the writ appeal. They are two Government Orders and a judgment of this Court in W.A. No. 513 of 2014. That apart, we had the opportunity to peruse the Training Manual for Medical Officers issued by the National Leprosy Eradication Programme under the Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India which, among other things, discloses, to a great extent, the efforts taken by India towards leprosy eradication. We also called for the Judges Papers and judgment in W.P. (C) No. 12751 of 2004 decided by the Division Bench, on 4th January, 2007 along with two writ appeals since it was seen that they would be profitable for reference in view of the relevant issues and because this is a Court of Record.

5. G.O.(Rt) No. 874/2003/H&FWD dated 21-3-2003 evidences that the National Leprosy Eradication Programme was implemented for the first time in 1987, in Alappuzha district and later the programme was implemented in all districts in a phased manner and that as per the guidelines of the Government of India at the time of implementation of the Multi Drug Therapy Programme, the required number of field staff had to be recruited by the State Government. At that time, the State Health Department faced dearth of Leprosy Inspectors and there was no live list of candidates with the Kerala Public Service Commission, "P.S.C.", for short. It was in those circumstances that it was decided to recruit persons on temporary basis through employment exchange. This factual position stands corroborated by the contents of the counter-affidavit filed on behalf of the State of Kerala to the writ petition. It says, among other things, that Government of India implemented National Leprosy Eradication Programme, a 100% centrally sponsored programme, all over the States with an object of "leprosy free nation". It proceeds to say that in Kerala, the staff for that programme was to be appointed through Public Service Commission on condition that they would be integrated with General Health Staff as and when the Government of India winds up the programme. Hence, only because a live list of Leprosy Health Visitors was not available with the P.S.C., candidates were selected through employment exchange and appointments were made on temporary basis. The writ petitioners on such appointment, though termed as on temporary basis through employment exchange, were sent for training for a period of six months in "Leprosy Health Visitors" course.

6. The counter-affidavit of the State to the writ petition proceeds to say that during the period of the training course, stipend was given to the writ petitioners and after completion of that course, they had executed a bond to serve the Government for a period of ten years on appointment on temporary basis. That counter-affidavit contains the candid admission that the writ petitioners, working as provisional Leprosy Inspectors, on having completed 45 years of age then, had requested the Government for regularisation since they had no other way to earn the livelihood. Government, stated to be considering all the aspects and on humanitarian ground, accorded sanction for regularisation of the employees who were selected through employment exchange as Leprosy Health Visitors and appointed temporarily under Rule 9(a)(i) of Part II, K.S. & S.S.R. and allowed them to continue in the same position. This was, however, subject to the conditions enumerated in Ext. P-1, including that regularisation can only be effected with prospective effect and the past service cannot be counted for any service benefits including pension. Those conditions are under challenge by the writ petitioners, who failed before the learned Single Judge.

7. The judgment dated 4th January, 2007 in W.P. (C) No. 12751 of 2004 and the writ appeals decided thereby, shows that this Court took note of the Government Order dated 29-12-2006 which is Ext. P-1 in the writ petition from which this writ appeal arises. That Government Order was placed before the Bench along with I.A. No. 4 of 2006 in W.A. No. 513 of 2004. In the light of that Government Order which came during the pendency of those writ appeals and the writ petition, those cases were ordered noting that the Leprosy Health Visitors (Leprosy Inspectors) had then urged before the Bench that the conditions contained in the regularisation including that the past service could not be counted for any service benefits inclusive of pension are harsh and have to be quashed. This plea was projected before that Bench on behalf of the Leprosy Inspectors. Their right to challenge those conditions stood preserved as per the judgment issued in those cases, thereby leaving open that issue to be challenged in independent proceedings. We notice that fact at this stage to revert to the judgment impugned in this appeal which stands to repel the plea of the writ petitioners, essentially on a count of acquiescence of the conditions of the grant of regular appointment. The writ petitioners stand criticised through the impugned judgment of having filed the writ petition only after one year of the Government Order. Their plea that the delay in giving them regular appointment is not because of any of their fault and therefore, they cannot be denied the benefit of their provisional service has been negated by the learned Single Judge by merely stating that they had accepted Ext. P-1 order of regularisation knowing fully well the conditions therein and they did not choose to challenge the conditions in Ext. P-1 at that point of time. The impugned judgment states that Ext. P-1 order of regularisation was only a concession and the writ petitioners were not able to satisfy that they had a right to be regularised in service and that the petitioners can take the concession with the conditions attached thereto or they have to leave it. According to the learned Single Judge, writ petitioners

cannot, after accepting Ext. P-1, turn around and challenge the conditions on which they were appointed on regular service. What is under challenge here are the conditions or restrictions imposed on the writ petitioners while regularising their appointments.

8. The file of W.P.C. No. 12751 of 2004 which we had called for and the materials produced in this case including as additional evidence, copiously show the different litigations for regularisation of the Leprosy Inspectors who had toiled for nearly two decades in service. They had immediately pointed out to the Division Bench which was hearing their case at that point of time, about the issuance of Ext. P-1 and their grievance about the conditions and restrictions imposed while regularising them in service. Taking note of the sequence of events and litigations and the different Government Orders, we are unable to agree with the finding in the impugned judgment that the writ petition was not filed promptly or that the writ petitioners had accepted the conditions in Ext. P-1 and therefore, they are not entitled to challenge those conditions and restrictions. We set aside that finding in the impugned judgment.

9. The National Leprosy Control Programme (N.L.C.P.) was launched in 1954-55. Multi Drug Therapy was introduced in phased manner in the year 1983 and N.L.C.P. was renamed as National Leprosy Eradication Programme. At the 44th World Health Assembly held in 1991, World Health Organisation and its Member States committed to eliminate leprosy as a public health problem by the year 2000, elimination being defined as prevalence below one case per 10,000 population. Government of India was also a signatory to that commitment. To enhance the process of elimination, the first World Bank supported project on N.L.E.P. was started in the year 1993-94 and M.D.T. was made available to all the registered cases. The second World Bank supported N.L.E.P. was started for a period of three years from 2001-02. One of the objectives of that phase was to accomplish integration of leprosy services with General Health Care System (G.H.C.S.). In the post elimination period, N.L.E.P. needs to expand the scope of leprosy services provided to the patients, their families and community at large. The aims and objectives under the 11th Plan (2007-2012) call for different objectives, including further reducing the leprosy burden in the country, providing good quality leprosy services, enhancement of Disability Prevention and Medical Rehabilitation and increasing the advocacy towards reduction of stigma and to stop discrimination and strengthen monitoring and supervision. These objectives are also in conformity with the global strategy issued by WHO (2006-2010). A new paradigm is noted by N.L.E.P. It is stated that "in view of the need to sustain Leprosy services for many years to come, there has to be a shift from a campaign like elimination approach, towards the long term process of sustaining integrated high quality Leprosy services, which in addition to case detection and treatment with Multi Drug Therapy, also include prevention of disability and rehabilitation". These materials and facts, which we have noted from the Training Manual issued by N.L.E.P., described in paragraph No. 4 above, clearly discloses that the march forward in the management of leprosy services

would continue. More importantly, it discloses the achievements of this Nation by working through the objectives of N.L.C.P. and N.L.E.P. through different stages.

10. K. Madalaimuthu's case (supra) was rendered on a seniority dispute and it was in that context that it was held that the period of temporary service prior to regularisation could not be reckoned for counting seniority. That precedent has no application to the facts or the issues arising for decision in this case which do not involve any seniority dispute, but is pointedly on the question as to whether the appellants could be deprived of the benefit of the length of provisional service for service benefits, including pension and also whether regularisation could be ordered to operate only from the date of regularisation.

11. Piara Singh's case (supra) was rendered pointing out the issues which the courts will have to take into consideration while giving directions for regularisation of service. Noting the varied situations and relevant factors, Their Lordships have cautioned that a practical and pragmatic view has to be taken and that there can be no rule of thumb in such matters. Conditions and circumstances of one situation may not be the same as that of the other. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. Such an exercise cannot be a mechanical act, but a judicious one.

12. We may also note the decision of the Hon'ble Supreme Court in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., speaking on the equality clause in Article 14 of the Constitution. That was a case dealing with contract labour, its regulation and abolition and temporary or ad hoc engagements and other relevant aspects. The socio-security clause in the Constitution was noted in the backdrop of the ratio of Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, to underscore that the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation and is thus consequently an essential ingredient of social and economic justice. The security clause in the Constitution has to be understood as meaning that the people of the country ought to be secured of socio-economic justice by way of a fusion of Fundamental Rights and Directive Principles of State Policy. Socialism ought not to be treated as a mere concept or an ideal, but the same ought to be practised in every sphere of life and be treated by the law Courts as a constitutional mandate since the law Courts exist for the society and in the event the law Courts feel the requirement in accordance with principles of justice, equity and good conscience, the law Courts ought to rise up to the occasion to meet and redress the expectation of the people.

13. Here, we are dealing with the appellants who, beyond any dispute, are those who have contributed their might to the Nation discharging its socioeconomic political justice deliverance to ensure the needs and dignity of the unfortunate victims of leprosy by extending physical nursing and emotional and holistic

support to those unfortunate brethren. As noted earlier, the appointment of Leprosy Health Visitors, later Leprosy Inspectors, were not made in an unregulated manner. After Alappuzha, as already noted, Government of India selected Thiruvananthapuram, Kollam, Palakkad and Kasaragod, in addition, for implementation of Multi Drug Treatment for Leprosy. As is evidenced by GO (Ms.) 132/88/H&FWD dated 12-7-1988, the Director of Health Services reported that Leprosy Health Visitors are a scarce category and for the implementation of Multi Drug Treatment in all the endemic districts and also for the implementation of the Leprosy Eradication Programme under the 20 Point Programme, it has become necessary to appoint the required number of Leprosy Health Visitors without delay. It was noted that trained Leprosy Health Visitors were not available and there was also no live list of Leprosy Health Visitors with the P.S.C. for recruitment. It was under such circumstances that the Government had examined the matter in detail and had accorded sanction to select candidates through Employment Exchanges for training as Leprosy Health Visitors.

14. The appointment of persons, including the appellants, following such decision, though was ordered to be purely on temporary basis observing P.S.C. Rules, the quality of service that they rendered were as trained hands for a specific purpose and on continuous officiation and discharge of duties and responsibilities as such temporary hands. They are not back door recruits. They were taken as needed, to achieve the national and human right health and welfare relevant goals of eradication of leprosy. They were taken in on temporary appointment because there was no live list with the P.S.C.

15. With passage of time, P.S.C. came out with list and many of them were brought in even displacing temporary hands.

16. Writ petitioners and others who were temporarily appointed as Leprosy Inspectors have worked for nearly two decades discharging such duties and responsibilities after being put to six months' training for such purpose. Though they would have executed bonds as dictated by the executive hierarchy in Government and governance, we cannot ignore their then abysmal bargaining power in that regard. Having extracted labour, they cannot be left high and dry. The need based recruitment and the training conferred on the temporary appointees were with the specific purpose of getting them trained and making themselves available to discharge duties and functions in connection with the implementation of a cardinal and crucial project of national importance, namely, leprosy management. In this land of India, much need not be stated to recall the necessity of such programmes and the requirement of people to man those projects. Efforts taken by national icons of yesteryears, including the Father of the Nation, Mahatma Gandhiji, should provide constitutional pulsation in such a situation. The refusal to count past services of the writ appellants for any service benefits, including pension is irrational, inhuman, illogical, unreasonable and arbitrary. It amounts to negation of the Fundamental Rights enshrined in Articles 14 and 16 of the Constitution of India. It is unreasonable and arbitrary to

exclude the appellants from the benefits of counting their past services for all service benefits including pension.

17. However, we do not see any ground to interfere with condition No. 2 in paragraph 6 of Ext. P-1 ordering that regularisation would be operative only from the date of Ext. P-1 order. We say so because, may be unfortunately for them, the appellants or a similarly placed person had not obtained any executive or judicial order before that for regularisation. This will not, however, stand in the way of the counting of the provisional service for all service benefits, including pension.

18. For the aforesaid reasons, this writ appeal succeeds to the extent that the impugned judgment is liable to be set aside and condition No. 3 in paragraph 6 of Ext. P-1 is liable to be quashed, resultantly directing that the provisional service rendered by the appellants shall be counted for all service benefits, including pension.

19. In the result, this writ appeal is allowed as ordered hereunder:

(i) the impugned judgment is set aside.

(ii) Condition No. 3 in paragraph 6 of Ext. P-1 G.O. (Ms.) No. 275/06/H&FWD dated 29-12-2006 is quashed.

(iii) It is declared that the provisional service rendered by each of the appellants shall be counted for all service benefits including pension.

(iv) No costs.