

(2002) 04 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No's. 240 to 269 of 1999 and 5479 to 5483 of 2001

M.P. Gangarangaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 243G

Citation : (2002) ILR (Kar) 1871 : (2002) 5 KarLJ 178 : (2002) 2 KCCR 1440 : (2002) 4 RCR(Civil) 663

Hon'ble Judges : N.K. Jain, C.J.;N. Kumar, J;H. Rangavittalachar, J

Bench : Full Bench

Advocate : V. Lakshminarayana, in W.P. Nos. 5479 to 5483 of 2001 and C.S. Patil and S.M. Byadgi, in W.P. Nos. 240 to 269 of 1999, for the Appellant; B. Anand, Additional Govt. Advocate for Respondents 1 to 26 in W.P. Nos. 5479 to 5483 of 2001 and N.S. Sanjay Gowda, for Respondent 27 in W.P. Nos. 5479 to 5483 of 2001, for the Respondent

Judgement

N.K. Jain, C.J.—A learned Single Judge of this Court has made this reference vide order dated 5-3-2001 to a larger Bench in view of the conflicting judgments of two Division Benches, in Writ Appeal Nos. 2765 to 2905 of 2000, DD:. 23-1-2001, whereby the State and other authorities were directed to consider the cases of the employees who have put in service of ten years or more, continuously, for regularization in terms of the direction/orders passed by the Apex Court in the cases of The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., and State of Karnataka and Others Vs. The Karnataka Casual and Daily Rated Workers Union, Hubli, wherein it was observed that "such judgment of the co-ordinate Bench is clearly "per incuriam" in view of the judgment of the Supreme Court in cases State of Punjab and others Vs. Surinder Kumar and others, and J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . Thus, vide order dated 14-3-2002, passed by the Hon'ble Chief Justice, this Reference is placed before us on 26-3-2002.

2. The necessary facts leading to the order of reference, as stated by the learned Counsel, are: It is stated that the earlier Act, i.e., the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayat and Nyaya Panchayat Act, 1983 (Act 20 of 1985) was enacted on 14-8-1985 and some Departments were transferred to the Zilla Panchayat. It is stated that some more Departments were added in 1987, 1991 and 1995 also and so far as the daily wage employees are concerned, they have been transferred to Mandal Panchayat and they were allowed to work and continue in service subject to budgetary allocation. It is stated that after establishment of Zilla Parishads, despite the power conferred, no recruitment rules were framed till 1988. However, in respect of some cadres C and R Rules were published in 1988 but the same has not been given effect to. Thereafter, in view of the 73rd constitutional amendment, Article 243-G of the Constitution has been inserted and in pursuance of it the Karnataka Panchayat Raj Act, 1993 came into force on 10-5-1993. The learned Counsel submits that in pursuance of the 1993 Act, Panchayats have been constituted at Mandal, Taluk and District levels as independent bodies and have been functioning as corporate bodies and as such the persons working in Zilla Panchayats are to be transferred to respective Departments as per the relevant provisions. It is also stated that there are two types, NMR and Work Charge Departments. The casual employees, who stood transferred along with the employees of Zilla Panchayat and other set of employees appointed by the Zilla Panchayat by virtue of doctrine of necessity. It is stated that as the Government desired to frame service rules and it required some time, the learned Single Judge directed the Government to constitute a service and to identify the cadres within 31-12-2000 and also issued other directions.

3. It is submitted that those who have put in 10 years of service and working against sanctioned posts are entitled for regularization as per the scheme framed in the Dharwad District PWD Literate Daily Wages Employees' Association's case, *supra*. It is submitted that the first Division Bench has confirmed the judgment in Dharwad District PWD Literate Daily Wages Employees' Association's case, *supra*, vide order dated 23-1-2001 in W.A. Nos. 2765 to 2905 of 2000 and the special leave petitions filed before the Supreme Court against these appeals were rejected on 5-11-2001. It is submitted that on an earlier occasion three writ petitions were filed. The daily wage employees were appointed after 1-7-1984, and therefore, their services were not regularised, which is contrary to the Government Order dated 8-9-1990. The Government submitted a scheme to the Supreme Court stating that the services of daily wage employees who had put in 5 years of service would be regularized after the completion of 10 years service, and only such persons' service would be regularised who are appointed prior to 1-7-1984. Thereafter, the petitioners made an oral claim that the scheme may be modified to the extent that the employees who are appointed prior to and as on 1-1-1990. The Supreme Court modified the scheme, to the extent that those who were appointed prior to and as on 1-7-1984 and had put in more than 10 years of service, were entitled to be

regularised from 1-1-1990 and remaining will have to be regularised on or before 31-12-1997. After this judgment a Government Order came to be issued on 6-8-1990 annulling the appointments made after 1-7-1984, but continuing the service of those who had put in service of 240 days, governed as per Section 25-B of the Industrial Disputes Act, 1947.

In Dharwad District PWD Literate Daily Wages Employees' Association's case, supra, pursuant to the directions issued by their Lordships the State prepared a scheme for regularising the services of the daily rated employees which was accepted by the Court with certain modifications. The scheme envisaged that those casual/daily rated employee, who was appointed on or before first of July, 1984 shall be treated as Monthly Rated Establishment (MRE) employee with a fixed pay of Rs. 780 per month with effect from 1-1-1990. The Government issued official memorandum dated 3rd July, 1984 followed by Government Order dated 6-8-1990 prescribing the modalities of regularization/absorption of casual/daily rated employee in MRE and their eventual absorption as regular Government servants and specifying that the scheme was however applicable only to such of the employees as had been appointed on or before 1st of July, 1984 and remained continuously in service till 6-8-1990. The learned Single Judge, while dealing with the regularization of daily wage employees, in W.P. Nos. 3354 to 3357 of 1998 and connected matters, observed that:

"It is not shown by the respondents that the initial appointment of the petitioners whether under the State or those by the Zilla Panchayats, suffering from any illegality like the one referred to in Ashwani Kumar and Others Vs. State of Bihar and Others, . It is also not in dispute that the petitioners have served as daily rated employees for more than 10 years and in some cases even 15 years. Subject to the availability of vacancies and their eligibility the petitioners have on account of the length of their service acquired a right for being regularised".

The learned Single Judge by his order dated 10-9-1999 allowed the writ petitions with certain directions regarding regularization of the services of the daily wage employees. This order was approved by the earlier Division Bench by its order dated 23-1-2001 passed in W.A. Nos. 2765 to 2905 of 2000. Whereas, in W.P. No. 12610 of 1993, the learned Single Judge by his order dated 22-9-1998 disposed off the petitions observing that:

"In my view, in the absence of sufficient material before this Court to determine whether these petitioners were working continuously with any one of the respondents, it would be very difficult for this Court to issue, a positive direction as was done by the Supreme Court in Dharwad District P. W.D. Literate Daily Wages Employees' Association's case, supra".

However, the learned Single Judge granted permission to the petitioners therein, to make representations or approach the employer-respondent as the case may be for regularization of their services. The above order of the learned Single Judge was set aside by the later Division Bench vide order dated 1-2-2001 in the

case of Karnataka Casual and Daily Rated Workers Union, supra. The later Division Bench while allowing the writ appeals filed by the State held that:

Since the initial entry in service of daily wage employees employed after 1-7-1984 was tainted with illegalities right from the inception, this Court has no jurisdiction to direct for their regularization in view of clear and unambiguous declaration of law by the Supreme Court....".

4. The main contention of Mr. Lakshminarayana, the learned Counsel for the appellants is that once the issue has been decided by the earlier Division Bench and the same has been confirmed by the Supreme Court, the later Division Bench should not have held that the decision of the earlier Division Bench as "per incuriam". He submits that once a Supreme Court decision on the point has been referred by a Single Judge and that decision has been confirmed by the earlier Division Bench, it is wrong on the part of the later Division Bench to declare that order as "per incuriam". He also submitted that even if the Supreme Court judgment is not referred in the judgment, the co-ordinate Bench has no power to disagree with the co-ordinate Bench decision and proper course is to refer the matter to the larger Bench. He further submits that, more particularly, subsequent to the second Division Bench judgment dated 1-2-2001, the Division Benches of this Court have, in various writ appeals viz., W.A. Nos. 2911 to 2928 of 2000, DD: 16-3-2001, W-A. Nos. 1381 to 1398 of 2001, DD: 12-6-2001, permitted the regularization of employees on completion of 10 to 15 years of service, and therefore, the reference made by the learned Single Judge should be answered in favour of the appellant and that they are entitled to get the same relief.

5. We have heard the learned Counsels for the parties and perused the material on record, the case-laws and the point in reference.

6. This Court cannot go into the merits of the case in this reference, nor the entire case on merit has been referred. So far as the law on regularization of service is concerned, it is well-settled that an incumbent is entitled for regularization provided there is existing subsisting vacancy. His case can be considered as against such existing vacancy, continuity of service and seniority and the rules prevailing in the concerned Department of the State. It is also to be seen what is the purpose one is appointed for. Whether he has been appointed for a fixed term or on temporary basis or temporarily against a permanent vacancy is also to be seen taking into consideration the terms and conditions of the appointment order and the service/selection rules. However, each case depends upon the individual facts and circumstances of its own. This Court cannot go into these questions of facts. More so, while sitting in a reference the Court cannot consider the argument of the learned Counsel that petitioners-appellants have been appointed for administrative exigency to sanctioned posts and, therefore, they are entitled to get advantage of the earlier decision, whereby this Court has directed to regularise the services of similarly situated persons who have completed 10 years of service. Nor in reference, this

Court can go into the question whether the alleged appointments were made prior to 1-7-1984, under the scheme as approved by the Supreme Court or during the ban period. The only question referred by the learned Single Judge is whether the later Division Bench can hold the decision of the earlier Division Bench as "per incuriam".

7. No doubt, a Single Judge is bound to follow the decision of a Division Bench otherwise also a Single Judge is bound to follow the decision of a Single Judge and so also a Division Bench is bound to follow the decision of a co-ordinate Bench and if there is any difference of opinion with the earlier decision of the Single Judge or Division Bench on the questions of law, judicial propriety requires that the matter has to be referred to a Division Bench or larger Bench. It is also settled that the later view will prevail over the earlier view and in case the earlier view is not considered or brought to the notice, that view cannot be said to be bad. There is no dispute with regard to this settled legal position. So it is not necessary to deal with the case-law on the point referred. It is also settled that the power to pass an order invoking Article 142 of the Constitution lies only with the Supreme Court and the High Court cannot exercise same power under Article 226 of the Constitution.

8. Keeping the settled position of, law in mind, if a later Division Bench has a difference of opinion with the earlier Division Bench on the questions of law, the matter should be referred to a larger Bench. In W.P. No. 12610 of 1993, the learned Single Judge was not satisfied that the petitioners-appellants were working continuously and the later Division Bench on considering the fact that they were appointed after 1-7-1984 and relying on the cases, was of the view that the decision of the earlier Division Bench was clearly "per incuriam" and found that the appointments made after 1-7-1984 were illegal. The later Division Bench could have distinguished the case or otherwise referred the matter to a larger Bench. In any view of the matter, whatever may be the reason, having difference of opinion, in our view, it is not proper and correct to comment and to use the word "per incuriam". Be that as it may. The facts of the present case have not been considered, seen and applied at all, as per the settled law, by the learned Single Judge. Under the circumstances, the reference was not necessary.

9. The Government Advocate also pointed out that against the order of the later Division Bench dated 1-2-2001 in Karnataka Casual and Daily Rated Workers Union's case, supra, the respondents therein have preferred special leave petitions and the same is pending before the Supreme Court for final adjudication.

10. As the learned Single Judge has not referred the matter on merits, this Court cannot go into the merits of the case and admittedly the learned Single Judge while referring has also not appreciated the facts, as stated. Under the circumstances, it will be appropriate that the learned Single Judge himself considers the case applying the facts of the case as per the settled law on merits and decide in accordance with law.