

(2000) 10 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31170 of 1997

M.V. Subba Rao and others

APPELLANT

Vs

District Scheduled Caste Service Co-operative Society Ltd.,
Nellore and others

RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2000) 6 ALD 507 : (2000) 6 ALT 587

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : Mr. D.V. Sitharama Murthy, for the Appellant; Mr. P. Sesha Rao, SC for Corporation and Government Pleader for Finance, for the Respondent

Judgement

1. The petitioners approached this Court for the second time-when their request for regularisation of their services had been rejected by the second respondent by his proceedings in Rc.No.A1/881/88 dated 27-10-1997 even when this Court by its Order dated 29-8-1997 in Writ Petition No.8534 of 1997 directed the second respondent to examine and consider the case of the petitioners in all aspects for regularisation of their services in terms of G.O. Ms. No.212, dated 22-4-1994 -seeking an appropriate writ, particularly one in the nature of Mandamus to declare the said proceedings of the second respondent as illegal and arbitrary and for consequential direction to regularise their services as Work Inspectors from the date of their joining in the service with all consequential and attendant benefits such as salaries, seniority, etc. The petitioners also seek alternative directions to transfer the petitioners to any other department of the State.

2. The grievance of the petitioners seems to be that they having been appointed on an ad hoc basis as Work Inspectors by the first respondent herein on various dates, initially for a period of 1989 days, however continued to be in service without breaks, despite the orders passed by the respondents directing the

Mandal Development Officers to give a break in service after every 89 days, their services are eligible to be regularised. The first respondent-Society is fully funded and controlled by the State Government and there is sufficient workload for all the employees. It is the further grievance of the petitioners that the Work Inspectors appointed by the first respondent-Society are being paid regular salaries by issuing the circulars dated 18-2-1987 and 19-2-1987 pursuant to the directions given by this Court in the writ petitions filed by them earlier thereto. The wages being paid to them are not commensurate with the work they are expected to discharge. Under such circumstances, the petitioners moved this Court in Writ Petition No.8534 of 1997 for directions to regularise their services as Work Inspectors. The said writ petition was disposed of by an Order dated 29-8-1997 directing the respondents to consider the regularisation of the services of the petitioners in terms of G.O, Ms. No.212 dated 22-4-1994. However, the second respondent rejected the request of the petitioners for regularisation and for regular pay scales on the premises that the petitioners had not completed five years of continuous service as on 25-11-1993, and that the third respondent by circular Rc.No.LC/1914/APSC/95, dated 9-4-1997 directed not to regularise the services of the petitioners as there were no sanctioned posts. Challenging the same, as aforesaid, the petitioners approached this Court again.

3. The respondents resisted the writ petition by filing a counter that the petitioner have not completed five years of continuous service as on 25-11-1993 as their services used to be terminated after very 89 days pursuant to the directions of the second respondent in his proceedings Rc.No.881/88/1, dated 19-10-1993 issued to all the Mandal Development Officers to Officers to effect break in services of the petitioners in every 89 days and that there are no sanctioned posts of Work Inspectors in the staff pattern of the first respondent-Society and that the respondents 1 to 3 are not competent to regularise the services of the petitioners under Act 2 of 1994 as amended under Act 3 of 1998 and Act 27 of 1998 and, therefore, their services cannot be regularised in terms of G.O. Ms. No.212, dated 22-4-1994.

4. The third petitioner, who passed B.Tech, (Civil), the petitioners 1, 4 and 5, who possessed Diploma in Civil Engineering, and the petitioners 2, 6 and 7, who passed I.T.I in the trade of Draguhtsman (Civil) and having duly registered their names in the Employment Exchange are obviously qualified and eligible to be appointed as Work Inspectors (Technical). They were appointed as Work Inspectors (Technical) on an ad hoc basis by the first respondent herein on 20-8-1991, 9-1-1992, 17-7-1991, 10-1-1992, 20-12-1991, 25-1-1991 and 13-4-1991 respectively. The petitioners have been allowed to work as Work Inspectors (Technical) on an ad hoc basis for the maintenance and utilisation of the community wells got dug by the first respondent-Society and their services have been terminated. The services of some of the Work Inspectors have not been regularised by the second respondent pursuant to the directions given by this Court when they approached the High Court seeking appropriate directions.

These are all admitted facts.

5. In fact, both the grounds under which the request of the petitioners have not been considered and rejected are no more available to the respondents. On more than one occasion, when this Court directed the respondents to regularise the persons, who are similarly placed to that of the petitioners herein to be regularised in their services and to pay regular pay scales to them, there is no gainsaying that those Orders have been complied with. In *P. Dharma Rao v. Managing Director, APTTDC Ltd.* 1996 (2) ALD 478, a learned single Judge of this Court by his Order dated 19-3-1996 directed the respondents therein to regularise the services of all employees employed on consolidated pay, who had put in five years of service, notwithstanding the fact that they did not work all days in a month and during all the five years. It has been further observed in the said judgment that refusal to regularise the services on the ground that there are no sanctioned posts is bad, particularly when it is not the requirement of the G.O. Ms. No.212, dated 22-4-1994. Again in *S. Purushotham Vs. District Collector, Karimnagar and others*, , yet another learned single Judge of this Court directed the District Collector, Karimnagar, to regularise the services of the petitioner therein with effect from the date on which he completed five years.

6. In view of the above two judgments of this Court, the request of the petitioners can be considered straight away. However, the learned Government Pleader appearing for the respondents contends that since the directions earlier given by this Court to consider the request of the petitioners for regularisation provided the petitioners satisfy the other requirements in G.O. Ms. No.212 dated 22-4-1994 and as the petitioners have not satisfied the other eligibility criteria, their services cannot be regularised. The learned Government Pleader further contends that when there are no regular sanctioned posts, the services of the petitioners cannot, at all, be regularised. He seeks to place reliance upon the judgment of the Apex Court in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, . The Supreme Court held in the said judgment that the Court must act with due care and caution while issuing a direction for regularisation of services and a blanket order directing the State to regularise the services of all ad hoc/temporary employees was not proper. That was a case where a blanket order was passed directing the State to regularise the services of all the employees employed on ad /we/temporary basis when they completed one year of service, regardless of the fact that no vacancies were available for them and they were not sponsored by Employment Exchange, nor were appointed in pursuance of a notification calling upon for applications, thereby gained entry by backdoor, they were not eligible and/or qualified for the post at the time of their appointment, and the records of service since appointment were not satisfactory. Under such circumstances, the Apex Court directed the High Court to approach the problem with a practical and pragmatic view inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. The facts in that particular case are totally different from the facts in the instant case. It is

appropriate here to extract some relevant observations made by the Apex Court in the said judgment thus:

"It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature, this power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The Court comes into picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason; it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation".

7. Reliance has also been sought to be placed upon another Judgment of the Apex Court in *Ashwani Kumar and Others Vs. State of Bihar and Others*, wherein the Apex Court held that the employees, whose entry in service is illegal being in total disregard of the recruitment Rules and not against any existing vacancy, cannot be regularised. That was again a case where large-scale appointments were made without the sanctioned posts and necessary budget sanctions in T.B. eradication programme by the Bihar Government. In view of the peculiar facts of that case, the Supreme Court held that the services of the employees cannot be regularised. It is obvious, therefore, that the initial entry into the posts itself was illegal and appointments have been made in flagrant violation of the Rules and without there being any vacancies with the necessary budgetary provisions.

8. Coming to the instant case, when the appointment of the petitioners, though on ad hoc basis, is not in doubt, they are eligible to occupy the posts admittedly. As aforesaid, they are being continued in service on ad hoc basis and it is not the case of the respondents that the necessity to keep them in service no more exists or at any time ceased. It is also not the case of the respondent there is no budgetary sanction. Except the two conditions set forth supra, that there are no sanctioned posts and the petitioners have not completed five years of continuous service as on the cut off date, no other grounds disqualifying the petitioners from regularisation are pleaded in this case. Obviously, the petitioners are being continued in service even till today, of course, on ad hoc basis and terminating their services intermittently in an artificial manner so as not to allow them to put in continuous service. Such artificial termination shall have to be disregarded as

observed by the Supreme Court in the first mentioned case supra. Any way, the two judgments of the Supreme Court upon which the reliance has been placed by the learned Government Pleader and also the learned Standing Counsel appearing for the first respondent-Society are of no avail in this case. The twin objections thus raised in this case by the respondents have not been found favour with by this Court in the two judgments referred to supra. When those petitioners have been accommodated and their services have been regularised, no matter, pursuant to the directions given by this Court in the above two judgments, without further challenging them, the request of the petitioners herein cannot be disregarded, particularly when they are similarly placed with that of those whose services have been regularised. I fail to understand, that when want of sanctioned posts has not come in the way of the respondents in having regularised the services of some of the Work Inspectors, who have been appointed on ad hoc basis as in the case of the petitioners herein, how the same ground can be pressed into service by the respondents in the case of these petitioners. It can be presumed ultimately, as has been held by the Apex Court in Piara Singh's case, about the need and warrant of regular posts when ad hoc appointment has been continued for long. For the last more than 8 years the petitioners have been continuing in service. The fact that the petitioners have been allowed to continue for the last more than 8 years bespeaks the need for their continuance apart from the necessary presumption that can be drawn.

9. For the foregoing reasons, the twin objections raised by the respondents in this case are not tenable. I see no legal impediment in regularising the services of these petitioners. Therefore, the request of the petitioners shall have to be considered.

10. In the result, the writ petition is allowed. No order as to costs.