

(2016) 03 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 29116 of 2014 and Writ Petition Nos. 16318, 28212, 30206, 31522 and 33033 of 2015

ONGC Field Operators Union

APPELLANT

Vs

NGC Ltd.

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Citation : (2016) 5 ALT 20 : (2016) 6 AndhLD 23

Hon'ble Judges : Sri R. Kantha Rao, J.

Bench : Single Bench

Advocate : Sri Vedula Srinivas, Sri Ch. Srinivas, Sri Rama Mohan Palanki and Sri S. Surendra Kumar Advocates, for the Appellant; Sri Kakara Venkata Rao and Sri K. Ramesh Babu, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Sri R. Kantha Rao, J.—These writ petitions are filed for a mandamus declaring the action of the respondents-Oil and Natural Gas Corporation Limited (the Corporation, for short) in not regularising the services of the petitioners as Field Operators for Rajahmundry Asset and E.O.A., Kakinada despite their continuous service for more than 20 years as illegal, arbitrary, unconstitutional amounting to unfair labour practise and to direct the respondents-Corporation to regularise the services of the petitioners in their respective categories in which they are presently working with all consequential benefits.

2. The averments in the Affidavits filed in support of the writ petitions may be stated as follows:

(a) The petitioners are working as Field Operators in the ONGC, Krishna Godavari Basin of Rajahmundry Asset and EOA of Kakinada under the control of the 3rd respondent. They possess the technical qualification of ITI/Diploma in various trades. The 1st respondent is an undertaking of Government of India and is one of the premium public sector undertakings. The post of Field Operator comes

under Level-A-II/A-1/W-1 pertaining to the posts of Technical Assistant/Assistant Technical/ Junior Assistant Technician and Junior Assistants etc. The posts are permanent in nature directly connected to the primary operations of the respondents-Corporation and are indispensable. Initially, the petitioners were engaged through private contractors on contract basis in the respondents-Corporation prior to 1998. After repeated demands and prolonged discussion for the regularisation of services of the petitioners, the respondents-Corporation agreed to form societies with the petitioners and other similarly situated individuals and to engage them through respective Cooperative Societies by eliminating the labour contractors. For this purpose, an agreement was entered into on 11-01-1997 between the respondents-Corporation on one side and the Union on the other in the presence of the Member of Parliament of Narsapur to take a decision on the issues pertaining to the regularisation. The agreement worked for a period of 10 years and thereafter, an understanding was arrived at in the meeting held on 12-01-2003 to continue the benefit of engaging the petitioners through the Cooperative Societies of the respondents-Corporation for 5 more years. It was further agreed that the respondents-Corporation will create and fill up 60 posts to meet the operational requirements and to start the process of recruitment immediately and similarly 60 posts for every year will be filled up to make a total of 300 posts in 5 years. It was also agreed that the members of the Societies who are eligible will be considered for such appointments by granting relaxation of age.

(b) The petitioners have put in more than 20 years of service in the ONGC and that the posts in which they are working are permanent in nature. As their demand for regularisation was not considered, a strike notice was given on 11-12-2007 with a charter of demands which ultimately resulted in conciliation proceedings before the Regional Commissioner of Labour (Central), Hyderabad. In the meeting held on 08-01-2008, an agreement was arrived at, which was reduced into writing and the ONGC agreed to consider to provide term based employment to 280 society workers.

(c) The grievance of the petitioner is that giving a go-by to the undertaking given on 08-01-2008, the ONGC with a view to conduct an open general recruitment, conducted a written examination for 280 society workers which was followed by oral interview and medical examination. Some of the members of the society were also subjected to the said tests and have gone through the same successfully. They were engaged by order dated 05-7-2008 as Field Operators for 4 years on tenure basis subject to the conditions mentioned therein. After expiry of the said period of 4 years in the year 2012, the very same individuals as well as some other society workers who were subjected to similar process of written test, oral interview and medical examination were also issued with letters of appointment dated 05-7-2012 as Field Operators for a period of 4 years on certain terms and conditions.

(d) It is submitted that prior to the term based appointment, the very same

persons were working for more than a decade as contract labour and in all they have put in more than 20 years of service. They have been discharging the essential and core operations which are permanent in nature, the post of Field Operator is indispensable and they are appointed against clear and sanctioned vacancies.

(e) Next, it is submitted that though the petitioners have put in more than 20 years of uninterrupted service and qualified for regularisation, in the year 2013, the respondents have notified the posts of Field Operators and called for applications from the departmental candidates as well as outsiders. The written test was held in such a manner that it was impossible for the departmental candidates to get through the same and it was designed accordingly by the respondents-Corporation. The grievance of the petitioners is that instead of considering their cases for regularisation, the respondents-Corporation resorted to fill up the existing vacancies by the open general candidates by inviting applications from outsiders and issued notification vide Circular dated 01-9-2014.

(f) Aggrieved by the notification, some of the persons through ONGC Field Operators' Union filed W.P.No.29116 of 2014 wherein this Court while ordering "notice before admission" passed the interim order dated 25-9-2014 directing the respondents therein not to finalise the selection process until further orders. It is submitted by the petitioners that in cases of similarly situated persons, the Supreme Court in several reported judgments granted the same relief which is prayed for in the present writ petitions.

(g) It is under these circumstances, the petitioners filed the present writ petitions seeking a direction to the respondents-Corporation to regularise their services in the post of Field Operators.

3. The contentions put-forth by the respondents-Corporation in these writ petitions in the counters filed by them are as follows:

(a) The recruitment in question is meant for filling up Level A-I, A-II and W-I which are cadre posts enumerated in the Recruitment and P Regulations and has nothing to do with the posts of Field Operators which are ad hoc and tenure based posts filled up in the year 2008 to meet the work requirements of the projects i.e. Rajahmundry Asset and Eastern Offshore Asset at Kakinada. The members of the petitioner Union were neither appointed nor worked in the posts that are being filled up under the present recruitment notification. The so-called demand of regularisation of the petitioner Union cannot have any relation with the present recruitment which is meant for filling up altogether different posts. The persons who never worked in the presently notified posts cannot raise any objection against the said recruitment nor can they demand for regularisation of their services in the said posts.

(b) Admittedly, the members of the petitioner Union are working as Field Operators whereas the present recruitment relates to recruitment to the entirely different posts and as such the petitioners cannot have any grievance about the

present recruitment. The members of the petitioner Union have been recruited as Field Operators which are tenure posts for a period of 4 years. Even though they are tenure posts, the respondents-Corporation adopted an open general recruitment procedure for filling up the posts. The fact that the recruitment procedure was followed for filling up those temporary posts would not in any manner confer any right on these recruits to seek for regularisation of their services in the said posts or in other regular posts. The respondents-Corporation is fully justified in initiating the present recruitment action for Level A-I, A-II and W-I posts which are cadre posts as this course of action would comply with the mandate in Articles 14 and 16 of the Constitution of India. In fact, the respondents-Corporation acted in a benevolent manner and treated all the existing Field Operators though working in non-cadre posts as departmental candidates and extended age concession. As per the recruitment notification, the departmental candidates who fulfil the requisite qualification will be given first consideration. The assertion made by the petitioners that the post of Field Operator comes under Level A-I, A-II and W-I pertaining to the post of Technical Assistant is denied by the respondents-Corporation. The fact that the post of Field Operator is against the sanctioned vacancy is also denied.

(c) Thus, according to the

respondents-Corporation, the posts of Field Operators are tenure based posts and a separate recruitment was made for the said posts for a fixed tenure, the petitioners who knowing fully well opted to the said posts, now are estopped from claiming regularisation much less in a different posts which are required to be filled up by adopting the Recruitment procedure of the Corporation. The petitioners, however, are entitled to participate in the recruitment process and in fact, most of the Field Operators have applied for the recruitment to these posts. The respondents-Corporation already conducted a written examination on 16-11-2014 in which more than 10,300 candidates have appeared including 201 eligible Field Operators and the posts are required to be filled up urgently to meet the operational requirements.

(d) Raising the aforementioned contentions, the respondents-Corporation sought to dismiss the writ petitions.

4. I have heard Sri Vedula Srinivas, learned counsel appearing for the petitioners in W.P.Nos.29116 and 30749 of 2014, Sri Ch.Srinivas, learned counsel appearing for the petitioners in W.P.No.16318 of 2015, Sri Rama Mohan Palanki, learned counsel appearing for the petitioners in W.P.Nos.28212, 30206 and 33033 of 2015, Sri S. Surendra Kumar, learned counsel appearing for the petitioners in W.P.No.31522 of 2015 and Sri Kakara Venkata Rao and Sri K.Ramesh Babu, learned counsel appearing for the respondents-Corporation.

5. The following are the facts not in dispute:

The petitioners initially were working through private contractors during the period prior to 1997. Subsequently, under an agreement dated 11-12-1997

between the Contract Workers" Union and the respondents-Corporation, they worked for a period of 10 years through the system of forming Cooperative Societies. Subsequently, in the conciliation meeting held on 08-01-2008 between the Management of the respondents-Corporation and the Workers" Unions, ONGC agreed to take initially 280 workers who were being employed through societies on term based employment in the Corporation and the Corporation appointed all those workers including the petitioners as Field Operators by following open general recruitment process and after expiry of the first term of 4 years, the Corporation re-engaged them again for a further period of 4 years from July, 2012. Therefore, there would not be denial that the petitioners have been working for the Corporation for the last 25 years (approximately) and have been discharging the essential and core operations which are permanent and indispensable in nature for the Corporation. Therefore, after the conciliation meeting held on 08-01-2008, the petitioners and some other similarly placed workers have been appointed directly by following the regular open direct recruitment process and since then they are being continued as temporary workers in the name of term based employment. The petitioners have been consistently making demand for regularisation of their services and the same has not been considered. The instant recruitment notice which is under challenge in the writ petitions clearly demonstrates that the petitioners are being treated by the Corporation as departmental candidates and they are permitted to participate in the selection process along with the fresh candidates. The contention of the petitioners is that since they were appointed though on term basis by undergoing a regular open recruitment procedure, they need not undergo the same recruitment process again and that their services have to be regularised.

6. The petitioners also rely on Clause 2(ii) of the Certified Standing Orders for Contingent Employees of the Oil and Natural Gas Commission, which is as follows:

"A workman, who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days and who possesses the minimum qualification prescribed by the Commission may be considered for conversion as regular employee."

Therefore, they claim that they are entitled for regularisation of their services in the respondents-Corporation in appropriate posts from the date on which they were engaged i.e. 01-01-1998 or in any case they are entitled for regularisation with effect from 05-7-2008 the date on which they were engaged as Field Operators after selection in the regular recruitment process.

7. In support of their contention, the petitioners relied on the following judgments:

(a) Nihal Singh v. State of Punjab, (2013) 4 SCC 65, wherein the Supreme Court held as follows:

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive Government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive Government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36.....

37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practise consistent with their obligation to function in accordance with the Constitution. Umadevi [(2006) 4 SCC 1] judgment cannot become a licence for exploitation by the State and its instrumentalities.

38. For all the above mentioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State."

(b) On identical facts, in Sudarshan Rajpoot v. U.P. SRTC, (2015) 2 SCC 317, the Supreme Court after referring to various earlier judgments on the subject, held as follows:

"26. Further, we hold that even if the plea of the employer is accepted, extracting work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. Therefore, we have held that it amounts to an unfair labour practise as defined under Section 2(ra) of the ID Act, 1947 read with Section 25-T which is prohibited under Section 25-U, Chapter V-C of the ID Act, 1947."

(c) In Amarkant Rai v. State of Bihar, 2015 Law Suit (SC) 227, the Supreme Court held as follows:

"The appellant has been working in a sanctioned post and his appointment was not illegal but in the facts and circumstances of the case, his appointment could only be irregular appointment entitling him for regularisation. Principal of the College has no authority to make any appointment on any post on daily wages. In Umadevi's case (3) [(2006) 4 SCC 1], even though this Court has held that the appointments made against temporary or ad-hoc are not be regularised, no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. The authorities are therefore directed to notionally regularise the services of the appellant retrospectively with effect from 03-01-2002."

8. In any case, the petitioners have been working as Field Operators in the respondents-Corporation approximately for a period of 25 years. Their appointments are neither irregular nor illegal. Since the respondents-Corporation continued them for over a period of two decades, it has to be necessarily

understood that their services are absolutely necessary and indispensable. In the year 2008, the petitioners and other similarly placed workers have been appointed directly by the ONGC by subjecting them to regular open direct recruitment process. The petitioners claim that they are eligible for many of the posts which were advertised under the notification. Therefore, this Court is of the considered view that the petitioners are entitled for regularisation of their services in the respondents-Corporation without again subjecting them to written test and interview under the notification.

9. Consequently, the writ petitions are allowed. The respondents-Corporation are directed to regularise the services of the petitioners in the posts of Field Operators with effect from 07-7-2008 the date on which they were engaged as Field Operators after selecting them through an open and direct recruitment process with all consequential benefits. The respondents-Corporation may, however, fill up the remaining vacancies after absorbing the petitioners in the regular posts. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.