

(2009) 08 MAD CK 0183

In the Madras High Court

Case No : Writ Petition No. 2934 of 2007 (T) and O.A. No. 1038 of 2000

P. Sundaramurthy

APPELLANT

Vs

The District Collector, The Block Development Officer, Vanur
Panchayat Union and The Panchayat Union Commissioner

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32

Citation : (2009) 6 MLJ 638

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : K. Vasudevan, for the Appellant; S. Anitha, Government Advocate,
for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. The brief facts of the case are as follows:

The petitioner had been initially appointed, as a Nominal Muster Roll employee, to supervise the works executed under the J.V.V.T. Schemes, by the third respondent, by the proceedings, dated 15.7.1982. The petitioner had been working, continuously, from 15.7.1982 to 31.3.1999, without any blemish. While so, he was appointed as a Night Watchman, with effect from 1.4.1999, pursuant to a resolution passed by the Panchayat Union Council, vide Resolution No. 324, dated 5.5.1999. The Commissioner, Panchayat Union, Vanur, the third respondent herein, had also issued the proceedings, dated 6.5.1999, appointing the petitioner as a Night Watchman, with effect from 1.4.1999, on daily wage basis, at Rs. 47/- per day.

3. On 12.1.2000, the petitioner was served with an order, dated 2.11.1999, issued by the Block Development Officer, Panchayat Union, Vanur, stating that his

services stood terminated, with effect from 2.11.1999, due to administrative reasons.

4. In the reply affidavit filed on behalf of the first respondent, it has been stated that the petitioner was engaged as a Nominal Muster Roll employee, for the various works implemented in Vanur Panchayat Union, on daily wages, which was need based. The engagement of the petitioner did not give him any right in respect of the service. Even when the petitioner was employed, he was paid wages on nominal rates, with breaks in service. As such, the petitioner was not engaged in any work, continuously. While so, the petitioner was engaged as a Night Watchman, on daily wages, in Vanur Panchayat Union, by the order issued by the Commissioner, Panchayat Union, Vanur, in Rc.No.A1/5274/95, dated 6.5.1999.

5. It has been further stated that the appointment of the staff on contingent basis was banned in G.O.Ms. No. 878, Rural Development and Local Administration Department, dated 15.5.1981, with effect from 1.4.1981. Further, in G.O.Ms. No. 93, Rural Development (C.III) Department, dated 26.3.1997, it has been ordered that no fresh appointment should be made for the local bodies in all categories of staff, even on a temporary basis. The post of Night Watchman is not a post sanctioned by the Government in the regular establishment of the Panchayat Union. Further, if a post had been sanctioned by the Government, it would come under the purview of the Tamil Nadu Public Service Commission and the recruitment for the said post should be made only through the Tamil Nadu Public Service Commission. For the other posts, the appointment should be made only from the candidates sponsored by the employment exchange. In the present case, the petitioner was not sponsored by any employment exchange. Therefore, the order passed by the Commissioner, Panchayat Union, Vanur, on 6.5.1999, appointing the petitioner as a Night Watchman, on daily wages, is irregular. Therefore, the petitioner was removed from service by an order, dated 2.11.1999, passed by the Commissioner Panchayat Union, Vanur.

6. Further, since the petitioner had been employed, purely on a temporary basis, on daily wages, he was terminated from service, without any notice being issued to him. In such circumstances, the contentions raised on behalf of the petitioner are devoid of merits.

7. The learned Counsel appearing for the petitioner had vehemently contended that the removal of the petitioner from service, by the impugned order of the second respondent, dated 2.11.1999, attaches a stigma on the petitioner and therefore, he should have been given a prior notice before being terminated from service. All the necessary procedures for removing an employee from service ought to have been followed. Proper reasons have not been given, while terminating the petitioner from service, except saying that the termination was due to administrative reasons. Though the petitioner had not been sponsored through the employment exchange, his appointment should be considered as a regular appointment. There is no illegality or irregularity in the appointment of

the petitioner. Therefore, the impugned order of the second respondent, dated 2.11.1999, is arbitrary, illegal and void.

8. The learned Counsel appearing for the petitioner had relied on the decision of the Supreme Court, reported in *Om Prakash Goel v. Himachal Pradesh Tourism* in AIR 1991 S.C. 197 and the decision of this Court reported in *Lakshmanakumar V.L. v. The District Manager, "TASMAC" Limited* in 2006 (1) CTC 660, in support of his contentions.

9. Per contra, the learned Government Advocate appearing for the respondents had submitted that the petitioner had been appointed in the Panchayat Union, Vanur, only on a temporary basis. Further, he had not worked, continuously, as claimed by him. The petitioner was employed, whenever work was available, on daily wage basis. In such circumstances, the petitioner had been terminated from service, purely on administrative grounds. Therefore, the claims made by the petitioner cannot be sustained.

10. In view of the submissions made by the learned Counsels appearing for the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the reliefs, as prayed for by the petitioner, in the present writ petition.

11. The petitioner has not been in a position to show that he was employed, on a regular basis, in a sanctioned post and that he has been appointed in accordance with the service rules applicable to him. Further, the petitioner had not been appointed through the employment exchange nor was he employed by the recruitment process of the Tamil Nadu Public Service Commission. Since the employment of the petitioner was purely on a temporary basis, no prior notice had been given to the petitioner before he was terminated from service by an order passed by the second respondent, dated 2.11.1999.

12. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , the Supreme Court had held as follows: Paragraphs 12 and 45 read as follows:

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of

the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain?not at arm's length?since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

13. In view of the above decision of the Supreme Court cited supra, irregular and illegal appointments cannot be regularised. Since the petitioner has no right to

the post in which he was engaged, on a temporary basis, the contentions raised on behalf of the petitioner cannot be countenanced. In such view of the matter, the writ petition is liable to be dismissed. Hence, it is dismissed. No costs.