
(2022) 01 TEL CK 0043
In the Telangana High Court
Case No : Writ Petition No. 20009 Of 2006

P.Mallikarjun, Hyderabad

APPELLANT

Vs

Chairman M.D., The Oriental Insurance Co., 3 Others

RESPONDENT

Date of Decision : 27-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 16, 21, 226
Income Tax Act, 1961 — Section 203, 206

Citation : (2022) 01 TEL CK 0043

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : P Venkateswar Rao, A Krishnam Raju

Final Decision : Allowed

Judgement

1. This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a direction more particularly one in the

nature of Writ of Mandamus declaring the action of the respondents in changing the nature of the post of caretaker to the post of a contractor by

agreement dt.16.08.2006 as illegal, arbitrary and in violation of Articles 16 and 21 of the Constitution of India and to consequently direct the

respondents to regularise the services of the petitioner as caretaker in the respondent company and grant other benefits to the petitioner as this

Honâ??ble Court may deem fit and proper in the circumstances of the case.

2. Brief facts of the case as stated by the petitioner are that the petitioner was appointed as a caretaker of the guest house in the respondent company

at Banjara Hills, Hyderabad in 1998. At the time of appointment as a caretaker, he was interviewed by a five Member Committee and was selected

as caretaker in the month of November, 1998 and accordingly, the respondents

were paying salary and other benefits to him on par with the sub-staff of the company. The petitioner was being paid a sum of Rs.6,291/- as gross salary and after making deductions, i.e., IT and PF and other deductions, he was receiving Rs.5,635/- per month at the time of filing of the Writ Petition in 2006. The petitioner submits that his salary was enhanced from time to time along with other employees and he was also getting uniform dress along with other employees. The petitioner was also permitted to take a helper in the guest house subject to a maximum of Rs.1,000/- per month with effect from 01.01.2001 vide Ref.No.Pers/HO/276(P)/18/2001.CR-52 dt.06.07.2001. The Company Board decided that the remuneration of the caretakers may be revised from 01.01.2001 and the pay and allowances excluding HRA payable to Peons under the Amendment Scheme, 2000 was made applicable to clerical and subordinate staff. However, they were not entitled to conveyance allowance of Rs.75/- per month. It is the case of the petitioner that the respondent authorities prepared an agreement to change the nature of the post from caretaker to contractor and they wanted to put the petitioner in the form of a contractor instead of regularising his services as caretaker though since 1998, the petitioner was uninterruptedly regularly working as caretaker. Therefore, he was eligible for regularisation as a caretaker. It was his grievance that through this new agreement, caretaker post was proposed to be changed as a contractor and if done accordingly, he would be put to irreparable loss. He placed reliance in the case of Union of India Vs. Dharma Pal and others Civil Appeal No.7062/96 dt.20.03.1996 of the Supreme Court of India, wherein the Government of India was directed to regularise the services of all those workers who have completed the prescribed period of days viz., 240 days in a year against the existing vacancy applying the rule of reservation in the order of seniority in the respective categories mentioned in the scheme and that such regularised employees would be entitled to all the regular payment at the scale of pay prescribed by the Central Government. The petitioner's case is that he was entitled to be regularised in accordance with the above judgment of the Hon'ble Supreme Court. Hence, the petitioner filed this Writ Petition.

3. Learned counsel for the petitioner, Sri P. Venkateswar Rao, while reiterating the averments made by the petitioner in the writ affidavit, has drawn

the attention of this Court to page 15 of the writ papers, wherein vide letter dt.04.12.2000, it is certified that the petitioner is working in the Guest

House of the organisation and was staying at No.33, Classic Emerald No.8-2-622/1/1/B-1 & B-3, Road No.10 (New No.4), Banjara Hills, Hyderabad

and that he may be issued with required licence. He also referred to page 32 of the writ paper book, which is Form No.16A, wherein the tax was

deducted at source under Section 203 of the Income Tax Act and the TDS Circle where annual return under Section 206 was to be delivered was

mentioned as "ITO Salary Circle" and his name and designation were mentioned as Caretaker, Guest House, Banjara Hills, Hyderabad. He also

has drawn the attention of this Court to page 37 of the writ papers, wherein the agreement of contract is placed. However, it is an unsigned

agreement. He also filed a copy of the order of the High Court of Madras in W.P.No.19003 of 2000 in the case of New India Assurance Co. Ltd.,

Vs. Workman C. Gnanam, wherein under similar circumstances, the Hon'ble Madras High Court has held that the workman therein is entitled to

regularisation of his services.

4. Learned counsel for the respondents, Sri A. Krishnam Raju, on the other hand, relied upon the averments of the respondent organisation in the

counter affidavit and submitted that there was no post of caretaker in the respondent organisation and the company was maintaining a guest house and

the petitioner was engaged to maintain the guest house and the nomenclature given to the said work was as caretaker. It was submitted that it was not

a permanent post and the petitioner was engaged only on contractual basis to maintain the guest house and no particular recruitment process was

undertaken to call it as an appointment to a permanent post. He further submitted that whether the petitioner was an employee or not is a disputed fact

which cannot be gone into in these writ proceedings. In support of his contentions, he placed reliance upon the judgments of the Hon'ble Supreme

Court in the case of Yogesh Mahajan Vs. Professor R.C. Deka, Director, All India Institute of Medical Sciences (2018) 3 SCC 218 and the case of

Surinder Prasad Tiwari Vs. U.P.Rajya Krishi Utpadan Mandi Parishad and others (2006) 7 SCC 684. He therefore prayed for dismissal of the Writ

Petition.

5. Having regard to the rival contentions and the material on record, it is seen

that the petitioner was appointed and recognized as a caretaker by the respondent company in the year 1998. Though there is no proof of any selection process being undertaken, it is the case of the petitioner that a Committee interviewed him before appointing him as a caretaker. The respondents have not disputed that the petitioner has been taking care of the guest house for the past 5 years. It is also undisputed that the petitioner has not signed the document which is in the nature of an agreement or contract. Further, from the Form No.16A, it is seen that the TDS has been deducted from the monthly payment made to the petitioner and the office to which the TDS is to be remitted is mentioned as "ITO Salary Circle". All these facts go in favour of the petitioner. Further, it is seen that the petitioner is continuing in service by virtue of the interim order of this Court in W.P.M.P.No.25257 of 2006 dt.28.09.2006. The stay vacate petition filed by the respondent company was also dismissed and the petitioner was directed to be continued in service. Therefore, it is clear that the petitioner is continuing in service and though the respondents submitted that there is no post of caretaker in the organisation, this Court deems it fit and proper to direct the respondents to regularise the petitioner as a sub-staff or in any such post which carried the same scale in 1998, in which the petitioner was initially appointed in 1998 and grant him all the attendant benefits thereafter, i.e., enhancement of salary, increments and all other eligible benefits which a regular employee would be eligible under law.

6. The Writ Petition is accordingly allowed. No costs.

7. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.