
(2000) 10 AP CK 0005
In the Andhra Pradesh High Court
Case No : W.A. No's. 1222 of 1999

Pratap Singh A. and Others	Vs	APPELLANT
A.P. State Electricity Board and Others		RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Andhra Pradesh State Electricity Board Service Regulations — Rule 16
Constitution of India, 1950 — Article 24
Contract Act, 1872 — Section 23

Citation : (2001) 1 LLJ 973

Hon'ble Judges : M.S. Liberhan, C.J;Goda Raghuram, J;B. Sudershan Reddy, J

Bench : Full Bench

Advocate : B. Vidya Sagar, R. Subhash Reddy, Y. Sudhakar and P. Veera Reddy, for the Appellant; Standing Counsel for A.P.S.E.B., for the Respondent

Final Decision : Allowed

Judgement

M.S. Liberhan, C.J.—These appeals are being heard analogously as the facts largely and the question raised can be fairly regarded as common questions. The appeals are being disposed of by common judgment.

2. The pristine questions raised in these appeals are: (1) Whether there is an irregularity, with respect to age, occurred at the time of initial appointment or entry into service. (2) Whether an irregularity was committed by the workers or they have suppressed any fact or committed fraud for securing the ad hoc service? (3) Will the irregularity deprive appointees from regularisation under the scheme framed for that purpose.

3. In view of the Division Bench judgment of this Court in W.P.No. 7681 of 1991 dated October 7, 1996 and again in W.P.No. 11350 of 1992 dated November 11, 1996 wherein it has been held that such of those ex-casual labour who were minors at the time of their initial engagement cannot claim absorption into regular service, the petitioners are not entitled for absorption. It would be expedient to notice at this stage the decision in W.P.No. 7681 of 1991 dated

October 7, 1996 wherein while considering the case of absorption of persons found to be aged 13 and 14 years on the date of their initial engagement as casual labour, it was found as under:

"In the present case, we find that assuming that the petitioners were the persons who worked as casual labourers in 1979-80, they were undisputedly minors of 13 and 14 years and they must have got themselves engaged if at all by misrepresentation or fraud. Their employment was opposed to public policy. The principle *ex dolo malo or ex turpi casua non oritur actio* will apply to the facts of the present case. No claim can arise out of fraud or illegal methods. We, therefore, cannot interfere".

4. In W.P.No. 11350 of 1992 dated November 11, 1996, the petitioners are similarly situated persons and the petition was dismissed following the said judgment.

5. The learned single Judge while following the judgment of the Division Bench dismissed the writ petition observing that with respect to the challenge about the correctness of the abovesaid judgments being either inapplicable or incorrect to the specific facts and situation of the petitioners, the same could only be done by a larger Bench for settlement of the law on the question.

6. In view of the above circumstances, the matter came up for consideration before us in a larger Bench by the order of reference dated February 25, 2000.

7. Skeletal facts for determination of the question argued run thus:

8. The employees, shall hereinafter be referred to as the petitioners and the employer as the Board. The petitioners joined the service of the Board as Village Electricity Workers/ casual labourers on various dates. They were in service for over a decade. An agreement between the Board and the recognised Unions of the petitioners was entered in March, 1996. State of Andhra Pradesh issued a Circular No. 21207/ SCRA-2193-E. Department dated May 17, 1997. The Board decided to fill 50% of the vacancies existing in the initial recruitment cadres of Junior Lineman/Junior Assistant/ L.D.C/Cashier/Typist by considering the cases from amongst the ex-casual labourers/Village Electricity Workers and contract labour other than those relating to 33 categories where engagement of contract labour was prohibited. Board issued Guidelines/Eligibility criteria for selection of candidates vide B.P.Ms. No. 36 dated May 18, 1997. The relevant guideline which is the basic premise to decline the consideration for regularisation of the petitioners is embodied in para No. 5(3)(i) to the effect that age shall be reckoned as per the Board's Service Regulations in force at the time of their first engagement and there shall be no relaxation of age. Undisputedly, the petitioners neither misrepresented nor fraudulently got the employment by not disclosing their true age. They were between the age of 15 and 18 years on the date of their initial appointment, a decade ago. The petitioners were denied the absorption, albeit they were underaged at the time of their initial appointment. It was challenged as being illegal, arbitrary and violative of Article 14. The

petitioners sought the absorption, contending that the minimum age should be computed as on the date of selection for regular appointment especially in view of the facts and circumstances that the petitioners have served the Board for decades continuously, when some may have become overaged. Their just expectation cannot be denied. The Board is and was estopped by its act and conduct in refusing to consider their cases for absorption. There is no minimum age prescribed for the post of helpers.

9. Board averred, the current appointment was not a direct appointment but from amongst the candidates who have already worked as casual labourers or Village Electricity Workers or contract labourers. The minimum age be reckoned not as on the date of the present consideration but as on the date of their initial entry into the service. Presently the petitioners were overaged. If the age is to be taken into consideration at the time of their regularisation or appointment, the very scheme of absorption entered into with the Unions shall be frustrated. (2). It is inherent in the scheme of regularisation that appointment is on regular basis. The petitioners who were not engaged in accordance with the recruitment rules, the engagement of minors runs contrary to the rules which confer no right on them including the right of regularisation or for consideration for absorption. (3) Minors could not be appointed to any post muchless to the post of a Helper. It is contrary to public policy. Such requirement of public policy would have to be read into the scheme/Rule 5 of the draft statutory rules. (4) The prescription of age qualification in the guidelines contained in BPMS 36 does not violate any provision of the Constitution muchless is violative of Article 14.

10. In our considered view, the Division Bench has not laid down any question of law as such. It is in view of the facts found or assumed that the employees secured employment being under the age of 13 and 14 years as initial appointment on suppression of facts that the judgment came to be passed. Similarly, in the second writ petition, it was found on the report of the Superintending Engineer that the petitioners obtained the initial engagement on the basis of impersonation though a further observation was made that they claimed employment at the age of 15 and 16 years in July, 1979 and worked only for a period of nine days. Thus declined to interfere and denied the relief in view of the specific factual matrix.

11. The specific question which came up for consideration before us is: In view of the admitted facts where the petitioners had obtained the initial appointment as minors not by suppression of facts, impersonation or fraud or any conscious or unconscious act on their part could they be denied the just relief solely on the ground that they were minors when they initially joined the service as village electricity workers/casual labour on various dates. They were in service for over a decade. The Board was privy to the said contract of employment. Board has taken work out of them. The petitioners having worked in the just expectation or if we may hasten to add, under an impression that they will be taken into regular service, and to the same effect is the agreement entered into by the Union

resulting in issuance of BPMS No. 36.

12. In our considered view, the ratio of the Division Bench judgments cannot be extended to deny the benefit to the petitioners who are not guilty of suppression of facts, fraud or misrepresentation at the time of their initial appointment. There is no allegation or material on the record of the Board that any of the petitioners are or were guilty of such suppression of facts or fraud or misrepresentation at any point of time. There is nothing on record even to assume so as a fact or otherwise.

13. The Constitution of India ensured justice-economic, social and political. Justice has not to be read in isolation. Justice has to be judged in terms of what is due to one and understood specially by the illiterate and unemployed folk of the country. Justice is not fixed in water tight compartments. Justice varies according to the facts and circumstances of each case. There can be no gainsaying that in a country of unemployment, people suffering from hunger and poverty, the State cannot be permitted to deny justice on assumed technicalities and specially being privy to the employment and taking work for decades and holding out a promise to them for regularisation. The State also cannot be permitted to turn round and deny the benefit of regularisation in the absence of any act overt or covert attributable to the petitioners of suppression of fact, fraud or misrepresentation made by them at the time of their initial engagement of employment or initial entry into service.

14. These petitioners cannot be denied their just expectation and thrown on the roads after they have become overaged, thus rendering them unemployed. It would or may provide an opportunity on account of vagaries of life to be the criminals thus and throw them on the society open to crime and as predators on the society.

15. There is another facet which requires consideration as to whether there is any statutory or legal impediment for considering their cases for regularisation.

16. The respondent initially, though faintly, contended that in view of Rule 16(e) of the A.P.S.E.B. Service Regulations, Part-II, the petitioners would be ineligible for regularisation. That the rules are applicable only to the employees who are in regular service and draw their pay monthly in a time-scale of pay and not to the employees who are under a contract of service, which is the undisputed case of the petitioners. The counsel for the Board conceded though mildly contended that in view of the said rule those who have not completed 18 years of age shall not be eligible for direct recruitment. If we may hasten to add, they were never recruited by way of direct recruitment at any point of time. They have initially joined the service as Village Electricity Workers only as casual workers and not on regular pay scale or under the regulations referred to. The Board's own contention is that though the petitioners' initial engagement is not by direct recruitment, now the present case of absorption would be by way of direct recruitment. Thus, on the stand of the Board itself, these regulations would not

be applicable. As a necessary corollary, the relief sought by the petitioners cannot be denied to them solely on the ground that they were under 18 years of age at the time of their initial engagement by the Board in the above referred capacity.

17. The Board in the alternative contended that the Draft Service Rules of 1960 which are still not promulgated prohibits employment of persons who are below the age of 18 years. It would be expedient to refer to the rule providing for the qualification which runs thus:

"No person shall be eligible for appointment to any category or grade if he has completed 25 years of age on the date of appointment.

Note: (i) the age limit referred to in this rule shall be relaxed to the extent of period served if any in work charged establishment or on daily wages as the case may be.

(ii) In case of contract labour belonging, to S.Cs., and S.Ts., Backward Classes and Aboriginal Tribes in the agency areas, the age limit of 25 years prescribed above shall be enhanced to 30 years".

18. From a reading of the regulation relied upon, it is categorically discernable that neither expressly nor by implication, any minimum age for entry into service is provided. Again during the course of arguments at the Bar, it was not disputed and could not be disputed that the initial engagement of the petitioners as Village Electricity Workers was only by way of contract labour or casual labour and is not governed by these rules which are applicable to the posts ranging from Foreman- Gr.I. to Gauze reader or to the service consisting of 73 grades contained in the Annexure I to the draft rules. Apart from that fact, with respect to the status and vitality of the rules which are executive instructions placed on the highest pedestal, we are satisfied that they are not attracted or applicable to the case in hand. Apart from the fact that these rules are not applicable to the petitioners they do not prescribe any minimum age for recruitment much less prohibits the engagement of the petitioners below the age of 14 years or prohibits their present claim for regularisation when they are concedingly above 18 years.

19. The respondent's counsel contended that the engagement of a minor is contrary to public policy in view of Article 24 of the Constitution and Section 23 of the Indian Contract Act. We fail to comprehend the contention raised by the counsel for the respondent. Article 24 prohibits that no child below the age of 14 years shall be employed to work in any factory, or mine or engaged in any other hazardous employment. In view of the admitted fact established from the record, the petitioners were between 15 and 18 years of age at the time of their initial engagement in various capacities referred to in the earlier part of the judgment. Article 24 does not prohibit anybody being employed above the age of 15, though at no point of time, it was the stand of the respondent that they were employed in a factory, mine or any hazardous employment. The respondent

cannot be permitted to approbate and reprobate in the same breath. They themselves provided the employment. It is not expected from the State or State agencies, which are not only to give public service but are duty bound to generate employment for the citizens. After generating employment and employing persons, they cannot turn round and say that since they violated the constitution or the constitutional provisions as presently devised, or any statutory provisions, the sufferer would be the citizen. Instead of they being ideal employers they cannot be callous to the ground realities and adopt a principle or attitude which results in perpetuating injustice and draconian rule of law.

20. Lastly, the learned counsel for the respondent-Board contended that the petitioners are disentitled for being considered for regularisation on account of their initial engagement in the various posts referred to above being opposed to public policy in view of Section 23 of the Indian Contract Act or on account of such initial contract of employment being void in view of the petitioners' incapacity to contract at that point of time being minors u/s 11 of the Contract Act.

21. We find no force in the submission of the learned counsel for the respondent-Board. Firstly, there is no written express contract between the parties entered into at any point of time. It is at best an implied contract spelt out in view of their engagement by the respondent. At best, it can be termed to be a voidable contract. It would be voidable at the instance of the minors that is the petitioners and not the Board.

22. In our considered view, in view of the facts stated in the earlier part of the judgment and contentions raised by the counsel for the Board, the petitioners were never engaged as the regular employees of the Board in a time pay scale. Initially, they were employed as casual labour or village electricity workers or contract labour etc. In view of the totality of the facts and circumstances any irregularity in their employment would be deemed to have been waived by the act and conduct of the Board especially when nothing is attributed to the petitioners on their part for securing the service or making any false representation or committing fraud and the Board itself being privy to the contract of service for more than a decade during which period they have crossed 18 years many a times i. e., the petitioners have attained majority a considerable time ago and their engagement all these years must necessarily expressly or by implication amounts to an implied contract on regular basis, atleast on the date they have completed 18 years of age. Such contract cannot be said to be against a public policy and certainly be a valid contract at least from the date each of the petitioners attained majority.

23. The respondents are further estopped by their act in denying the just expectation of the petitioners. We are of the considered view that being persons belonging to the lower economic strata and by compulsion of their economic necessity and they being totally unorganized labour accepted the employment on account of economic necessity which cannot weigh against them and deny their

rightful claim on hair-splitting technicality even if there is any.

24. Merely the petitioners' entry at a distant time cannot be said to be again opposed to public policy specially when they have become ineligible having been overaged. It is not their entry which can be termed to be arbitrary but it is the denial of their consideration according to the scheme promulgated by the respondent-Board itself for buying industrial peace by entering into agreement with the three unions which would be vitiated by the vice of arbitrariness. The respondent cannot be permitted to adopt a ruse to deny the petitioners of their legitimate claim of regularisation, which must be rejected. Judicial restraint demands no more to be said.

25. It has become axiomatic by now that public service or service of the statutory authorities has lost the initial status of a contract of service after coming into force of the Constitution and public law. As far back as in 1967, the Supreme Court has observed in *Roshan Lal Tandon Vs. Union of India (UOI)*, to the following effect:

"The hallmark of a status is the attachment to a legal relationship of the rights and duties imposed by public laws and not by mere agreement of parties".

26. Similarly, a Division Bench of the Calcutta High Court categorically held that the appointment of a person below the age of 18 years cannot be termed to be illegal. Thus his entire service of employment including the period before attaining the age of 18 years shall be counted for the purpose of considering his seniority. We cannot add more to the law laid down by the Calcutta High Court.

27. The learned counsel for the Board has vehemently relied on the law laid down in the case of *State of Haryana and others Vs. Piara Singh and others etc. etc.*, to contend that the employee must possess the prescribed qualifications for the post at the time of his appointment on ad hoc basis for the purpose of his case being considered for regularisation later. There is no dispute with the principle of law laid down and the binding nature. As we have observed in the earlier part of the judgment, there is no rule or regulation which has been pointed out at any point of time during the course of argument which prescribes an entry age limit for employment as a casual labourer, village electricity worker or contract labour. The petitioners do not suffer from any disqualification for being considered for regularisation. To be fair to the counsel for the Board, the judgments cited in *Piara Singh's case (supra)* and *E. Ramakrishnan and Others Vs. State of Kerala and Others*, wherein the law has been laid to the effect that persons not selected through the Public Service Commission's norms as also the relevant recruitment rules and appointed without following the procedure of selection are not entitled for regularisation are not applicable. It was in the peculiar facts and circumstances of the particular cases that the relief was denied, which is not the case in hand. The petitioners were never appointed in violation of any norms, rules of recruitment, procedure of recruitment which disentitles them for regularisation. To the same effect is the proposition of law as

has been laid down in Union of India v. Bishamber Dutt AIR 1997 SC 16: 1996 (11) SCC 34 : 1997-II-LLJ-381.

28. For the reasons recorded above, the law as relied upon by the counsel for the respondent has been laid down on the facts and circumstances and totality of the circumstances of those cases which is not attracted to the case in hand as we have found as a fact that there is no illegality in the initial appointment of the petitioners.

29. Lastly but not least, the learned counsel for the Board relied on Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, wherein the Supreme Court considering the challenge by the workmen of the imposition of conditions by the High Court while directing regularisation of their services held:

"Where the initial appointment of the workmen in question is not in accordance with the rules governing the appointments or the policy of the recruitment of the management or in contravention of the various statutory orders including the reservation policy, conditions could be imposed by way of suitable guidelines while directing regularization of service depending on the facts of each case".

30. As has been repeatedly observed in the earlier part of the judgment in the case in hand, para 5(3) of BPMS No. 36 merely states that the age shall be reckoned as per the Board's Service Regulations in force at the time of first engagement and there shall be no relaxation of age. As we have observed earlier, we have found that no relevant service regulation of the Board prescribed any entry age limit for casual labour/village electricity worker or contract labour. In the circumstances, there is nothing in BPMS.No. 36, which persuades us to hold that the respondent-Board is entitled to decline the consideration of the petitioners for regularisation.

31. Thus, in the totality of the facts and circumstances of this case, there is no question of law as such as framed and argued. We answer the questions in the facts and circumstances of the case that::

(i) There was no violation of public policy or any irregularity that occurred at the time of initial appointment or entry into service, which disentitles the consideration of the petitioner for regularisation.

(ii) The alleged if any irregularity in the initial appointment having been waived by the Board, it does not confer on the Board a right to deny the just due to the employee.

(iii) The violation of a public policy and the irregularity committed has to be judged in the facts and circumstances of each case. No strict proposition as such can be laid down.

32. In view of the observations made above, the writ appeals are allowed and consequently the writ petitions are also allowed. No grounds urged by the

respondent can be sustained. The petitioners would not suffer any disqualification for being considered for regularisation in terms of BPMS.No. 36 and the respondent-Board is directed to consider the case of the petitioners in terms of the said BPMS for regularisation within six months from today subject to availability of posts. No costs.