
(2012) 10 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No"s. 21555 to 21605 of 2012 (S-REG)

Puspanjali M.C. and Others

APPELLANT

Vs

Karnataka Power Transmission Corporation Ltd. and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2013) 3 AKR 372

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Vikas Rojipura and Ravi Varma Kumar, Assts, for the Appellant; B.C. Prabhakar and Raghavendra G. Gayatri, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

Subhash B. Adi, J.—All these petitioners have sought for direction to the respondents to consider for regularisation of their services w.e.f. 20.5.2010 and grant all consequential reliefs. The case of the petitioners is that, during 2003, the Government had imposed a ban on recruitment in the Government department. In 2003, the KPTCL was expanding its activities and was in acute need of manpower, since there was a ban on public employment, the KPTCL issued advertisement calling upon applications for recruitment to various posts but it was treated as temporary appointment. The selection of the candidates was in accordance with the Recruitment Rules adhering to the constitutional scheme. These petitioners were appointed in 2007 on contract basis on monthly salary of Rs. 8,000/-.

2. The KPTCL, knowing fully well that these recruitments were made on regular basis, except treating them as contractual employees, those who were appointed on contract basis in 2003, 2005 and 2006, as such, the KPTCL passed a resolution to regularise their services. Accordingly, those who were appointed on contract basis up to 2006, their services were regularised. However, the services of these petitioners and others, those who were appointed in 2007 and onwards, though appointed against sanctioned posts against a clear vacancy on the basis

of requisite qualification in terms of the Regulation, however, their services were not regularised.

3. When the same was brought to the notice of the KPTCL, it passed a resolution dated 29.12.2010 produced at Annexure-G inter alia resolving that "the proposal to regularise the services of the Contract Assistant Engineers and Contract Junior Engineers working in KPTCL and BESCOs be and is hereby recommended to Government for necessary approval". It further resolved that "the Director (Administration and HR), KPTCL be and is hereby authorised to addressed Government of Karnataka accordingly". Though the resolution has been passed in 2010, the Government has not yet taken any action in pursuance of the same. As such, these petitioners are before this Court.

4. Learned counsel for the petitioners submits that in view of ban in recruitment of the Government servant in 2003, though these petitioners were appointed against clear vacancies on the basis of requisite qualification, by following the procedure for regular appointment but they were appointed only as temporary/contractual employees. He also submitted that the KPTCL itself has regularised the services of such temporary/contract employees recruited during 2003, 2005 and 2006. But, only in respect of employees recruited from 2007 onwards, though resolution has been passed by the KPTCL, the State Government has not taken any decision, in this matter.

5. He further contended that the principle laid down by the Apex Court in a decision in the matter of Secretary, State of Karnataka and Others Vs. Umadevi and Others, does not bar the regularisation of the services of the petitioners as their appointment is not illegal. This Court, in WP No. 7425/2007 dated 20.5.2010, considering the decision in Umadevi's case and relying on the decision of the Apex Court in Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others, has held that the petitioners therein are entitled for regularisation and accordingly, has issued direction.

6. On the other hand, Sri. B.C. Prabhakar, learned counsel appearing for the KPTCL submitted that, the initial appointment of these petitioners in pursuance of the advertisement dated 7.2.2007 and it was only a temporary appointment, petitioners were aware that their appointment is temporary. However, the KPTCL, having regard to their experience has continued them on contract basis. He also submits that, on humanitarian ground, resolution has been passed and it is up to the Government to take steps.

7. On the other hand, learned Government Pleader submits that, the recommendation made by the KPTCL goes contrary to the decision of the Apex Court in State of Karnataka and Others Vs. M.L. Kesari and Others, Further, he submitted that the matter is yet to be considered by the Government.

8. It is not in dispute that in 2003, there was ban on recruitment of Government servants and the departments of the Government could not have made permanent recruitment. At the same time, the Government wanted to do

recruitment of the employees as there was acute need. Having regard to the same, even KPTCL has made certain recruitment from 2003 and these recruitment were temporary. Though they were temporary, but were made by following the regulations applicable to recruitment for permanent post. It is submitted that except it is stated as temporary, but it was permanent recruitment. As far as the regularisation is concerned, the Apex Court, in Umadevi's case, as one time measure, has permitted the Government to regularise the services of temporary/casual/contractual employees who fulfill the norms stipulated therein.

9. Paragraph 53 of the said judgment reads as under:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore and Another Vs. S.V. Narayanappa, R.N. Nanjundappa Vs. T. Thimmiah and Another*, and *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

10. However, despite of the observations made by the Apex Court above, the State Governments, understanding that there is total ban of regularisation, had not regularised even who were eligible in terms of the Umadevi's case. It is in this context, the decision in Umadevi's case again fell for consideration before the Apex Court in the matter of *State of Karnataka and Others Vs. M.L. Kesari and Others*, The Apex Court clarified the position as to what constitutes one time consideration and stated that, all the candidates who fulfill the norms stipulated therein, till their case is considered as one time measure by the State, is required to be considered.

11. Paragraph 7 of the said judgment reads as under:

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad hoc/casual employees were still pending before Courts.

Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six months period mentioned in para 53 (Para 44 of AIR) of Umadevi has expired. The one-time exercise should consider all daily-wage/ad hoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 (Para 44 of AIR) of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 (Para 44 of AIR) of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 (Para 44 of AIR) of Umadevi, are so considered.

(Underlining supplied)

12. No doubt, this Court, in W.P. No. 7425/2007 has referred the decision in Umadevi's case and has issued direction, at paragraphs 10 to 13, this Court has observed as under:

10. The appointment of Contract Assistant Engineers by the respondent Corporation was against sanctioned vacant posts, by issuing newspaper advertisement, conducting special technical aptitude test and by considering their academic records. Further the guidelines on reservation in recruitment had been scrupulously followed while appointing the Contract Assistant Engineers. It is not in dispute that in the year 2003 there was a ban on recruitment in the Corporation by an order of the Government. The appointment of Contract Assistant Engineers was not illegal and it was only irregular.

11. There was compelling need in the Corporation to fill the vacant posts. In the circumstances the respondent Corporation resorted for appointment of Assistant Engineers on contract basis since there was ban on regular recruitment according to the Rules. Now these contract Assistant Engineers have put in more than 6 to 7 years of service, they are qualified and fit to be absorbed in the service. As one time measure the respondent Corporation passed the impugned resolution to absorb all the contract Assistant Engineers. Therefore the impugned resolution is in no way contrary to the law laid down by the Supreme Court in Umadevi's case.

12. In Punjab Water Supply Board's case the Supreme Court clarified the law laid down in the earlier decision in Umadevi's case specifying what the constitutional Bench had in mind in directing regularisation was in relation to

such appointments, which were irregular in nature and not illegal ones. In the instant case the appointment of Contract Assistant Engineers can at best be irregular appointment and in any event not illegal appointment. Therefore regularisation of Contract Assistant Engineers under the impugned resolution is not contrary to the law laid down by the Supreme Court in the decision referred to above.

13. In the year 2003 when the Corporation appointed contract Assistant Engineers some of the petitioners had the qualification to be appointed as Assistant Engineers and some of the petitioners did not had the requisite qualification. The petitioners who had the requisite qualification had the opportunity to apply and to be appointed as Contract Assistant Engineers but they did not avail that opportunity. Merely because the appointment of contract Assistant Engineers was for a temporary tenure, some of the petitioners though had the requisite qualification did not apply is not a ground to set aside the impugned resolution. In fact the petitioners are not calling in question the appointment of Contract Assistant Engineers. On the other hand the petitioners are questioning the impugned resolution at Annexure-K regularising the services of contract Assistant Engineers on the ground that their quota for promotion gets reduced and their right to be considered for promotion is adversely affected. This contention of the petitioners is unfounded. Firstly the petitioners are eligible for promotion only after 17.07.2008. The impugned resolution at Annexure-K is dated 16.03.2007. Therefore on the date of impugned resolution the petitioners were not eligible for promotion from the cadre of Junior Engineers to the cadre of Assistant Engineers. Therefore the question of petitioners right to be considered for promotion is adversely affected will not arise.

13. Learned counsel for the petitioners submitted that, all these appointments are made against clear vacancies in respect of sanctioned post, petitioners are qualified to be appointed as Junior Engineers and Assistant Engineers. They have been working in KPTCL since the date of their recruitment and it is also submitted that except the nomenclature of temporary, in all other respects they are permanent appointments. Further, the KPTCL has also resolved to recommend to the Government for regularisation, as such there is no impediment to regularise their services. If the petitioners' appointment is against clear vacancies in the sanctioned post, if the petitioners are duly qualified and the appointments were made following the constitutional norms and if the State Government has already considered the case of other candidates, it is open to the State Government to consider the case of these petitioners also. Since the KPTCL has already passed a resolution, without going into the correctness or otherwise of the resolution, when the petitioners have only sought for direction, I deem it appropriate only to issue direction to the State. If the resolution is already forwarded to the State Government for approval, the State Government may take decision in the matter in accordance with law as early as possible not later than two months from the date of receipt of copy of this order without fail.

Accordingly, petitions are disposed of.