
(1999) 11 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14255 of 1999

S. Purushotham

APPELLANT

Vs

District Collector, Karimnagar and others

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 ALD 108

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. V. Sree Ranga Rao, for the Appellant; Mr. P. Sesha Rao, SC for APSCCFC Ltd., for the Respondent

Judgement

1. The petitioner is working as Work Inspector on daily wage basis in the Engineering wing of the 4th respondent which is under the control of the 2nd respondent. He is aggrieved by the proceedings in A5/1569/APCS/94 dated 23-3-1999 (impugned proceedings) issued by the 2nd respondent. By the said proceedings, the petitioner's claim for regularisation of his services in the 2nd respondent was rejected. Therefore, the petitioner prays this Court for issue of a writ in the nature of writ of mandamus declaring the impugned proceedings as contrary to the orders of this Court dated 18-2-1999 in WA No.1276 of 1998 and pass further orders directing the respondents to regularise his services in the 2nd respondent, The facts in brief are as follows:

The Andhra Pradesh Scheduled Caste Service Co-operative Society is an apex body having District Scheduled Caste Co-operative Societies at District level. They have various district units under the control of Executive Director. The entire funding is by the Government of Andhra Pradesh. The affairs of the Apex body and other district units are controlled by the Government in a pervasive manner. The basic purpose of these societies is to look after the welfare of the Scheduled Caste persons having economic empowerment as the goal. It functions not with a profit motive but with a welfare motive. Its success can only

be measured with reference to more number of persons it helped to stand on their legs and coming out of stage of poverty and penury. I am rather constrained to make these introductory remarks as the present case shows that the powers that be seem to have forgotten the object with which the service co-operative society for SC persons came to be established.

2. The petitioner joined the Karimnagar unit of the Society, the 6th respondent in 1987. He joined as an NMR Work Inspector. He is a matriculate with ITI draftsman course. His initial appointment was from among the candidates sponsored by the Employment Exchange. Sometime in July, 1988 he was terminated. In the writ petition filed by him, being Writ Petition No.5233 of 1989, this Court passed interim order to continue the petitioner. Therefore, he was taken to duty from 27-3-1990 onwards. He worked continuously for more than half a decade and claimed that his services be regularised. He also complains that one Mr. Sami Reddy who was his junior was regularised in service in January, 1997 itself and the same treatment was denied to him. Be that as it may, on 24-1-1997 this Court disposed of Writ Petition No.5233 of 1989 directing the respondents to consider the case of the petitioner for regularisation in accordance with G.O. Ms. No.212 dated 22-4-1994.

3. After his unsuccessful repeated representations, the petitioner filed Contempt Case No. 1289 of 1997 complaining that the orders of this Court in Writ Petition No.5233 of 1989 were flouted. The petitioner says that after receiving the notice in the contempt case, the first respondent issued proceedings No.2240/Estt/89 dated 13-2-1998 rejecting his claim for regularisation. The grounds of rejection are as follows:

1. The individual is not having minimum (5) years of service as per G.O. Ms. No.212, dated 22-4-1994 as on 25-11-1993 and continuing.

2. The individual is working in the NMR basis in the Engineering wing which is created temporarily and the employees working there in are not entitled for regularisation in view of its temporary nature.

3. The Engineering wing is running with the minus balance.

4. There is no clear vacancy in the Engineering Wing and there is no work load to regularise the services of the individuals as contemplated under Clause 5 of G.O. dated 22-4-1994.

4. The petitioner again approached this Court. But this time in WP No.9554 of 1998 he prayed for a declaration that the action of the Collector-cum-Chairman of the District unit is improper, arbitrary, unreasonable and contrary to the orders of the Court. After hearing the learned Standing Counsel for the SC Society, the learned Government Pleader for Social Welfare, this Court by order dated 23-4-1998 quashed the rejection order dated 13-2-1998 and further directed the respondents to regularise the services of the petitioner with effect from the date on which he completed 5 years of continuous service treating 27-3-1990 as the

date of entry into service. This order was passed following the law laid down by the Supreme Court in Dist. Collector/Chairman and Others Vs. M.L. Singh and Others . In the said judgment, the Supreme Court categorically held that 5 years eligibility period for the purpose of G.O. Ms. No.212 dated 22-4-1994 is to be reckoned with reference to the date of completion of 5 years of continuous service and not completion of 5 years as on the date of issue of the said Government order. Be that as it may, the District unit, Karimnagar and the Managing Director of the apex body along with others filed writ appeal being Writ Appeal No.1276 of 1998. A Division Bench comprising the Hon''ble the Chief Justice Sri M.S. Liberhan and Hon''ble Sri Justice A.S. Bhate dismissed the writ appeal directing the respondents to consider the case of the petitioner for regularisation keeping in view the observations made by the Division Bench.

5. The 2nd respondent herein issued the impugned proceedings rejecting the claim of the petitioner for regularisation after the judgment of this Court in the Writ Appeal No.1276 of 1998. The grounds of rejection are as under:

1. The individual has not completed 5 years of service as on 25-11-1993 which is a statutory obligation as per the Act 3/94, 3/98 and 27/98.

2. There is no clear vacancy against which regularisation can be considered which is also one of the statutory condition as per the Act 3/98 and Act 27/98.

6. The main contention of the learned Counsel for the petitioner is that the impugned order of rejection is contrary to the judgment of the Division Bench of this Court and that the same is arbitrary. It is further submitted that the two grounds on which the claim of the petitioner was rejected was already subject-matter before a learned single Judge as well as the Division Bench of this Court and, therefore, the 2nd respondent as grossly erred in rejecting the claim of the petitioner on the impugned grounds which were held to be non-existent or held against the respondents. The learned Standing Counsel for the respondents 1, 2, 4 and 6 submits that when the Society rejected the claim of the petitioner, the petitioner approached the Court by filing CC No.608 of 1999 and that the Society also filed a review petition in Writ Appeal No.1276 of 1998 which is pending and, therefore, the writ petition should be rejected.

7. The point that arises for consideration is whether the impugned order is illegal and unsustainable.

8. After receiving the impugned order, the petitioner filed CC No.608 of 1999. The Division Bench comprising the Hon''ble the Chief Justice Sri M.S. Liberhan and Hon''ble Sri Justice G. Raghuram by order dated 8-6-1999 passed the following order:

"Concedingly, the order dated 23-3-1999 has been passed declining to regularise the services of the petitioner in terms of the directions issued in the writ petition. Even assuming, prima facie, as alleged by the petitioner, that the order passed by the Corporation runs counter to the orders passed in the Writ Appeal, the

petitioner would be at liberty to challenge the same in the appropriate forum. In our considered view, in the facts and circumstances of the case, it cannot be said that the respondent have willfully violated the orders of this Court in order to invoke the contempt jurisdiction. No ground is made out to issue notice to the respondent. The contempt case is, therefore, dismissed.

It is, however, made clear that the petitioner will be at liberty to challenge the impugned order and in case the Court comes to the conclusion that the respondents have not followed the order of this Court, then, it would be open for the Court to pass appropriate orders keeping in view the totality of the facts and circumstances of the case."

9. A reading of the order in the contempt case shows that the submission of the learned Standing Counsel is liable to be rejected. The Division Bench categorically reserved liberty to the petitioner to challenge the impugned order and also further observed that if the Court comes to the conclusion that the respondents have not followed the order of this Court, it is open to the Court to pass appropriate orders keeping in view the totality of the facts and circumstances of this case.

10. The second aspect of the matter is whether the impugned order suffers from error being contrary to the observations made by the Division Bench. The Division Bench considered the truth and veracity of the reasons of grounds of rejection, namely, that the petitioner has not completed 5 years of service as on 25-11-1993, that as the Engineering Wing is temporarily established, the employees working therein are not entitled for regularisation that the Engineering wing is running in losses and that there is no clear vacancy in the Engineering Wing and there is no work load to regularise the services of the petitioner. The Division Bench referred to the Judgment of the Supreme Court in M.L.Singh's case supra and held as follows:

"....It is the number of years put in service which is relevant for regularisation. It was further observed that the NMRs. are entitled to seek regularisation of their services in the establishment if they complete five years of continuous service."

Dealing with the other ground of rejection, the Court held as follows:

"....Even the other ground viz., running of the institution in minus balance and the Engineering wing being created temporarily cannot hold good in view of the fact that other employees who are similarly situated are still continuing and the Engineering Wing is not yet being wound up. As and when the same is wound up, whatever be the status of the regular employees, the petitioner would get the similar status or if any scheme is floated by the State to absorb the regular employees of the Engineering Wing, the writ petitioner would be entitled to avail of the same benefit. Nothing has been put before us to say that there is no work load in the Engineering wing so as to enable the respondents to reject the claim of the writ petitioner. In the teeth of the fact that the writ petitioner is being continued as NMR for all these years, it can be assumed that there is work load

in the Engineering Department and it is for this reason that he is continued as NMR. Thus, even the fourth ground cannot be sustained."

11. When on two occasions the learned single Judge as well as the Division Bench have categorically held that an employee who completes 5 years of service is entitled to regularisation of his services from the date of completion of five years, I fail to understand the audacious attempt of the respondents to again reject the claim of the petitioner on the ground that he has not completed five years of service as on 25-11-1993. The reference to Act 2/94, 3/98 and 27/98 are rather uncalled for and have no bearing to the facts of this case. Therefore, the first ground of rejection is unsustainable.

12. The second ground that there is no clear vacancy against which regularisation can be considered is also to be rejected as this Court clearly stated that as long as the Engineering Wing is not wound up such ground is not available to the respondents. The district unit head, the first respondent herein, rejected the claim of the petitioner on 13-2-1998 on four grounds which were held to be unreasonable by this Court. Therefore, the 2nd respondent again cannot reject the claim of the petitioner on the same grounds and deny the benefit of regularisation to the petitioner. As in the case of interpretations of Laws, even in the matter of rationality and reasonableness of administrative actions or administrative reasons what the Courts say shall be final and infallible.

13. During the course of arguments on 17-9-1999 the learned Standing Counsel submitted that the Review petition against the judgment of the Division Bench dated 18-2-1999 is pending. Again on 1-10-1999 when the matter was argued, the learned Counsel for the petitioner submitted that the Review Petition is dismissed by the Division Bench. Therefore, whether the review petition is pending or not is not of much relevance to decide the issue in this case and accordingly this submission is also rejected.

14. This Court shall not ordinarily issue a mandamus to appoint a person or regularize the services of a person as, such a direction at the initial stage amounts to depriving the competent employer the right and liberty to enter into a contract of service. That is the basic philosophy behind in not issuing a direct mandamus to appoint/regularise a person. However, when on two occasions this Court in the exercise of extraordinary prerogative power of issuing writs, directed the respondents to consider the case of the petitioner for regularisation and the same is rejected in an illegal manner, it is always open and well within the powers of judicial review, for this Court to step into the shoes of the appointing authority and issue a mandamus in the nature of mandatory order directing the respondents to appoint/ regularise the petitioner as Work Inspector. This principle is well settled. A mandamus in the nature of a mandatory order in service jurisprudence is subject to a precondition that the Court should first declare the impugned action as illegal and unconstitutional. In the present case, I have come to the conclusion that the action of the respondents in issuing the impugned proceedings is illegal and deserves to be declared as such.

Accordingly, the action of the respondents in issuing the impugned order is declared as illegal.

15. The next stage is to issue a writ in the nature of a mandamus either directing the respondents to consider the case of the petitioner or straightaway direct the respondents to regularise the services of the petitioner. This view is supported by two binding precedents of the Supreme Court in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, and *O.P. Gupta Vs. Union of India (UOI) and Others*, . In *Jagannathan's* case (supra) it was contended that the High Court should not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. This contention was repelled by the Supreme Court in the following words:

"....There is a basic fallacy underlying this submission - both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , this Court point out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country" In *Hochtief Gammon Vs. State of Orissa and Others*, , this Court held that the powers of the Courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the Courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers."

16. The Hon"ble Supreme Court held that the High Court was justified in giving directions to the appellant to give suitable relaxation to the respondent-employees. After referring to *Mayor of Rochester v. Regina* 1858 FB & E 1024, 1032, 1034, *The King v. Revising Barrister for the Borough of Hanley* (1912) 3 KB 518, *Padfield v. Minister for Agriculture, Fisheries and Food* 1968 AC 997 and the statement of law as enunciated in *Halsbury's Laws of England* (4th Edition, Vol.1, Para 89), the Hon"ble Supreme Court laid down as follows:

"....There is thus no doubt that the High Courts in India exercising their Jurisdiction under Article 226 have the power to issue a writ of mandamus or a

writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226 issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give direction which the Governments or the public authority should have passed or given had it properly and lawfully exercised its discretion."

17. In O.P. Gupta's case (supra) dealing with the case involving interpretation of FR25 and FR54 of the Fundamental Rules under which the authorities were required to pass necessary orders after issuing notice under FR54 regarding pay and allowances to be paid to the Government servants for the period of absence and whether or not the period of suspension shall be treated as on duty, the Supreme Court, while allowing the appeal of the employee, observed as follows:

".....The stoppage of such increments at the efficiency bar during the pendency of a departmental proceedings is not by way of punishment and therefore the Government servant facing a departmental enquiry is not entitled to a hearing. Ordinarily, therefore, the Court does not come into the picture at that stage. But in a case like the present where despite the fact that the department inquiry against the appellant had been quashed, and it had been held by the High Court that his suspension was wholly without jurisdiction, there was no occasion for the competent authority to enforce the bar against him under FR25, particularly after his retirement, unless it was by way of punishment. That being so, the order passed by the competent authority under FR25 prejudicial to the interests of the appellant in such circumstances must be subject to the power of judicial review....."

"It enjoins that the cases of Government servants for crossing of the efficiency bar in the time scale of pay should be considered at the appropriate time and in case the decision is to enforce the bar against the Government servant, he should be informed of the decision. This clearly implies that the competent authority must conform to the rules of natural justice. It would be a denial of justice to remit back the matter to the competent authority to reach a decision afresh under FR25, in the facts and circumstances of the present case."

18. In the present case, in fact, the learned single Judge of this Court while disposing of Writ Petition No.9554 of 1998 directed the respondents to regularise the services of the petitioner with effect from the date on which he completed

live years treating 28-3-1990 as the date of entry into service. This direction stood modified by the orders of the Division Bench which directed the respondents to consider the case of the petitioner for regularisation. In spite of this, the petitioner faced a rejection order. Therefore, at this stage, it would be miscarriage of justice, if once again the respondents are allowed to exercise the administrative discretion in the matter of regularisation of services of the petitioner. This is one case where the Court is justified in issuing a mandatory order.

19. In the result, for the above reasons, it is declared that the action of the 2nd respondent in issuing the impugned proceedings No.A5/1569/APSC/94 dated 23-3-1999 is arbitrary, contrary to the orders of this Court in Writ Appeal No.1276 of 1998, illegal and unconstitutional. Hence, the impugned order dated 23-3-1999 is set aside. The writ petition is allowed. A writ in the nature of writ of mandamus shall issue to respondents 1, 2, 4 and 6 to regularise forthwith the services of the petitioner with effect from 26-3-1995 in the post of Work Inspector and give all consequential benefits like arrears, seniority and promotion. Respondents 1, 2, 4 and 6 jointly shall also be burdened with costs of Rs.1,000/-.