

(2004) 02 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No's. 392, 753, 2138 and 18499 of 1997

Shanmugam

APPELLANT

Vs

Kerala Water Authority

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 18

Citation : (2004) 2 KLT 529

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : M.C. Sen, Shahna Karthikeyan, M.P. Sreekrishnan, V.N. Ramesan Nambisan, P.K. Suresh Kumar, E. Subramani and P.V. Mohanan, for the Appellant; T.P. Kelu Nambiar P.C. Sasidharan, Babu Varghese, Mathai Muthiranthi, J. George, S. Radhakrishnan, A.K. Madhavan Unni, V. Radhakrishnan, N. James Koshy, Chincy Gopakumar, V.P. Seemandini, K.P. Kylasanatha Pillay, Arun B. Varghese, Sreedevi Kylasanath and Bindu Raghavan, for the Respondent

Judgement

Kurian Joseph, J.—Petitioners in all these cases have been recruited through Public Service Commission as Assistant Engineers in the Kerala Water Authority. They are aggrieved since the service of ad hoc Assistant Engineers appointed under Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, 1959 have been regularised retrospectively. The earliest of such proceedings for regularisation is Ext.P5 dated 21.3.1991 in O.P.No. 392/97. All such ad hoc employees have been given retrospective regularisation with effect from 19.9.1990, the date of judgment of the Supreme Court in Jacob's case, Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, . It is the contention of the learned counsel appearing for the petitioners that the retrospective regularisation of ad hoc employees has affected their settled seniority and consequently their promotion.

2. The contention of the party respondents as well as the Kerala Water Authority is that all ad hoc Assistant Engineers were duly qualified at the time of recruitment, they have been continuing for long and that their regularisation is in

compliance with the directions issued by the Supreme Court in Jacob's case.

3. In Jacob's case, in the matter of regularisation the following are the three directions issued by the Apex Court:

(1) The authority will with immediate effect regularise the services of all ex-PHED employees as per its Resolution of 30th January, 1987 without waiting for State Government approval.

(2) The services of workers employed by the Authority between 1st April, 1984 and 4th August, 1986 will be regularised with immediate effect if they possess the requisite qualifications for the post prescribed on the date of appointment of the concerned worker.

(3) The services of workers appointed after 4th August, 1984 and possessing the requisite qualifications should be regulated in accordance with Act 19 of 1970 provided they have put in continuous service of not less than one year, artificial breaks, if any, to be ignored. The Kerala Public Service Commission will take immediate steps to regularise their services as a separate block. In so doing the Kerala Public Service Commission will take the age bar as waived.

4. The case of employees referred to in the first direction is covered by the resolution No. 687 of the Kerala Water Authority dated 30.1.1987, the text of which is produced as Ext.R7(a) in OP No. 392/97. Ext.R7(a) reads as follows:-

"Resolved to recommend to Government the regularisation of service of the provisional employees recruited in the erstwhile PHED and still working in the Kerala Water Authority".

5. Their case is separately dealt with by the Supreme Court in para 13 of the Jacob's case. In order to understand the real intention behind the direction it is necessary to extract the said paragraph as such.

"From the pleadings in this case one thing that clearly emerges is that the Authority had taken a decision on 30th January, 1987 to regularise the services of those who were employed by the erstwhile PHED and whose services stood transferred to the Authority by the thrust of the statute. According to the resolution extracted earlier, the Authority recommended to the State Government that the services of the employees recruited in the erstwhile PHED and who - continued to work on the establishment of the authority should be regularised. The learned counsel for the State Government contended that since these employees were now borne on the establishment of the authority on the statutory transfer of their services, it was for the authority to regularise their services, and it was quite unnecessary to make a recommendation to the State Government in that behalf. To put it differently, the stand of the State Government through its counsel is that the question of regularisation of the services of ex-PHED employees now borne on the establishment of the Authority is exclusively within the purview of the Authority and the State Government has no role to play. That means it was wholly unnecessary on the part of the

authority to make the recommendation it made by the resolution of 30th January, 1987 to the State Government for the regularisation of the ex-PHED employees serving on its establishment on that date. To us the position, therefore, appears crystal clear that it is for the authority and the authority alone to regularise the services of such employees without waiting for a nod from the State Government. The sphinx-like silence on the part of the State Government for now over three years from the date of the resolution is indeed disturbing and betrays total lack of concern for this pressing human problem".

6. The Apex Court took note of the fact that the employees were originally in the service of the Public Health Engineering Department and that the transferee had duly decided to regularise them in service, as early as in 1987. It is in that context the Supreme Court directed the Kerala Water Authority to regularise the service of all ex-PHED employees as per Us resolution dated 30.1.1987. Therefore, as far as respondents 2 to 7 in O.P.No. 392/97 are concerned, the decision of the Kerala Water Authority in the matter of retrospective regularisation cannot be faulted. In this context it has however to be noted that though the Supreme Court directed regularisation as per the resolution dated 30.1.1987, the date of effect of the regularisation is only on 19.9.1990. Since those respondents were satisfied with that date, it is not necessary to reopen the case. They should be governed by the date of regularisation now granted to them, namely 19.9.1990.

7. However, the case; of Assistant Engineers recruited on ad hoc basis by the Kerala Water Authority the position is entirely different. There, is no resolution by the Kerala Water Authority prior to the judgment for regularising them in service. In their case the Supreme Court directed the Kerala Water Authority that they would be regularised with immediate effect subject to the condition that the incumbents possessed the requisite qualifications. The contention of those respondents is that since the Supreme Court directed the Kerala Water Authority to regularise them in service with immediate effect, the decision taken by the Kerala Water Authority to grant date of effect of regularisation as the date of judgment is fully justified. I am afraid the contention cannot be appreciated. On a close reading of para 15 of the judgment, it is clear that the focus of the Apex Court was on the job security of ad hoc employees who had been continuing for long. Interpreting Rule 9(a)(i) of the KS and SSR providing for temporary appointments, it was held as follows:-

"If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue oh their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job

is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service".

8. It has also to be noted that apprehending termination only, ad hoc employees had approached the Court and not for regularisation. However, the Supreme Court after analysing the facts held, that such employees should not be retrenched from service for the only reason that they were appointed on ad hoc basis. It was also held that appropriate orders in the matter of regularisation should be passed with immediate effect. The Supreme Court did not say that the regularisation should be either from the date of appointment or from the date of judgment in the case obviously since that would lead to further complications of affecting the settled seniority of the regularly appointed employees who were not before the court and which issue was not the subject matter either. In this context it will also be profitable to refer to Rule 18(a) of Part II KS and SSR, which reads as follows:-

"Date of commencement of probation of persons first appointed temporarily:- If a person, having been appointed temporarily under sub-r.(a) or sub-r.(c) of Rule 9 to a post borne on the cadre of any service, class or category otherwise than in accordance with the rules governing appointment thereto, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine, without prejudice to seniority of others".

It is thus clear that the rule making authority was conscious of the fact that even in situations where retrospective regularisation is given to the ad hoc employees, the sama should only be without prejudice to the settled seniority of the regularly recruited employees.

9. The Supreme Court in Registrar General of India and Another Vs. V. Thippa Setty and Others, , had occasion to consider the issue of settlement of seniority of ad hoc employees. regularisation of ad hoc employees should only be prospective and not retrospective, lest it should affect the settled seniority of others, it was held. The relevant portion of the judgment reads as follows:-

"If ad hoc service is regularised from back date, it will disturb seniority of regularly appointed employees in the cadre. Ordinarily regularisation must take effect prospectively and not retrospectively. Ad hoc appointees, casual labour and daily rated persons are not subject to strict discipline of service and it is a matter of common experience that their attendance is very often not regular. At times they do not even meet the qualification for appointment since they are taken on ad hoc basis. These deficiencies are overlooked by way of granting relaxation and therefore, cadre must be taken to see that they do not upset the seniority of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularisation should be prospective and not retrospective as the chances of their upsetting the seniority cannot be overlooked. The Tribunal must also keep in view that those who are likely to be affected by retrospective regularisation are not before the Court. Their career should not be unwillingly affected. regularisation must therefore ordinarily be prospective".

10. Therefore, it is declared that the Assistant Engineers who are parties to these Writ Petitions and who were appointed on ad hoc basis, will be entitled to count their service for the purpose of seniority only from the respective dates of the orders on regularisation. The impugned orders are set aside to the extent required for the above declaration. The seniority list will be revised on the basis of this declaration, within three months from the date of production of a copy of this judgment. In the facts and circumstances of these cases, the restoration of benefits to the regular recruits would be granted only on notional basis. This shall also be done within the said period. Taking note of the fact that some of the ad hoc recruits had been enjoying the fruits of retrospective regularisation even from 1991, it is made clear that it will be open to the Authority not to revert them from the present posts, if the interests of the regular recruits could be otherwise protected. But it is made clear that the existing list shall not be operated, unless revised as above.

The Original Petitions are disposed of as above.