

(2010) 09 KAR CK 0159
In the Karnataka High Court
Case No : Writ Petition No. 80694 of 2009

Shivamma

APPELLANT

Vs

Krishna Grameen Bank

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (k)

Citation : (2011) 3 KCCR 334 SN : (2011) 3 KCCR 329

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : P. Vilas Kumar, for the Appellant; A.M. Nagral, for R.A. Patil, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the Petitioner and the Respondent.

2. It is the case of the Petitioner that the Respondent is a Rural Regional Banker, which was constituted in the year 1979. The practice adopted by the Respondent-Bank in appointing subsidiary staff on daily wages, or on temporary basis, was to appoint them by oral instructions and after extracting work for several years, to regularize them as permanent employees at a later point of time. It is the further case of the Petitioner that the eligibility criteria for such appointments was that the candidates ought to have passed the VII Standard. The Petitioner was one of such subsidiary staff appointed on temporary basis, in the year 1981 on a daily wage of Rs. 5. While several others were regularized, after three to four years of service the Petitioner was singled out for arbitrary treatment. The Petitioner was employed as a Sweeper, apart from attending to other menial jobs, assigned on the instructions of the superior officials of the Bank. The Petitioner was eligible to be regularized as a permanent employee of the Bank. Though she was made to work for nine to ten hours per day, her services were not regularized, her wages however, were nominally increased over a period of time and ultimately reached

Rs. 2,500/- per month. She was paid the daily wages every month at the rate of Rs. 100/- per day excluding Sundays. It is the further case of the Petitioner that though there is a Union of permanent employees of the Respondent-Bank, it does not espouse the cause of employees who are not permanent employees. The repeated requests of the Petitioner to the Union to raise a dispute on her behalf was negated and therefore, the Petitioner is before this Court seeking regularization of her employment.

3. It is in the above background that the learned Counsel for the Petitioner would raise several contentions as regards the maintainability of the petition and the legal right of the Petitioner for such regularization.

4. The learned Counsel for the Respondent, on the other hand, has filed statement of objections on behalf of the Respondent to contend as follows:

It is vehemently denied that the Bank had adopted the practice of appointing subsidiary staff on daily wages and after extracting work for several years was regularizing them. On the other hand, it is contended that the recruitment of employees of the Respondent-Bank is required to be in accordance with the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988, a copy of which is produced at Annexure "R1" and all recruitments are strictly in compliance with the same. The contention to the contrary is denied. The petition averments are specifically denied.

While it is also contended that in terms of Rule 10 of the above Rules, guidelines for recruitment of the post of employees such as the Petitioner, prescribes several conditions and requirements. The Petitioner does not meet the said requirements. In that, unless the Petitioner was registered with the local Employment Exchange or other such agency, as contemplated under Rule 10, the Petitioner could not have sought for appointment with the Respondent-Bank, unless she was sponsored by such agency. It is further contended that even if the Petitioner was employed intermittently against casual vacancies and on daily wages, the fact that she may have worked for a few days with the Respondent-Bank does not confer any vested right for permanent absorption.

5. In this regard, the learned Counsel places strong reliance on the judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , wherein there is a declaration of law when in case of engaging or appointing on casual or temporary basis, it would come to an end when it is discontinued and therefore, the same would apply on all fours to the present case and since the Respondent is an instrumentality of State, the said decision is a clear prohibition against regularization of services of a temporary daily wager, such as the Petitioner. It is further denied that several employees who were appointed similarly as the Petitioner, have been subsequently regularized. The attempt on the part of the Petitioner to claim that two employees who were appointed at the same point of time according to the petition averments, who were gardeners, were recruited by the Bank after the Respondent-Bank moved to its own building

in the year 2003 and therefore, their appointment was in accordance with the Rules aforesaid and the Petitioner therefore, is not enabled to equate herself with the gardeners appointed by the Bank and hence, would submit that there are no grounds made out for interference by this Court.

6. By way of reply, the learned Counsel for the Petitioner would seek to clarify the legal position insofar as the regularization of services of employees are concerned. Firstly, the learned Counsel would point out from the judgment in Umadevi's case that there is no embargo insofar as the labour jurisprudence is concerned, by reference to the said decision which is rendered with respect to service law. The said decision deals with irregularly appointed employees, who may have continued in service by virtue of interim directions issued by the Court and the learned Counsel would draw specific attention to paragraph-53 of the judgment reported in the equivalent citation in ILR 2006 KAR 2607 at page 2687, which reads as follows:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (Supra), R.N. Nanjundappa (Supra) and B.N. Nagarajan (Supra) 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 regularisation 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 cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

The Counsel would submit that, it is such illegally appointed employees who would be affected by the said decision and since the Petitioner's appointment could never be said to be illegal, the mere fact that she was paid daily wages, did not detract from the fact that she was appointed in the usual course. Further she was not continued in employment by virtue of any interim directions by any Court and the Petitioner having put in almost three two decades of service, was certainly entitled to be regularized. The said decision also does not indicate that workmen such as the Petitioner who has no legal remedy by raising an industrial dispute and where the cause could not be espoused by the Union of permanent

employees, ought to be left to the winds, the law still remains that the Petitioner's service ought to be regularized. On the other hand, he would submit that Schedule 5 to the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act" for brevity) item No. 10, which is one of the several kinds of unfair labour practices contemplated, it would be an unfair labour practice to employ workmen as badlis, casuals or temporaries and to continue them as such for years, with the object of depriving of them of the status and privileges of permanent workmen. This is not effaced from the statute book by virtue of the decision in Umadevi's case and this is also the law as subsequently expounded by the Supreme Court in the case of State of Karnataka and Others Vs. Ganapathi Chaya Nayak and Others, wherein the Supreme Court has held at paragraph-8 as follows:

8. In view of the settled position of law in this regard which has been reiterated in a number of judgments of this Court, we hold that the claims of the Respondents for regularization or absorption cannot be sustained. Accordingly, we allow the appeals and set aside the orders passed by the High Court as also the KAT. The Respondents did not argue about their rights under the Industrial Disputes Act, 1947 at any stage till the hearing of the appeal before us. A faint argument was sought to be made by the Counsel appearing for the Respondents which, however, was not permitted to be raised as neither there was any pleading in support of the same nor any argument in the Courts below at any stage. Further, even a case of the said nature has not been pleaded before us. Therefore, such a plea could not be raised before us by the Respondents. We have, therefore, in these appeals not adjudicated upon the rights of the Respondents under the said Act. Liberty is, therefore, granted to the Respondents to approach the appropriate forum, under the said Act, if such a remedy and right is available to the Respondents.

7. The learned Counsel would point out that, notwithstanding the rejection of the prayer of the Appellants therein in the above decision, insofar as their claim for regularization or absorption was concerned, the Apex Court has granted liberty to the employees to approach the appropriate forum, if such a remedy and right is available to the Respondents. Whereas in the instant case on hand, the Petitioner, as already stated, was a temporary employee, who is not in a position to espouse her cause through the Union of permanent employees. The Union has negated the Petitioner's repeated demands to raise a dispute on her behalf and it is in that background that the Petitioner being left with no remedy, is before this Court.

8. The learned Counsel would also refer to a Division Bench judgment of this Court in the case of Forbes Gokak Limited Vs. J.H. Jadhav, , wherein it is specifically laid down that an individual dispute of a workman is excluded u/s 2(k) of the I.D. Act and therefore, the only remedy available to the Petitioner is to approach this Court and hence, the maintainability of the Petitioner or the right of the Petitioner under the law cannot be denied.

9. While the Counsel for the Respondent also submitting that the observation of the Apex Court at paragraph 53 of Umadevi's case referred to hereinabove has been distinguished in the case of State of Karnataka and Others Vs. Sri G.V. Chandrashekar, is concerned, he would submit that the same has been further distinguished in U.P. State Electricity Board v. Pooran Chandra Pandey JT 2007 12 179, wherein it has been observed that the decision in Umadevi's case cannot be mechanically applied as if it were Euclid's formula, without seeing the facts of a particular case and that the writ Petitioners before the Court ought not to be discriminated against vis-vis original employees of the Board and ought to be treated on par. Therefore to take a contrary view, would violate Article 14 of the Constitution of India. Umadevi's case is to be read in conformity with Article 14 of the Constitution of India, it cannot be read in conflict with the same. The Constitution is the supreme law of the land and not even the Apex Court can violate the Constitution and it is on that basis that the Apex Court has held that when the Petitioners therein had put in more than 22 years of service, it would be unreasonable if their claim for regularization was denied even after such a long period and hence apart from discrimination under Article 14 of the Constitution, it is held that it would also be violated on the ground of arbitrariness and unreasonableness, if employees who had put in long years of service are denied the benefit of regularization and are made to face the same selection along with fresh recruits. The learned Counsel would also submit with reference to the Rules which have been framed and have come into force with effect from 1998, could not be cited to defeat the Petitioner's claim for regularization, when she was appointed and had rendered service for more than 27 years even prior to the Rules having come into force and therefore, would seek that the petition be allowed.

10. Given the above facts and circumstances of the case, if the background to the decision in Umadevi's is kept in view, it was in respect of the illegal appointments and employees who had been continued in service over the years by virtue of orders of Courts that were sought to be set at naught and it cannot be said that the decision would have any bearing on the provisions of the I.D. Act or in respect of employees whose legal remedies were not available under the general law. Since the Petitioner was left with no remedy, the decision in the U.P. State Electricity Board's case can safely be applied in holding that the Petitioner's long years of service required to be protected and on the ground of discrimination, when it is not seriously disputed that the gardeners who had been appointed along with the Petitioner though have been regularized pursuant to the Rules having come into force, on the footing that they were recruited under the Rules in the year 2003, the fact remains that they were appointed much earlier and the mere issuance of appointment order with reference to the Rules in the year 2003 did not place them on a different pedestal. The Petitioner also could be similarly considered for regularization under the very Rules if it is so necessary and therefore, the Petitioner shall be regularized, but, however without back-wages. The Petitioner shall however, be entitled to continuity of service and other

consequential benefits. The Respondent Bank shall comply with this order within a period of eight weeks, if not earlier from the date of receipt of a certified copy of the order.