

(2017) 06 KAR CK 0052
In the Karnataka High Court
Case No : 205091 of 2016

SHRI.SUNIL.S.PUJARI & ORS.

APPELLANT

Vs

THE STATE OF KARNATAKA, & ORS.

RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

Citation : (2017) 06 KAR CK 0052

Hon'ble Judges : B.Veerappa

Bench : SINGLE BENCH

Advocate : HULEPPA HEROOR, ARCHANA.P.TIWARI

Judgement

1. Learned counsel for the petitioners filed a memo for amendment of prayer with regard to direction sought in terms of W.P.No.104429/2013 dated 09.08.2016. The said memo is allowed. Learned counsel for the petitioners is permitted to amend the prayer suitably. By consent of both the parties the matter is taken up for final hearing. These two writ petitions are filed by the petitioners for a writ of mandamus directing the respondents to consider their representation for regularization of their services in accordance with law.

2. It is the specific case of the petitioners that they were appointed during the year 2004-05 as Junior Engineers on contract basis for one year or on completion of project whichever is earlier. According to petitioners they have been appointed again and again every year and they were continued in service till 18.06.2016. On 18.06.2016 their appointment was made for one year which would expire on 17.06.2017. It is further case of the petitioners that they are working from 2004-05 till today continuously without any interruption and they have been continued by separate orders issued by respondent Nos.1 to 5. Though the petitioners made their representations on 01.09.2014 through official correspondence, the respondents in particular 1st respondent have not considered the same nor passed any orders till today. It is further case of the petitioners that they are working more than 13 years continuously without any interim order of the court of course with an artificial break till today. It is further

contended that the project is on going till today and their services are required. In spite of the representation, the respondents have not considered the same nor passed any orders. Therefore, petitioners are before this court for writ of mandamus as prayed for.

3. Respondents-State Government has filed statement of objections by denying the averments made in the writ petitions and contended that though petitioners were appointed in a particular project and as soon as the project was completed, the petitioners were appointed again and again for more than 13 years and they were engaged on contract basis. They have no right to demand for regularization of their services. It is also contended that one of the appointment order were issued on the condition that persons appointed on contract basis for one year should not claim any permanent job or regularization etc. It is specifically contended that respondents doing scheme under "Police Gruha 2020" and other schemes. It is further contended that for speedy employment of work the Managing Director engaged the employment on request. Hence, employer appointed on contract basis for another one year on 16.06.2016 by an official correspondence with similar basis as stated supra. Petitioners have given their consent. The petitioners along with others were also appointed for one year on 16.06.2016. It is specifically contended at Para No.17 that contract employees including present petitioners have given a representation dated 01.09.2014 requesting for regularization of their services. The said request was placed before 150th Board meeting held on 23.09.2015 and the matter was discussed in detail and it was decided in the Board Meeting to submit a proposal to the Government. Accordingly, a letter was addressed to the Government of Karnataka vide letter dated 20.12.2014. The State Government has replied to the said letter stating that the contract employees cannot be regularized. Therefore, respondents sought for dismissal of the writ petitions.

4. I have heard the learned counsel for the parties to the lis.

5. Sri. Huleppa Heroor, learned counsel for the petitioners vehemently contended that inaction on the part of the respondents No.1 to 5 in not considering the representation made by the petitioners dated 01.09.2014 is erroneous and contrary to the material on record. He further contended that petitioners were continued in the post of Junior Engineers under the respondents authority for more than 13 years, of course there is an artificial break. Respondents ought to have taken into consideration that the petitioners have continued their services for more than 13 years without any interim order passed by Court. Respondents have continued the petitioners voluntarily. Therefore, respondents ought to have regularize the services of the petitioners by taking into consideration their continuos services, their age and by taking into consideration that project work is extended till today. Therefore, he sought to allow the present writ petitions. In support of his contentions the learned counsel for the petitioners has relied upon the judgment of the Hon"ble Supreme Court of India in the case of Secretary State of Karnataka and others vs. Umadevi (3) and others, reported in 2006 (4)

SCC and invited Para No.53 of the said judgment.

6. Per contra Smt.Archana.P.Tiwari, learned AGA strenuously contended that petitioners are appointed during the year 2004-05 as Junior Engineers on contract basis for one year or an completion of project whichever is earlier. As soon as project work completes, the petitioners were discontinued and of course they were continued in different projects on different periods. Hence, they have not worked continuously for more than 13 years as contended by the petitioners. Hence, she sought to dismissal of the writ petitions. She also relied upon the very same judgment relied upon by the learned counsel for the petitioners in the case of Secretary State of Karnataka and others vs. Umadevi (3) and others, reported in 2006 (4) SCC.

7. Having heard the learned counsel for the parties to the lis, it is undisputed fact that petitioners were appointed during the year 2004-05 as Junior Engineers on contract basis for one year or an completion of project whichever is earlier. It is specific case of the petitioners that they were appointed continuously by respondents for more than 13 years of course on artificial break. The fact remains that petitioners were worked continuously under the respondents is not in dispute. The said contention raised by counsel for the petitioners has been disputed by respondents in their statement of objections, whether petitioners have worked continuously for more than years or by an artificial break. The fact remains that the petitioners are working under the respondents for more than 13 years. Hence, it is clear that services of the petitioners are required for completion of project by the respondents.

8. The material on record clearly indicates that petitioners were appointed during the year 2004-05 and still continued in the project by the respondents. The Respondents ought to have consider the representation of the petitioners for regularization as per the law laid down by the Hon"ble Supreme Court of India in the case of Secretary State of Karnataka and others vs. Umadevi (3) and others, reported in 2006 (4) SCC, wherein the Hon"ble Supreme Court of India at Para No.53 specifically held as under :- "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa R.N. Nanjundappa and B.N.Nagarajan 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 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 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 bases on this judgment, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

9. Though learned AGA opposed for regularization, the fact remains as to whether services of these petitioners are required for on going project and as to whether they were continued for more than 13 years by respondents, has to be decided by the respondents by considering the representation made by the petitioners and pass necessary orders. Though the petitioners along with others made representation as long back on 01.09.2014 till today respondents have not the same nor passed orders. Therefore, petitioners made out a case to issue writ of mandamus as prayed for. For the reasons stated above writ petitions are allowed. The respondent Nos.1 to 5 in particular respondent No.1 shall consider the representation made by the petitioners dated 01.09.2014 for regularization of their services and pass orders strictly in accordance with law within a period of three months from the date of receipt copy of this order. Till such consideration the respondents shall not discharge the petitioners from the post held by them as on today. Ordered accordingly.