
(2013) 04 RAJ CK 0064

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9392 of 2008

Shyam Lal Gurjar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2013) 2 WLN 417

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Sanjeet Purohit, for the Appellant; Kailash Joshi, for the Respondent

Judgement

P.K. Lohra, J.—The petitioner, Shyam Lal Gurjar, has laid this writ petition under Art. 226 of the Constitution of India praying the reliefs of granting him regular pay scale of Class IV Employee since inception of his service career and for conferring the benefits of regularization in service. The very edifice of the reliefs claimed by the petitioner, as narrated in the writ petition, is that at the threshold of his service career, he was appointed as Beldar in the office of Municipal Council, Bhilwara w.e.f. 01.09.1990. While serving in the said capacity, the services of the petitioner were dispensed with and being aggrieved from this sort of action of the respondents, the petitioner raised an industrial dispute which ultimately culminated into reference before the Labour Court, Bhilwara. After adjudicating the reference made by the appropriate Government, the Labour Court vide its Award dt. 05.02.1999 declared his termination to be null and void and ordered his reinstatement with continuity of services. However, the petitioner was denied back wages and other financial benefits. As per version of the petitioner, the said Award was assailed by the Municipal Council, Bhilwara before this Court by way of S.B. Civil Writ Petition No. 327 of 2002 but the said effort of the Municipal Council proved to be abortive and the writ petition was dismissed by this Court on 27.08.2002. Despite dismissal of the writ petition, the Award was not complied with by the respondents although petitioner made repeated

requests and persuasions. Ultimately, vide order dt. 20.05.2004 the petitioner was reinstated in the services and since then he is discharging his duties with utmost sincerity and diligence without any interruption. According to the petitioner, the respondents are paying meager sum of Rs. 100 per day to him as a remuneration and despite utilizing his services for the works which are perennial in nature, he has not been allowed regular pay scale of Class IV Employee. The petitioner has also laid emphasis in the writ petition that vide order dt. 12.07.1999 (Annex. 4), six other incumbents, who were daily rated employees, have been allowed the regular pay scale of Class PV Employee. That apart, the petitioner has quoted the examples of Laxmi Lai and Satya Narain, who were also appointed as daily rated employees with the petitioner, whose services have been regularized by the respondent Municipal Council. In the writ petition, the petitioner has also annexed the representation which was submitted by him ventilating his grievances. For the purpose of claiming the relief of regularization, the petitioner has placed reliance on Circular dt. 28.05.1999, which clearly envisages that if an incumbent has served for 240 days then his services are liable to be regularized on satisfaction of certain terms and conditions. The petitioner has also mentioned in the writ petition that he has ventilated his grievances before the Government but none of his efforts have yielded the desired results.

2. On behalf of respondent No. 3 & 4 preliminary reply to show cause notice was submitted. In its reply, the Municipal Council has submitted that the learned Labour Court while adjudicating the reference has simply ordered his reinstatement but there is no direction for regularizing his services. In the return, while harping on the Award, the respondents have submitted that in terms of Award the petitioner cannot be deemed to be a fit candidate for regularization of his services. Adverting to the circular, on which the petitioner has placed reliance, the respondents in their reply have submitted that the said circular is not applicable vis-?-vis the petitioner, and therefore, in adherence of that circular the petitioner is not entitled for regularization of his services. As per the version of the respondents, regularization of services of an individual is within the discretion of the State Government and as the petitioner was not found entitled for regularization, the said advantage was not given to him. Commenting on the examples quoted by the petitioner, wherein the incumbents were regularized, the respondents have averred in the reply that their cases are distinguishable from the petitioner. As per averments in the reply of the respondents, unequals cannot be treated as equals and as such the petitioner is not entitled for the relief of regularization as well as grant of regular pay scale of Class IV Employee.

3. I have heard the learned counsel for the parties and perused the materials on record.

4. Learned counsel for the petitioner, Mr. Sanjeet Purohit, strenuously urged that at the threshold of his service career the petitioner was appointed on 01.09.1990 and since then he is continuing in the services except the brief interruption which

was caused due to illegal action of the respondents. The submission of the learned counsel for the petitioner is that the termination of the services of the petitioner was found to be illegal and the learned Labour Court has ordered his reinstatement in the services, therefore, by legal fiction the interregnum period during which he remained unemployed is to be treated as continuity in the services. While reiterating this stand, the learned counsel for the petitioner has further submitted that since his reinstatement i.e. 2004, he is serving the respondent Municipal Council uninterruptedly and therefore keeping in view the longevity of his satisfactory services, his services are liable to be regularized. Taking a dig at the action of the respondents in discriminating him vis-?-vis similarly circumstanced other incumbents, the learned counsel Mr. Purohit has submitted that the petitioner has been subjected to glaring and hostile discrimination in clear negation of Article 14 & 16 of the Constitution of India. According to learned counsel for the petitioner, the reply of the respondents on the issue of discrimination is absolutely vague, cryptic and unspecific and therefore there is hardly any justification for not extending the benefit of regularization to the petitioner which was infact extended to other incumbents, who are similarly circumstanced to that of him. While joining issue with the respondents, the learned counsel for the petitioner has urged that there is no quarrel in the legal position that unequals cannot be treated as equals but then according to him, it is a bounden duty of a welfare State to treat likes as alike as mandated by Article 14 & 16 of the Constitution of India. Learned counsel for the petitioner has also invited my attention to the Constitution Bench judgment of the Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, Placing reliance on Para 53 of the said judgment, learned counsel for the petitioner has submitted that in view of law laid down by Apex Court his case deserves consideration for regularization of his services. The complete text of Para 53 of the judgment (supra) is reproduced as infra:

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 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 the 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 subjudice, need not be reopened based 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.

5. Learned counsel for the petitioner has also urged that in many other identical petitions, this Court has issued directions for consideration of cases of the individuals for regularization of their services in terms of ratio decidendi in Uma Devi's case (supra). The learned counsel has also placed reliance on the order passed by this Court dt. 20th February 2013 in S.B. Civil Writ Petition No. 3628 of 2008 (Dalji Patidar vs. State of Rajasthan & Ors), order dt. 21st February 2013 in S.B. Civil Writ Petition No. 2784 of 1997 (Arjun Singh vs. RSRTC & Anr.) and order dt. 21st February 2013 in S.B. Civil Writ Petition No. 7618 of 2011 (Puran Mai vs. State of Rajasthan). According to learned counsel, in Puran Mai's case (supra), this Court in an identical situation has made following observations.

It is not in dispute that the petitioner was initially appointed on 13.10.1998 and is still continuing in the services of the respondent Municipal Board as Safai Karamchari. The interregnum period, during which his services were dispensed with, has also been treated to be continuous by virtue of award passed by the Labour Court, Jodhpur, and therefore, by this time the petitioner has rendered almost 15 years' services as Safai Karamchari with the respondent Municipal Board. The Hon'ble Apex Court, while examining the question of regularization in Uma Devi's case (supra), has concluded in clear and unequivocal terms that if an incumbent has continued in services for a duration of more than 10 years, then case of such an individual deserves consideration for regularization provided he is working against the duly sanctioned post and qualified for the post. In view of the fact that the petitioner is working against the sanctioned vacant post and he is +qualified to be appointed as Safai Karamchari, mere irregularity in his appointment cannot be cited as an impediment for consideration of his case for regularization. Thus, in my considered opinion, the contentions of the learned counsel for the petitioner are worth acceptance and the arguments advanced on behalf of the learned counsel for the respondent Municipal Board are not worth any sort of credence in the given circumstances. The contentions of the learned counsel for the Municipal Board are also not sustainable in the facts and circumstances of the present case by virtue of ratio decidendi of Uma Devi's case.

6. Per contra, learned counsel for the respondents, Mr. Kailash Joshi, has vehemently argued that petitioner is not entitled for relief of regularization. According to learned counsel for the respondents, the petitioner was a temporary daily rated employee and as such he has no right to the post and consequently his prayer for regularization is not tenable. While buttressing his submission, learned counsel Mr. Joshi has further urged that in the Award passed by the learned Labour Court, the learned Labour Court has not allowed back wages to the petitioner and therefore the interregnum period during which the petitioner

remained out of employment cannot be counted for the purpose of regularization. Joining the issue with the petitioner, learned counsel for the respondents has argued that there is no question of any discrimination vis-?-vis the petitioner much less hostile discrimination and as such the claim of the petitioner for the twin reliefs is not sustainable. The submission of the learned counsel for the respondents is that the case of petitioner is clearly distinguishable from the other examples which he has quoted in the petition. Opposing the prayer of the petitioner for regularization of his services tooth to nail, the learned counsel for the respondents has placed reliance on the following legal precedents.

1. State of U.P. and Others Vs. Rekha Rani,
2. Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another,
3. State of Karnataka and Others Vs. Ganapathi Chaya Nayak and Others,
4. Secretary, State of Karnataka and Others Vs. Umadevi and Others,

7. I have given my anxious consideration to the arguments advanced at Bar by the learned counsel for the parties and have also perused the precedents on which reliance is placed by the learned counsels. The first case of the Apex Court, Rekha Ram's case (supra), on which the learned counsel for the respondents has placed heavy reliance, is clearly distinguishable because in that case the Apex Court has denied regularization for twin reasons; namely, the incumbent was not in service, and the post in question was within the purview of Public Service Commission for which appointment can be made on recommendation of the said Commission.

8. In case of Mahboob Deepak's case (supra), the Apex Court has held that a daily wage/adhoc employee cannot be regularized merely because he has completed 240 days. The Apex Court has held that no appointment can be made by a local authority without following the provisions of recruitment rules. If the ratio decidendi of the said verdict is examined in the light of fact situation in the present case, then it will ipso facto reveal that the petitioner in the present case was initially appointed in the year 1990 and after his termination in 1991 he was reinstated in the services with continuity by the Award of Labour Court. Moreover, since 2004, he is continuously working and therefore if the total length of service is reckoned from 1990, obviously by this time he has completed more than two decades' services. In this situation, the observations made by the Constitution Bench of Apex Court in Uma Devi's case (supra) can very well be pressed into service. True it is that merely because an incumbent has put in 240 days' services his prayer for regularization of the services cannot be accepted, however, the total length of service deserves due credence and therefore the aforesaid verdict cannot come in the way of the petitioner for grant of relief.

9. The next judgment on which the learned counsel for the respondents has placed reliance i.e. State of Karnataka and Others Vs. Ganapathi Chaya Nayak and Others, suffice it to state that in the said case while considering the ratio

decidendi in Uma Devi's case (supra), the Apex Court has not examined the fact that the incumbent is qualified for the post and working against the sanctioned post. One more distinguishing feature in the present case vis-à-vis the facts of the said case is that the respondents have regularized the services of other similarly circumstanced employees. If the averments contained in the writ petition in this behalf are examined in totality and reply to these averments are properly construed, then it will ipso facto reveal that reply of the respondents is absolutely vague, cryptic and unspecific. The respondents in their return have not disputed the fact that the other incumbents have been regularized but have rest contented by stating in the reply that their cases are distinguishable. This sort of reply is obviously not in consonance and conformity with Order 8 Rule 3 CPC. Thus, the evasive denial on the part of the respondents clearly amounts to admission of the allegations. Therefore, viewed from any angle, the said judgment cannot come to the rescue of the respondents.

10. Lastly, the learned counsel for the respondents has placed reliance on Uma Devi's case (supra). There is no quarrel in the legal position that public employments are to be made in strict adherence of Article 14 & 16 of the Constitution of India but at the same time it cannot be said that longevity of duration of the employment can be overlooked by the Court while considering case of an individual for regularization of his services. The Apex Court while considering this aspect of the matter has accordingly made the favourable observations in Para 53 of the said verdict, quoted supra.

11. One more vital fact in the present case is that the petitioner was appointed on temporary basis as Class IV Employee which is lowest in hierarchy and he is continuing since long. Therefore, the longevity of the duration of services is a very vital fact, which cannot escape sight of this Court. The reinstatement of the petitioner in the services as a consequence of the Award passed by the Labour Court is yet another redeeming feature and therefore the interregnum period during which the petitioner remained out of employment deserves consideration for reckoning his services from the initial appointment by legal fiction. It is an admitted fact that the Award passed by the Labour Court was upheld by this Court and the said Award has attained finality. In this view of the matter, the writ petition preferred by the petitioner is worth acceptance.

12. The upshot of the above discussion is that the present writ petition is allowed and the respondents are directed to consider the case of the petitioner for regularization of his services as Beldar within a period of three months from the date of passing of this order. In the facts and circumstances of the case, the costs are made easy.