

(2015) 05 KL CK 0104

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 6199 of 2014 (Y), 7709, 10943 and 13789 of 2014

Sindhu T.C. and Others

APPELLANT

Vs

Kerala Veterinary and Animal Science University and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 05 KL CK 0104

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Renjith Thampan, Senior Advocate and P.R. Reena, for the Appellant; Millu Dandapani, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J—Under challenge in these writ petitions is the ranked list prepared by the respondent university for appointment of casual labourers.

W.P(C) No. 6199/2014

2. In this writ petition, the petitioners allege that they along with nine other women are engaged as daily wage workers in the second respondent farm under the respondent university from 2006 onwards. They allege that all the fourteen persons, including the petitioners were selected for undergoing training in the faculty of farm operation under the second respondent from May 2006 to July 2006. They further allege that after the successful completion of training, the petitioners as well as the other nine women workers were engaged on daily wage basis from August 2006 onwards.

3. When there was an attempt to deny employment to the petitioners and other nine women daily wage workers, they approached this Court with W.P(C) No. 18001 of 2010 wherein this Court has granted an interim order not to terminate the engagement of the petitioners as daily wage workers. That writ petition was

finally disposed of directing the respondent university to consider the representation for accommodating the petitioners in the vacancies of workers under the second respondent.

4. The petitioners further allege that pursuant to that the Kerala Agricultural University, which was the predecessor university of the first respondent, considered the entire aspects and passed proceedings dated 23.12.2010 wherein the Kerala Agricultural University has clearly undertaken that while preparing the Casual Labour Roll(CLR) in the second respondent farm, the petitioners and other daily wage workers would be given preference by giving weightage to the number of years they have worked.

5. The petitioners further allege that in the year 2013, the first respondent invited applications for preparing the list of CLR workers in various farms under the university, including the second respondent. Pursuant to that, the petitioners filed necessary applications. They were under the bonafide impression that in view of Ext. P4 undertaking by the university, the petitioners would be given preference considering the number of years of daily wage service they have rendered in the university continuously without any break even today. The petitioners further allege that nine daily wage women workers made mention of above have now recently joined the INTUC union, which is the trade union, owing allegiance to Indian National Congress, which is the major constituent of ruling front in the State of Kerala.

6. The grievance of the petitioners is that the Registrar of the respondent university has published a list of casual labourers at various farms and stations under the respondent university on 26.2.2014 and while preparing the said list the first respondent ignored Ext. P4 undertaking and did not give any preference to the petitioners. However, the persons who have joined INTUC were given rank Nos. 4, 6, 7, 16, 27, 32, 39, 56 and 61, i.e. above rank No. 150 which ensures daily wage work to all of them. The petitioners point out that they were given rank as rank Nos. 168, 276, 206, 176 and 291 in Ext. P6. As a result of this wrong ranking, the petitioners would not be getting work at any point of time. This, according to the petitioners, was done only to deny their original claim. The petitioners apprehend that they would be discharged from being engaged as daily wage workers in the second respondent farm and Ext. P6 which is under challenge would be implemented.

W.P(C) No. 7709/2014

7. The petitioners in this writ petition are casual labourers working in the various farms/diaries under the second respondent college who responded to Ext. P4 notification issued by the first respondent for appointment of casual labourers. The petitioners point out that as per the conditions prescribed in Ext. P4, the applicant should be a permanent resident within 5 kms. distance of the college/farm. The minimum educational qualification is a pass in the fourth standard and the maximum qualification is a pass in SSLC examination. The petitioners further

point out that as per Ext. P1 minutes dated 2.10.2011, the persons working as casual labourers upto 31.3.2011 are entitled to grace mark. Therefore, according to the petitioners, all of them are entitled to grace marks and they appeared for the skill test and interview. The skill test for male candidates was scooping of soil with spade and giving bath to cattle. The skill test for female candidates was chopping grass and giving bath to cattle. The total marks provided for skill test was 40 and 10 marks was for the interview. The petitioners allege that they who are experienced in the said work have performed extremely well in the skill test, as it was their usual duties in which they were engaged for the last several years. As they were entitled for grace marks upto 10, they were under the hope that they would find a proper place in the ranked list. Thereafter Exts. P5(a) and P5 (b) separate ranked list for male and female were published. The petitioners allege that the candidates who were residing beyond the distance of 5 kms. and those who are having higher qualifications, are included in the ranked list. Therefore, according to the petitioners, the list is illegal. Hence, they prayed for an interference by this Court.

W.P(C) No. 10943/2014

8. The petitioner, who failed in the 10th standard, have applied to the post of casual workers responding to Ext. P1 notification issued by the third respondent. His grievance is that he was not included in Ext. P2 main list and he was placed at rank No. 14 in the supplementary list. He points out that the persons, who are having higher qualification, are included in the said list. He further alleges that several candidates are the dependents of employees under the respondents. He further alleges that three persons from one family also are included in the said list. Highlighting all these illegalities, he made Ext. P3 representation. However, no action has been taken. It is with this background, the petitioner has come up before this Court.

W.P(C) No. 13789/2014.

9. The petitioners, who are 27 in number, allege that they were engaged as daily wage workers in various establishments/colleges which were originally functioning under the Kerala Agricultural University, which is now succeeded by the first respondent university. The petitioners allege that the normal practice in the farms of Kerala Agricultural University as well as the first respondent university was to prepare CLR and absorb the daily wage hands who had continuously worked in the respective farm.

10. When the Agricultural University was bifurcated and the first respondent was formed, the question relating to the preparation of the list of casual labourers was discussed and it was decided that the existing daily wage/contract workers would be given some preference while preparing the CLR. The petitioners further allege that the university had issued application for enlisting persons in the CLR of different farms and colleges of the respondent university. The first respondent had prepared a draft list of eligible persons and the first petitioner is rank No. 1

and other petitioners are also ranked on the top of the list of various farms like Animal Genetics and Breeding and Rabbit Farm, CASN Poultry Science etc. After the preparation of the draft list, it seems that there has been some manipulation at the behest of certain persons in the university and the first respondent has now published a list of casual labour workers for Mannuthy farms. The persons who were at the top in Ext. P5 draft list were given very low rank.

11. The petitioners also allege that on enquiry they were given to understand that many of the persons mentioned in Exts. P6 and P7 are actually not having the required qualifications. The petitioners claim that they have obtained full marks in the practical test for grass cutting and giving bath to cattle. However, they were given very low marks in Exts. P6 and P7. They also allege that the benefit of previous experience as stipulated in the annexure to Ext. P4 were not given to them. According to the petitioners, many of the persons who were ranked at the top have not worked for a single day as daily wage or contract workers in the establishment of the respondent university. It is with this background, they have approached this Court.

12. In the detailed counter affidavit filed by the respondent university, they contended that number of trainings are imparted in the organisations under the university and no assurance had been given for regular employment to all these trainings. However, certain relaxations as per the rules were given such as exemption from appearing in the endurance test etc. They would further contend that after the merit lists were prepared, when it came to the question of regular employment on the basis of the merit list, the mandatory communal roster was followed and, as such, the exact merit could not be followed. This has been erroneously construed by the petitioners.

13. They would further allege that it is not correct to state that the normal practice in the university was to prepare list of casual labourers and to absorb them. According to the respondent university, all that the benefits that could accrue to such casual labourers who had continuously worked was only certain relaxations. The respondent university has also decided to give relaxation with respect to distance of residence and educational qualifications to daily wage hands who have worked upto 31.3.2011. They are also exempted from physical endurance test of 100 metres run. The university has published the list of 163 female and 68 male candidates and sufficient time was given for making complaints, if any. While taking part in different stages of selection process, till the date of publishing the ranked list, none of the above petitioners have submitted any complaints.

14. They further contend that mere experience does not give any pre-emptive rights to the petitioners for regular employment. They are afforded regular casual labour post only when they come in the merit list. They would further contend that utmost care was taken by the university for conducting an unbiased and fair casual labour selection. Therefore, they prayed for a dismissal of writ petitions.

15. I have heard Mr. Ranjith Thampan, the learned senior counsel for the petitioners in W.P(C) No. 6199 of 2014 and 13789 of 2014, Mr. G. Krishna Kumar, the learned counsel for the petitioners in W.P(C) No. 7709 of 2014 and Mr. C.A. Chacko, the learned counsel for the petitioner in W.P(C) No. 10943 of 2014 and Mr. Millu Dandapani, the learned standing counsel for the respondent university quite in extenso.

16. The gist of the petitioners' claim is that they having received training were given a promise by the respondent university that the extent of experience gained by them in the respondent organisation would be given due weightage while they were being selected as regular casual labourers under various departments of the respondent university and at the time of regularisation, the respondents have not followed strictly the ranked list, but have chosen persons below the ranked list, thus discriminating the petitioners and depriving them of the original claim. In one of the writ petitions, it is alleged that the preparation of separate list for male and female is illegal and in the lists, persons with higher qualifications were also included. The respondent university has stoutly denied the allegations in the counter affidavit.

17. It can be seen from Exts. P2 to P2(d) in W.P(C) No. 6199 of 2014 that the petitioners in that writ petition were working in the second respondent farm from august 2006 onwards on daily wage basis without any break. Mr. Ranjith Thampan, the learned senior counsel for the petitioners would argue that considering the legal claim of the petitioners, the university as per Ext. P4 had undertaken that while preparing the CLR in the second respondent farm, the weightage of service as daily wage workers would be given. However, when Ext. P6 was issued no such weightage was given. The Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 has observed that the persons who are working on daily wage basis can be given weightage for having been engaged for work in the department for a significant period of time. It is crucial to note that it is pursuant to the said decision that Ext. P4 was passed. However, Ext. P4 is now ignored.

18. Though it was strenuously argued by the learned standing counsel for the respondent university that the decision of the Umadevi's case is not applicable to the present case, I am not inclined to accept the same. The practical test to which the petitioners were subjected to was for cutting grass as well as giving bath to cattle. It is too idle to believe that the petitioners who were doing the said work as a part of their job for years could not fair well in the practical text. Therefore, the claim of the petitioners that they have performed excellently since they were well aware of the work of the farm for so many years is only to be accepted. However, while issuing the list, apart from the denial of weightage for the number of years of service, the petitioners were given unreasonable and arbitrary low marks. This, according to the petitioners, was to see that the

petitioners are not posted at any point of time.

19. Mr. G. Krishna Kumar, the learned counsel for the petitioners in W.P(C) No. 7709 of 2014 would argue that the petitioners were working in various farms/diaries under the second respondent college. Ext. P1 settlement was arrived at between the first respondent and various trade unions representing the casual labourers/contract labourers. It is relevant to note that the first respondent as per Ext. P1 promised that casual labourers/contract labourers would be given one grace mark each for each year of service upto a maximum of ten marks. As per clause (1) of Ext. P1, while selecting casual labourers, persons working as daily wages/contract labourers who are below the age of 55 and eligible to be participated in the selection process would be considered and the age limit prescribed as per Exhibit P1 is minimum of 55. As the first respondent had promised certain concession and age relaxation to casual labourers/contract labourers as per Ext. P1 the first respondent is bound by that. Though the first respondent extended the age relaxation pursuant to the Ext. P1 to the petitioners, the first respondent has not granted grace marks as promised and has detracted from the promise made. Therefore, I see valid force in the submission made by Mr. g. Krishna Kumar that the selection process was vitiated.

20. As rightly pointed out by Mr. Krishna Kumar, at no point of time, either in Ext. P1, P3 or Ext. P4, it is mentioned that there would be separate list for female candidates. Therefore, the change of selection procedure and qualification after the test and interview is over is highly arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

21. Mr. C.A. Chacko, the learned counsel for the petitioner in W.P(C) No. 10943 of 2014 would further point out that persons, who were having higher qualifications, are included in Ext. P2 in that writ petition. The petitioner in that case failed in the 10th standard and had applied to the said post. As per Ext. P1 notification, the age limit is 36 and the educational qualification is between 4 and 10 standards. Highlighting the illegalities, the petitioner made Ext. P3 representation. However it could not evoke any positive response.

22. The petitioners in W.P(C) No. 13789 of 2014 have also stated that the persons who were working on daily wage basis and contract labourers are entitled to preference while preparing the CLR list. They would allege that they had obtained top marks in the practical test of grass cutting and giving bath to cattle. While preparing the list, these aspects were ignored by the respondent university.

23. On a consideration of the entire materials now placed on record, I have no hesitation to hold that the preparation of the list was not in accordance with the undertakings previously given by the respondent university, and is against the published norms. Therefore, this Court is of the view that the list published the respondent university calls for an interference.

In the result, the writ petitions are allowed. The order of the respondent

university dated 26.2.2014 and the lists appended thereto (Ext. P6 in W.P(C) No. 6199 of 2014, Exts. P5(a), P5(b), Exts. P6 and P6(a) in W.P(C) No. 7709 of 2014, Ext. P2 in W.P(C) No. 10943 of 2014 as well as Exts. P6 and P7 lists in W.P(C) No. 13789 of 2014) are hereby quashed. The respondent university is directed to prepare a fresh list after conducting a fresh interview of all the applicants by a new committee formed for that purpose. While making the selection process, due weightage shall be given to the undertaking in Ext. P4 dated 23.12.2010 in W.P(C) No. 6199 of 2014 as well as the minutes of the respondent university dated 2.10.2011 (Ext. P1 in W.P(C) No. 7709 of 2014). The entire exercise shall be completed within a period of three months from the date of receipt of a this judgment.