

(2003) 01 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 45030 of 2002 etc.

State of Karnataka and Others	Vs	APPELLANT
T.B. Manjunath and Others		RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2003) ILR (Kar) 2827 : (2003) 4 KCCR 410 SN

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : M.B. Prabhakar, AGA, for the Appellant; K. Govindaraj, for the Respondent

Final Decision : Dismissed

Judgement

Raveendran, J.

As this petitions involve common question of law we have heard and disposed of these petitions by this common order.

Facts in W.P.No. 45030/2002:

1. The respondent herein approached the Karnataka Administrative Tribunal in Application No. 10244/2001 alleging that he was initially appointed on daily wage basis on 1-1-1984 as a forest Watcher, that after two years there was a break as he was discharged and he was re-appointed with effect from 1-1-1992; that as he had served for more than 2400 days in a block period of 10 years, he was entitled to regularisation relying on the Government Order dated 20-10-1994; that as his request was not considered, he approached the Karnataka Administrative Tribunal in Application No 3649/1999 and the Tribunal disposed of the said Application by order dated 18-8-2000 directing the petitioners herein to consider the representation and take a decision thereon; and that thereafter an endorsement dated 13-12-2000 was issued to him rejecting his request for regularization. He therefore, sought quashing of the endorsement dated

13-12-2000 and a direction to petitioners herein to regularize his services as a Forest Watcher with all consequential benefits.

2. The petitioners herein resisted the said application on the ground that the respondent had worked between January 1984 to December 1985; that thereafter that in December 1985 he voluntarily left the work; that he was re-employed as a daily wage worker only in March 1992 and therefore what should be reckoned is the service from March, 1992; and that as he was appointed after 1-7-1984 and as he had not completed 10 years service, he was not entitled to claim regularization.

3. The Tribunal by order dated 9-9-2002 allowed the application in part. It held that having regard to the decision in Premalakala Shetty and Ors. v. Common Cadre Authority, Writ Petition No. 1330/1998 dd 12.11.1998 what was necessary for regularization was 10 years service irrespective of whether they were appointed prior to 1-7-1984 or after 1-7-1984; that as petitioner had completed 10 years of continues service as on the date of the order, his requests for regularization requires to be considered, particularly as he had worked for more than 2400 days during the period of 10 years. It therefore directed the petitioners to find out whether respondent had in fact worked for 10 years or 2400 days in 10 years and consider his case for regularization accordingly.

Facts in WP Nos 793 to 796/2003

4. The respondents herein approached the Karnataka Administrative Tribunal in Application Nos. 6930-6933/2001 seeking a direction to the petitioners to regularize their service in the posts held by them or equivalent posts with consequential benefits. The respondents alleged that they had been appointed on daily wages on various dates between 1-7-1985 and 4-9-1987 and having been continuously worked ever since then and completed 10 years of service on daily wage basis and therefore they were entitled to regularization.

5. The petitioners herein filed their reply admitting that respondents have been working from the respective dates mentioned by them. But they contended that the respondents were not entitled to regularisation as they were all appointed on daily wage basis after the cut off date 1-7-1984.

6. The Tribunal allowed the applications in part by order dated 26-9-2002. It held that having regard to the decision in SMT PREMAKALA SHETTY vs COMMON CADRE AUTHORITY (Supra) which has been affirmed by the Division Bench and by the Supreme Court, the contention of the petitioners herein that for regularisation of the appointment on daily wage basis ought to have been prior to 1-7-1984 was not correct. The Tribunal held that what was the relief was 10 years service and not the date of initial appointment.

Common contentions:

7. Feelings aggrieved, respondents in the said applications have filed these petitions. They have reiterated their contentions urged before the Tribunal in

these petitions that is, that regularisation can be only in accordance with the scheme contained in the Government .1. Writ Petition No. 1330/1998 dd 12.11.1998 Order dated 6-8-1990 and not otherwise, that the said scheme does not contemplate regularisation of any daily wage employee appointed subsequent to 1-7-1984; and that as all the Respondents claim that they were appointed on daily wage basis subsequent to 1-7-1984, they are not entitled to regularisation. Reliance is placed on the decision of the Division Bench or this Court in State of Karnataka v. The Karnataka Casual & Daily Rated Workers Union, Hubli, W.A.No. 120/1999 dd on 1.2.2001 wherein it is held that that the decision in The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., and the Government Order dated 6.8.1990 were applicable to only those who were appointed on daily wage basis on or before 1-7-1984; and that as the G.O. dated 6.8.1990 did not apply to those appointed after 1.7.1984, and as there was no provision for recruitment otherwise than in accordance with Karnataka Civil Services (General Recruitment) Rules, 1977, persons appointed after 1-7-1984 on daily wages were not entitled to regularisation, irrespective of whether the period of such service on daily wage basis exceeded ten or more years.

8. But other Division Benches have not followed the said decision in W.A.120/1999. We may refer to some of them State of Karnataka v. H.R. Basavaraju, W.A. No. 5861-65/2000 dd 1.2.2001, State of Karnataka v. Eranna, W.A.No. 1381 -1398/2001 dd 12.6.2001 and The State of Karnataka v. H. Ganesh Rao, W.A. 1592-1638/2000 C/C dd 1.6.2001 The last decision refers to and distinguishes the decision in W.A.No.120/1999.

9. The decision in W.A. No. 120/1999 has proceeded on the basis that the G.O. dated 6-8-1990 providing for regularisation was issued to give effect to the decision in The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., ; that the said decision formulated the scheme for regularisation of Casual daily wage employees appointed on or before 1-7-1984; and therefore persons appointed on daily wage basis after 1-7-1984; cannot claim regularisation on the basis of the said decision of the Supreme Court or the G.O. dated 6-8-1990. But the other Division Benches of this Court have consistently taken the view (both before and after the decision in W.A.No.120/1999) based on several decisions of Supreme Court that any person employed on daily wage basis for ten or more years is entitled to be considered for regularisation. They have affirmed and approved the following view expressed by the Single Judge in PREMAKALA SHETTY vs COMMON CADRE COMMITTEE (W.P.NO.1338/1998 and connected cases decided on 12-11-1998, by following several decisions of Supreme Court:-

"It is evident from these decisions that if any person employed either temporarily or on daily wage basis serves continuously for a period of more than 10 years, he should normally be considered for regularisation. Even the several schemes formulated by the State Government in regard to the regularisation of daily

rated/ monthly rated employees, as per orders dated 6.8.1990 and 21.8.1999 contemplate regularisation on the completion of 10 years of service..

It is next contended that 96 persons who were regularised by order dated 28.3.1996 were all appointed prior to 1.7.1984 and therefore they were regularised by following the principle contained in the Government Order dated 6.8.1990; and many of the petitioners were appointed after 1.7.1984 and therefore they (who were appointed after 1.7.1984) could not be regularised. The order dated 6.8.1990, in terms, does not apply to the Banks where petitioner were working. Further the date 1.7.1984 was relevant to the scheme for regularisation formulated on 6-8-1990. It does not mean that no one appointed after 1-7-1984 cannot be regularised, even if they render continuous service for 10 years. The stress should be on the 10 years minimum service and not on any cut off date. The cut off date will have to vary from time to time. Hence, the contention that persons appointed after 1-7-1984 cannot be regularised has no merit."

(emphasis supplied)

9.1 In ERANNA'S Case, the Division Bench held as follows, while approving the decision in PREMAKALA SHETTY: "Respondents-Writ Petitioners having put in 15 years of service filed the writ petitions seeking a writ of mandamus directing the appellants to consider the case for regularisation of their service. Single Judge keeping in view that the respondents had put in 15 years of service has allowed the writ petitions in terms of the order passed in the case of PREMAKALA SHETTY vs COMMON CADRE COMMITTEE (Writ Petition No. 1338/1998 and other connected matters decided on 12th of November, 1998). In Premakala Shetty's case. The Learned Single Judge after elaborately considering the law laid down by the Supreme Court has held that an employee who has put in more than 10 years of service either temporarily or on daily wage basis deserves to be considered for regularisation of his/her service. This Bench has also taken a similar view.

We agree with the view taken by the Single Judge. In case an employee is continued in service for a period of 10 years, then the need is permanent prima facie. Single Judge has rightly directed the appellants to consider the case of the respondents for regularisation of their service as they had put in 16 years of service."

9.2 In GANESH RAO'S case, another Division Bench considered the matter exhaustively. It dealt with persons who were appointed on daily wage basis after 1-7-1984, with out following the procedure laid down under the Recruitment Rules. After referring to the decision in State of Haryana and others Vs. Piara Singh and others etc. etc., , the Division Bench observed as follows.

"The Supreme Court while pointing out that the aforementioned observations/guidelines are not exhaustive, concludes thus:

Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein".

The Supreme Court did not go to the extent of holding that the ad-hoc or temporary employees whose employment was necessitated on account of the exigencies of administration will be ineligible for regularisation only for the reason that they were appointed without following the normal recruitment procedure. However, the Supreme Court did indicate that even in such cases, candidates should be drawn from the Employment Exchange or some other method consistent with the requirement of Article 16 should be followed. A notice calling for applications should be published and such applications should be considered. At the same time, the Supreme Court did not indicate the consequences of not following such procedure while initiating the process of recruitment of ad-hoc/daily wage employees. On the other hand, the need to regularise the services of ad-hoc employees or casual labour who were continued for a fairly long spell of service has been stressed by the Supreme Court with the only rider that they must be eligible and qualified according to Rules, that the Service record is satisfactory and the appointment is not opposed to reservation policy. It is not the case of the Appellant that any of these disqualifying factors apply to the cases of the respondents. The orders issued by the Government of Haryana from time to time regularising the services of work-charged employees and casual labour has been recommended by the Supreme Court. The Apex Court indicated that the proper course would be frame a scheme for regularisation consistent with the observations made therein. Following the decision in *PIARA SINGH's* case, in a recent case viz., *Hindustan Machine Tools v. M. Ranga Reddy*, JT 2000 (Suppl.1) SC 267, the Supreme Court held:

"Tested on the touchstone of the principles laid down in the decisions noted above and keeping in mind the mandate of the Constitution under Articles 38(1), 39(e) and 43, we are of the considered view that the directions issued by the High Court to frame a scheme for regularisation of services of the writ petitioners does not warrant interference. However, considering the submissions made by the learned Counsel for the appellants that the Company is under financial constraints and has decided to reduce its work force, we would like to clarify that while framing the scheme it would be open to the appellant Company to assess the requirement of the regular work force in its different units ... and fix the strength of work force so that the workers concerned are able to get the benefit of regular service within a reasonable time."

The writ petitioners in that case were the casual labourers working on daily wages for long periods discharging the same duties as regular employees of the company.

In our view the decision in *PIARA SINGH's* case fortifies the Respondents' stand for the reasons already discussed. It may be that the respondents bear stigma of being back-door entrants because most of them have not come through the

Employment Exchange and there is no evidence of due publicity before engaging them on temporary and daily wage basis. Though the Supreme Court laid down the procedure to be followed in such cases of ad-hoc or temporary employment consistent with Article 16 of the Constitution, the Supreme Court did not go further and said that failure to follow such procedure would disentitle the employees to claim regularisation by virtue of their long-standing service. The underlined observations, vide Para 14 Supra give a contra-indication. It is a well-known fact that in vast majority of cases, recruitment of ad-hoc/daily wage employees is made without giving due publicity and without a transparent selection procedure. If that could be put against the employees concerned, there could hardly be any case in which regularisation could be directed by framing a scheme or otherwise. A balanced and pragmatic outlook consistent with justice and fairness is what is required in such situations. It would have been a different matter if a procedure had been prescribed for recruitment even on daily wage or ad-hoc basis and the appointments were made in breach of such procedure as it had happened in ASHWANI KUMAR's case. But that is not the case here.

Nearer home, there is a decision of three Judge Bench of the Supreme Court in DHARWAD DISTRICT P.W.D. LITERATE DAILY WAGES EMPLOYEES ASSOCIATION vs STATE OF KARNATAKA. In that case, Writ Petitions were filed by the Employees' Unions and by others in public interest seeking directions to confirm the daily rated and monthly-rated employees as regular government servants and for payment of salary at the scale applicable to the appropriate categories of Government Servants and for other service benefits. The Supreme Court noticed that the workers who were employed as monthly rated Gangmen and Sowdies were working for 16 to 20 years continuously. Earlier, a direction was given to the Government to pay salary to such workmen at the rates equivalent to the minimum pay in the pay scales of the regularly employed Gangmen or Sowdies, but without any increment, with effect from 1.7.1988. The Government was directed to frame a rational scheme for absorbing as many casual workers and monthly rated Gangmen and Sowdies as possible in regular cadres. The Government of Karnataka then filed a draft scheme, whereupon the matter came up for further consideration of the Supreme Court. On the principle of equal pay for equal work, this is what the Supreme Court said:

" We have referred to several precedents - all rendered within the current decade - to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State be it of the Centre or the State, or the public sector that the Constitution - makers wanted them to be bound by what this Court said by way of interpreting the law."

The decisions starting from NARINDER MOHAN's case including the three Judge

Bench decisions in the cases of SURENDRA KUMAR and SURESH KUMAR VERMA seem to lay down that in exercise of judicial review power under Article 226, the Court should not give directions for regularisation merely on the ground that the ad hoc or daily wage employees have put in considerable length of satisfactory service. The ratio of these decisions spells out that regularisation cannot be ordered dehors the recruitment rules framed under Article 309 especially where the process of selection is entrusted to a constitutional body like the Public Service Commission. Sweeping directions to regularise without regard to the selection and recruitment procedure prescribed by the Rules were not approved by the Supreme Court. PIARA SINGH's case and ASHWANI KUMAR's case seem to tread a middle path and set a leeway for regularisation if the employees concerned were appointed on daily wage ad-hoc basis against sanctioned posts and their appointment was not totally obnoxious to the rules governing the recruitment. The procedural irregularities in the matter of recruitment can be overlooked to certain extent and regularisation could be ordered if other conditions such as longstanding service, fulfillment of qualifications for entry are satisfied. Both in PIARA SINGH's case and ASHWANI KUMAR's case, induction of employees through back-door, that is to say, without the publicity and transparent process of selection was frowned upon. But, that by itself has not been regarded as a disqualifying factor for regularisation unless of-course, those requirements as spelt out in the procedure prescribed for the ad-hoc/daily wage recruitment. A holistic view has to be taken by balancing various relevant considerations. That was the approach in the two cases of PIARA SINGH and ASHWANI KUMAR."

10. Thus the principle clearly appears to be that any one employed continuously for more than 10 years on daily wage basis should be considered for regularisation, provided there was no fraud or misrepresentation on the part of the employee in securing or continuing in such daily wage employment and the employee possesses the prescribed qualification for the post to which he is considered for regularisation. We therefore find no infirmity in the directions issued by the Tribunal and no ground is made out to interfere with the order of the Tribunal.

11. In view of the above these petitions are dismissed. We however, extend the time for complying with the order of the Tribunal by four months from the date of receipt of this order.