
(2014) 10 KL CK 0279

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1189 of 2013 and 373 of 2014

State of Kerala

APPELLANT

Vs

A. Rajagopal

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 10 KL CK 0279

Hon'ble Judges : Ashok Bhushan, J;A.M. Shaffique, J

Bench : Division Bench

Advocate : P.I. Davis, Senior Government Pleader, Advocate for the Appellant;
N. Sugathan, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—Since the subject matter in relation to these appeals raises common questions, the same are decided together.

2. W.A. No. 1189/2013 is filed by the 1st respondent, State of Kerala against the judgment in W.P.C. No. 30552 of 2007. W.A. No. 373/2014 is filed by the 1st respondent, State of Kerala against the judgment in W.P.C. No. 18430 of 2008.

3. In W.P.C. No. 30552 of 2007, by judgment dated 15/02/2013, the learned Single Judge declared that the petitioners are entitled to have their service regularized with effect from 17/01/1991, the date on which the governing body of District Rural Development Agency (DRDA), Trivandrum resolved them to regularise in service and to give them all consequential service benefits.

4. In W.P.C. No. 18430 of 2008, the learned Single Judge by judgment dated 24/10/2013, considered the claim of an employee of DRDA for regularisation and relying upon the judgment in W.P.C. No. 30552/2007 directed that the petitioner in that case was entitled to be regularized in service with effect from 20/05/1991, the date on which Government addressed a letter to DRDA to take a decision to regularise his service. There was a direction to give consequential benefits as well.

5. The facts involved in the writ petitions would disclose that the petitioners in both these cases were engaged in DRDA on daily wage basis on various dates. In W.P.C. No. 30552/2007, the Governing Body of DRDA decided to regularise their services with effect from a particular date. The same was not approved by the Government. Ultimately, after prolonged litigation, the Government took a decision to regularise the service of the petitioners with effect from 29/06/2007. In respect of the petitioner in W.P.C. No. 18430/2008, there was no such decision by DRDA. However he was regularized in service with effect from 01/03/2006. It is, challenging the aforesaid orders, that these writ appeals came to be filed.

6. Petitioners relied upon various other orders passed by the Government regularizing the service of certain category of employees with effect from the date of entry in service. It is contended that since their appointments were made against sanctioned post and the governing body of DRDA has taken a decision to regularise their service with effect from a particular date, the Government, having taken a decision to regularise their service, regularization should have been given from the date on which the DRDA has taken the decision or when similarly placed persons were regularised.

7. Since the judgment in W.P.C. No. 18430/2008 is based on the judgment in W.P.C. No. 30552/2007, it is all the more necessary to consider the appeal against the said judgment to consider the contentions urged on behalf of the appellant.

8. The learned Single Judge relied upon fact that several similarly placed persons were regularised with effect from the date on which DRDA has taken a decision to regularise their service. It is further observed that from Ext. P10 judgment dated 11/07/2006 in W.A. No. 2601/2004, it was clear that several persons were regularized effective from the date on which they have been engaged as daily wage employees.

9. Reference to the judgment in W.A. No. 2601/2004 would show that it was an appeal filed by the State against a judgment in favour of the petitioners. After referring to Secretary, State of Karnataka and Others Vs. Umadevi and Others, , a Division Bench of this Court carved out an exception to the law laid down in Umadevi's case (supra) by finding that the services of the employees were regularized based on the resolution of DRDA, Thiruvananthapuram as early as in 1991. When the Government is continuing regularisation of DRDA even in 2006, there is no reason to deny the writ petitioners the benefit of regularisation. Since the Government was passing only consequential order in implementation of the decision taken by them, it is observed that they cannot take a varied stand in the case of the writ petitioners.

10. In W.A. No. 1189/2013, the impugned order is Ext. P11 which would show that the Government had passed the order regularising them in the poverty alleviation units (formerly DRDAs) with effect from the date of the order, that is 29/06/2007 on a supernumerary basis and also on the condition that, on their

retirement, the posts will cease to exist.

11. In W.A. No. 373/2014, the impugned order is Ext. P10 dated 12/02/2008 by which Government had confirmed Ext. P4 order regularising the petitioner's service with effect from the date of the order i.e. 01/03/2006, whereas the petitioner claimed regularisation with effect from 21/08/1987.

12. In W.A. No. 373/2014, the governing body of DRDA has not taken any decision to regularise the service of the petitioners. They relied upon regularisation given to certain others, whom they claimed to be similarly placed. In fact, in the judgment in W.A. No. 2061 of 2004 also, the Division Bench proceeded on the basis that the DRDA had passed a resolution as early as in 1991 to regularise the petitioners in service.

13. The learned Government pleader relied upon Umadevi's case (supra) to contend that the judgment in W.A. No. 2061 of 2004 is not an authority for the claim made by the petitioners as the finding is contrary to the law laid down by the Constitution Bench. That apart, when the Government has already ordered regularisation, it is not open for the petitioners to insist that they should be regularised from a particular date. In Umadevi's case (supra) it is held that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke claim for being confirmed in the post. An appointment to the post could be made only by following a proper procedure for selection. It is further held that those who are working on daily wages formed a class by themselves and they cannot claim that they should be treated on par with regularly recruited candidates. The arguments based on Articles 14 and 16 of the Constitution were overruled. Further in paragraphs 49 and 52 it is held as under:

"49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the

relevant rules or in adherence of Articles 14 and 16 of the Constitution."

"52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College*. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

14. The learned counsel for the party respondent relied upon the judgment of the Supreme Court in *S. Sumnyan and Others Vs. Limi Niri and Others*, to contend that regularisation of service of a person could be granted whose initial appointment although not in accordance with the procedure prescribed was later on approved by an authority having power and jurisdiction to do so. The said judgment does not apply to the facts of the present case especially since in that case, appointment was made according to the rule.

15. True that the Government has regularised the service of the petitioners, but the same was effective from the date of order. As far as the initial appointment is concerned, it was on daily wages and not following any approved selection procedure. When such a fact is admitted, applying the principle of law laid down in *Umadevi's case (supra)* petitioners have no legal right to demand that they should be regularised from an earlier date. It is true that several persons were given regularisation in the same organisation, but that does not mean that this Court can issue any direction in that regard when the same is found to be illegal by virtue of the judgment of the Supreme Court in *Umadevi's case (supra)*.

In the light of the above discussion, we are of the view that the appeals are liable to be allowed. Hence we allow the appeals by setting aside the judgment of the learned Single Judge and the writ petitions stands dismissed.