

(2023) 01 KL CK 0002
In the High Court Of Kerala
Case No : Writ Appeal No.2143 Of 2019

State Of Kerala

APPELLANT

Vs

R.Suresh Babu

RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Citation : (2023) 01 KL CK 0002

Hon'ble Judges : A.K. Jayasankaran Nambiar, J; Mohammed Nias C.P, J

Bench : Division Bench

Advocate : Bijoy Chandran, S.P.Aravindakshan Pillay, V.Madhusudhanan, T.R.Harikumar, N.Santha, V.Varghese, Peter Jose Christo, S.A.Anand, K.N.Remya, L.Annapoorna, Vishnu V.K., Kum.Abhirami K. Uday, Kuruvilla Sabu Christy

Final Decision : Disposed Of

Judgement

A.K. Jayasankaran Nambiar, J.

1. The State is in appeal before us against the judgment dated 29.3.2019 of the learned Single Judge in W.P.(C).No.6639 of 2018. The brief facts necessary for disposal of the Writ Appeal are as follows:

The writ petitioner was regularised in the service of the Agency for Non Conventional Energy and Rural Technology [ANERT] as a Technician. In the writ petition, he was aggrieved by Ext.P14 order dated 12.2.2018 of the Government in the Power Department that rejected his claim for regularisation with effect from his date of joining ANERT as a Technician on ad hoc basis namely, 12.8.1995. The contention of the writ petitioner was essentially that he had been appointed as a Technician on ad hoc basis on a consolidated pay of Rs.1200/- on 27.7.1995 and after joining for duty on 12.08.1995, he had continued to work under ANERT without any break till April, 2009. Thereafter, when his services were dispensed with, he approached this Court through W.P.(C).No.484 of 2010, which was disposed directing ANERT to consider his case for regularisation in accordance with the Scheme then in vogue. The ANERT proceeded to consider

the claim of the writ petitioner for regularisation, but rejected the same. Aggrieved by the said rejection order, the petitioner approached the Government through a representation dated 27.5.2011. The Government, on a consideration of the said representation, found that while rejecting the claim of the petitioner for regularisation, ANERT had not taken into consideration the services that had been rendered by him in ANERT as an ad hoc employee, and hence, taking note of his familiarity with the work in ANERT, recommended the engagement of the petitioner in an appropriate vacancy on contract basis for a period of one year. It is not in dispute that pursuant to the said recommendation by the Government, the petitioner was engaged on contract basis as a Technician with effect from 13.7.2011. The contract period was further extended by another year on the expiry of the initial period of one year from 13.7.2011. While so, by Ext.P4 proceedings dated 28.9.2012, the Director of ANERT addressed the Principal Secretary, Power Department to the Government of Kerala, recommending the issuance of orders of regularisation of employees who had already completed ten years of service in ANERT. While forwarding the details of employees who, according to ANERT, had more than ten years of service in the Organisation, the name of the petitioner was also forwarded clearly indicating therein that, while he had commenced service in ANERT as a Technician with effect from 12.8.1995, the recommendation for regularisation was with effect from 13.7.2011 in the post of Technician, when the scale of pay of Rs.5930 - 9590 was fixed for the post of Technician in the Organisation. The said recommendation of ANERT was accepted by the Government, and Ext.P5 order dated 5.7.2013 was passed regularising the service of the petitioner as Technician with effect from 13.7.2011.

2. Not satisfied with the regularisation granted to him with effect from 13.7.2011, and pointing out specific instances where employees, who had been engaged on ad hoc basis, had been granted regularisation with effect from the date of their initial appointment in ANERT on ad hoc basis, the petitioner approached the Government yet again seeking a retrospective regularisation with effect from the date of his initial appointment in ANERT, namely, 12.8.1995. It was this representation that was rejected by the Government by Ext.P14 order that was impugned in the writ petition.

3. Counter affidavits were filed in the writ petition by ANERT as also by the Government, wherein, the stand taken was essentially that the decision of the Government to regularise the services of employees in ANERT was based on the recommendations made by the Director, ANERT, and accordingly, the effective date of regularisation was to be the date on which a scale of pay was fixed for the posts in question. Inasmuch as the scale of pay for the post of Technician was fixed only with effect from 13.7.2011, that was to be the effective date of regularisation of the service of the petitioner as Technician in the Organisation. Referring to the instances pointed out by the writ petitioner with regard to persons having been regularised with retrospective effect from the date of their initial employment in the Organisation, which date was prior to the date of fixing of the pay scale for the posts in question, it was submitted by the Government

that they were instances of mistaken grant of regularisation and although the Government had realised the said mistake later, action for correcting the mistake was not taken solely because the employees in question had retired from service in the meanwhile.

4. The learned Single Judge, who considered the writ petition, found that since identically situated persons had been granted regularisation from the date of their initial appointment irrespective of the fact that the scale of pay for the posts in question had been fixed only subsequently, there was no justification for denying a similar benefit to the writ petitioner alone. Reliance was also placed on Ext.P12 recommendation made by the Director of ANERT to the Government seeking favourable consideration of the petitioner's claim for regularisation with effect from 12.8.1995. The learned Judge therefore set aside Ext.P14 order and directed the Government/ANERT to grant the petitioner regularisation in service with effect from 12.8.1995 and re-fix the petitioner's pay accordingly.

5. We have heard Sri.V. Varghese, the learned counsel for the 1st respondent/writ petitioner, Sri.Bijoy Chandran, the learned Government Pleader for the appellant State as also Sri.T.R. Harikumar, the learned counsel for the 2nd respondent ANERT.

6. Before us, it is the submission of Sri. Bijoy Chandran, the learned Government Pleader appearing on behalf of the appellant State that the Scheme for regularisation as contained in Ext.P4 letter of recommendation of the Director of ANERT clearly contemplated a regularisation only with effect from the date on which the scales of pay had been fixed for the posts in question. It is contended that the grant of regularisation being a matter of policy, this Court ought not to have interfered with the policy decision taken by the Government especially with regard to the effective date of regularisation of the employees in question. It is his further contention that in view of the express provisions in the Government order granting the benefit of regularisation, that the regularisation would take effect only from a particular date, it was not open to the learned Single Judge to give a retrospective effect to the said regularisation by granting the benefits with effect from a date prior to the actual date of regularisation.

7. Per contra, it is the submission of Sri.Varghese, the learned counsel appearing for the writ petitioner that the Government cannot be permitted to take divergent stands with regard to employees similarly placed in the matter of regularisation of their services. It is his case that while it may have been open to the Government not to consider the claim for regularisation of any employee, once they took a decision to regularise the services of those who had completed ten years of service on adhoc/contract basis in the Organisation, there could not have been a discrimination between employees similarly situated, and who satisfied the criteria of having rendered ten years service on ad hoc/contract basis in the Organisation. He points out with specific reference to the instances referred to in the writ petition that there was no justification whatsoever for meting out a differential treatment to the writ petitioner alone while granting the

benefit of retrospective regularisation to others similarly placed as the writ petitioner. The learned counsel for the ANERT too supports the stand taken by the writ petitioner.

We have considered the rival submissions and have gone through the pleadings before us. While at first blush, it would appear, as noticed by the learned Single Judge, that there was a differential treatment meted out to the petitioner as against others similarly placed, on a closer scrutiny of the documents, we find that the writ petitioner and the others, whose case he refers to in his writ petition, were not similarly placed. No doubt, the writ petitioner joined duty as a Technician on ad hoc basis with effect from 12.8.1995 but his services were terminated in 2009. On that occasion, when he approached this Court through W.P.(C).No.484 of 2010, this Court directed the ANERT to consider his claim for regularisation in service based on the Rules then in vogue. It would appear that ANERT then rejected his claim for regularisation. Against the said decision, the petitioner chose to approach the Government through a representation preferred before the Minister concerned. The Government then recommended the engagement of the petitioner as Technician on contract basis, initially for a period of one year which was then extended by a further period of one year. It was while he was continuing as such, based on the appointment orders issued to him on contract basis, that he put in a claim for regularisation of his service. In our view, even if his claim for regularisation in service, by taking note of his past service rendered in the Organisation, was to be considered favourably by the Government, the regularisation could have been granted only with effect from 13.7.2011, the date of his subsequent engagement as Technician, albeit, on contract basis. It is also significant that the said date is the date with effect from which a scale of pay was prescribed for the post of Technician. The scheme of regularisation that was then in vogue envisaged a regularisation of employees in the posts in question from the date on which a scale of pay was fixed for the post. It was the benefit of this scheme that the petitioner was claiming after the rejection of his claim under the earlier scheme. Thus, in any view of the matter, we find that it is only with effect from 13.07.2011 that the petitioner could have been regularised in service in terms of the Scheme the benefit of which he was seeking, more so on account of the fact that he was re-engaged in service only with effect from 13.7.2011. The case of the petitioner being unique in the above aspects, we see no reason to accept the argument of the learned counsel for the writ petitioner with regard to the alleged differential treatment meted out to him as compared to other employees in the Organisation. We therefore allow this Writ Appeal, by setting aside the impugned judgment of the learned Single Judge, and dismissing the writ petition by upholding Ext.P14 order of the Government that was impugned in the writ petition.