

(2011) 06 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16796 of 2010

The Kakatiya Medical College

APPELLANT

Vs

A. Rajaiah and Others

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 — Section 7
Constitution of India, 1950 — Article 21, 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2011) 06 AP CK 0041

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : G.P. for Medical and Health, for the Appellant; B. Tarakam, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Respondents 1 to 11 (for short "the Respondents") were employed as sweepers, watchmen, scavengers and office boys etc., on various dates ranging from 01.06.1971 to 15.02.1990, to work in the Men's Hostel of Kakatiya Medical College, Warangal, the Petitioner herein. They were being paid salary on daily wages, once in a month. The College was initially established by a Society, but was later on taken over by the Government of Andhra Pradesh.

2. The A.P. State Legislature enacted the A.P. (Regularization of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act 1994 (for short "the Act"), prohibiting regularization of services of temporary or daily wage employees, to reduce the burden on the exchequer. This was preceded by an Ordinance. The Ordinance and thereafter the Act were challenged in various proceedings. At one stage of the proceedings, the Government appears to have assured the Supreme Court that it would evolve a scheme to protect the interests of the employees, who have been working for a considerable period, on temporary or ad hoc basis. It was in this context that the Government issued

G.O. Ms. No. 212 Finance and Planning (FW.PC.III), dated 22.04.1994 (for short "the G.O.") providing for regularization of daily wage and NMR employees, subject to certain conditions.

3. Respondents approached this Court by filing W.P. No. 18527 of 1994 with a prayer to extend the benefit of the G.O., to them. The writ petition was disposed of on 28.02.2006, directing the Government of A.P. in its Finance and Planning Department, to examine the matter for exercise of jurisdiction u/s 10 of the Industrial District Act, 1947 (for short "the I.D. Act") for making reference to the Labour Court, in relation to the dispute between the Respondents and the Petitioner. In pursuance of the said order, the Petitioner has also taken up the matter with the Government, which, in turn, issued G.O. Rt. No. 793, dated 10.04.2007, making a reference to the Labour Court, Warangal, to decide whether the action of the Petitioner in not extending the benefit of the G.O. is justified and if not, to what relief the workmen are entitled.

4. The reference was taken up by the Industrial Tribunal-cum-Labour Court, Warangal, (for short "the Labour Court") as I.D. No. 38 of 2007. Through its award, dated 15.12.2008, the Labour Court held that the action of the Petitioner herein in not extending the benefit under the G.O. to the Respondents, is not justified. It also issued a direction to the Petitioner to create additional posts to absorb the Respondents, and in the meanwhile, to pay the minimum pay scale admissible to the regular employees working in similar posts, and doing similar work. The relief was denied to Respondent No. 10, on the ground that he did not complete the minimum of five years of service stipulated under the G.O. The award, in turn, was published by the Government in G.O. Rt. No. 148, Labour Employment, Training and Factories (LAB.I) Department, dated 24.02.2009. The Petitioner challenges the said award.

5. The Petitioner contends that the scheme under the G.O. does not apply to the Respondents, since there did not exist any regular cadre posts nor were they employed by the administration of the college. According to the Petitioner, the Respondents were being engaged on daily wage basis, and the hostels were administered by the students, with their own funds. Placing reliance upon the judgments rendered by the Supreme Court in the recent past, the Petitioner contends that the Labour Court has travelled beyond the scope of the reference and that the direction issued by it to create additional posts is untenable in law.

6. The Respondents filed a counter-affidavit opposing the writ petition. They state that the reference was made by the Government u/s 10 of the I.D. Act, on the assumption that G.O. applies to them and that it is not open to the Petitioner, to raise any objection in that regard. It is also their case that they were appointed by the warden of the hostel and service certificates were also issued from time to time.

7. Learned Special Government Pleader appearing on behalf of the Petitioner submits that the Respondents have no right to seek regularization of their

services, even if it is a fact they have been working for a considerable time. He contends that the hostels in the Government Medical Colleges are being run by the students themselves and that salaries to the employees are being paid from the funds collected from the students. He submits that there is no element of public service in the employment of the Respondents and that the reference itself was untenable. He has placed reliance upon the judgments to the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, *Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others*, *Official Liquidator Vs. Dayanand and Others*, *A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another*, and *State of Madhya Pradesh v. Mohd. Ibrahim* (2009) 15 SCC 214.

8. Sri B. Tarakam, learned Senior Counsel appeared for the Respondents. Part of the arguments were submitted by Ms. Vasudha Nagaraj, learned Counsel for the Respondents. Their plea is that once a reference u/s 10 of the I.D. Act was made, in compliance with the directions issued by this Court, it is not open to the Petitioner to raise any contention as to the applicability of the G.O. It is also urged that the recent judgments of the Supreme Court i.e. *Umadevi's case* (1 supra), *Indian Drugs & Pharmaceuticals Limited's case* (2 supra), *Dan Bahadur Singh's case* (3 supra), *Dayanand's case* (4 supra), and *Mohd. Ibrahim's case* (6 supra) do not apply to the facts of the instant case, since there did not exist any scheme similar to the one in the G.O. in those cases.

9. The activities of Government are carried out through a properly selected and well-trained set of employees. In various departments and establishments of the Government, the extent of the work force of different categories is assessed and cadre of adequate size is stipulated for each department or the establishment. The functioning of the Government used to be satisfactory as long as the employment, training, promotion and other aspects for service of its employees was done in accordance with the relevant service rules or regulations, as the case may be.

10. Over the period, ambitious authorities whether political or executive have disregarded the stipulated norms and started inducting men of their own choice into various services. In certain cases, the appointment, otherwise than through the prescribed method, was resorted to on account of delay, on the part of the superior authorities, in according the approval for the proposals. The net result was that the work force has considerably increased, compared to the fixed cadre and that, in turn, caused huge financial burden upon the state. The problem became acute in the State of Andhra Pradesh, and the same, necessitated issuance of Ordinance, and thereafter, enactment of the Act in the year 1994.

11. In the context of regularization of services of such employees, several judgments have emerged from the High Courts and the Supreme Courts. Considerations ranging from exigencies of public service, sympathy towards persons, who rendered service for considerably long period, to the obligation of

the State towards its citizens, the right to live traceable to Article 21 of the Constitution of India, weighed, with Courts may be in different scales. The emphasis was towards regularization of services of such employees subject to certain conditions such as their fitment into the cadre, possession of requisite qualifications and so on. It was in this context that G.O. was issued in the State of A.P.

12. The Respondents, who rendered decades of service by the time the G.O. was issued, approached this Court claiming the benefit thereunder. After about a decade from the date of filing, writ petition was disposed of, with a direction to the Government to exercise its jurisdiction u/s 10 of the I. D. Act. Accordingly reference came to be made and the Labour Court passed an award, the gist of which was mentioned in the preceding paragraphs.

13. The Petitioner challenges the award on various grounds, such as that

- (a) G.O. Ms. No. 212 does not apply to the cases of the Respondents;
- (b) assuming that G.O. Ms. No. 212 applies no relief can be granted to the Respondents, since there are no clear vacancies; and that
- (c) the Labour Court cannot issue directions for creation of posts.

14. Before undertaking a discussion on merits of the matter, an important aspect needs to be taken into account. The writ petition is directed against an award passed by the Labour Court in response to a reference made to it by the Government. The scope of interference with such awards is relatively less. It is only when the award is patently illegal or is opposed to specific provisions of law, that this Court can interfere with the same. Even where two views are possible, the one taken by the Labour Court cannot be found fault with. The exercise of jurisdiction under Article 226 of the Constitution of India, in such cases, cannot be to the extent of making the High Court as an appellate authority. It is in this background that the matter needs to be examined.

15. This is the second time that the dispute between the Respondents and the Petitioner landed before this Court. Way back in the year 1994 the Respondents approached this Court claiming the benefit under the G.O. The background of the G.O. has already been indicated, in brief. Since the question as to whether the Respondents are the employees of the Petitioner at all, was very much in dispute, this Court thought it fit to leave the matter to be dealt with under the I.D. Act.

16. The Petitioner itself addressed a letter to the Government seeking reference. Ultimately, the reference came to be made u/s 10 of the I.D. Act, in the following terms:

10. Reference of disputes to Boards, Courts or Tribunals:

- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for enquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matters specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c):

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under this Act, in respect of the dispute may have commenced:

Provided also that where the dispute in relating to which the Central Government, is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

17. In dealing with the first question raised by the Petitioner, viz., whether the G.O. is applicable to the Respondents at all, the text of the reference assumes significance. A perusal of the reference discloses that the Government proceeded on the assumption that the G.O. applies to the Respondents and the only area of dispute was as to whether the Petitioner was justified in not extending the benefit thereof to the Respondents. If the Petitioner was of the view that the G.O. does not apply to the case of the Respondents, at all, it ought to have challenged the reference itself before the matter was taken up by the Labour Court. Once the reference has become final, and the Labour Court has proceeded to answer it with the participation of the Petitioner and the Respondents, it is not open to it, to raise the question as to the applicability of the G.O.

18. It is no doubt true that in the recent past, the Supreme Court had taken an altogether a different view, in the context of regularization of employees with considerable length of service on daily wages or NMR basis, and that the directions issued by the High Courts for regularization of such employees were held to be not proper. Reference in this context can be made to the judgments in Umadevi's case (1 supra), Indian Drugs & Pharmaceuticals Limited's case (2 supra), Dan Bahadur Singh's case (3 supra), Dayanand's case (4 supra) and

Mohd. Abraham's case (6 supra).

19. However, except in one case, namely, Manjula Bhashini's case (5 supra), in no other cases there existed any scheme framed by the Government itself, for regularization of temporary employees. The purport of the judgments of the Supreme Court has been that the High Court cannot infringe upon the power and jurisdiction of the Government in the matter of making appointments, and that it can be left to the discretion of the State or its instrumentalities which in turn would take an informed decision, based upon their need and the financial soundness etc. Where however, the Government itself had framed a scheme for regularization of services and the direction issued by the Courts is only for implementation thereof, nothing was found to be illegal.

20. In Manjula Bhashini's case (5 supra), the G.O. Ms. No. 212 was under consideration by the Supreme Court. The scrutiny was more about the fulfillment of the conditions stipulated in the G.O. After discussing the back ground in which the G.O., came to be issued and the principles laid down in several judgments rendered by it, the Hon"ble Supreme Court held as under:

102. The declaration made by the Division Bench that the ban on regularization will be effective from 19.08.1998 i.e. the date on which Act 27 of 1998 came into force and that all persons who have completed 5 years service as on that date would be entitled to be considered for regularization of service is set aside. It is, however, made clear that the daily-wage employees and others who are covered by Section 7 of the 1994 Act (Amended) and whose services have not been regularized so far, shall be entitled to be considered for regularization and their services shall be regularized subject to fulfillment of the conditions enumerated in the G.O. dated 22.4.1994.

103. With a view to obviate further litigation on this issue, we direct the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularization of the services of eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or the High Court or this Court. Since some of the appeals decided by this order relate to part-time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O.

(P) No. 112 dated 23.07.1997.

21. The G.O., as such, was not found fault with, but its implementation was directed to be subject to certain conditions. It is not the case of the Petitioner that the Respondents do not fulfill the conditions stipulated by the Hon"ble Supreme Court.

22. Another contention of the Petitioner is about the existence, in fact, the lack,

of posts in the cadre etc. This, in fact is a question, which ought to have been raised when the reference was made. Once the Government was proceeded on the assumption that the G.O. applies, thereby assuming that the posts exist, though not in a regular cadre; it is not open to the Petitioner to contend otherwise.

23. During the course of hearing of the writ petition, this Court wanted to know from the Respondents as to the manner in which the hostels are being run. At one stage, it was informed that expect in 3 or 4 medical colleges, there exists approved cadre of attenders, sweepers, cooks etc., in the hostels and that in the Petitioner-institution no such cadre is existed. Subsequently it was informed that in none of the hostels under the Government Medical Colleges, there is any regular establishment or cadre strength. It is not in dispute that some of the Respondents are working for the past 30 to 40 years and that the hostel is not a temporary establishment. The Labour Court has discussed the oral and documentary evidence adduced before it and recorded findings as to the nature of functioning of the hostels.

24. The existence of clear vacancies is no doubt a condition precedent for extending the benefit under G.O. Things would have been different altogether, had it been the case of the Petitioner that almost all the posts existing in the establishment are held by other incumbents and that there are no clear vacancies. When the effort and attempt of the Petitioner is to disown the entire establishment of the hostels, the plea as to non-availability of vacancies, virtually becomes redundant. It is not as if a particular number of posts are earmarked and that adequate vacancies are not available to accommodate the Respondents. The service certificates issued by the Petitioner disclose that the Respondents are holding the posts for the past several decades. Therefore, the point urged by the Petitioner is untenable.

25. Now remains the last question raised by the Petitioner, pertaining to the direction issued by the Labour Court to create posts. After recording its findings on various aspects, the Tribunal issued a direction to the Respondents to create additional posts. This is clearly outside the scope of the reference or for that matter, the jurisdiction of the Labour Court. The G.O. can be implemented, only if there are vacancies, or that the posts as such are held by the temporary or daily wage employees. A direction issued for creation of additional posts would not go well with such a scheme. In fact it would be a contradiction in terms. The regularization can be only vis-?-vis the posts that are already held by the temporary or daily wage employees.

26. Hence, the writ petition is partly allowed setting aside that part of the award which directed the creation of additional posts and upholding the same in all other respects.

27. There shall be no order as to costs.