

(2007) 08 KAR CK 0016

In the Karnataka High Court

Case No : Writ Appeal No. 564 of 2007 and I.A. No. II of 2007

The State of Karnataka and Others

APPELLANT

Vs

Ayyanna

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Citation : (2007) 08 KAR CK 0016

Hon'ble Judges : Cyriac Joseph, C.J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : B. Srinivasa Gowda, for the Appellant; V. Lakshminarayana, for the Respondent

Judgement

Cyriac Joseph, C.J.—This writ appeal is filed against the judgment dated 25.01.2006 in Writ Petition No. 849 of 2004. The appellants are the respondents in the writ petition. The respondent herein was the petitioner in the writ petition.

2. The respondent was appointed as Hostel Superintendent of Boys Hostel, Kuradi, Manvi Taluk, Raichur District on 05.02.1986 on daily wages. Since then he has been continuing as Hostel Superintendent appointed on daily wages.

3. The respondent filed Writ Petition No. 25912 of 2002 praying for a direction to regularise his service as he had completed about 16 years of service as a daily waged government employee. The said writ petition was disposed of on 24.07.2002 in the following terms:

Both the counsels say that this matter is fully covered by the judgment of this Court in Writ Petition Nos. 42096 to 42113 of 2001 dated 29.11.2001 permitting the petitioners therein to file additional representation and directing the respondents therein to consider the representation in accordance with law and in accordance with the judgment of this High Court in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000 dated 24.01.2001.

Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000 were disposed by a

Division Bench of this Court on 24.01.2001 holding that an employee who has put in ten years or more of service is entitled to be considered for regularisation of his service. For taking the said view, the Division Bench relied on the judgment of the Hon'ble Supreme Court in Dharwad District P.W.D. Literate Daily Wage Employees Association's case and Piara Singh's case and various other judgments to which reference had been made by the learned Single Judge in the order impugned in the writ appeals. Since the respondents therein had put in more than 10 years of service, the Division Bench held that the learned Single Judge had rightly directed the respondents in the writ petition to consider the question of regularising the service of the respondents subject to their fulfilling the eligibility criteria.

4. Against the judgment dated 24.01.2001 in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000, the Government of Karnataka filed Special Leave Petitions before the Supreme Court along with application for condoning the delay of 451 days in filing the appeal. The application for condonation of delay was rejected by the Supreme Court and the Special Leave Petitions stood dismissed as barred by time. Thus the judgment dated 24.01.2001 in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000 became final.

5. Since the respondents in Writ Petition No. 25912 of 2002 did not file any appeal against the judgment dated 24.07.2002 in the said writ petition, they were bound to consider the petitioner's case for regularisation in terms of Writ Petition Nos. 42096 to 42113 of 2001 and the judgment in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000. Consequently, the respondents in Writ Petition No. 25912 of 2002 were bound to regularise the service of the writ petitioner as admittedly, he had completed ten years of service.

6. However, the Commissioner for Social Welfare Department issued Annexure-G endorsement dated 13.06.2003 stating that his claim will be considered only after the decision of the Division Bench in Writ Appeal Nos. 66 to 83 of 2003 and the decision of the Supreme Court in Civil Appeal Nos. 1861 to 2063 of 2001 were delivered. Writ Appeals Nos. 66 to 83 of 2003 had been dismissed on 14.02.2003 by a Division Bench of this Court four months before Annexure-G endorsement was issued. But it was not noticed by the Commissioner for Social Welfare Department while issuing Annexure-G endorsement. Civil Appeal Nos. 1861 to 2063 of 2001 were decided by the Constitution Bench of the Supreme Court only on 10.04.2006 and the judgment is reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, (popularly known as Umadevi's case).

7. In the meanwhile, challenging Annexure-G endorsement, the respondent filed Writ Petition No. 849 of 2004 and the said writ petition was disposed of by a learned Single Judge on 25.01.2006 i.e., before the decision in Umadevi's case. In the judgment dated 25.01.2006, learned Single Judge held that in the light of the judgment in Writ Petition No. 25912 of 2002 filed by the petitioner following the judgments in Writ Petition Nos. 42096 to 42113 of 2001 which followed the

judgment in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000, the writ petitioner was entitled to succeed and accordingly, the writ petition was allowed setting aside Annexure-G endorsement and directing the respondents in the writ petition to take action in accordance with law and in terms of the direction issued by the Court in the earlier writ petition. Aggrieved by the order of the learned Single Judge in Writ Petition No. 849 of 2004, the respondents in the writ petition have filed this writ appeal.

8. It is not disputed by the appellants that no appeal was filed against the judgment in Writ Petition No. 25912 of 2002 filed by the respondent. Therefore, the judgment in Writ Petition No. 25912 of 2002 has become final and binding on the appellants herein. The direction in the judgment in Writ Petition No. 25912 of 2002 was to consider the case of the petitioner therein for regularisation in terms of the judgment in Writ Petition Nos. 42096 to 42113 of 2001. The direction in the judgment in Writ Petition Nos. 42096 to 42113 of 2001 was to consider the case of the daily waged employees in the light of the judgment in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000. It is not disputed that the Special Leave Petitions filed against the judgment in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000 was dismissed by the Supreme Court. Hence the judgment in Writ Appeal Nos. 5697 of 2000 and 6677 to 7124 of 2000 has become final. In the said judgment, the Division Bench has categorically held that an employee who has put in ten years or more of service is entitled to be considered for regularisation of service. In such circumstances, as rightly held by the learned Single Judge in the impugned order, the appellants were bound to regularise the service of the respondent as he had completed more than 10 years as a daily waged employee.

9. The only contention of the learned Government Advocate appearing for the appellants is that in the light of the decision of the Supreme Court in Umadevi's case, the earlier judgments of this Court in favour of the respondent cannot be and need not be complied with. In support of his contention learned Government Advocate invited our attention to paragraph 54 of the judgment in Umadevi's case which reads thus:

It is also clarified that those decisions which run counter to the principles settled in this decision or in which directions running counter to what we have held herein will stand denuded of their status as precedents.

We understand the above clarification of the Hon'ble Supreme Court only to mean that earlier decisions running counter to the principles settled in the decision in Umadevi's case will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the decision in Umadevi's case and which has become final and binding on the parties need not be honoured and implemented. In our view, notwithstanding the clarification in paragraph 54 of the judgment in Umadevi's case, the appellants cannot escape the liability to comply with the direction in the judgment in Writ Petition No. 25912 of 2002 which had become final and binding on the appellants and the

respondent long prior to the decision in Umadevi's case.

10. Therefore, we uphold the order of the learned Single Judge. The writ appeal is devoid of merit and is liable to be dismissed.

11. The writ appeal has been filed with a delay of 382 days and the explanation offered by the appellants for the delay is not at all satisfactory. Hence we also hold that I.A.II of 2007 for condonation of delay is liable to be dismissed.

12. In the above circumstances I.A.II of 2007 is rejected and Writ Appeal No. 564 of 2007 is dismissed.