

(2013) 11 KAR CK 0356

In the Karnataka High Court

Case No : WA No's. 45 of 2013 and 3477-3482 of 2013 (S-RES)

The State of Karnataka

APPELLANT

Vs

Sri R. Jagadeesh and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 1 AKR 856 : (2014) ILR (Kar) 621 : (2014) 3 KarLJ 432 :
(2014) 1 KCCR 318

Hon'ble Judges : D.H. Waghela, C.J.;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : A.S. Ponnanna, GA, for the Appellant;

Final Decision : Dismissed

Judgement

D.H. Waghela, C.J.—These appeals are preferred by the State from the order dated 28.02.2012 of learned Single Judge of this Court whereby, the order dated 11.03.2011 of the appellant herein has been quashed and the matter is remanded for reconsideration in accordance with law, as expeditiously as possible and in any event not later than three months. The appellant has also filed an application for condoning the delay of 270 days in preferring the appeals and the delay is sought to be explained by the chronology of dates on which the matter was processed in the department concerned of the appellant. In view of the inordinate delay and the direction as aforesaid in the impugned order, learned Government Advocate was extensively heard on the merits of the contentions sought to be canvassed in the appeals.

2. The order dated 11.03.2011 of the appellant which was under challenge before learned Single Judge was itself made pursuant to an earlier order dated 15.04.2010 in WP Nos. 10993/2010 and WP Nos. 12061-12067/2010; and that order was specifically made in respect of the seven employees of the Mysore City Corporation, who were petitioners before the learned Single Judge. Those employees - original petitioners have repeatedly approached this Court on the basis that they were appointed on daily wage basis since the years 1986-1987

and they were continued in service for all the years till 2012, without being regularized in service. Undisputedly, the case of the original petitioners had chequered history of several litigations starting with the first litigation in the year 1989, when a group of petitions being WP Nos. 22957-22978/1999 were disposed by Hon''ble Justice S. Rajendrababu (as His Lordship then was) on 28.03.1990, with the observations as under;

Inasmuch as that litigation had been conducted in a representative capacity, it is binding on all parties concerned as aforesaid. It is now necessary for the respondents to examine the cases of each one of these petitioners either for their continuance or what further relief should be given by way of regularization or emoluments or any other working condition as directed by the aforesaid order of the Supreme Court and until such time as they take a decision, the interim order granted by this Court shall enure to the benefit of the petitioners. Petitions stand disposed of in the above circumstance.

Thereafter, by order dated 14.10.1999 of Hon''ble Justice R.V. Raveendran (as His Lordship then was) in WP Nos. 32357-32366/1999 c/w 37548/1999, the appellant herein were directed to hear their objections/representations and make appropriate order in respect of such employees concerned in regard to the action proposed to be taken by the order dated 23.09.1999, which was impugned in that petition, and by which the benefits of minimum of the pay-scale and increments and allowances extended to the employees, were sought to be withdrawn. Even in that order, further directions were given in the following terms;

PARA 13.

a)

b)

c)

d)

e) The letter dated 30.04.1998 of the State Government and endorsement dated 08.05.1998 issued by the Mysore City Corporation rejecting the request for regularization, is quashed.

f) The Mysore City Corporation is directed to consider the claim of the petitioners for regularization within six months from the date of receipt of a copy of this order, by deciding:-

i) Whether they have put in ten years of full time continuous service; and

ii) Whether they are entitled to regularization as per the principles relating to regularization referred to above. The terms of regularization (other than the cut off date regarding date of entry into service) may be regulated or governed by the relevant orders of the Government/Corporation relating to regularization.

3. After the above order, as stated at the Bar by learned Government Advocate, the employees concerned were pushed back to the minimum of pay-scale and their request for regularization was rejected. It is thereafter that the employees kept on making representations, in view of the revision of pay-scale and application of the recommendations of the Fourth Pay Commission. Admittedly, in WP No. 10993/2010, the direction dated 15.04.2010 were issued by this Court to consider the claim of the petitioners therein, in accordance with law and as expeditiously as possible. Pursuant to that direction, the order dated 11.03.2011 which was impugned before learned Single Judge was made, and perusal of that order reveals that, even as the employees had claimed to have been appointed in 1986-1987 against vacant posts and had put in continuous service since then, the stand of the appellant herein was that (i) at the time of creation of those specific posts, there were no Cadre and Recruitment Rules, (ii) the time scale of pay granted to the employees by order dated 23.11.1995 was also withdrawn, (iii) no information was available with the appellant herein about the employees concerned having been appointed against vacant posts, (iv) that guidelines issued by the Government pursuant to the judgment of the Apex Court in Secretary, State of Karnataka vs. Umadevi and others, were not permitting regularization in service and that the employees concerned had continued in service on account of judgment and orders of the High Court, issued in the years 1990 and 1993.

4. Even as the direction issued by the order impugned herein is only to reconsider the cases of the employees after quashing the order dated 11.03.2011 of the appellant herein, it was clear from the perusal of the said order that it could not withstand a judicial scrutiny. The grounds for rejecting the claim of regularization in service, as briefly enumerated hereinabove could not be substantiated by learned Government Advocate on the basis of any material on record. Even after the clear directions of this Court in WP Nos. 32357-32366/1999, it was too late in the day for the appellant herein to contend that employees concerned had failed to prove that there were no vacant posts at the time when they were initially appointed on temporary basis. It could also not be substantiated from the record that they were surviving in service for 20 years only on account of one or the other order of the High Court or for that matter any Court or Tribunal. The indisputable fact that the appellant themselves had issued orders to place the employees at the minimum of the time scale from the year 1995 was a step towards regularizing their services rather than terminating their services in accordance with law. Thereafter, even disregarding the whole chequered history of the case, the exceptional provision made in paragraph 53 of the judgment of Constitution Bench of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, made it incumbent upon the appellant to consider the cases of the employees in light of the observations made by the Apex Court in the year 2006. A bare reading of those observations of the Apex Court would indicate that the Union of India, the State of Karnataka and their instrumentalities were required to take steps to regularize, as a one

time measure, the services of such irregularly appointed employees, who had by that time worked for 10 years or more in duly sanctioned posts, without the cover of orders of any Court or Tribunal. There is a clear direction for this process to be set in motion within six months from 10.02.2006. It is further clarified by the Apex Court that if any regularization were already made and were not sub judice, they need not be reopened, but there should be no by-passing of the constitutional requirement. These observations and directions would suggest that the appellant herein were, even without the aforesaid directions of this Court, and pursuant to the earlier directions issued by order dated 14.10.1999 in WP Nos. 32357-32366/1999 under a legal obligation to consider the cases of the employees to prevent apparent discrimination and injustice in the matter of their own employees consistently working under them, since more than 20 years. It may be pertinent to note here that the best evidence and data about the creation and vacancy of the posts, and the facts about filling up those posts from time to time would be in the knowledge and possession of the appellant and the employees could not be faulted or punished for absence or non-compliance of recruitment rules at the time of their initial entry in service on temporary basis. The appellant have not appeared to be forthcoming on that aspect. In that view of the matter, it is indeed unfortunate that the appellant, as an institution of local self-government would have forced its own employees to press their demand in one after the other litigation for the purpose of denying them forever the benefits to which they may be entitled after continuous and admittedly uninterrupted service for more than 25 years by now. The reasons for not considering the cases of the respondent employees for regularizing their services, and grant of full benefits at par with the regular employees of the appellant, within the time limit prescribed in Umadevi (supra) having been found to be baseless and invalid, as discussed in brief herein, it is incumbent upon the appellant to consider their cases for regularization of their services in their respective posts or cadre, atleast with effect from 01.08.2006, pursuant to the observations of the Apex Court in Umadevi (supra). Prima facie, the appellant is litigating on the issue, at present in contempt of the impugned order of this Court and the directions of the Apex Court. Therefore, even on merits and after affording full opportunity to the appellant to argue the appeals, we do not find any substance in any of the contentions sought to be canvassed in appeals. Therefore, the appeals as well as the interim applications made therein are dismissed in-limine.