
(2014) 08 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 750 of 2013

T.M. Azad

APPELLANT

Vs

The Kerala Water Authority

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0064

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : R. Rajasekharan Pillai and Sabina Jayan, Advocate for the Appellant;
Joseph John, Adv., SC, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a Part Time Sweeper who was engaged on a daily wage basis under the respondent Water Authority with effect from 11.07.1984. It is the specific case of the petitioner that despite having worked continuously for more than 25 years, he was not regularised in service. The facts in the writ petition reveal that the petitioner had approached this Court in the past and pursuant to the directions of this Court, the 1st respondent passed an order declining the request of the petitioner for regularisation.

2. The petitioner would submit that there were several matters pending before this Court wherein others, similarly situated as the petitioner, had approached this Court seeking regularisation of their services under the respondent Water Authority. It is pointed out that, pursuant to the judgment of this Court in those writ petitions, Ext. P1 Government Order dated 25.11.2005 came to be issued, directing the sanctioning of posts and the regularising of Part Time Contingent Employees serving under various Corporations and Departments under the State Government. Thereafter, the specific case of the petitioner for regularisation was recommended by the respondent Water Authority vide Ext. P2. Ext. P3 Circular was also issued by the respondent Water Authority based on Ext. P1 Government order dated 25.11.2005. The Government, subsequently, vide Ext. P5 proceedings, created posts and regularised the petitioner's service with effect

from 01.04.2008. Thus, with the issuance of Ext. P5 proceedings, the petitioner's service came to be regularised under the respondent Authority.

3. The petitioner, however, was aggrieved by Ext. P5 to the extent it regularised his services only with effect from 01.04.2008 and not from 11.07.1984 which, according to him, is the date on which he was engaged for the first time on daily wage basis under the respondent Water Authority. He therefore took up the matter again with the respondent Water Authority and, pursuant to Ext. P9 judgment of this Court passed in a writ petition filed by the petitioner seeking a direction to the respondent Water Authority to consider his case, Ext. P10 order came to be passed by the Managing Director of the respondent Water Authority rejecting the request of the petitioner for retrospective regularisation. This order of the Managing Director was again challenged by the petitioner in W.P.(C). No. 33694 of 2010 which resulted in Ext. P11 judgment directing the respondent Water Authority to consider the petitioners claim for regularisation as per the applicable Government order and also to disburse the pensionary benefits due to him pursuant thereto. The respondent thereafter passed Ext. P13 order rejecting the request of the petitioner for retrospective regularisation with effect from 11.07.1984. The decision of the respondent Water Authority in Ext. P13 reveals that it is based on Ext. P12 Government order which clarified the ambit and scope of the earlier Government order dated 25.11.2005. In this writ petition, the petitioner challenges Ext. P13 order passed by the respondent Water Authority, inter alia, on the ground that the State Government having accepted the fact that services rendered by Part Time Sweepers engaged on daily wage basis are to be regularised, could not place limits on the tenure of regular service by making it effective from a date other than the actual date from which the petitioner was engaged on daily wage basis. The petitioner would, in particular rely on paragraph 8 of Ext. P1 Government order which mandates inter alia :-

"That posts shall be created with effect from the date of appointment of the incumbent as Casual Sweeper or from 18.06.2001 (i.e., 3 years preceding the date of judgment vide ref. (10) above) whichever is later. In the case of those covered by earlier orders of the High Court (for regularisation) the relevant date shall be the date of appointment of the incumbent as Casual Sweeper or the date 3 years preceding the date of such judgment ordering regularisation whichever is later."

4. The respondent Water Authority has filed a counter affidavit wherein it disputes the entitlement of the petitioner for retrospective regularisation with effect from 11.7.1984. The contention of the respondent in the counter affidavit is that even assuming that the benefit of retrospective regularisation can be extended to the petitioner in the instant case, it can only be with effect from 18.06.2001 as laid down in Ext. P1 Government order and not beyond that date.

5. I have heard Sri. R. Rajasekharan Pillai, counsel for the petitioner and also Sri. Joseph John, Standing counsel for the respondent Water Authority.

6. On a consideration of the facts and circumstances of the case, I note that the petitioner's service has already been regularised with effect from 01.04.2008 by virtue of Ext. P5 order passed by the Government. The only question to be decided in the instant case, therefore, is whether, having regularised the services of the petitioner under the respondent Water Authority, the petitioner is entitled for a regularisation with effect from a date, anterior to 01.04.2008. In this connection, when Ext. P1 Government Order is perused, it is apparent there from that the mandate under the said Government Order was to create posts with effect from the date of appointment of the incumbent as Casual Sweeper or from 18.06.2001, whichever is later. The relevance of the date 18.06.2001 appears to be the fact that there were writ petitions that were pending before this Court and the final judgment in those writ petitions were rendered on 18.06.2004. A period commencing from a date three years prior to the date of judgment was taken as appropriate by the State Government for the purposes of granting regularisation. It is accordingly, that the date of 18.6.2001 was arrived at by the Government in Ext. P1 Government order. In the case of the petitioner, since his earlier attempts at regularisation did not find favour with this Court, the issue of regularising his service from a date prior to 18.06.2001 did not actually arise. However, the date of 18.06.2001 would apply even to the case of regularisation of the petitioner as is evidenced from Ext. P1 Government Order itself. In Ext. P13 order, that is impugned in the writ petition, it is seen that the petitioners claim for retrospective regularisation has been denied in toto. This seems to be contrary to the mandate in Ext. P1 Government order. Accordingly, I quash Ext. P13 to the extent it denies the claim of the petitioner for retrospective regularisation in toto. I make it clear that, in view of Ext. P1 Government order, the petitioner's services under the respondent Water Authority shall be deemed to have been regularised with effect from 18.06.2001. With these modifications, Ext. P5 order regularising the petitioners service is held legal and valid and Ext. P13 order of the respondent Water Authority is quashed. The respondent Water Authority shall quantify the monetary benefits due to the petitioner in accordance with this judgment within a period of one month from the date of receipt of a copy of the judgment and disburse amounts, if any, due to the petitioner immediately thereafter.

The writ petition is allowed as above.