
(1991) 03 MAD CK 0057
In the Madras High Court

V. Mannar

APPELLANT

Vs

The Assistant Director, Director Carpentry and Blacksmithy
Unit, Tamil Nadu Khadi and Village Industries Board and
Others

RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1992) 1 MLJ 38

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is as follows:

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon"ble Court may be pleased to issue appropriate writ, direction or orders, and in particular issue a writ in the nature of certiorarifted mandamus calling for the records on the file of the 1st respondent in relation to the order bearing R.C. No. 1329/E/87, dated 11.8.1989 quash the same consequently directing the respondents to reinstate the petitioner in service with effect from 11.8.1989 with all consequential benefits of regularisation, back wages award costs and render justice.

2. Notice of motion has been ordered by me on 25.10.1990.

3. Though notice has been served on the respondents nobody has entered appearance on behalf of respondents 1 and 2 Mr. P. Arivudainambi, learned Government Advocate, appears for the third respondent. No counter has been filed by the third respondent. I called for records from the third respondent. I have gone through the records.

4. The petitioner was provisionally appointed as a daily wager in the village Industries Board on 27.10.1958 and he worked in the board upto 11.8.1970. Thereafter from 3.7.1972 to 19.8.1978 and from 29.2.1979 to 21.12.1980 the

petitioner worked as daily wager in the Board. Subsequently from 23.12.1980 he was appointed as a watchman on contingent basis and he worked in the carpentry and Blacksmithy Unit, Guindy from 23.12.1980 to 3.6.1982. Thereafter the petitioner worked from 25.11.1982 to 10.2.1983 in the Khadi and Village Industries Board, Thiruvannamalai and from 12.2.1983 to 11.4.1984 in Kancheepuram and from 26.4.1984 to 11.8.1989 in the carpentry and Blacksmithy Unit, Guindy.

5. The petitioner was issued with an order dated 7.8.1989 passed by the Regional Deputy Director, Tamil Nadu Khadi and Village Industries Board, Vellore, ousting the petitioner from service with immediate effect, and the petitioner was relieved from service on 11.8.1989. The petitioner has made representations to the respondents requesting them to reinstate him in service. By an order dated 5.7.1990 the second respondent stated that the Government has informed the Board by its letter dated 15.6.1990 that since the appointment was made after 8.7.1980, the proposal to bring the petitioner on a regular time scale was not accepted. The petitioner has made a representation to the Government on 13.9.1989, and reports were called from the Khadi and Village Industries Board. The board by its report dated 3.11.1989 recommended that the petitioner could be absorbed in any one of the vacant posts of watchman on regular basis on compassionate grounds by relaxing the Regulation 6(2) of the Board's service Regulation relating to recruitment through Employment Exchange. The petitioner made a further representation to the Minister in charge of Tamil Nadu Khadi and Village Industries Board on 20.9.1989. A note was put up to the concerned Minister and ultimately a decision was arrived at to issue a direction to the Board to bring the petitioner in the regular time scales of pay in the post of watchman with effect from 1.4.1987 taking into consideration of the orders issued in G.O.Ms. No. 107, P & AR (Personnel) Department, dated 5.2.1987 and relaxing the regulation 6(2) of the Board's service Regulation. I could see from the file that though the Minister concerned has approved the proposal to bring the petitioner in the regular time scale of pay with effect from 1.4.1987 on compassionate grounds, due to the objections raised by the second respondent, the petitioner has been ousted from service.

6. Ms. Anna Mathew, learned Counsel for the petitioner, contends that the petitioner was working as a daily wager in various departments from 27.10.1958, and the petitioner is aged about 45 years and has absolutely no chance of getting employment elsewhere and the action of the respondents 1 and 2 in terminating the services of the petitioner after a total service of 31 years, is totally unfair, illegal and arbitrary. The sum and substance of the argument of the learned Counsel for the petitioner is that the action of the second respondent is violative of Articles 14 and 16 of the Constitution. The learned Counsel further submits that the reason given by the third respondent that the petitioner was appointed as a contingent staff with effect from 23.12.1980 after the cut-off date viz., 8.7.1980, and therefore the petitioner's service cannot be regularised, is unsustainable, and the cut-off date fixed by the third respondent without any

reason is arbitrary. She further argues that the non-regularisation of the petitioner's service before 8.7.1980 was not due to the fault of the petitioner and therefore the petitioner cannot be penalised.

7. Mr. P. Arivudainambi, learned Government Advocate appearing for the third respondent, contends that the petitioner was not sponsored by the employment exchange, and his appointment was in violation of Rule 6(2) of the Board's service Regulation. The learned Government Advocate further submits that cut-off date was fixed as 8.7.1980 as per G.O.Ms.No.312,ES, dated 30.11.1987, and though the petitioner was appointed as watchman only with effect from 23.12.1980 by the then Regional Director, and the date fell after the date fixed by the Government for regulating the irregular appointment i.e., 8.7.1980, the petitioner's services were terminated with effect from 11.8.1989. In such circumstances, the order of termination of the services of the petitioner is valid and there is no arbitrariness in this case. After going through the files produced by the third respondent and after hearing the arguments of the learned Counsel for the petitioner and the learned Government Advocate for the third respondent, and taking into consideration the fact that respondents 1 and 2 have not been represented by any counsel, I am of the view that the petitioner will be entitled to the relief prayed for.

8. The facts are not in dispute. The only question to be considered in this case is whether the G.O.Ms. No. 312 LE dated 30.11.1987, which fixed 8.7.1980 as the cut-off date has to be taken into account while considering the order of termination of the services of the petitioner. The only ground, I could see from the file, is that the petitioner was appointed as watchman with effect from 23.12.1980 by the then Regional Deputy Director and this date fell after the date fixed by the Government for regulating the irregular appointment. i.e., 8.7.1980, and therefore the petitioner was ousted from service from 11.8.1989. The file shows that the petitioner who was previously working on daily wages from 27.10.1988 in soap Unit, Poondi, was temporarily appointed as watchman from 23.12.1980. It is seen from G.O.Ms. No. 107, P & AR, dated 5.2.1987 that orders were issued to the Heads of Departments directing them to create posts to bring the contingent staff to regular establishment after a careful review of the need for the posts and to appoint a contingent staff in the post, if no relaxation of rules is involved. Since the petitioner has completed 5 years of service as watchman on 23.12.1985, the petitioner should have been brought into regular time scale of pay by relaxing regulation 6(2) of the Boards Service Regulation relating to recruitment through Employment Exchange. However, it has not been done so. Unfortunately the petitioner's services had been regularised only on 23.12.1980, which is put against the petitioner's case now, according to the third respondent.

9. Considering the facts and circumstances of the case, I am of the view that the failure on the part of respondents to regularise the services of the petitioner in view of G.O.Ms. No. 107, P. & AR, dated 5.2.1987, cannot stand in the way of the

petitioner getting benefit under the said G.O. To put it in other words, the petitioner should not be penalised for the wrong committed by the respondents. As such, I am of the view that the petitioner's services had to be regularised even as early as 23.12.1985 which had not been done.

10. Further, whether the cut off date prescribed under the G.O. is valid is a question to be decided. That question has been decided by the Supreme Court in a decision reported in D.S. Nakara and Others Vs. Union of India (UOI), , wherein it has been held by the Supreme Court that any date fixed arbitrarily as cutoff date is violative of Article 14 of the Constitution of India. It was held by the Supreme Court in that decision that "the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question". In that case the Supreme Court had an occasion to consider the earlier decision of the Supreme Court reported in D.R. Nim, I.P.S. Vs. Union of India (UOI), under which "arbitrary date was fixed for the purpose of fixing seniority among the persons in the Indian Police Service. The Supreme Court in that case D.R. Nim, I.P.S. Vs. Union of India (UOI), , held that" the Central Government cannot pick out a date from a hat and say that a period prior to that would not be deemed to be approved by the Central Government within Proviso 2.

11. In this case, I do not find any rational nexus in fixing the date 8.7.1980 as cut-off date. I do not see any reason to fix the cut-off date as 8.7.1980 and to oust the petitioner from service. In view of the principles laid down by the Supreme Court in the aforesaid decisions, I do not think the reason given by the respondents in the impugned order ousting the petitioner from service can be sustained and the impugned order is set aside. The respondents are directed to absorb the petitioner in any one of the vacant posts as watchman from 11.8.1989 on regular basis within six weeks from the date of receipt of copy of this order. On application by the petitioner for back wages and other benefits, the respondents will consider the same and pass orders according to Rules. The writ petition is ordered accordingly. No costs.