

(1997) 03 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15555 of 1993

Vishnu Kumar and Another

APPELLANT

Vs

State Bank of Hyderabad and Another

RESPONDENT

Date of Decision : 28-03-1997

Acts Referred:

Citation : (1997) 3 AnWR 468 : (1997) 2 LLJ 131

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : C. Suryanarayanan, for the Appellant; K. Srinivasa Murthy, for the Respondent

Judgement

1. The 1st petitioner was employed as a temporary workmen under the 2nd respondent w.e.f., February 12, 1990 and the 2nd petitioner was similarly recruited w.e.f., July 9, 1990. They have been continuously working without any interruption or break on all working days though on daily wages. Their services, however, were terminated by verbal orders and the above writ petition has been filed seeking a direction for reinstatement in service and absorption in the regular establishment as per the Central Government's orders.

2. While it is not denied by the respondent that the petitioners had worked as casual labourers from February 12, 1990 and July 9, 1990 respectively upto August 26, 1993 and were paid daily wages, it is stated that the petitioners were performing duties menial in nature such as cleaning and dusting the premises. It is contended by the respondents that the petitioners are not entitled to reinstatement as their services were disengaged in accordance with law w.e.f., August 27, 1993.

3. Learned counsel for the petitioner, however, contended that the Government have recommended the case of temporary employees who have put in not less than 240 days to be regularised vide letter No. F3/J/104/87-88 (Annexure P-1). Insofar as Banks are concerned, it is stated that one time opportunity to all

temporary employees be given by considering all those engaged as temporary on or after January 1, 1982. The learned counsel for the petitioner, contends that as per the said Circular letter which is binding on the Respondent Bank, the petitioners having worked continuously and have put in more than 240 days of service are therefore entitled to be absorbed.

4. Sri K. Srinivasa Murthy, learned counsel for the respondents, however, contends that pursuant to the said guidelines received from the Government of India, the Respondent Bank had entered into a settlement with the recognised workmen association and the selection process was completed by giving a paper notification in July, 1991. The petitioners did not apply within the time prescribed therefore and accordingly they are not entitled to be absorbed.

5. Sri K. Srinivasa Murthy, learned counsel for the Respondents, also sought to raise a contention that the petitioners are casual workers and not temporary employees and are therefore not eligible for absorption. In any event, according to Sri K. Srinivasa Murthy, learned counsel for the Respondent Bank, the selection process has been completed and the petitioners are not entitled to seek absorption even as per the Government of India guidelines referred to above.

6. A perusal of the settlement dated February 21, 1992 shows that the temporary employees are entitled for absorption provided they fulfill other qualifications. The reference is to temporary employees in the subordinate cadre and those who have completed a minimum of 90 days after January 1, 1982 (cut off date) are eligible to be appointed in the subordinate cadre. The petitioners have completed a minimum of 90 (ninety) days after January 1, 1982 in the subordinate cadre.

7. In the circumstances, the distinction sought to be drawn by Sri K. Srinivasa Murthy, with regard to temporary employees and casual employees is one without distinction. Even the public notification refers to temporary employees on daily wages. The petitioners, as already noticed, had been working from February 12, 1990 and July 9, 1990 respectively upto August 26, 1993 and can therefore be considered as to temporary employees who were paid daily wages and entitled to the benefit of absorption even as per the settlement dated February 21, 1992.

8. The contention of the respondents that the petitioners failed to apply before the due date i.e., August 31, 1991 and are thus disentitled from claiming the benefit of absorption under Clause 12(4) of the Settlement dated February 21, 1992 is equally untenable on the facts of the instant case. The petitioners were in service upto August 26, 1993 by which date they had completed more than the minimum 90 days service and therefore it was for the respondent organisation to have empanelled them or afforded them an opportunity of availing of the benefits of absorption. The petitioners continued upto August 26, 1993 and were neither informed of their rights under the Settlement for absorption nor was it brought to their notice that they would not be considered

for absorption if they do not apply. The very fact that the petitioners were continued beyond August 31, 1991 i.e., upto August 26, 1993 shows that the petitioners were not aware of the last date for applying. The respondents cannot be absolved of their obligation to consider the cases of eligible employees who were continuing and whose eligibility was known to the respondents.

9. In the circumstances, the petitioners cannot be denied the benefits of absorption as per the scheme under the Settlement dated February 21, 1992 merely on the ground that they did not apply before the due date i.e., August 31, 1991.

10. Accordingly, the respondents are directed to consider the case of the petitioners for permanent appointment within a period of two months from the date of receipt of a copy of this order without considering them disqualified for not applying before the alleged due date August 31, 1991. The conditions for appointment shall be strictly in accordance with the terms and conditions prescribed in the Settlement dated February 21, 1992.

11. This Court is, however, not inclined to grant any direction as urged by the learned counsel for the petitioners to restore status quo ante as on August 26, 1993 with continuity of service or payment of any backwages to the petitioners until reinstatement. The scheme for absorption having been framed by the Respondent Bank, it is but appropriate that the petitioners need to be considered for permanent appointment only in accordance with the scheme as framed by the Respondent Bank and as evidenced by the Settlement dated February 21, 1992 arrived at under the provisions to the Industrial Disputes Act.

12. In the result, the Writ Petition is allowed in part and a direction shall issue to the respondents to consider the case of the petitioners for permanent appointment in the subordinate cadre within a period of two months from the date of receipt of a copy of this order in accordance with scheme prescribed in the Settlement dated February 21, 1992. No costs.