

Ms. Kalaivani A. and anr. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Feb-12-2002

Reported in : ILR2002KAR1558; 2002(2)KarLJ499

Judge : Kumar Rajaratnam and ;D.V. Shylendra Kumar, JJ.

Acts : [Constitution of India](#) - Articles 16 and 226; Karnataka Urban Development Authority Act, 1987 - Sections 13(2) and 13(3)

Appeal No. : Writ Appeal Nos. 4464 and 4465 of 1998

Appellant : Ms. Kalaivani A. and anr.

Respondent : State of Karnataka and ors.

Advocate for Def. : M.N. Ramanjaneya Gowda, Government Adv. and ;S. Basavaraj, Adv.

Advocate for Pet/Ap. : K. Subba Rao, Adv.

Judgement :

Kumar Rajaratham, J.

1. The appellants being aggrieved by the order of the learned Single Judge upholding the order of the respondent 2 in not extending the tenure as draughtsman have filed these writ appeals.

2. Both these appeals relate to a common order passed by the respondent 2 and accordingly a common order is passed in the writ appeals.
3. One Mr. P.V. Shivakumar, petitioner in W.P. No. 18523 of 1998 and one Ms. Kalaivani, petitioner in W.P. No. 19148 of 1998 have challenged the order of the respondent 2. dated 24-7-1998 (B.V. Shivakumar v. State of Karnataka and Ors., 1999(2) Kar. L.J. 342) , in not extending the tenure as Draughtsman in the Bangalore Metropolitan Region Development Authority (hereinafter referred to as 'BMRDA').
4. The facts very briefly are.--The appellant-Kalaivani belong to a Schedule Caste Community and was a diploma holder in Civil Engineering. The appellant-P.V. Shivakumar was also a diploma holder in Civil Engineering. Both of them were appointed as draughtsmen on a pay scale of Rs. 1520-40-1800-50-2300-75-2900 for a period of six months by an order dated 15-5-1996 passed by respondent 2-BMRDA. Both the appellants were sponsored by the employment exchange. The appointment was only for a period of six months. Subsequently respondent 2-BMRDA issued a corrigendum dated 2-7-1996 stating that the appellants would work on a consolidated salary of Rs. 3,850/-. Before that period was over their services were continued for a further period of one year on a monthly payment of Rs. 3,850/-. When that period was to expire the appellants filed a representation before the respondent 2-BMRDA seeking that they may be continued in service.
5. The Metropolitan Commissioner of respondent 2-BMRDA by its order at Annexure-G in W.P. No. 18523 of 1998 stated as follows:
- 'For the reasons stated in the preamble and for discharging the works of structure plan and other technical works pertaining to Bangalore Metropolitan Region, the services of the following staff have been continued in Bangalore Metropolitan .Region Development Authority.-
1. Ms. Kalaivani A. From 10-12-1997 to 31-3-1998;2. Mr. Shivakumar B.V. From 13-12-1997 to 31-3-1998;3. Ms. Sumangala From 24-11-1997 to 31-3-1998. After the expiry of the above period, their services will be continued for a period of six months from 1-4-1998 to 30-9-1998 in the office of the Bangalore International

Airport Area Planning Authority and out of the fund of Area Planning Authority a sum of Rs. 3,850/- per month will be paid. Thereafter no further extension will be given'.

6. Mr. Subba Rao, learned Senior Counsel for the appellants submitted that the appellants were employed on a regular basis on a particular pay scale as per Annexure-B in W.P. No. 18523 of 1998. He further submitted that they were selected through the employment exchange and appointed against the permanent post. It is further submitted that the appellants underwent training for a period of 1 month and subsequently by an order dated 6-4-1998 the appellants were deputed to the respondent 3-Bangalore International Airport Area Planning Authority (hereinafter referred to as 'BIAAPA') as per Annexure-G. The learned Counsel also pointed out that a letter was addressed to the Government by respondent 3-BIAAPA that the services of technical staff were required beyond 30-9-1998. It was further submitted that the respondent 3-BIAAPA having regard to the nature of work which is of a permanent nature the appellants ought to have been continued in service. It was further submitted that another person who was appointed on a contract basis is still being continued in service.

7. The learned Counsel for the appellants relied on the judgments of the Supreme Court in B.N. Nagarajan and Ors. v. State of Mysore and Ors., : (1967)ILLJ698SC and Bhagwan Shukla v. Union of India and Ors., : (1995)ILLJ726SC

8. The original appointment on a particular pay scale was on 15-5-1996. Immediately after that a corrigendum was issued on 2-7-1996 with the pay scale substituted by the words 'fixed pay of Rs. 3,850'. The appellants accepted the consolidated salary of Rs. 3,850/- per month without any demur and continued to work with the respondent 2. There was one more extension given on the same consolidated salary. On 6-4-1998 the services of the appellants were lent to respondent 3-BIAAPA as per Annexure-G in W.P. No. 18523 of 1998. Even the transfer to the Airport, Planning Authority was on a contract basis and was for a fixed tenure.

9. There is nothing on record to show that the appointment of the appellants was made against a permanent vacancy. Therefore, it cannot be said that any right will

accrue to the appellants by grant of an extension or by transferring the services of the appellants to the respondent 3 on the same terms and conditions of contract of employment. Once the work was over the appellants are bound to be relieved from service and no legal right accrues to an employee who is admittedly on employment on contract basis.

10. The learned Single Judge rightly held that it was specifically made known to the appellants that their employment as draughtsman was purely on contract basis on a consolidated salary to meet a particular exigency and once the contract was over there was no right for the appellants for regularisation or extension of tenure. While disposing of the writ petitions the learned Single Judge held that the very appointment of the appellants were against a non. est post and were ab initio void and without jurisdiction. The learned Single Judge made a reference to a circular dated 21-4-1997 at Annexure-6 and held that the appellants were appointed contrary to the circular. The circular reads as follows:

'As per the Government orders and the circulars issued by the Government, the appointments on contract basis and on daily wage basis are prohibited. However, it has come to the notice of the Government that several Urban Development Authorities and the Town Planning Authorities have been making appointments on contract basis and on daily wage basis and making fixed payments to the employees in violation of the Government instructions. This action is in violation of the rules and it has been informed that the officer concerned will be made responsible. Such illegal appointments have been causing losses to the Authorities. Hence, it is directed not to implement such illegal decision taken by the Commissioners and the Member Secretaries in the Meetings of the Authorities. In case such illegal decisions are taken in the meetings such decisions shall not be implemented and the report shall be made in this regard to the Government under the provisions of Section 13(2)(a) of the Karnataka Urban Development Authority Act. It is hereby informed that in case of default, the officer concerned will be made responsible and disciplinary action will be taken against him and the losses incurred by the Authorities will be recovered from such officer'.

11. The learned Single Judge after making a reference to the circular held that it will be incumbent upon the Chief Secretary to take action against the Metropolitan Commissioner of BMRDA on the basis of the circular to inspire confidence in the general masses. The strictures against the then Metropolitan Commissioner of the respondent 2 are extracted as follows:--

'17. Coming to the facts of the present case, as discussed above, the then Metropolitan Commissioner, who is now holding the post of Secretary-I, Urban Development Department, Government of Karnataka, has prima facie acted contrary to the statutory provisions and Government directives in giving employment to the petitioner and two other persons on unsanctioned posts and therefore it will be incumbent upon the Chief Secretary of the State of Karnataka to take appropriate action against the said erring officer keeping in view the above circular in order to inspire confidence in the general masses that even the persons holding high posts in administrative hierarchy are subjected to appropriate penalties for violations committed by them and the law equally applies to the common man as well as persons placed in higher administrative echelon'.

(emphasis supplied)

12. Mr. Basavaraj, learned Counsel for the respondent 2 justified the appointment of the appellants on contract basis and submitted that the observations of the learned Single Judge may be deleted as unwarranted and against the principles of natural justice. It was further submitted that BMRDA covers an area of 8,600 sq. kms. covering the districts of Bangalore, Urban and Rural, Malur Taluk of Kolar District. During the year 1995 the task of preparing the overall structural plan for the Bangalore Metropolitan Region was approved by the Authority in its meeting held on 23-6-1995 and the same was undertaken by the Authority. Due to the shortage of staff, some of the employees had to look after the functions other than for which they were appointed. While one head draughtsman of the Authority was also entrusted with the work of drawing section, the other head draughtsman had to look after the no objection cases of Kanakapura and Magadi Taluks which fall within the BMR. Under these circumstances, it was felt that the appointment of few persons on contract basis, only for a limited period i.e., till the completion of the

overall structural plan would be necessary. Accordingly, the administrative section of the Authority requested the employment exchange to send a list of candidates for the posts of one tracer and two draughtsmen with the requisite qualification for appointment on purely temporary basis.

13. It was further submitted that having regard to the nature of the appointment the then Metropolitan Commissioner placed the matter before the Authority for its consideration and the Authority in its resolution dated 11-9-1996 approved the appointments made by the Metropolitan Commissioner on temporary basis. It was also submitted that having regard to the approval given by the Authority headed by the Chief Minister and other ministers of his Cabinet it has to be construed that the circular dated 21-4-1997 was relaxed by the Government itself. It was further submitted that the reasons for the appointment of the appellants in BIAAPA are that the State Government in its notification dated 14-5-1997 extended the local planning area of BIAAPA by including additional 143 villages of Devanahally Taluk, 27 villages of Bangalore North Taluk and 67 villages of Doddaballapur Taluk. There was no posts of draughtsmen in the BIAAPA and the work load of the said Authority also increased after the State Government expressed its intention to build the International Airport at Devanahally. The work for which the appellants were appointed in BMRDA was nearing completion. Under these circumstances a letter was addressed by the then Metropolitan Commissioner to the Government seeking approval of the appointment of the appellants in BIAAPA. The said letter is dated 11-3-1998. (Annexure-8 to the affidavit). Since the matter was pending before the Government, official memorandum impugned in the writ petition dated 6-4-1998 was passed. It was also submitted that having regard to the decision of the Authority to approve the appointment of the appellants the circular dated 21-4-1997 shall be deemed to have been relaxed and having regard to the fact that no allegations of mala fide or abuse of power are alleged against the then Metropolitan Commissioner, the observations made at paragraph 17 of the judgment of learned Single Judge may be deleted especially as the then Metropolitan Commissioner was not heard in the matter.

14. The only question that arose for consideration in the writ petitions was whether the termination of the writ petitioners on a contract basis at the end of the contract

was justified in law. If the answer was yes, the writ petitioners would not be entitled to the relief sought for. No other question arose for consideration.

15. In the ultimate analysis it is not necessarily the knowledge of law that matters, but the application of that knowledge to the Us that is before us that advances the cause of justice. Even if one were to shut out a litigant from being given relief, since such a relief cannot be granted in accordance with law, one must have the courage to graciously say so without high-brow semantics. It is infinitely preferable for the Courts to confine themselves to the Us before it. No less no more.

16. The 2nd respondent is a creature of a statute. The Bangalore Metropolitan Region Development Authority Act, 1985 came into force on 29th October, 1985 published in the Gazette on 29th October, 1985. The object of the Act was for the Authority to provide planning, co-ordination and supervision, the proper and orderly development of the areas within the Bangalore Metropolitan Region and to provide for matters connected therewith. The Authority under the provisions of the Act consists of the following members.--

- (a) the Chief Minister of Karnataka who shall be the Chairman;
- (b) the Minister-in-charge of Urban Development who shall be the Vice-Chairman;
- (c) the Chairman, Bangalore Development Authority;
- (d) the Mayor, Corporation of the City of Bangalore;
- (e) the Chief Secretary to the Government of Karnataka;
- (f) the Divisional Commissioner, Bangalore Division, Bangalore;
- (g) the Secretary, Finance Department, Government of Kar-nataka;
- (h) the Secretary, Housing and Urban Development Department, Government of Karnataka;
- (i) the Secretary, Public Works Command Area Development and Electricity Department, Government of Karnataka;

- (j) the Secretary, Commerce and Industries Department, Government of Karnataka;
- (k) the Chairman, Bangalore Water Supply and Sewerage Board;
- (1) the Chairman, Karnataka Housing Board;
- (m) the Chairman, Karnataka Slum Clearance Board;
- (n) the Chairman, Karnataka Electricity Board;
- (o) the Chairman, Karnataka State Road Transport Corporation;
- (p) the Director of Town Planning, Government of Karnataka;
- (q) the Chief Conservator of Forests (General), Government of Karnataka;
- (r) the Chairman, Bangalore Urban Art Commission;
- (s) the Divisional Railway Manager, Southern Railway, Bangalore (with the consent of the Central Government);
- (t) the General Manager, Bangalore Telephones, Bangalore (with the consent of the Central Government);
- (u) three members appointed by the Government, representing Labour, Women and Scheduled Castes and Scheduled Tribes;
- (v) four members of the Karnataka State Legislature representing the Bangalore Metropolitan Region, appointed by the Government; and
- (w) four members from amongst the persons representing the local authorities in the Bangalore Metropolitan Region, appointed by the Government;
- (x) the Metropolitan Commissioner, who shall be the Member-Secretary.

17. The area of operation of respondent 2 covers nearly 8,600 kms. The task of preparing the overall structural plan of Bangalore Metropolitan Region was approved in its meeting held on 23-6-1995. Due to shortage of staff, some of the

employees have to look after the functions. One draughtsman was entrusted with the work of drawing section. Under these circumstances there was shortage of staff. The Administrative Section of the Authority requested the employment exchange to send a list of candidates for the posts of one tracer and two draughtsmen with the requisite qualification for appointment on purely temporary basis. A letter was also addressed by the respondent 2 to the Government seeking approval of the appointment of the appellants. The letter is dated 11-3-1998 at Annexure-8 to the Affidavit. Since the matter was pending before the Government no further extension was granted to the appellants. The temporary appointments of the appellants was approved by the full Board meeting consisting of the Chief Minister, Minister-in-charge of Urban Development (Vice-Chairman), Chairman, Mayor of the Corporation of the City of Bangalore, Chief Secretary to the Government of Karnataka, Secretary (Finance) and other members. The Board members of the Authority ratified the appointment of the appellants. By this it cannot be said that the circular (Annexure-6) prevails over the act of ratification done at the Board meeting which ratified the appointment of the appellants.

17-A. English version of Annexure-5 reads as follows.-

'Bangalore Metropolitan Region Development Authority

Office of the

Metropolitan Commissioner,

L.R.D.E. Building,

Ali Asker Road,

Opposite Hotel Palace,

Bangalore - 560 052.

No. BMRDA:EST:3:96-97 Dated 21-2-1996

Official Memorandum

Sub: Regarding the continuation of the temporary appointments.Reft(I) Official Memorandum of this office, No.BMRDA:EST:3:96-97, dated 5-5-1996.(2) Corrigendum of this office No. BMRDA:EST:3:96-97,dated 2-7-1996. Preamble:

Whereas, at present, two draughtsmen have been appointed on temporary basis for six months, as per the request made by the Joint Director of Town Planning and as per the order of the Metropolitan Commissioner, on the ground that it is not possible with the present staff of the Authority to complete the structure plan and such other town planning works.

In the meeting of the Authority held on 1-9-1996, at Item 10, it was decided to continue for the period of one year. Accordingly, the Metropolitan Commissioner has approved this subject at reference 2.

(emphasis supplied)

ORDER

For the reasons stated in the preamble, for the purpose of completing the structure plan and other town planning works, Ms. Kalaivani and Sri B.V. Shivakumar are continued from 10-12-1996 and 13-12-1996 respectively for one year on monthly payment of Rs. 3,850/- and the sanction is given to reimburse such expenses from the funds of the Authority.

-Sd-

for Metropolitan Commissioner,

Bangalore Metropolitan Region

Development Authority,

Bangalore.

Copies to:

1. Sri B.V. Shivakumar, for information.2. Ms. A. Kalaivani, for information.3. Employment Officer, Employment Exchange, Bangalore.4. Private Secretary, Metropolitan Commissioner.4. Accounts Officer, Bangalore Metropolitan Region Development Authority, Bangalore.6. Private files, -Sd-

for Metropolitan Commissioner,

Bangalore Metropolitan Region

Development Authority,

Bangalore, 23-2-1996'.

From this it is clear that the Authority decided to continue the services of the appellants for one year. It was only in these circumstances, the Metropolitan Commissioner had approved the decision of the Authority and sanction was granted to reimburse such expenditure from the funds of the Authority. This was done not by the Metropolitan Commissioner suo motu but on the decision made by the Authority on 1-9-1996. Therefore, the decision was made not by the Metropolitan Commissioner but by the Authority.

18. No reference has been made by the learned Single Judge to these aspects. In the facts and circumstances of this case whether the circular dated 21-4-1997 is deemed to have been relaxed is a moot question which does not fall for adjudication in the writ petitions. It is also common ground that there were no allegations of mala fide or abuse of power. The Board of respondent 2 consisting of the Chief Minister, Minister-in-charge of Urban Development, Chief Secretary and others had in fact ratified the appointment of the appellants as per Annexure-5 to the affidavit. Under Section 3(3) the Metropolitan Commissioner was only a Member Secretary of the Board when the decision was taken. Undoubtedly the appointment was made and ratified not by the Metropolitan Commissioner, but by the whole authority. Admittedly, the then Metropolitan Commissioner against whom remarks were made, was not heard before the order was pronounced.

19. The Supreme Court in *Braj Kishore Thakur v. Union of India and Ors.*, while dealing with an application for expunction of remarks pronounced as follows.-

'2. Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher Courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of Courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that 'a Judge who has not committed any error is yet to be born' '.

20. Accordingly, without meaning any disrespect to the learned Single Judge and in the interest of justice and fairness we expunge all the offending remarks made against the respondent 2 in the order dated 24-7-1998. As stated earlier we concur with the finding of the learned Single Judge that the appellants would not be entitled to any relief.

21. In the facts and circumstances of the case, it would be open to the appellants to make a representation for being considered for appointment as draughtsman on a regular basis. If such a representation is made the respondents may consider the same if such a vacancy arises in accordance with law, after giving due weightage to their services.

22. With these observations the writ appeals are disposed of.

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