

Ramesh Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-02-1995

Reported in : 1995(1)ALT(Cri)510; ILR1996KAR85; 1995(6)KarLJ200

Judge : M.F. Saldanha, J.

Acts : Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 - Sections 173

Appeal No. : W.P. Nos. 19653 to 19659 of 1990

Appellant : Ramesh

Respondent : State of Karnataka

Advocate for Def. : Chidananda Ullal, Govt. Adv.

Advocate for Pet/Ap. : V. Lakshminarayana, Adv.

Disposition : Petition succeeded

Judgement :

ORDER

Saldanha, J

1. This Petition involves a neat controversy in so far as the petitioners were admittedly appointed on a temporary basis around the years 1987-88 by the

respondent No. 1 Zilla Parishad as Typists, Stenographers etc. It was their contention that they approached the Court in the year 1990 through this Petition, that their continuance in service has been recommended by the Zilla Parishad but more importantly, that they have been continuously in a state of insecurity because of the fact that they were being reappointed for various temporary periods with a break on each occasion thereby creating a situation whereunder the petitioners would be discontinued at any time. Secondly, what was pointed out by them was that insofar as they were effectively employed on a daily wages basis, that their aggregate emoluments were far less than what they would have normally received for the same work had they been holding a regular post. The two fold relief that is claimed in the Petition is that their services should not be terminated and secondly, that they should be awarded or paid the salary that is equal to that which a regular appointed employee would receive insofar as they are performing the same job functions and would therefore be entitled to such parity on the basis of the principle of equal pay for equal work. Notice was issued to the respondents and the terminations were stayed after which, the Petition has come before the Court only today. In the meanwhile, some of the petitioners have secured employment elsewhere and therefore the relief that is prayed for today is limited only to petitioner Nos. 3, 5 and 7.

2. The respondents have filed their reply in which they point out that admittedly the employments were for temporary periods of time and the contention taken up is that the employment was made by the Zilla Parishad in which body there vested no power to make such appointments. The learned Government Advocate who represents the respondents therefore submitted that the petitioners are totally disqualified from any relief as no rights can flow from the original appointment order. In support of his contention he drew my attention to Section 173 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 and in particular to the amended Section (4) of Section 173 whereunder the Government has prescribed a regular machinery in whom the powers of recruitment are vested. Admittedly, when the petitioners were employed, this machinery was not in existence but the learned Government Advocate submits that the power at that time vested in the Government insofar as it was only open to the Government to either delegate its power or more

importantly, to send various employees on deputation or to otherwise regulate the manner in which the Zilla Panchayat employees were to be recruited. In sum and substance, the learned Government Advocate submitted that it is impermissible to uphold the contention raised by the petitioners that they are entitled to any regularisation since the source of their employment is irregular. Reliance was sought to be placed on the Decision of the Supreme Court reported in AIR 1988 SC 464, M.S.R.T.C. v. Gopinath Gundachar, wherein, the Supreme Court disallowed the claim of an employee of the Mysore State Road Transport Corporation who had been given a temporary and adhoc appointment and who contended that he had secured rights to the post and therefore resisted the advertisement being issued for recruitment of other persons.

3. The main contention put forward by the petitioners' learned Advocate is that the Courts have examined similar situations over a period of time and that they have, as of necessity, taken into account the situation that prevailed during the interim period when there is nobody entrusted with the power of recruiting the employee. The petitioners learned Advocate drew my attention to the observations of the Supreme Court in the Decision reported supra as also to the Decision reported in : (1961)ILLJ652SC T., Cajee v. Jormanik Siem; : (1982)ILLJ465SC , V.T. Kanzode and Ors. v. R.B.I. and Anr.. He also drew my attention to the observations of the Supreme Court to the Decision reported in : (1978)ILLJ197SC , Ramesh Prasad Singh v. State of Bihar and Ors. wherein the Supreme Court had occasion to uphold a situation whereby a temporary post has been created and to also observe that in situations of such a type, that the principle of equal pay for equal work could still be applicable. What is submitted on the basis of these Decisions is that admittedly, at the point of time when the petitioners came to be appointed, the Government had not set up the requisite machinery for recruitment of employment to this Zilla Parishad. The Zilla Parishad being an independent statutory authority which is required to perform certain functions necessarily requires the assistance of employees. Petitioners' learned Counsel submits that if for this purpose they have made appointments, that the Courts have upheld the power vested in that body to make such appointments. He further submits that the appointments are necessarily made on the basis of suitability, qualification etc. and if the record indicates that the employees did meet the requirements, then the prefix to those

orders that they are temporary or that they are for a limited period of time will have to be ignored. Also, what he submits is that if by implication the orders will have to be construed as a due exercise of power and regular appointment, then the petitioners would be entitled to claim the regular salaries that are attached to those posts.

4. What has been culled out from the aforesaid Decisions is that Courts have to take cognizance of the interim period that elapses between the setting up of an authority or the period that elapses prior to the promulgation of the necessary Rules, the Regulations and the functioning of a duly constituted recruitment body. The Courts have accepted the position that during this period the authority concerned which is invested with the power of administration has inherent in it the power of appointing people who are required to assist in such administration. The interim appointments that are therefore made depending on the circumstances, in appropriate cases are not to be questioned as having been made for want of due authority. This in sum and substance is the law that is crystallised on the basis of these and several other Decisions. In the present case, the learned Government Advocate submits that the Government did not neglect its duties but had issued a specific direction to make temporary or adhoc appointments until the regular procedure could be followed. He states that the Zilla Parishad followed these directions and made the temporary appointments and that therefore the status of the petitioners would only be that of temporary appointees. To my mind, the fallacy in this argument is that if the Zilla Parishad to run its own administration required personnel and the Government did not provide them but on the other hand instructed the Zilla Parishad to make the appointments but prefixed that they would have to be on a temporary basis, that the position becomes worse for the respondents in so far as this is a clear delegation of authority by the Government. Under these circumstances, it would not be possible to even argue that the Zilla Parishad had no power invested in it when making the appointment. The only question that arises is as to whether the Government was within its right to issue the direction that the appointments would only be temporary and on an adhoc basis because this was as the learned Government Advocate submitted a stop gap appointment. I accept that in numerous cases, it is necessary to make such transitory appointments, as also pointed out, on a temporary basis for a specific

period of time. The question arises whether the present appointment will have to be construed as such. The initial appointments were temporary appointments under the powers delegated by the Government and there is no difficulty with regard to that position. Those appointments were continued right upto the time when the petitioners approached this Court. What the Court needs to take special note of is the fact that if the real character of the appointments was temporary or stop gap, then they could extend only over a short duration of time. The fact that an appointment extends over a reasonably long period of time would change the character of the appointments atleast as far as rights flow or accrue to the concerned employees. I concede the position as pointed out by the learned Government Advocate that the appointments were initially temporary but the question arises as to what is the effect of continuing such appointments as in the present situation over a long period of time. As far as this aspect of the matter is concerned, I do not need to labour because it is now well settled law that the Court have in numerous cases where the appointees have been found to be suitable and have been performing their jobs satisfactorily held that the employees concerned are entitled to claim regularisation in the post. It is that situation that has once again arisen in the present case.

5. Having regard to both the position in law and on facts, I have no hesitation in holding that the present petitioners are entitled to the reliefs claimed for by them. The Petition is therefore allowed. The respondents are directed not to terminate the services of three petitioners having regard to the rights that have now accrued to them, their services will have to be regularised which will be done with immediate effect. The petitioners shall therefore be entitled to receive the salary and emoluments attached to the post held by them with effect from 1.8.1995.

6. The Petition accordingly succeeds. Rule is made Absolute. In the circumstances of the case, there shall be no order as to costs.