

C. Chandravathi Vs. Managing Director, Andhra Pradesh State Essential Commodities Corporation Ltd.

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Court : Andhra Pradesh

Decided On : Aug-08-1995

Reported in : 1995(3)ALT188

Judge : B. Sri Atchuananda Swamy and ;M.N. Rao, JJ.

Appeal No. : Writ Appeal No. 695 of 1989

Appellant : C. Chandravathi

Respondent : Managing Director, Andhra Pradesh State Essential Commodities Corporation Ltd.

Judgement :

ORDER

M.N. Rao, J.

1. This appeal is from the judgment of a learned single Judge in Writ Petition No. 14271 of 1988 dismissing the writ petition filed by the appellant herein seeking a mandamus to be respondents declaring the order passed on 25-6-1988 regularising her services as Typist in the respondent-Corporation with effect from 5-1-1988 as illegal and for a consequential direction to regularise her services from the date of her appointment i.e. 9-11-1982.

2. The petitioner was sponsored by the Employment Exchange pursuant to a requisition given by the respondent-Corporation for recruitment to the post of Typist. In column 3(c) of the form notifying vacancies the qualifications required are specifically mentioned as: '(a) Matriculation or equivalent examination with Typewriting Higher Grade; and (b) Preference being given to those who possess Shorthand Lower Grade or Gradation'. After interviewing the petitioner along with the other sponsored candidates and judging her merit on comparative basis, the authorities had selected her and issued an order of appointment in her favour on 4-11-1982. The qualifications possessed by her at the time when she was interviewed were:

(1) Pass in SSLC;

(2) Pass in English Typewriting Higher Grade;

(3) Pass in Lower Grade Shorthand; and

(4) Lower Grade Telugu Typewriting. It is evident that she possessed one of the preferential qualifications, namely, a pass in Lower Grade Shorthand. She joined the service as Typist on 9-11-1982 in the scale of Rs. 425-650. The order of appointment dated 4-11-1982 specifically says that she was appointed 'on temporary basis in the scale of Rs. 425-10-455-15-650 plus allowances admissible under the Rules of the Corporation from the date of joining the Corporation. She will be on probation for a period of one year from the date of joining the Corporation ...' The prescribed period of one year probation was over by 8-11-1983 but no order was passed declaring her probation. In order to improve her qualifications she appeared for B.A. degree examination conducted by the Andhra Pradesh Open University in August 1987 in consequence of which the degree was awarded to her on 5-1-1988. It appears that her application for regularisation with effect from the date of first appointment was rejected by the Corporation on 12-9-1988. By the impugned order dated 25-6-1988 she was informed that her services would be regularised only with effect from 5-1-1988, i.e., the date on which she was awarded the Bachelor's Degree.

3. Seeking a mandamus that her services should be regularised with effect from the date of the first appointment, she filed Writ Petition No. 14271 of 1988 which was dismissed by the learned single Judge taking the view that her appointment was purely temporary and her appointment could not deprive the right of regularisation of services of others who were appointed on daily wage basis and that she did not implead them as parties although the order which she was challenging would adversely affect their interests. Aggrieved by that the present writ appeal was brought.

4. It is the contention of Shri Jagapathi, the learned Counsel for the appellant, that when the appellant was placed on probation she was entitled to have her services regularised and the failure on the part of the Corporation to pass a formal order of regularisation should not deprive her of the services rendered between 9-11-1982 and 5-1-1988. The view taken by the Corporation that she become eligible for regular appointment with effect from the date when she was awarded the Bachelor's Degree is clearly unsustainable as the qualification prescribed at the time of her appointment to the post of Typist was not graduation. Countering these contentions, Shri Subba Reddy, learned Standing Counsel for the Corporation, has urged that the appointment of the appellant was only on temporary basis which would not confer any rights on her to seek regular appointment. The qualification prescribed being graduation and as the appellant came to acquire that qualification only on 5-1-1988 she was not entitled to seek regularisation with effect from a date anterior to 5-1-1988.

5. After considering the rival contentions, we are of the view that the writ appeal must succeed. From the appointment order it is clear that the appellant was placed on probation. No doubt, it appears from the submissions made by the learned Counsel for the Corporation that there were no rules at the time when the appellant was appointed. But that cannot deprive the appellant of the right she acquired to have her services regularised. The respondent-Corporation was originally part of the Andhra Pradesh Civil Services Corporation. It was only on 21-4-1981 that the respondent-Corporation was formed. At the time of its formation, it is not in dispute, there were no rules governing the service conditions of the employees. No order was issued by the respondent-Corporation that the

conditions of service of its employees would be governed by the regulations framed by the A.P. Civil Supplies Corporation. It is a settled legal position that before an appointment could be made without there being any rules, in other words, in the absence of rules a valid appointment could be made - B.N. Nagarajan v. State of Mysore 0043/1966 : (1967)ILLJ698SC . That is what happened in the present case.

6. The appointment of the appellant although was described as temporary, having regard to the fact that she was considered among with other persons sponsored by the employment exchange and on the assessment of her merit on comparative basis she was selected and placed on probation, it must be inferred that against a regularly existing vacancy she was appointed. The mere label given to her appointment that it was temporary is not conclusive or decisive of the nature of the appointment. It was only in December 1983 the Corporation had adopted by a resolution that the Regulations governing the employees of the Andhra Pradesh Civil Supplies Corporation would govern its employees also. As by December 1983 the appellant had completed the prescribed period of one year probation, the Corporation was in a state of doubt whether or not to pass formal orders regularising her services. There was some reason for the delay on the part of the Corporation to take immediate action. There were certain employees appointed on daily wage basis and all of them, we were told, were graduates. The Corporation wanted to regularise their services since they were not sponsored by the employment exchange. After a good deal of correspondence with the Government, the Corporation succeeded in persuading the Government to accept their request. Accordingly, the Government issued an order on 30th June 1982 permitting the regularisation of the services of all the daily-wagers and exempting them from being sponsored by the employment exchange. As a consequence of the Government's Order with effect from 8-10-1982 all the daily-wagers were appointed on regular basis.

7. The learned Judge proceeded on a mistaken assumption that if the claim of the appellant was allowed for regularisation it would adversely affect the interest of daily-wagers. It must be seen in this context that the appellant had joined duty on 9-11-1982 whereas the services of the daily-wagers were regularised with effect

from 8-10-1982, i.e., much earlier than the date of joining by the appellant. The claim of the appellant for regularisation with effect from 9-11-1982, therefore, would not in any manner adversely affect the interests of the daily-wagers.

8. The other assumption based upon which the learned Judge negated the contention of the appellant, namely, that she was appointed on temporary basis, in the particular circumstances of the case, is unsustainable. When the appellant was placed on probation, as we have already stated supra, the question of treating her appointment on temporary basis would not arise. Only regularly appointed employees would be placed on probation but not others who were appointed on temporary basis. In any event, a temporary appointment placing the incumbent on probation would not last for so many years. The decision of the Supreme Court in *Municipal Corporation Raipur v. Ashok Kumar Misra* 1991 II CLR 826 (S.C.) relied upon by Shri Subba Reddy, learned Counsel for the Corporation, is not relevant for deciding the question at issue. In that case, there was a rule expressly postulating that the period of probation was subject to extension by order in writing for another period of one year and the person put on probation was required to pass the prescribed examinations in order to have his/her services regularised. In the context of the fact-situation of that case it was ruled by the Supreme Court thus:

'Mere expiry of the initial period of probation does not automatically have the effect of due confirmation and the status of a due confirmation of the probation. An express order in that regard only confers the status of an approved probationer.'

In *State of Punjab v. Dharam Singh* : [1968]3SCR1 a Constitution Bench of the Supreme Court had taken the view in a case where the service rules prescribed a certain period beyond which the probationary period could not be extended and an employee placed on probation was allowed to continue in that post after completion of the maximum period without an express order of confirmation:

'In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.'

In the present case, although there were no rules governing the appointment, the very fact that the period of probation was prescribed as one year and no conditions were imposed to enable the employee to claim regularisation, the necessary inference that must follow is that, in the absence of an adverse order within a reasonable period after the completion of the prescribed period of probation, the employee was entitled to claim that he/she had successfully completed the probation.

9. For these reasons, the writ appeal is allowed. The order of the learned single Judge is set aside and the writ petition is allowed with a direction that the services of the appellant (writ petitioner) shall be regularised in the cadre of Typist with effect from 9-11-1982. She is also entitled for all consequential benefits including the claim for promotion to the higher post reckoning her seniority with effect from 9-11-1982, et cetera. No costs.

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