

Ajith Vs. State of Kerala

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Court : Kerala

Decided On : Feb-01-2005

Reported in : 2005(2)KLT814

Judge : M. Ramachandran, J.

Acts : Industrial Disputes Act; Cooperative Societies (Amendment) Ordinance, 1995 - Ordinance 10

Appeal No. : O.P. No. 34639 of 2002

Appellant : Ajith

Respondent : State of Kerala

Advocate for Def. : B.S. Krishnan, Sr. Adv. and; K. Anand, Adv.

Advocate for Pet/Ap. : A.X. Varghese, Adv.

Judgement :

M. Ramachandran, J.

1. In paragraph 2 of the Original Petition, the petitioners have given the details of their engagement as Hatchery Workers under the Matsyafed--2nd respondent (hereinafter referred to as Federation), in their various Units. Excepting the 6th respondent, others have been served with notice and because of the presence of

the second respondent, I do not think this position is to be treated as a defect so as to stall adjudication of the issue. The claim urged is one for regularisation of service.

2. The contention is that after imparting six months training in Hatchery Operation by technicians, who had been specialised and brought even from abroad, the petitioners have been engaged for work in Hatcheries of the second respondent, in different locations. Statements indicate that the last of them was engaged on 20.4.1995 and rest of them had commenced service from earlier dates, in some cases, from February 1993 onwards. Mr. A.X. Varghese, counsel for the petitioners, submits that such service was uninterrupted, though termed as casual.

3. It is further pointed out that later on because of austerity measures, there were restrictions in employing workmen on casual basis, and by Ext.P1 dated 7.8.2001, the Federation had advised the District Officers that all personnel, who had been engaged on daily wages, were to be terminated on completion of 179 days of service. Such engagements, were also directed to be restricted to absolute minimum.

4. Thereafter, an office order was issued on 17.8.2001 as Ext.P5, and so far as it is relevant, an important condition incorporated therein, had been highlighted as following:

'All personnel who are engaged in your Unit on or after 29.4.1995 on Daily Wage/Contract/ Piece rate basis beyond 179 days should be terminated with immediate effect and compliance reported.'

This was followed by Ext.P2 communication, which in fact was on a review of the earlier orders on the subject. Details had been called for. A Circular which followed on 7.8.2002 (Ext.P3) in peremptory terms directed for termination of casual workers on completion of their period of contract and the vacancies were to be filled up only through Employment Exchange with a stipulation that they will not be permitted to continue beyond 179 days. However, according to the petitioners, these pertained to personnel who had come to be engaged after 25.4.1995 alone. The text of the Circular could be extracted herein below:

'The Auditors and Registrar of Fisheries Co-operatives have pointed out that the engagement of provisional hands after the Public Service Commission notification is against the rules and provisional appointment shall be made only through the Employment Exchange.

In these circumstances it is hereby directed that those who are engaged on provisional basis after 25.4.1995 should be terminated on completion of their present period of contract. The vacancies hereafter should be filled up only through Employment Exchange and they should not be allowed to continue beyond 179 days.'

5. Petitioners also refer to the recommendatory steps taken by the Units-in-charge. According to them, services of persons similarly situated like them were essential for running the establishment. Hatchery Operations were a specialised field and skills could have been acquired only after training coupled with experience, and fresh Employment Exchange hands perhaps might have been ill-suited, taking notice of the work expected of them, relating to prawn breeding.

6. Budget proposals for the year 2002-2003 and the Action Plan for the Personnel Division of the Federation, as could be seen from the extracts produced as Ext.P6, dealt with the issue of regularisation of temporary employees. Paragraph 4 thereof is to the following effect:

'4. Regularisation of Temporary Employees.

Some of the employees taken in the Federation's Production Units, Hatcheries & Farms on temporary basis are continuing in service for several years. These personnel have acquired rich experience and expertise in their work. Regularising them in service would be in the interest of the Federation. Sanction of Government is essential for regularising temporary hands as Government has ordered that any new appointments in Apex Societies will be approved only if the proposal is cleared by a committee consisting of the Principal Secretary (P & ARD) and Secretary (Expenditure).'

7. The complaint of the petitioners is that no steps are being taken consequent to the above proposal. The Original Petition was filed seeking for the relief of regularisation, and the learned counsel for the petitioner had highlighted principles, which supported their cause. Observations made by the Supreme Court, while such claims are to be considered, are cited. The argument is that in so far as they had commenced service prior to 25.4.1995, they are entitled to a special consideration including regularisation. The significance of the said date is that by the amendment brought in by the Cooperative Societies (Amendment) Ordinance No. 10 of 1995, all appointments of officers and servants of apex level and district level Societies were to be made from the select list of candidates furnished by the Kerala Public Service Commission. This had been the law from 25.4.1995 and the petitioners contend that as they had been engaged on prior dates after due training and their term of engagement was not for any specified periods, as could be gatherable from Exts.P3 and P5, the Federation always had drawn a distinction as between the rights of persons who were engaged prior to the said date and after the date of the Ordinance. This should have been translated to solid steps.

8. Mr. Varghese refers to the principles for regularisation of employees, spoken to by the decision of the Supreme Court in *Jacob M. Puthuparambil v. Kerala Water Authority*, 1990 (2) KLT 673 = AIR 1990 SC 2228, as also the decision of this Court in *Kalistus v. State of Kerala*, 1996 (2) KLT 110. The later case pertained to the self same organisation.

9. A counter affidavit has not been filed by the respondents. Postings of the case indicate that specific opportunities were given to the Federation for this purpose. Mr. Anand, standing counsel for the second respondent, submits that he has instructions to oppose the application, but satisfactory explanation is not forthcoming as to the absence of an affidavit. It has therefore to be taken that the averments regarding the nature of engagement, the training and the pattern of work and regularity in such association are to be deemed as not controverted.

10. The Supreme Court as well as this Court have examined the claims of persons, who are engaged on temporary and provisional basis, in the matter of relief of regularisation in diverse cases. It appears that the employees have to be

reassured of a position that their ultimate interest will be taken notice when there is continued engagement and public sector undertakings are not to discard them after utilising the best part of their life. In later decisions, there has been caution suggested, whereby it is declared that such Corporations are to ensure that benefits are not to be conferred to persons blindly. In the matter of public employment, where opportunity was not afforded, for persons to participate in such selection, a person is not to be permitted to enjoy a benefit only for the chance that he got an engagement. A gifted opportunity for such employment therefore should not have resulted in denying claims of persons standing in the queue for public employment.

11. Reference was made by the counsel for the second respondent to the decision of the Supreme Court in *Delhi Development Horticulture Employees' Union v. Delhi Administration*, (1992) 4 SCC 99. The Court had emphasised how the judicial sympathy could boomerang upon the purpose for which such schemes were framed. The Court had made similar observations in *M. D., U.P. Land Development Corporation and Anr. v. Amar Singh and Ors.*, (2003) 5 SCC 388. It had been held that once employees were appointed for the purpose of a Scheme, they do not thereby acquire any vested right to continue after the project is over. It is also relevant to note that a person appointed as a daily wager holds no post, and thus may not be entitled to claim the benefit of automatic regularisation. Reference may also be made to *State of Himachal Pradesh v. Nodha Ram*, AIR 1997 SC 1445, which held that when a project is completed and closed due to non-availability of funds, the employees have to depart along with closure of the activities. In view of the submission of Mr. Anand that the Units, to which the petitioners were engaged, are understood to have been closed down or on the verge of closure, being almost in the nature of project taken up by the Federation, straight away the claims may not be sustainable. It is also to be noticed that the decision in Jacob's case (cited supra) itself has been explained in later decisions (See *Director, Institute of Management Development, U.P. v. Pushpa Srivastava*, (1994) 4 SCC 33 and *Aswani Kumar v. State of Bihar*, (1997) 2 SCC 1).

12. The learned counsel for the second respondent also urged that the High Court will be ill-equipped to come to embark on an enquiry and decision upon the issue

of regularisation. Basically factual details regarding the requirement are to be taken notice of before an order for regularisation is passed. Perhaps, according to him, this could have been done only by adjudication by an Industrial Tribunal.

13. It has to be noticed that the claim of the petitioners is that they were in employment from 1993 onwards. This is not controverted. The second respondent is an Authority, although a Co-operative Society, and the manner and method in which the petitioners were inducted and continued would reveal that these were not casual engagements. Change in the method of recruitment had been brought about only in the year 1995 and if we go by the claims of the petitioners, they will be entitled to the benefit of Chapter V-A of the Industrial Disputes Act. The issue of regularisation stems from this background and it may not be equitable to drive them to a Tribunal, and start proceedings de novo. Arbitrariness in the matter of employment as well as termination, are to be avoided, as far as possible. It is also necessary to be noticed that there is a distinction drawn between the engagement of persons before 25.4.1995 and thereafter. Simultaneously, I cannot also ignore the submission of the learned counsel for the Federation that the engagement of the petitioners was for projects and perhaps it may not be possible for them to continue indefinitely. It will be illogical to place a burden on any establishment without understanding the possible benefit and the impact, as a hefty salary bill definitely affect its health, and ultimately its usefulness to the Society.

14. Therefore, demand of persons like the petitioners for continued engagement as regular hands has to be meticulously examined before they are permitted to become a part of the establishment. According to me, the issue has to be decided by an independent person. The Managing Director being part and parcel of the Federation, need not be invested with the duty. It may be possible for the Government to decide as to the eligibility of the petitioners or any of them for regularisation, with reference to their date of engagement, the requirement of the different Units in which they were so engaged, taking notice of whether such engagement was continuing during the course of the Original Petition and whether the regularisation will be advantageous to the institution concerned.

15. After taking notice of the relevant aspects, I direct that the Secretary, Department of Fisheries should come to a decision as to whether the request for regularisation is justified. If the claims are tenable, the petitioners should be given the benefit to the extent possible, and it may be done at his discretion. The Units are to be independently considered for this purpose, and the claims need not be clubbed together. In case there are persons similar to the petitioners, having equal or superior claims, they are also not to be left out.

16. I direct that notice of hearing in this regard may be published in all the Units to which the petitioners are attached. A decision has to be taken within a period of three months from the date of receipt of a copy of this judgment.

The Original Petition is disposed of with the above directions.

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