

Kalistus Vs. State of Kerala

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Court : Kerala

Decided On : Jan-23-1996

Reported in : (1997)ILLJ6Ker

Judge : K. Narayana Kurup, J.

Acts : Merchant Shipping Act - Sections 150; [Constitution of India](#) - Article 226

Appeal No. : O.P. No. 11435/1991-J

Appellant : Kalistus

Respondent : State of Kerala

Advocate for Def. : A.V.M. Salahudeen, Govt. Pleader,; B.S. Krishnan and; P.

Advocate for Pet/Ap. : K.R. Kurup, Adv.

Disposition : Petition allowed

Judgement :

K. Narayana Kurup, J.

1. The petitioners 1 to 22 in this Original Petition were originally appointed in the Kerala Fisheries Corporation Ltd., a fully owned Kerala Government undertaking as Skipper, Fishing Engineer, Deckhand and Assistant Engineer etc. on various dates from 1975 onwards. Consequent on the heavy loss suffered by the Kerala

Fisheries Corporation the Government vide G.O. Ms. No.7/84/TF & PD dt. January 27, 1984 ordered the formation of Co-operative Societies with the Fisheries Welfare Societies as primary members and at State Level Apex Federation, called 'Kerala State Co- operative Federation for Fisheries Development Ltd.' (MAT-SYAFED). It was ordered in this G.O. that simultaneous with the establishment of the Co-operative Organisation and functions of the State Public Undertakings in the Fisheries Sector, namely, Kerala Fisheries Corporation Ltd. etc. will be taken over by the new Organisation namely, Matsyafed. According to the petitioners, the Kerala Fisheries Corporation was accordingly wound up and its entire assets including deep sea Fishing Trawlers were transferred to the Matsyafed. The assets and liabilities were later assessed and published as on March 31, 1988 by Ext. P2 Government Order, G.O.P. No. 28/88/F & PD dt. July 14, 1988. The Government finalised the process of transfer as a result of which the Nylon Net factory at Ernakulam; the 4 deep Sea Trawlers; the Fish Meal Plant at Kozhikode; the Canning & Freezing Plant at Cochin etc. were transferred to Matsyafed since these units are viable and profitable. Various other items were also transferred to the Matsyafed. In regard to the employees of the Fisheries Corporation Ltd., G.O.P. 28/88 dt. July 14, 1988 also made certain decisions. The 107 employees working in the units, who were transferred to Government in 1977 were already absorbed by the Government. Besides this, by another order G.O. Ms. No.4/88/F&PD; dt. February 20, 1988 the Government absorbed 40 persons from the Kerala Fisheries Corporation. Besides all these, the first respondent agreed to take over the pension liabilities of all the retired employees of the Kerala Fisheries Corporation also. Some of them were duly retrenched after receiving the retrenchment compensation and other benefits. Thereafter the Government had discussions with the Trade Union Leaders of the Kerala Fisheries Corporation and ultimately the Government decided to take all the retrenched persons in the service of any of the agencies of the Government such as Matsyafed, Welfare Fund Board and Campuram Primary Co-operative Society etc. The remaining employees of the Kerala Fisheries Corporation were given option to have certain benefits on voluntary retirement. Those who were not prepared to have the option exercised for voluntary retirement were ordered to be absorbed in the Matsyafed or in the Kerala Fishermen's Welfare Fund Board or Campuram Fisheries Co-

operative Society or in any one of the 81 Fisheries Development Welfare Co-operative Societies. Thus, according to the petitioners, the 222 members of the Staff of the Kerala Fisheries Corporation were either absorbed in any of the above mentioned institutions as permanent employees or in the Government Department itself except those who voluntarily opted for retirement after receiving certain benefits as specified in Ext. P2 Government Order. As far as the petitioners were concerned, they could not be absorbed in the Matsyafed or in any other institutions as permanent employees. On the contrary, they continued to serve the Matsyafed on yearly contract basis.

2. As already noted, petitioners 1 to 22 were originally appointed in the Kerala Fisheries Corporation Ltd. as Skipper, Fishing Engineer, Deckhand and Assistant Engineer etc., on various dates from 1975 onwards. Petitioners 23 to 30 were appointed on different dates during 1989-90 in the Matsyafed in different posts on yearly contract basis. The various service details of the petitioners regarding joining time in the Fisheries Corporation, their status and later their appointment in Matsyated with reference to dates, category etc.

Name

Joining time in KFC

Category(Status)

Date of joining inMatsyafed & Section

Category (Status)

1.K.P. Kalistus

i-6-1978

Asst.Engineer

Fleet Section

Asst.Engineer

2. T.A. Joesph

28-8-1978

Deck hand

-do-1-1-1989

Jr. Skipper

3. K.S. John

14-6-1978

FishingEngineer

FleetSection

Deckhand

4. M.D. Velappan

3-6-1978

Deck hand

-do- 1-1-1989

Deck hand

5. K.R. Chandran

28-2-1987

Cook

-do- 1-1-1989

Deck hand

Pillai

6.K.K. Sadanandan

12-6-1978

Deck hand

-do- 1-8-1989

Jr. Skipper

7. D. Varghese

10-9-1981

Asst.Engineer

-do- 1-1-1989

Asst.Engineer

8. K. Jacob

23-7-1981

FishingEngr,

-do- 1-1-1989

FishingEngineer

Xavier

9.K.M. Manoharan

14-6-1978

Skipper

-do- 1-1-1989

Skipper

10.V.S. Ramesh Babu

10-6-1978

Asst.Engineer

-do- 1-1-1989

A.E.

11.M. Mohanachandran

28-8-1978

FishingEngineer

-do- 1-1-1989

FishingEngineer

12.V.Vasudharan

3-6-1978

Skipper

-do- 1-1-1989

Skipper

13.C.C.Jossy

5-4-1976

Deckhand

-do- 1-1-1989

Skipper

23-9-1978

promoted as Jr. Skipper

14.T.V. Gopinathan

14-6-1978

Deckhand

Fleetsection

Deckhand

15. K.D. Subban

28-9-1984

Oilman

-do- -8-1989

Oilman

16.S. Thankappan

19-3-1979

Skipper

-do--1-1989

Skipper

17.M.J. Thomas

17-11-1984

Oilman

-do--1-1989

Oilman

18.Stephen Luiz

3-6-1984

Oilman AE from

-do--1-1989

Asst.Engineer

10-4-1978

7-4-1984

-do--12-1980

Deck hand

19.M.P. Balachandran

11-7-1978

-do--1-1989

Jr.Skipper

20.Lenus Casper

11-7-1988

DeckhandJr. Skipper from 5-4-

-do- 1-1-1989

Deckman

21-11-1982

1989

-

21.S. Kamalanandanath-

Deckman

-do- 1-1-1989

Deckhand

22.M. Muraleedharan

20-11-1975

Deckhand

-do- 1-1-1989

JuniorSkipper

23.E.J. Joesph

-

-

-do-1-4-

Deckhand

24.C.V. Sreenivasan

-

1990(sic)

Oilman

25. A.K. Satheesh Babu

-

-do-10-9-1989

26.M.A. Simon

-

-

Fleet Section

Deckhand

27. Sajee Samuel

-

-

-do- 1-4-1990

Deckhand

28. P.V. Antony

-

-

-do- 10-12-

Deckhand

29.M. Sukumaran

-

-

1989(sic)

Cook

30.V.N.Hariharan

-

-

-do- 1-8-1989

Deckhand

-

-do- 1-4-1990

Ext. P3 is the proceedings issued by the Managing Director, Kerala Fisheries Corporation granting extension of contract of service to the 28th petitioner for a period upto March 31, 1982 on the same terms and conditions as agreed upon in the Memorandum of Agreement executed on July 11, 1979. Ext. P4 is the appointment order issued to some of the petitioners by the Managing Director of the Kerala Fisheries Corporation.

3. The point highlighted by the petitioners in this original petition is that they are entitled to get their services regularised either in the Matsyafed or in the Fisheries Department of the Government of Kerala on account of their long and continuous

service rendered in Fisheries Corporation as well as in the Matsyafed. According to the petitioners, some of them have got 16 years continuous service since their appointment in the Kerala Fisheries Corporation and some of them have three years continuous service since their appointment in the Matsyafed as on the date of filing of this Original Petition in 1991. At any rate, having regard to their long and continuous service either in the Matsyafed alone or in the Kerala Fisheries Corporation or in both, they are entitled to get their service regularised in the Matsyafed or in the Government Department. Since the petitioners failed to get their services regularised under the Kerala Fisheries Corporation or under any of the Government Departments they have approached this Court with the present writ petition seeking issuance of a writ of mandamus or any other appropriate writ, direction or order directing the respondents to regularise the services of the petitioners in the respective categories in which they are working in the Matsyafed or in the alternative to regularise their services in the Department of the Government of Kerala in identical posts with effect from the date of their original entry in the service of the Kerala Fisheries Corporation or in the Matsyafed as the case may be and for other incidental reliefs. Respondents have entered appearance and filed counter affidavit contesting the claim of the petitioners. According to respondents 2 to 4, the petitioners are not entitled to regularisation in service and in fact there is no need for engaging regular crew in the service of respondents 2 to 4. Respondents 2 to 4 have a further case that the petitioners have efficacious alternative remedy under Section 150 of the Merchant Shipping Act, 1958 for redressal of their grievances. The first respondent, State has also filed a counter affidavit in which the stand taken is that the petitioners are not entitled to be regularised in service.

4. Having considered the rival contention's, I am satisfied that the petitioners are entitled to get their services regularised in the service of respondents 2 to 4. In this contention, it has to be noted that some of the petitioners have put in 16 years of service since their appointment in the Kerala Fisheries Corporation till date. Some of them have three years of service to their credit since their appointment in the Matsyafed. In any view of the matter, their long and continuous service in the Kerala Fisheries Corporation or in Matsyafed or in both will entitle them to get their services regularised in the service of the second respondent and to deny them

regularisation and to keep them on contract basis perpetually is unjust and arbitrary. In *Smt. P.K. Narayani v. State of Kerala* AIR 1984 SC 534, the petitioners who had been serving as employees of the State of Kerala or its Public Sector Undertaking for the past few years challenged the action of the employer in terminating their services to make room for the candidates selected by the Kerala Public Service Commission. The Supreme Court directed that the petitioners and all others similarly placed should be allowed to appear for the next examination that the Public Service Commission may hold without raising the age bar and till then the petitioners and Ors. were allowed to continue in service provided there are vacancies. No doubt, the Supreme Court clarified that the order will not confer any right on the employees to continue in service or of being selected by the Commission otherwise than in accordance with the relevant rules and regulations. The interference of the Court was to resolve what the Court itself described as 'a human problem which has more than one facet'. Again in *Dr. A.K. Jain v. Union of India* 1987 (Supp) SCC 497, the service of ad-hoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging upto four years were sought to be terminated to accommodate the candidates selected by the Union Public Service Commission. The petitioners claimed that their services should be regularised and their seniority should be fixed from the date of their initial entry in service as ad-hoc appointees. In the counter, the Union of India contended that ad-hoc appointments were made by the General Managers of the Zonal Railways to tide over temporary shortage of doctors and their tenures were extended till regular selection was made by the UPSC and appointments were made by the President of India. Since the appointing authority was the President of India, such ad-hoc appointments by the General Managers of the Zonal Railways could not be regularised. It was further contended that the ad-hoc appointees were granted age relaxation and were asked to appear at two special selections based on interview to be held by the UPSC in 1982 and 1985. The petitioners were those ad-hoc appointees who had either failed to avail of the special benefit of selection or had appeared and failed to qualify. In these circumstances, it was contended that they could not be regularised in service. Notwithstanding the above factual position the Court directed regularisation of services of all doctors appointed upto October 1, 1984 in consultation with UPSC

on the evaluation of their work and conduct based on the confidential reports in respect of the period subsequent to October 1, 1982. Such regularisation was to be from the dates from which they are continuously working. The services of those not regularised were allowed to be terminated. The Apex Court in *Bharatiya Dak Tar Mazdoor Manch v. Union of India* AIR 1987 SC 2342, while dealing with the question of daily rated casual labour employed under P & T Department referred to the State's obligation under Part IV of the Constitution and observed as under:

'Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organisation engaged in production he will not put forward his best efforts to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonable long period of time'.

The Court emphasised that unless a sense of belonging arises, the worker will not give his best and consequently production will suffer which in turn will result in economic loss to the nation. The Court, therefore, directed the department to prepare a scheme on a rational basis for absorbing those who have worked for a continuous period of one year.

5. Again in *U.P.I.T. Dept., C.P.S.W. Association v. Union of India* (1988-I-LLJ-397) concerning Class IV employees who were found to be working on daily wages for nearly eight years or more in the Income-tax Department, the Supreme Court following the decision reported in AIR 1987 SC 2342 (supra) directed the Government to pay wages to such workmen at the rates equivalent to minimum pay in the scale of the regularly employed workers in the corresponding cadres and also directed to prepare scheme on a rational basis for absorbing such employees who have been continuously working for more than one year. Again, in

Jacob M. Puthuparambil v. Kerala Water Authority (1991-II-LLJ-65), the summit Court while dealing with the appointment of employees possessing requisite qualifications by way of stop-gap arrangement which continued for more than two years till regular appointments were made observed as follows at P 71.

'9. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service'.

The Court after surveying relevant decisions on the subject and after adverting to the pleadings directed the Kerala Water Authority to regularise the services of ex-PHED employees without waiting for State Government approval, provided they possess the requisite qualification for the post prescribed on the date of appointment of the concerned worker.

6. Learned counsel for the respondents placed reliance on the decisions of the Supreme Court reported in U.P.State Co- operative Land Development Bank Ltd. v. Tazmulk Ansari 1994 (Supp) SCC 745, and also on the decision reported in Madhyamik Siksha Parishad, U.P. v. Anil Kumar Mishra (1994-II-LLJ-977). Having considered those decisions, I am satisfied that those decisions will not be of any assistance to the respondents to advance their case before this Court as the facts of those cases are entirely different from the facts of the present case, where this court is concerned with the claim of regularisation of employees who have put in long years of service ranging from 3 years to 15 years under an instrumentality of the State. The respondents have no case that the petitioners are not qualified to

hold the respective posts. In fact, Ext. P4 will show that the petitioners were subjected to a selection and interview before their appointment to the post. Nor has the second respondent a case that there are no vacancies to accommodate the petitioners nor has it a case that regularisation if granted to the petitioners will result in denial of appointment to other eligible candidates who are found fit by a selection body like P.S.C. Taking into consideration, all these facts and circumstances, I am of the opinion that there is no justification on the part of respondents 2 to 4 in keeping the petitioners on contract basis ad infinitum without any rhyme or reason.

7. No doubt, respondents 2 to 4 would contend that this writ petition is not maintainable inasmuch as the petitioners have efficacious alternative remedy under Section 150 of the Merchant Shipping Act. But learned counsel for the petitioners brought to my notice the provisions of Chap. XV-A of the said Act and in particular Section 435B wherein it is provided that the Central Government, may by notification in the official Gazette, direct that any provisions of this Act shall also apply to Indian Fishing Boat subject to such exceptions and modifications as may be specified in the notification. Admittedly, no notification has been issued by the Central Government under this Section. Therefore, Section 150 of the Act which deals with resolution of dispute between Seamen and employers has no application to the petitioners.

8. That apart, even assuming that Section 150 of the Act is treated as an alternative remedy, I am of the view that the existence of such a remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution as the exhaustion of the alternative remedy is a rule of discretion and convenience rather than a rule of law.

9. At the outset learned counsel for respondents 2 to 4 raised a contention regarding the maintainability of the writ petition as according to the counsel, no writ will lie against Matsyafed which is a Co-operative Society. Having considered this contention I am not satisfied that it is liable to be accepted. Admittedly, the second respondent Matsyafed is a wholly Government owned undertaking and as such an instrumentality of the State amenable to the writ jurisdiction of this Court. Analogy

similar to Co-operative Societies is not applicable to the second respondent. Therefore, I hold that the petition is maintainable against the second respondent.

In the result, I allow the Original Petition and there will be a direction to respondents 1 to 4 to regularise the service of the petitioners who are now in service of the Matsyafed in the respective categories within three months from the date of receipt of a copy of this judgment.

Original Petition is allowed as above. No order as to costs.

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