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Court : Rajasthan

Decided On : Mar-14-2008

Reported in : RLW2008(2)Raj1621

Judge : Gopal Krishan Vyas, J.

Appellant : Surendra Kumar Vyas

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. By filing the present writ petition, the petitioner has prayed for quashing the order dated 5/7/2000 and directing the respondents to fix him in the pay scale of UDC and few other ancillary reliefs.

2. The facts of the case are that the petitioner was initially appointed on 27/9/1977 (Annex. I) as weaving helper in the Rajasthan Small Scale Industries Corporation - respondent No. 2 on consolidated wages @ 150/- pm. Later on, the said wages were increased from 150/- to 350/- in the year 1980, from 350/- to 500/- on 29/3/1982 then from 500/- to 750/- and at last from 27/4/1991 Rs. 1200/- was allowed as consolidated wages to the petitioner.

3. When the services of the petitioner were not regularised though similarly situated persons were granted benefit of regularisation and pay scale, the petitioner directly preferred SLP before Hon'ble Supreme Court and raised the plea that he has completed more than 18 years of service and similarly situated persons, who were appointed along with petitioner on different posts have been regularised and they were granted regular pay scale but same benefit has not been granted to the him. In the said SLP, the Hon'ble Apex Court while granting liberty to the petitioner to approach the High Court under Article 226 of the Constitution dismissed the SLP. The order passed by the Hon'ble Apex Court has been placed on record by the petitioner as Annex. P/5.

4. Pursuant to the liberty granted by the Hon'ble Apex Court, the petitioner preferred writ petition before this Court under Article 226 of the Constitution of India for the relief of regularisation and regular pay scale because he was getting Rs. 1200/-consolidated wages, which was equivalent to pay of UDC therefore petitioner prayed that benefit of pay scale of UDC may be granted w.e.f. 1/4/1982. Further it was prayed by the petitioner that respondents may be directed to grant benefit of promotion while granting benefit of regularisation and fixation on the post of UDC w.e.f. 1/4/1982.

5. Pursuant to the notices issued to the respondents, reply was filed and it was stated that respondents are running Woolen Carpet Training Centres at various places in Rajasthan subject to availability of grants sanctioned by the State Government. It was also stated that life of the centres are totally depends upon the availability of grant/sanction by the State Government and if no sanction is received to continue the centre, the centre is required to be closed down. While admitting fact of appointment of petitioner, it is stated in para 6 of the reply by the respondent that in condition No. (Ga) of Annex. P/2 and P/3, appointment orders, it was specifically mentioned that these appointments are only for Carpet Training Center and if the Government decides to stop the grant then automatically their services will come to an end. It is also pointed out that Rajasthan Galeecha Prashikshak Sangh raised the industrial dispute and reference was made by the appropriate Government to the Industrial Tribunal, Jaipur and the Tribunal vide its judgment Annex. R/2/1 dated 9/10/1996 held that the Masters, Assistant Masters

are not entitled for relief sought for. The said award of the Industrial Tribunal, Jaipur was also challenged before the Jaipur Bench and initially interim order was passed but later on said interim order was also vacated by this Court on 12/5/1997.

6. With regard to the contention of the petitioner that similarly situated persons appointed in the respondent department on different posts on consolidated wages were regularised, it is stated that one Mohd. Hanif Usta was appointed in the Industries department, whereas, petitioner was appointed in 'Galeecha Training Center' on consolidated wages subject to condition that in case the State Government stops the sanction/grant then the services of the petitioner would automatically come to an end. Therefore, the petitioner cannot claim his right at par with such persons. The crux of the contention of respondents in their reply is that due to non-availability of grant by the State Government, petitioner is not entitled for any regularization or for any other benefit of pay fixation.

7. It is submitted by the learned Counsel for the petitioner that during pendency of the writ petition, without any notice, the services of the petitioner were terminated vide order dated 5/7/2000, the petitioner filed application for amendment of writ petition and challenged the order of termination on the ground that he is working from last 23 years in the respondent department and getting Rs. 1200/- consolidated wages but without giving any notice or providing any opportunity of hearing, his services have been terminated, which is totally illegal. Though the said application for amendment of writ petition was opposed by the respondents, but this Court allowed the amendment application and petitioner filed amended writ petition and after considering the new facts and grounds raised in the amended writ petition, this Court vide order dated 21/7/2004 admitted the same. No reply was filed by the respondents to the amended writ petition. Petitioner filed additional affidavit on 27/11/2006 in which it was stated by him that the petitioner was working as weaving helper since 1977. After serving for about 23 years, the services were terminated on the ground that Government has not made available the funds for releasing salary to him, whereas, this ground is absolutely erroneous and is untenable because he was employee of Rajasthan Small Industries Corporation Limited, which is a Government undertaking thus, it was more or less Government Department and respondent department is organization of

Government, therefore, Government is having complete control over the respondent corporation known as Rajasthan Small Industries Corporation Limited'. In this additional affidavit it is stated by the petitioner that various persons working in the establishment like petitioner were transferred to various other centers and they are still continuing and getting regular pay scales after regularisation of services. In this connection he has invited attention of the Court towards an order passed on 1/9/1995, which is placed on record as Annex. A, whereby, one Shri Ram Kumar Gupta, who was holding the post of Senior Assistant has been promoted as Junior Accountant and transferred to Kota. His name appears at serial No. 5 in AnnexA With regard to one another person Shri Mohd. Hanif Usta, it is submitted that he was appointed along with petitioner but he is still continuing as State Government employee though he was appointed in Small Scale Industries Corporation. The petitioner has also placed on record Annex. C, whereby, Mohd. Hanif Usta was transferred from DIC. Bikaner to Rajasthali, Udaipur. Petitioner has also placed on record some more transfer orders of Mohd. Hanif Usta.

8. Along with the additional affidavit, the petitioner has also placed on record the seniority list of Junior Engineers published by the Corporation to show that the said Corporation is a Government Establishment and there are so many persons working substantively on different posts. He has also placed on record the seniority list of Class IV employees dated 17/7/2006, which is Annex. 'G'. The petitioner has also placed on record order dated 16/6/1978 (Annex. H), whereby, appointments were made on the post of LDC in Small Scale Industries Department and for these appointments also a condition was imposed that their appointments is only for carpet training centers so long the Government accord grant-inaid. The petitioner has also placed on record Annex. I whereby, appointments were made on the post of Class IV employee and in their appointment order same condition was incorporated which is incorporated in the order of appointment of petitioner dated 29/3/1982 (Annex. 2), whereby the petitioner was granted consolidated wages of Rs. 500/- but they are still working on the post.

9. Learned Counsel for the petitioner has invited my attention towards condition 'Ga' mentioned in Annex. P/2 dated 29/3/1982, whereby, the petitioner was appointed. The condition 'Ga' reads as under:

x & budh fu;qfDr iw.kZr% xyhpk izf'k{k.k dsUnzks ds fy, gS] jkT; ljdkj us bl gsrq vuqнку cUn gksus dh fLFkfr esa budh fu;qfDr Loa; lekIr gks tk;sxh A

10. It is submitted by learned Counsel for the petitioner that similar condition was incorporated in Annex. 'H', whereby, 15 persons were appointed as LDCs and in that order also condition 'Gha' was there which reads as under:

?k & budh fu;qfDr iw.kZr% xyhpk izf'k{k.k dsUnzks ds fy, gS] ljdkj Is vuqнку cUn gksus dh fLFkfr esa gh budh fu;qfDr Loa;eso lekIr gks tk;sxhA

11. While inviting attention towards above orders, so also similar order Annex. T in which same condition was incorporated for class IV employees, counsel for the petitioner submits that the petitioner was working from last more than 23 years and in his appointment order also same condition was incorporated but his services were terminated during the pendency of the writ petition but other similar employees are still working therefore the action of respondents is in violation of Article 14 and 21 of the Constitution of India being discriminatory.

12. Learned Counsel for the petitioner while assailing the validity of order Annex. 9 submitted that this order is patently illegal and against the principles of natural justice because admittedly, petitioner was appointed in the year 1977 on consolidated wages and he worked for more than 23 years and when he claimed regularisation of service and regular pay scales before this Court, his services were terminated illegally and unconstitutionally, so also without giving any notice or opportunity of hearing to him, whereas, many persons working on different posts like petitioner upon same terms and conditions are not only continuing but have been granted benefit of regularisation and regular pay scales by the respondents.

On this premise, it is submitted that the petitioner is also entitled for regularisation on the post as per his qualification.

13. Learned Counsel for the petitioner while inviting attention towards An-riex.T 76 submitted that at the time of opening of Carpet Training Centers the Government has also sanctioned the posts and many persons were appointed upon same

terms and conditions but in the case of petitioner respondents have refused to grant the benefit of regularisation so also the regular pay scales.

14. Learned Counsel for the petitioner argued that the petitioner, who was appointed in 1977 waited for regularisation so also for regular pay scale for years together and subsequently when he made prayer by way of filing writ petition before this Court for granting regular pay scales so also absorption on substantive post, then during pendency of writ petition without any notice, the respondents illegally terminated his service vide Annex. 9 dated 5/7/2000, therefore, the order impugned be set aside and respondents may be directed to reinstate the petitioner and regularise the services of the petitioner upon any post available in the department commensurating with his qualification because similarly situated Junior Engineers, LDCs and class IV employees were given the benefit of regularization in past.

15. Learned Counsel for the petitioner has invited the attention of this Court towards the judgment of Hon'ble Supreme Court in case of Secretary, State of Karnataka v. Uma Devi reported in : (2006)11LLJ722SC , in which the Hon'ble Supreme Court has observed that efforts should be made for regularisation of those employees who are working from last 10-15 years and for the same State Government shall frame a scheme. It was held in para 53 as under:

One aspect needs to be clarified. There may be cases of irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals

and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within a six months from this date. We also clarify that regularization, if any already made, but no sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

16. Per contra, learned Counsel for the respondent vehemently argued that petitioner is not entitled to get any relief from this Court because he was appointed on consolidated wages of Rs. 150/- and later on from time to time his wages were enhanced and at last in the year 1991 he was allowed consolidated wages of Rs. 1200/- vide order dated 27/4/1997 and appointed as Master though he was initially appointed as weaving helper vide Annex. P/1. Therefore, petitioner cannot claim benefit of regularisation because he was appointed with a condition that his employment will last till the department receives grant from the State Government. It is submitted that the claim of the petitioner is unfounded so also his services were rightly terminated vide Annex. 9 because at that time the grant was not sanctioned by the Government, therefore, as per the condition in the appointment order itself his services came to an end and the petitioner cannot raise any objection now and he is not entitled to take any plea that his services were illegally terminated because his services came to an end in accordance with the condition mentioned in the appointment order itself.

17. With regard to the ground raised by the petitioner for absorption and regularisation as has been done in the cases of other persons, it is submitted that they were appointed in the department whereas the petitioner was appointed in the Carpet Training Centre, hence the petitioner cannot treat himself at par with those persons.

18. After hearing the learned Counsel for both the parties and perusing the entire record of the case, it emerges from the facts that admittedly the petitioner was appointed vide Annex. 1 on the post of Weaving Helper on consolidated wages.

Upon perusal of this order, it is clear that it is nowhere stated that this appointment is subject to any grant in aid by the State Government. This appointment order was issued by the Managing Director of the Rajasthan Small Industries Corporation Ltd. which is a Government undertaking, as is evident from the order Annex. P/1 itself. Said order was issued on 27/9/1977. The petitioner continued till 1982 under the said order and thereafter another order was issued on 29/3/1982, whereby, the petitioner was appointed as Master at a consolidated salary of Rs. 500/-. In this order of appointment, first time a condition was imposed that the services of all the persons mentioned in the order will be purely for the Carpet Training Centre and their appointment will continue till the grant-in-aid is received from the Government. Thereafter, the petitioner was allowed to work as Master and in the year 1991 another order was issued on 27/4/1991 (Annex. 3), whereby, petitioner's salary was fixed at Rs. 1200/-. In the pleadings, it is admitted by the respondents that one Mohd. Hanif Usta, who was also appointed on consolidated wages of Rs. 750/- was granted regular pay scale of Rs. 640-1180 vide order dated 30/5/1986 (Annex. P/4). Respondents are also not disputing that Junior Engineers, LDCs and Class IV employees were appointed by the Rajasthan Small Industries Corporation Ltd. More so, seniority lists of Junior Assistants, Annex. 'F', seniority list of class IV employees, Annex. 'G' were issued and they are still continuing in the corporation. Likewise, respondents are not disputing that as many as 15 persons were appointed as LDCs in 1978 (Annex. H) and 16 persons were appointed on the post of Class IV employees vide order Annex. I. Meaning thereby, for all purposes, the Rajasthan Small Industries Corporation Ltd. is a Government Department and it is an establishment of Government of Rajasthan. Therefore, if the department itself is substantive then there is no question of imposing condition that employees will be allowed to work till grant is received by the Government. When other employees like Junior Assistants, LDCs and Class IV employees in whose appointment orders also the same condition was incorporated and they are not only continuing but were granted benefit of regularisation and pay scale by the respondents, therefore, in my opinion, the respondents have illegally acted in terminating the services of the petitioner, so also the action of the respondents is in violation of Article 14 of the Constitution of India. A person like petitioner, who was working for last 23 years filed writ petition

for grant of regular pay scale as it was not possible for him to work at consolidated wages of Rs. 1200/-, then instead of granting benefit of regularization and pay fixation, the services of petitioner were terminated during the pendency of writ petition illegally and unconstitutionally, therefore, amendment application was filed by the petitioner to challenge the termination order. This Court while allowing the amendment application, admitted the writ petition and issued notice to the respondents.

19. It is not in dispute that similarly situated persons like petitioner appointed on different posts are still continuing substantively with the Department, whereas, benefit of regularization and absorption has been denied to the petitioner, more so, his services were terminated without complying principle of natural justice and procedure of law, which is highly arbitrary and illegal action of the respondents. Respondents are under obligation to extend benefit of regularization to the petitioner as per his qualification or as per the wages last drawn by him while taking petitioner back in service.

20. In this case admittedly the petitioner was appointed in the year 1977 and in the year 1998 he made a prayer for regularization and regular pay scale but he was not granted the benefit of regularization and regular pay scale of any of the posts commensurating with his qualification, whereas, other similarly situated persons who were appointed upon other posts were granted regularization and they were absorbed even though they were appointed in Small Scale Industries Corporation but respondents in the case of petitioner submit that due to condition incorporated in the appointment order of grant and sanction from the State Government cannot regularise the services, of petitioner.

21. I am unable to understand that such type of plea has been taken by the welfare State after taking work from a citizen for more than 20 years, therefore, the action of respondents must be fair so also temporary employment, if necessitated on account of exigency of administration then it is the duty of the respondents to provide atleast minimum of pay scales for survival of employee even appointed on temporary basis. Likewise, while framing Work Charged Rules, 1964 it was specifically provided that after completion of two years of service a workman will

be entitled for semi permanent status and after completion of ten years of service a workman is entitled for permanent status. Thereafter, this Court also passed several judgments for granting semi permanent and permanent status to work charged employees in accordance with Rule 33 of the Work Charged Rules, 1964.

22. In these circumstances, when large number of persons were regularised by the Government even after completion of ten years of service in accordance with Work Charged Rules, 1964 then how same benefit can be denied to the petitioner, who has completed more than 20 years of service as on the date he filed the writ petitioner before this Court. The respondents' action while terminating the services of the petitioner during the pendency of the writ petition can be defined as arbitrary action because on one hand the petitioner was raising voice before this Court for regularization of his services because he was getting meager amount for survival and on the other hand his services were terminated after completion of 23 years of service without compliance of the basic principles of law during pendency of writ petition. Therefore, in view of the judgment rendered by Hon'ble Apex Court in State of Haryana v. Pyara Singh reported in : (1993)IILLJ937SC in which the Hon'ble Apex Court held that; 'If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization.' In the present case, petitioner was appointed in the year 1977 and made a prayer for regularization of service in the year 1998. During pendency of the writ petition, his services were illegally terminated, which is totally unconstitutional action of the respondents. Therefore, while following the judgments of Piara Singh (supra) so also the judgment in the case of Uma Devi (Supra), the petitioner is very much entitled for regularization of his services and for pay scales after due absorption commensurating with his qualification.

23. In view of the above discussion and following the directions given in para No. 53 of the decision rendered in Uma Devi's case (supra) by the Hon'ble Apex Court for the purpose of regularizing services of those persons, who had worked for 10-15 years, I deem it just and proper to allow this writ petition with the following directions:

(i) The impugned order of termination from services of the petitioner dated 5/7/2000 is quashed and set aside with all consequential benefits.

(ii) Respondents are further directed to absorb the petitioner on the post commensurating with his qualification and grant benefit of fixation of salary and other benefits which are available to regular employees and regularise his services from the date of completion of the years of service which is 27/9/1987 and grant benefit of fixation as per pay scale Rules. However, arrears shall be paid only from the date of filing of the writ petition, which is 15/10/1998 within a period of three months from the date of receipt of certified copy of this order with cost of Rs. 2000/-.

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