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Court : Karnataka

Decided On : Dec-05-2011

Judge : Ram Mohan Reddy

Appeal No. : Writ Petition No. 782 of 2011 (L-KSRTC)

Appellant : Chikkaramaiah

Respondent : The Divisional Controller

Advocate for Pet/Ap. : For the Petitioner: S.B. Mukkannappa, Advocate. For the Respondent: B.L. Sanjeev, Advocate.

Judgement :

1. Petitioner when appointed as a casual worker in the respondent-Public Road Transport Corporation with effect from 25-8-2004 pursuant to the direction of the Apex Court to treat him as a casual labour, a position, which he held prior to removal from service, alleging entitlement to regularisation, had his cause espoused through a Trade Union, which initiating conciliation proceeding under the Industrial Disputes Act, 1947, ending in a failure report, whence the State Government by order dated 20-12-2007 referred the industrial dispute to the Industrial Tribunal, for adjudication, registered as I.D.No.280/2007. The point of dispute referred for adjudication was whether the Trade Union were justified in making a demand for regularisation of the petitioner's service in the respondent-Road Transport Corporation. Petitioner having filed claim statement, was resisted

by filing counter statement of the respondent-Road Transport Corporation. The Industrial Tribunal having regard to the admitted facts and keeping in mind the authoritative pronouncement of the Constitution Bench of the Apex Court in Secretary, State of Karnataka and Others v Umadevi and Others (2006(4) Kar.L.J.29 (SC): AIR 2006 SC 1806: (2006)4 SCC 1: 2006 AIR SCW 1991: 2006-II-LLJ-722(SC)) and observations in State of Karnataka and Others v Ganapathi Chaya Nayak and Others (2010 (3) Kar.L.J.233 (SC): (2010)3 SCC 115: 2010 AIR SCW 1401: 2010-II-LLJ-293 (SC)), concluded that the petitioner's claim for regularisation was not maintainable and accordingly, by the award dated 26-8-2011, rejected the reference. Hence, this petition.

2. The Apex Court in State of Rajasthan and Others v Daya Lal and Others ((2011)2 SCC 429: 2011 AIR SCW 905), summarised the well-settled principles relating to regularisation and pay in parity thus:

“The following are well-settled principles relating to regularisation and parity in pay:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed in to service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation,

if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in Government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with Government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

3. In *Union of India and Others v Vartak Labor Union* ((2011)4 SCC 200: 2011 AIR SCW 1786), at paragraphs 17 and 20 following the earlier reported opinions and also that of the Constitution Bench in *Umadevi's* case opined that the respondent union's claim for regularisation of its members merely because they have been working for the BRO for a considerable time cannot be granted in the light of the decision of the Court wherein it is consistently held that casual employment terminates when the same is discontinued, and merely because a temporary or a casual worker is engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules.

4. In *Union of India and Another v Arulmozhi Iniarasu and Others* ((2011) 7 SCC 397), at Paragraphs 19 to 25 the Apex Court observed that the doctrine of legitimate expectation and its impact in administrative law had been considered by the Court in a catena of decisions while making reference to Council of Civil

Service Unions v Minister for Civil Service (1985 AC 374) as also in Sethi Auto Service Station and Another v Delhi Development Authority and Others (AIR 2009 SC 904: 2008 AIR SCW 8229: (2009)1 SCC 180), to conclude that the said doctrine is not attracted.

5. Undoubtedly, the words “regular” and “regularisation” have been interpreted by the Constitution Bench of the Apex Court in Umadevi’s case and applying the same to the facts of this case, admittedly petitioner when not appointed in a regular recruitment process under the KSRTC Servants Cadre and Recruitment Regulations, no exception can be taken to the reasons, findings and conclusions arrived at by the Industrial Tribunal in the award impugned, calling for interference.

Petition, devoid of merit is rejected.

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