(SUPREME COURT OF INDIA)

The Divisional Manager, APSRTC and Others

Vs

P. Lakshmoji Rao and Others

HON'BLE JUSTICE S. R. BABU AND HON'BLE JUSTICE P. VENKATARAMA REDDI

22/01/2004

Civil Appeal No. 2455 of 1999 (C.A. Nos. 3017, 5881 and 4855 of 1999)

JUDGMENT

The Judgment was delivered by P. VENKATARAMA REDDI, J.

These cases involving the issue as to the effective date of regular appointment and seniority unfold certain disturbing features - non application of mind by the High Court to the crucial aspects of the case, vagueness of the directions issued, the deficiency of pleadings and material placed on record by the contending parties and above all the default of the appellant-Corporation in allowing other similar orders becoming final while contesting certain others including the present matters.

2. The undisputed facts common to all these cases may be noticed:

Pursuant to the advertisements made by the appellant- Corporation (hereinafter referred to as 'APSRTC'), the respondents were selected as conductors and appointed on daily-wages initially for a certain period of time and thereafter their services were extended on the same terms and ultimately regularized after a year or two. They were placed on time scale of pay and their seniority was counted from the date of such regularization. Long afterwards, the respondents filed writ petitions contending that their services ought to have been regularized from an anterior date i.e., from the date of their initial appointment on daily - wage basis and the service benefits should be granted accordingly. This prayer was practically granted by the High Court with a rider that they should have completed one year of continuous service as defined in Section 25B of the Industrial Disputes Act. There was practically no discussion on the merits in any of these cases either in the judgments under appeal or the earlier judgments which were followed in the instant cases. All the writ appeals

were disposed of at the admission stage itself. One more fact to be noticed is that no averment has been made nor any material placed before us to establish that the judgments which were followed in these cases or similar judgments in certain other cases have been contested by APSRTC by filing LPAs or SLPs.

3. Now, we will advert briefly to the facts in each of these appeals.

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4. Pursuant to the advertisement issued by APSRTC calling for the applications for the posts of Conductors in Visakhapatnam, Vizianagaram and Srikakulam regions, the respondents were selected and appointed as Conductors on daily-wage basis in October, 1987. They joined the service on various dates between 16.10.1987 and 12.12.1987. The services of the respondents were regularized with effect from 15.2.1989. It is to be mentioned that the order appointing them on daily-wages and on regular basis not on record. The respondents filed writ petition in the year 1997 in the High Court of A.P. alleging that certain persons employed by the private bus operators and absorbed into Corporation service after nationalization of the routes, though appointed later on i.e. after 12.12.1987, were shown as seniors to the respondents in the seniority list (the date of which is not mentioned). Thus, according to the respondents, they were made juniors to the displaced employees who were appointed subsequently. It does not appear that any counter-affidavit was filed in the Writ petition. The stand of the appellant as seen from the grounds in the Writ appeal is that the respondents were appointed on daily-wage basis after selection in order to cope up with the peak season demands between January and July and their services were regularized as and when vacancies arose. The details of the vacancies that and arisen were however not spelt out. The reason for offering appointment to the respondents on regular basis with effect from 15.2.1989 is not specifically mentioned either in the memorandum of Writ appeal or the SLP. The learned single Judge allowed the writ petition of the 50 respondents directing regularization in the posts of conductors 'reckoning continuous service of the writ petitioners as envisaged in Section 25B of the Industrial Disputes Act for the purpose of benefits of service". On appeal by APSRTC, the Division Bench dismissed the same on the ground that 'on the appellants' own showing, the matter is covered in terms of the earlier order in writ appeal No. 705 of 1995". We will be adverting to the order in W.A. 705 of 1995 a little later.

Civil Appeal Nos. 3017 and 5881 of 1999

5. There are three respondents in these appeals. The two respondents in Civil Appeal No. 3017 of 1999 were appointed as casual Conductors on 15.12.1983 on daily-wage basis after due selection in Cuddapah region of APSRTC and they reported for duty on 19.12.1983. Their services were regularized with effect from 6.4.1985. The respondents filed the writ petitions in the year 1998 seeking regularization with effect from 19.12.1983 instead of 6.4.1985 and praying for all benefits of service with reference to the said date of their initial appointment. The respondent in Civil Appeal No. 5881 of 1999 was appointed on 3.4.1984 as a casual Conductor in Cuddapah region after due selection and his services were regularized with effect from 21.3.1986. He prayed for a similar direction to treat the effective date of regularization as 3.4.1984 instead of 21.3.1986. The learned single Judge dismissed both the writ petitions (filed in the year 1998) on the ground of unexplained delay in approaching the Court and non joinder of necessary parties whose seniority was likely to be affected. On appeal by the writ petitioners, the Division Bench set aside the order of the learned single Judge and directed the Corporation to consider the cases of the writ petitioners for

regularization 'notionally with effect from the date they were entitled to' with a further observation; "it is made clear that the appellant should be given the same benefits which have been granted by the respondents in respect of similarly situated persons". The learned Judges of the Division Bench noticed that in writ petition No. 26111 of 1998, which was disposed of by another learned single Judge, there was no opposition by the Corporation and therefore it was not fair on the part of the Corporation to raise the technical ground of latches in respect of similarly situated employees. It may be mentioned that in W.P. No. 26111 of 1998, the learned single Judge directed regularization with effect from the date of initial appointment purportedly following the decision of Division Bench in APSRTC vs. P.T. Rao (1998 2 Act 447). There was in fact no concession on merits in that case. It is not known whether any writ appeal was filed against the order in W.P. No. 26111 of 1998.

Civil Appeal No. 4855 of 1999

6. The four respondents in this appeal were recruited on daily-wage basis as casual Conductors after due selection and offered appointment in Governorpet depot of Vijayawada region in June/July, 1991. Their services were regularized in January/August, 1994. Claiming regularization on completion of 240 days of continuous service and placing reliance on the decision in Writ Appeal No. 705 of 1995, they filed writ petition in the year 1997. The writ petition was disposed of on 1.10.1997 with a direction to the respondents to consider the case of the petitioners for regularization as per the judgment in W.A. No. 705 of 1995. On appeal to the Division Bench, the writ appeal was dismissed in limine by a non-speaking order. In the writ appeal, an affidavit was filed by the Chief Law Officer of APSRTC. It is stated therein that on account of large sale nationalization of bus routes between 1986 and 1990 and the heavy passenger traffic during the peak season, the APSRTC resorted to recruitment of Conductors and Drivers on daily-wage basis in the hope of absorbing them on regular basis later on depending on the availability of the sanctioned posts. Keeping the anticipated regularization in view, they were chosen on the basis of selection. It is further stated that the regularization is done according to the prescribed norms envisaged in the memorandum of settlement dated 28.4.1994 entered into under Section 12(3) of the I.D. Act. For those employed between December 1991 and December 1994, the agreed date of regularization as per the settlement, falls between 31.12.1995 and 31.7.1997. The deponent of the affidavit also relied on the provisions of A.P. Act 2 of 1993 which seem to place restrictions on regularization of certain categories of employees. It was then pointed out that regularization from the date of initial appointment on daily-wages would cause administrative problems and upset the settled seniority.

7. It is seen from various judgments placed on record that the genesis of this litigation relating to the correct date of regularization is traceable to writ petition No. 12132 of 1984. That writ petition was filed by the daily-wage Drivers appointed in June, 1983 after a process of selection. Their services were terminated on 30th June, 1984 but they were reappointed in July, 1984 on the same terms. They they filed the said writ petition in which they sought for a direction that they must be treated as Drivers on regular basis from the dates of their initial appointment. Evidently, the services of the petitioners therein were actually not regularized. A learned single Judge disposed of the writ petition on 20.6.1988 with a direction to the respondents to 'declare the petitioners to be in service on regular basis from the dates of their joining duty and give consequential benefits". The only reason given by the learned Judge is contained in the following paragraph which we quote:

*"The petitioners were selected by a Committee on the basis of their eligibility and they have been appointed on June 10, 1983. Therefore, though there appears the term 'on temporary basis" "on daily wages" the fact remains that they have been discharging the duties on regular basis." **

8. Thus, the performance of duties carried out by regular employees, was taken to be the basis for directing regularization. The fact that they underwent a process of selection was also relied on. Insofar as the decision purports to lay down a proposition of service law that the employees selection on daily-wage basis after selection automatically become regular employees from day one if they perform the duties similar to regular employees, it is utterly untenable. In the absence of any service rule entitling the employees recruited on daily-wages to get the status of regular employees with pay-scale from the very date of joining, it would be difficult to countenance such proposition especially when there is no finding that the daily-wage employment was a ploy or a colourable device to postpone regularization indefinitely. In State of Haryana vs. Piara Singh) this Court set aside the direction of the High Court to regularize the services of the ad hoc/ temporary employees who have worked for more than one year and observed that there can be no rule of thumb in such matters and in any case, service for one year does not by itself confer a right of regularisation.

9. The next phase of litigation is writ petition No. 8070 of 1990. The order in W.P. No. 12232 of 1984 (referred to supra) was followed by another learned single Judge and a direction was issued to declare the petitioners as having been regularly appointed from the respective dates of their joining the post for which they were selected with all consequential benefits. It is not known whether the services of the three writ petitioners therein were regularized by the date of filing the writ petition and whether they wanted the benefit of retrospective regularization.

10. The APSRTC filed writ appeal against the order in W.P. No. 8070 of 1990 and it was disposed of cursorily without adverting to any issue on merits. The short order passed by the Division Bench on 24.7.1995 reads as follows:

"Heard learned counsel for the appellant and learned counsel for the respondent.

We do not think there is any mistake in the direction issued by the learned single Judge except that a clarification is required to reckon the date of continuous appointment and thus regularization in the post held by the petitioners respondents from the date of continuous appointment for the purpose of both of emoluments as well as seniority.

We accordingly clarify that the date of initial appointment as indicated in the order of the learned single Judge will be read as the date of continuous appointment as defined under Section 25B of the Industrial Disputes Act. Such continuous service of the petitioner/respondents shall be counted for all benefits in the service in accordance with law.

With the clarification as above, the appeal is dismissed." *

This order was followed in most of the writ petitions and writ appeals including the orders under appeal.

11. It is difficult to comprehend the ratio of the above decision. While purporting to clarify the order passed in the writ petition by the learned Single Judge, the Division Bench imported a totally alien concept of continuous service within the meaning of Section 25B of the I.D. Act which was for the special purpose of applying the provisions as to lay off and retrenchment contained in Chapter V-A of the Act. Moreover, the order in the writ appeal is as vague as it could be. The expression 'date of continuous appointment' makes no sense. Even it it is taken that she said wording has been

inaccurately used for the words 'continuous service', still, the direction is unintelligible. Continuous service within the meaning of Section 25B - for how long? Nothing has been specified. In this state of things, in W.P. No. 24263 of 1998, a learned single Judge proceeded on the basis that as per the decision in W.A. 705/1995, the employees were entitled to seek regularization with effect from the date of initial appointment, thus making the clarification given by the Division Bench virtually otiose.

12. The problem was compounded by another Division Bench decision of the High Court in Writ Appeal No. 1108 of 1997 APSRTC vs. P.T. Rao 1998 (2) ALT 447]. That was an appeal against the order of the learned single Judge directing regularization keeping in view the directions given in writ appeal No. 705 of 1995 (supra). The learned Judges after referring to the decision of this Court in State of Haryana vs. Piara Singh] observed:

"Thus, it is clear that the High Court cannot issue a blanket direction to regularize the services of the employees on completion of a particular period. If we examine the cases of the respondents-workmen here in the light of the principles laid down by the Supreme Court in State of Haryana vs. Piara Singh (supra), we have to hold that the order of the learned single Judge requires modification." *

13. Having said so, curiously, the following order was passed in the next paragraph which is the operative part of the judgment:

"Therefore, the order of the learned single Judge is modified to the effect that the respondents-workmen are entitled to the regularization of their services from the date of their initial appointment to such posts on completion of 240 working days. If there are number of claimants seeking regularization, the same can be done only in a phased manner. In so far as the claim of the workmen for arrears or backwages is concerned, having regard to the facts and circumstances of this case, we hold that the respondents-workmen are not entitled to the same.

With the above modification, the Writ Appeal is disposed of." *

14. The direction given in paragraph 5 is not quite consistent with what was held in the previous para of the judgment after referring to the law laid down in Piara Singh's case. The concept of 'continuous service for a period of one year' as per Section 25B of the I.D. Act has been imported by this Division Bench also. Moreover, it is difficult to reconcile the two direction sin para 5 (contained in the first two sentences). Perhaps, what the learned Judges meant was that the employees' claim for regularization should be considered on completion of 240 working days and if they are otherwise eligible, hey should be absorbed on regular basis to the extent of vacancies available. In the event of such regularization, it would take effect from the date of initial appointment.

15. It is difficult to follow the logic or the reasons behind the law laid down by the Division Bench. If the regularization has to take place in a phased manner subject to availability of vacancies etc., the question of according regular status to the employees right from the date of initial appointment on daily-wages does not arise. Moreover, if the services of respondents in the writ appeal have already been regularized and they claim regular status from the date of initial appointment, the High Court should have addressed itself to the specific question whether the regularization after some period of daily wage service was legally correct and recorded a finding thereon. The observations made and the directions given have only added to the dimension of controversy rather than solving

the problem. How and in what manner the said judgment in 1998 (2) ALT 447], which is sought to be relied upon by the appellants, was implemented is not known. No details are available in this regard. However, it is difficult to construe the judgment in the said writ appeal as upholding the contention of the appellants excepting the passing observation that the regularization could be done in a phased manner.

16. **In the light of the above discussion, we are of the view that the law laid down or the directions given in various writ petitions/writ appeals are not legally sustainable for more than one reason. Firstly, wrong criterion based on Section 25B of I.D. Act was applied in case after case. Secondly, the respondents and other similarly situated employees approached the Court under Article 226 long after their regularization, thereby unsetting the settled position. Thirdly, on the facts of these cases, it is evident that the services of the employees who were recruited as Conductors were regularized within a reasonable time. The respondent-employees were therefore treated fairly. No service rule or regulation or any other principle of law has been pressed into service by the respondents to claim regularization from an anterior date i.e. right from the date of their initial appointment as daily wage employees. #**

17. For the above reasons, we should have, in the normal course set aside the judgments under appeal and dismissed the writ petitions. However, there are certain facts which stare at the appellants, that come in the way of these appeals being allowed in toto. We have to take note of the material fact that the appellants failed to question the adverse decisions by filing appeals at the appropriate time. They allowed many judgments to become final though they related to employees of the same Region/Division. For instance Writ Petition No. 33077 of 1997 filed by 26 Conductors was disposed of on the same day on which Writ Petition No. 33083 of 1997 (which is under appeal in C.A. No. 2455 of 1999) was disposed of. In the Writ Appeals which have given rise to C.A. Nos. 3017 of 1999 and 5881 of 1999, reference has been made by the Division Bench to Writ Petition No. 26111 of 1998 disposed of on 4.11.1998 in which there were 30 petitioners. In the affidavit filed in the High Court in Writ Petition No. 33083 of 1997 which has given rise to C.A. No. 2455 of 1999, reference has also been made to two other writ petitions namely W.P. Nos. 31361 of 1996 and 14709 of 1996 decided on 19.4.1996 and 26.7.1996 respectively, wherein it was alleged that directions were given to regularize the services from the date of original appointment. Above all, it seems that the orders of the Division Bench passed in Writ Appeal Nos. 410 of 1997 and 1108 of 1997 (elaborately referred to supra) seem to have become final.

18. **In view of this peculiar situation and in order to avoid the anomalies that might otherwise ensue, while we hold that the respondent-employees have failed to establish their legal right to get the status of regular employees right from the date of their initial appointment on daily wage basis and the respective dates of regularization assigned to the respondents cannot be legally faulted, we are inclined to mound the relief in modification of the directions given in the judgments under appeal and direct as follows: #**

If any of the Conductors, junior to the respondents in the relevant seniority list of the concerned Division/Region, have got the benefit of seniority and regularization OR are entitled to get the same by virtue of the judgments that have become final, then the respondents who are seniors to them, shall be given the same benefit on the same principle. #

19. With these directions and observations, the Civil Appeals are disposed of without costs.