

SUPREME COURT OF INDIA

The Secretary To Govt.

Vs.

K. Kesavulu

C.A.No.5525 of 2007

(A Pasayat and A Alam JJ.)

29.11.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Andhra Pradesh High Court dismissing the writ petition filed by the appellant. In the writ petition correctness of order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, (In short the 'Tribunal') was questioned.

3. Background facts in a nutshell are as follows:

Respondent was appointed as Watchman at the Seed Stores, Pitchatoor, by proceedings dated 21.4.1980 on a temporary basis. Initially he was getting Rs.290/- p.m. Subsequently, the services of the respondent and eighteen others were converted into regular last grade service by ROC No.A3/3291/85 dated 1.3.1991. However, by subsequent proceeding in G. O. Ms. No.98 dated 1.4.1999, the service of the respondent was again regularized pursuant to the orders of the Government in G.O.Ms No.212 dated 22.4.1994. Consequently proceedings dated 8.4.1999 were issued considering him as a regular employee w.e.f. 1.4.1999. As a result, respondent was denied the benefit of regularisation into last grade service w.e.f. 1.3.1991. The respondent filed O.A.

No.3051 of 2000 before the A.P. Administrative Tribunal seeking invalidation of the proceedings in G.O.Ms. No.98 dated 1.4.1999 and consequential proceedings dated 8.4.1999 and for a declaration that he was entitled to be treated as a regular employee in the last grade service w.e.f. 1.3.1993 with all consequential benefits.

4. By Order dated 4.8.2004, the Tribunal held that the service of the respondent was regularized pursuant to the order in G.O. Ms. No.98 dated 1.4.1999 and basing on order in G.O.Ms No.9 of 1981 proceedings dated 1.3.1991 were issued and his service stood converted into a regular last grade service and the subsequent scheme of regularization issued in G.O. Ms. No.212 dated 22.4.1994 would not deprive the respondent of the benefits of earlier regularization. The order was challenged before the High Court which, as noted above, dismissed the writ petition.

5. In support of the appeal, learned counsel for the appellant submitted that Notification dated 1.2.1991 inter alia provided the following condition to be fulfilled: "Government have examined the issue

carefully and decided that the services of the full time contingent employees appointed before 1.2.1980 be converted into last grade service after completion of 5 years subject to fulfilling the conditions laid down in Govt. Memo 1st and 2nd."

6. Admittedly, the respondent was appointed in April, 1980 and, therefore, was not entitled to the benefit flowing from the G.O.Ms. 124 dated 22.2.1991. It was further pointed out that the order by which the regularization was directed on 1.3.1991 referred to a wrong G.O. i.e. G.O.Ms. No.9 (F&P (FW.PRC VI) Dept. dated 8.1.1981. The same related to regularization and conversion into regular posts. Noticing the illegality in the order of regularization cancellation was directed by order dated 23.9.1991 wherein the correct G.O.Ms. i.e. 124 dated 22.2.1991 was referred to and it was clearly stated that the concerned workman-respondent had not fulfilled the conditions laid down in G.O. Ms. 124 (F & A Agri.IV) dated 21.2.1991. The regularization in 1999 was done pursuant to G.O.Ms. No.98 dated 1.4.1999 which inter alia provided as follows:

"Government after careful consideration hereby accord permission for regularization of the services of the following daily wage employees working in Chittoor District against the existing vacancies as indicated against their names from the date of issue of orders i.e. with prospective effect as they have fulfilled all the conditions stipulated in G.O. Ms. No. 212, Finance and Planning (F.W.P.C.III) Department dated 22.4.1994."

7. This regularization was under another scheme. In any event writ petition was filed in 2004. It is highlighted that the 1999 scheme stipulated a condition about the regular vacancy and, therefore, regularization was done in 1999.

8. Learned counsel for the respondent on the other hand submitted before the Tribunal that it was clearly highlighted that G.O.Ms. No.212 dated 22.4.1994 provided that regularization of services of those who were working for five years prior to November, 1993.

9. The Tribunal held that the services of the respondent and others were regularized under earlier orders, and, therefore, G.O.Ms. No.98 dated 1.4.1999 cannot be applied to the case of the respondent.

10. It is to be noted that the order dated 23.9.1991 was passed because the respondent and several others did not fulfil the conditions laid down in G.O.Ms. No.124 (F&A) Agrl.V) dated 1.2.1991. The condition which is relevant has already been extracted above. Undisputedly, the concerned G.O. related to persons who had completed five years of service before 1.2.1990. Undisputedly the respondent was appointed on 21.4.1990 and, therefore, he did not fulfil the condition.

11. That being so, the question of his regularization did not arise. After the order of regularization was passed the discrepancy was noticed and was subsequently rectified. It is not the case of the respondent that he was to be regularised in terms of G.O.Ms. No.124 dated 1.2.1991. The Tribunal and the High Court clearly lost sight of this basic fact. That being so, the orders of the Tribunal and the High Court are indefensible and are set aside.

12. The appeal is allowed. There shall be no order as to costs.