

CASE NO.:
Appeal (civil) 5158 of 2007

PETITIONER:
The Regional Manager, APSRTC

RESPONDENT:
N. Satyanarayana and Ors

DATE OF JUDGMENT: 12/11/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5158 OF 2007
(Arising out of S.L.P. (C) No. 17859 of 2005)

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 in Writ Appeal No.874 of 2005 dismissing the appeal filed by the appellants and thereby upholding the order passed by a learned Single Judge in Writ Petition No.16244 of 1999 and some other writ petitions. The present appeal relates to Writ Petition No.16244 of 1999 which was filed by the respondents.

3. Factual position is almost undisputed. The respondents were appointed as Conductors w.e.f. 31.10.1996 on daily wages basis. Although the appointments of the respondents were on daily wages basis, their services were to be regularized in a phased manner as and when sanctioned vacancies arose. Since sanctioned vacancies arose and the respondents had completed 240 days of service, in terms of policy decision, their services were regularized w.e.f. 1.8.1987. After passage of more than a decade, respondents filed a writ petition i.e. Writ Petition (C) No.16244 of 1999 seeking regularization of their services from the date of initial appointment with all consequential benefits. By order dated 18.08.2004, learned Single Judge disposed of the Writ Petition along with other cases allowing the writ petitions purportedly following the decision of this Court in Divisional Manager, APSRTC and Ors. v. P. Lakshmoji Rao and Ors. (2004 (2) SCC 433).

4. Writ Appeals were filed before the High Court challenging the learned Single Judge's order on the ground that on a misreading of this Court's judgment in Divisional Manager, APSRTC and Ors. case (supra) the writ petition was allowed.

5. The Division Bench dismissed the writ appeal holding that the judgment of this Court in Divisional Manager, APSRTC's case (supra) applied to the facts of the case.

6. In support of the appeal, learned counsel for the appellant - Corporation submitted that both the learned Single Judge and the Division Bench did not appreciate the ratio of the decision in Divisional Manager, APSRTC's case (supra) in the proper perspective and have erroneously held that the

decision applied to the case of the respondents.

7. There is no appearance on behalf of any of the respondents in spite of service of notice.

8. The learned Single Judge, while allowing the writ petition relied on paragraph-18 of the judgment of this Court. The same reads as follows:

"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 mould 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 senior 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."

9. It is to be noted that the ratio of the decision in the said case was to the following effect:

"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 25-B 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 if it is taken that the said wording has been inaccurately used for the words 'continuous service', still, the direction is unintelligible. Continuous service within the meaning of Section 25-B 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. No.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.

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 25-B 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 unsettling 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 regularization 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."

10. Even a bare reading of paragraph-18 of the judgment on which reliance has been placed by the learned Single Judge and the Division Bench, it is clear that the relief was moulded to avoid anomalies and in view of the peculiar situation involved. This Court categorically held that the orders impugned in the appeals were not sustainable because the writ petitions were filed after a long lapse of time. Similar is the position here. The regularization was done w.e.f. 1.8.1987 and the writ petitions were filed in the year 1999. That being so and since in the writ petition without any explanation has been offered for the delayed approach, writ petition should have been dismissed on the ground of delay and laches.

11. The learned Single Judge and the Division Bench clearly lost sight of this fact and as rightly contended by learned counsel for the appellant, misread the judgment of this Court to grant relief to the respondents. Orders of both the learned Single Judge and the Division Bench of the High Court need to be vacated and we direct accordingly.

12. The appeal is allowed but in the circumstances without any order as to costs.