

HIGH COURT OF ANDHRA PRADESH**Bench: Justice Dr. V.R.K. Krupa Sagar****Date of Decision: 20th June 2024**

Case No.: WRIT PETITION No. 25259 of 2003

APPELLANT(S): T. Madhava and OthersPetitioners**VERSUS****RESPONDENT(S): The State of Andhra Pradesh and Others
.....Respondents****Legislation:**

Article 226 of the Constitution of India

Articles 14 & 16 of the Constitution of India

Subject: Writ petition seeking issuance of a Writ of Mandamus to declare the petitioners as eligible for regularization as employees of the Irrigation Department and to challenge the rejection of their claims for regularization.

Headnotes:

Writ of Mandamus – Regularization of Employment – Petitioners sought declaration as regular employees of the Irrigation Department – Challenge against rejection of regularization claims – Held, petitioners employed by a private contractor (M/s. Gammon India Limited) and not directly by the government – Absorption into departmental rolls for wage payment during a strike does not constitute regularization – Petitioners’ claims unsupported by evidence of absorption or precedent – Petition dismissed [Paras 1-20].

Regularization – Employment by Private Contractor – Petitioners, originally hired by a private contractor for a government project, claimed absorption in the Irrigation Department – Government argued petitioners were only temporarily added to rolls to mitigate a strike threat – Supreme Court and High Court precedents cited against regularization of contractor employees as government employees [Paras 8-17].

Employment Law – Article 226 – Scope of Writ of Mandamus – Court emphasized writ jurisdiction to enforce lawful public duties – Petitioners failed to demonstrate entitlement to regularization under constitutional or statutory law – Past litigation and Supreme Court directions considered – Claims held without merit [Paras 13-20].

Decision – Writ Petition Dismissed – Held – Petitioners not entitled to regularization as employees of the Irrigation Department – No costs awarded – Miscellaneous applications, if any, also dismissed [Paras 20].

Referred Cases:

- Dasari Umadevi v. State of Andhra Pradesh
- Vibhuti Shankar Pandey v. State of Madhya Pradesh
- Secretary, State of Karnataka v. Umadevi
- Manjula Bhashini v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited
- State of Rajasthan v. Daya Lal
- State of Tamil Nadu v. A. Singamuthu
- Secretary to Government, School Education Department, Chennai v. R. Govindaswamy

Representing Advocates:

For Petitioners: P. Venkateswar Rao, V. Padmanabha Rao

For Respondents: GP for Irrigation & Comm Area Dev, GP for Services III (AP)

ORDER:

The remedy under Article 226 of the Constitution of India is intended to be used for ensuring the observance of the law of the land. Writ jurisdiction is to examine actions of State in public law domain. Writ of Mandamus is to

command the performance of a particular duty where the official charged by law with performance of the duty refuses or fails to perform it.

2. In this writ petition filed under Article 226 of the Constitution of India petitioners make their prayer in the following terms:

“For the reasons and in the circumstances stated in the accompanying affidavit the petitioners herein pray that this Hon’ble Court, in the interest of justice, be pleased to issue a Writ, Order or Direction; more particularly one in the nature of Writ of Mandamus:

- (a) declare that the petitioners are fully eligible and qualified to be absorbed as regular employees of the Irrigation Department;
- (b) declare the action of the respondents in rejecting the claims of the petitioners vide orders dated 02.05.1998 for regularisation as permanent employees of the Irrigation Department as arbitrary, illegal, violative of Articles 14 & 16 of the Constitution of India.
- (c) further direct the respondents to regularise the services of the petitioners as regular employees of the Irrigation Department with all consequential benefits; and pass such order or further orders as are deemed fit and proper in the circumstances of the case.”

3. Respondents in their counter affidavit gave the details of their reply to the various facts alleged in the writ petition and prayed for dismissal of the writ petition.

4. Sri V.Padmanabha Rao, the learned counsel for writ petitioners and Sri V.K.Naidu, the learned Government Pleader for Services-III appearing for respondents submitted their arguments.

5. The cause urged here has been part of a long-drawn litigation. However, only what is relevant for adjudication of this writ requires a mention here. Srisailem Project has been a lifegiving endeavour of the State. During the construction of this project there were various works which include construction of powerhouse buildings, construction of tail race tunnels and excavations for powerhouse and such other works. There has been Irrigation Department and Andhra Pradesh Construction Corporation. To Srisailem Project, the State used to award contracts to various companies for carrying out specific works. One such company was M/s. Gammon India Limited. The present writ petitioners and various others were hired by the said company in the year 1977. Some of these writ petitioners are skilled workers and some

of them are unskilled workers. It is they who have filed this writ petition with the prayers referred above.

6. The basis for raising such a prayer emanated out of the following facts:

These workers have found that their counterparts working in the Andhra Pradesh Construction Corporation were paid wages as per G.O.Ms.No.242, dated 01.06.1977 whereunder pay scales and other benefits were stipulated for work charged establishment employees. However, the employer of the writ petitioners, namely, M/s. Gammon India Limited, has not been paying such wages. That caused stir and unrest leading the workers in M/s. Gammon India Limited resorting to strike. The fallout of the strike was that on 12.01.1982 it caused grave threat to the very costly equipment for the powerhouse which was lying in the power pit and if not attended soon, it was likely to be submerged in the water. It is in those circumstances, the Chief Engineer Projects, (Srisaillam Project) put his step forward and exhorted to convince M/s. Gammon India Limited to do the needful to its own workers and saw that the contract that was given to it was executed appropriately. That did not result in any change. It is in the background of these facts, the writ petitioners alleged that the Chief Engineer made a proposal to M/s. Gammon India Limited that the employees of the said company would be absorbed in the Irrigation Department. Then the writ petitioners and their colleague employees resumed their work and rescued the powerhouse equipment. It is also alleged in the writ petition that on 25.01.1982 they were absorbed in the Irrigation Department.

7. At this stage, it is required to be noticed that the contention that they were absorbed is very strongly denied in the counter affidavit filed by the respondents. It is stated that M/s. Gammon India Limited is the contractor company and it failed to settle the unrest among the workers of its own company and since there was threat of damage to valuable machinery and equipment costing several crores of rupees, the Chief Engineer (Projects) instructed the site officers on 25.01.1982 to pay to contractor company workers the wages as per G.O.Ms.No.242, dated 01.06.1977 and for that limited purpose they were taken on departmental rolls and that it was made known to everyone that the amounts so paid by the department to those contractor company workers would be recovered from the work bills of the contractor company.

8. It is undisputed that in the year 1983 the Executive Engineer, Powerhouse Division discharged the contractor company workers from departmental rolls. After a few rounds of litigation before Courts, the Government referred the dispute to the Labour Court vide G.O.Rt.No.727, dated 01.05.1984 and the terms of the reference are as follows:

“Whether the 74 persons in the enclosed list who were originally appointed by M/s. Gammon India Limited Contractors, Srisailam Project, Kurnool District and later worked under the Executive Engineer, Power House Division, Srisailam Project, Kurnool District can be treated as employees of the said Executive Engineer and consequently their demand for extension of all benefits such as monetary benefits, leave, seniority etc., on par with work charged employees working in the State Government and reinstatement of the retrenched employees as per their seniority among existing employees of the Executive Engineer is justified. If not, to what relief the workmen were entitled.”

9. The said reference was numbered as I.D.No.50 of 1986 on the file of Industrial Tribunal-cum-Labour Court, Ananthapur. After an elaborate enquiry, the learned Tribunal passed its award on 01.09.1990 which reads as below:

“The 74 petitioners in the enclosed list to the reference who were originally appointed by M/s. Gammon India Limited, Contractors, Srisailam Project, Kurnool District and later worked under Executive Engineer, Power House Division, Srisailam Project, Kurnool District cannot be treated as employees of the said Executive Engineer and consequently their demand for extension of all benefits such as monetary benefits, leave, seniority etc., on par with work charged employees working in the State Government and reinstatement of the retrenched employees as per their seniority among the existing employees of the Executive Engineers is not justified and the petitioners are not entitled for any relief.”

10. The workmen questioned the said award in W.P.No.16880 of 1991. A learned Division Bench of this Court by order dated 02.09.1993 held in the following terms:

“Heard both sides.

The learned counsel for the petitioners submits that the issue in this writ petition is squarely covered by the decision of the Supreme Court in Writ Petition No.6081 of 1983 dated 26.11.1986.

In view of the above, we direct the respondents to consider the case of the petitioners in the light of the above judgment of the Supreme Court within three months from the date of receipt of a copy of this order, if the same is applicable.

With the above direction, the writ petition is disposed of. No costs.”

11. The said order of this Court was questioned by the State before the Hon'ble Supreme Court in S.L.P.No.15841 of 1998. While the same was pending, the State, in obedience to the directions given by the learned Division Bench of this Court, referred above considered the grievance of all the workmen including the writ petitioners and considered their case in the light of the principles laid down by the Hon'ble Supreme Court of India which is referred in the order of the Division Bench of this Court and concluded that these petitioners are not entitled for any of the reliefs they claimed. In those circumstances, S.L.P.No.15841 of 1998 was disposed of by the Hon'ble Supreme Court of India by its order dated 18.07.2000 which reads as below:

“Learned counsel for the petitioners today submits that pursuant to the direction contained in the impugned judgment the Chief Engineer has considered the claim of the respondents and passed orders. In view of the subsequent development the special leave petition has become infructuous. It is accordingly dismissed.

This course is adopted without prejudice to the right of the respondents to challenge the order, if any passed, by the Chief Engineer to the detriment of the respondents.”

12. It is also to be noticed that aggrieved by the orders of the Chief Engineer rejecting their claims, the workers preferred W.P.No.439 of 2003 before the Hon'ble Supreme Court of India. On 26.09.2003 their Lordships passed the following order:

“We declined to entertain this petition under Article 32 of the Constitution. Hence, the same is dismissed. However, the petitioners shall have the liberty, if so advised, to approach the High Court under Article 226 of the Constitution.”

13. Acting upon that liberty granted by their Lordships, the writ petitioners have now come up with this writ petition whereunder they challenged the order of rejection dated 02.05.1998. The challenge is based on the following contentions:

That the department failed to follow the principles laid down in W.P.No.6081 of 1983 of the Hon'ble Supreme Court of India and it erroneously distinguished the said binding precedent and thereby committed an error in not absorbing them and regularizing their services. Such action is violative of Articles 14 and 16 of the Constitution of India. That these writ petitioners saved crores worth of equipment and the respondents despite availing themselves of their services failed to regularize them. Respondents are prohibited from distinguishing the judgment of the Supreme Court. The impugned rejection order dated 02.05.1998 was not served on the writ petitioners, but they got a copy of the same while they were prosecuting the contempt proceedings before the Court (contempt proceedings were closed a long time ago).

14. As against it, learned Government Pleader for Services-III submits that the various litigations that the writ petitioners have been carrying on since 1983 never ever resulted in any positive finding in favour of any of them for their regularization. That the respondents duly obliged the orders of the Hon'ble Division Bench of this Court and considered the ratio contained in the judgment of the Hon'ble Supreme Court of India referred in the order of the Hon'ble Division Bench of this Court and found that the facts available in the said case are totally different from the facts available for the case of writ petitioners and after due application of mind it rejected their claims. Learned Government

Pleader argues that the writ petitioners are not entitled for the relief they sought for and that there are no sanctioned posts and ¹their case does not fall within the parameters of any precedent and that there has been no possibility for any such absorption and that the writ petitioners were never absorbed at all and their claims are unreasonable.

15. For respondents in support of their contentions, the following precedent is cited: -

1. ***Dasari Umadevi v. State of Andhra Pradesh***¹

¹ SCC Online AP 382

2. ***Vibhuti Shankar Pandey v. State of Madhya Pradesh***¹
 3. ***Secretary, State of Karnataka v. Umadevi***²
 4. ***A.Manjula Bhashini v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited***³
 5. ***State of Rajasthan v. Daya Lal***⁴
 6. ***State of Tamil Nadu v. A.Singamuthu***⁵
 7. ***Secretary to Government, School Education Department, Chennai v. R.Govindaswamy***⁶
16. Pointed reference is drawn to the ratio in ***State of Rajasthan v. Daya Lal*** (supra 5). Their Lordships laid down the well settled principles relating to regularization and parity in pay and stated that:

“(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization 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 regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an 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 into 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 regularization, if he is not working

¹ (2023) 3 SCC 639

² (2006) 4 SCC 1

³ (2009) 8 SCC 431

⁴ (2011) 2 SCC 429

⁵ (2017) 4 SCC 113

⁶ (2014) 4 SCC 769

against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(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.”

17. This Court has considered the submissions made on both sides. Having considered the entire material on record, it can be said that **hope** is a feeling of expectation and desire for a particular thing to happen. **Hope against hope** is to hope very strongly that something will happen although one knows it is not likely to happen at all. The writ petitioners have been hoping against hope. Their grievance has absolutely no merit and it has to be stated that they have been feeling agitated unnecessarily and against the prescription of law. It is undisputed that these writ petitioners were not employed in the Irrigation Department and were not employed in the Andhra Pradesh Construction Corporation or any other Government establishment. They were hired by a private company which private company won the tender work and executed certain works at Srisailem Project. That continued till 25.01.1982. These workers who were hired by the M/s. Gammon India Limited in the year 1977 worked with the said company and received its wages from that company till 25.01.1982. What happened on 25.01.1982 and just before that are the matters to be considered. These workers had a grievance with their employer as they were not paid wages like the wages received by their counterparts in the Andhra Pradesh Construction Corporation and Irrigation Department. While they were engaged at a nationally important project and while the crores worth of equipment was lying in the power pit, instead of doing their duty, they resorted to the weapon of strike and its employer did not react. Since the project was at stake, the Chief Engineer intervened to see that the work progressed smoothly. He thought of paying these contract company workers the minimum wages that were being paid to the workers working in the Andhra Pradesh Construction Corporation. It was for that purpose they were brought to the departmental rolls. While the writ petitioners contend that they were absorbed, they are unable to show any evidence showing their absorption. The precise question is whether M/s. Gammon India Limited was their employer or the Government

was the employer. That was decided by the Tribunal. The order of the Tribunal is not under challenge here. It is undisputed that it was only for a short period they were brought to the rolls of the department and that was done only to pay wages that are equal to the wages that are paid to workers in Government Corporation. It is also to be seen, as mentioned in the counter affidavit, the department filed four suits as against M/s. Gammon India Limited to collect the overdue amount of Rs.1,20,00,000/-. That include recovery of payments made by the department to these workers on behalf of M/s. Gammon India Limited. It is also undisputed that they were decreed in favour of the department. The threat to valuable equipment would not have arisen had the writ petitioners and their coworkers not resorted to any strike. We are not concerned whether the strike was justified or unjustified and whether it is legal or not legal. We are concerned with the simple fact that in the event of the usual carrying of work there was no occasion for any threat of damage to the valuable equipment. Not doing the work created such a piquant situation. It is based on that the writ petitioners wanted to capitalize. Their entry into the departmental rolls, though for a short period, was limited for payment of money alone. It was not out of any scheme. It was not under any contract. No fact is stated and no law is cited and argued here on behalf of the writ petitioners to show the basis on which they are entitled to seek their absorption and regularization. All the precedent referred above stare against them.

18. Their contention is that the respondents are not entitled to distinguish the judgment of the Hon'ble Supreme Court. That contention is totally misplaced. The judgment is to be followed for what it has laid down and not for what one hopes it ought to have laid down. Learned Division Bench of this Court disposed of the earlier writ petition in W.P.No.16880 of 1991 only at the request of these writ petitioners and directed the department to consider the decision of the Hon'ble Supreme Court of India in W.P.No.6081 of 1983 and find out whether it is applicable or not and if it is applicable, it has to be obliged and followed and if it is not applicable it has to take its own decision in accordance with law. Since that was the purport of the order of this Court, it was well within the competence of the respondents to consider the same as stated by this Court. It accordingly considered and found that the decision of the Hon'ble Supreme Court of India in W.P.No.6081 of 1983 had no application to the case of these writ petitioners. It is not as though that these writ petitioners are not aware of what is what. Paragraph No.8 of the affidavit filed in support of this writ petition reads as below:

“I further respectfully submit that similarly situated candidate G. Govinda Rajulu has filed W.P. No.6081 of 1993 before the Hon'ble Supreme Court. Only difference was that G. Govinda Rajulu was initially appointed in the Andhra Pradesh Construction Corporation Limited and on closure of Andhra Pradesh Construction Corporation Limited, he was regularly absorbed in the Irrigation Department. On the other hand, I and the other petitioners were initially engaged by M/s. Gammon India Limited, but subsequently we were absorbed by the Chief Engineer in the Irrigation Department on 25.1.1982. In respect of Govinda Rajulu, he was absorbed in the Irrigation Department, whereas our cases for regularization in the Irrigation Department have been erroneously rejected. I further respectfully submit that I and the other petitioners have become age barred from past 20 years and fighting for our rights. All the petitioners are poor, unemployed. They have become age barred for any other employment. If the petitioners' case is not considered for regularization, they will be put to irreparable loss and hardship.”

19. Thus, it is clear that they are very well aware that Mr. G.Govinda Rajulu was not a worker hired by M/s. Gammon India Limited. In the impugned order the Chief Engineer has mentioned that there is a clear distinction between workmen engaged by the contractor as against the workmen engaged by State or a Public Sector Undertaking wholly owned by the State. It is based on such distinction the Chief Engineer came to conclude that Govinda Rajulu's case has no application to the case of these workmen. The view taken by the Chief Engineer is in accordance with law and is in compliance with the directions of this Court and it followed the law as laid down by the Hon'ble Supreme Court of India. Castigating that as violative of Articles 14 and 16 of the Constitution of India is wholly misplaced. There is absolutely no merit in this writ petition.
20. In the result, this Writ Petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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