

PM Wilson, S/O Late PP Mathai Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 28, 2025

Acts Referred: Constitution of India, 1950 Article 14, 16

Hon'ble Judges: A. Muhamed Mustaque, J; P. Krishna Kumar, J

Bench: Division Bench

Advocate: A.Aruna, P.V.Uttara, A.J.Varghese

Final Decision: Disposed Of

Judgement

P.Krishna Kumar, J.

1. In this batch of original petitions, the petitioners who formerly worked in the Water Resources Department as Seasonal Labour Roll (SLR) workers

claim pensionary benefits, contending that they retired from their employment after decades of continuous service in the department and were denied

equal treatment, as the Government has given pensionary benefits to similarly placed employees retired from the Fisheries Department.

2. They approached the Kerala Administrative Tribunal while they were continuing as SLR workers seeking directions to regularise their service, to

permit them to continue up to the age of 60 years and to grant pensionary benefits. The Tribunal disposed of the applications by observing that it is

open to the Government to consider their requests for treatment on par with similarly placed persons. The petitioners challenged the said order for the

reason that the Tribunal ought to have granted the reliefs sought in view of the various declarations of law by the Apex court.

3. Heard the learned counsel appearing for the petitioners and the learned Senior Government Pleader. For ease of convenience, we take O.P.

(KAT)No.380/2024 as the leading case.

4. The learned counsel appearing for the petitioners forcefully submitted that the Government cannot speak in two voices when it considers similarly

placed SLR workers in two different departments. As the Government has already decided to provide retirement benefits to the SLR workers in the

Fisheries Department, the same benefits should not be denied to the petitioners, who were also regularised as SLR workers in a different department,

it is urged. The learned counsel further placed heavy reliance on Ext.P3 Cabinet decision dated 16/02/2011 wherein it was decided that HR/CLR/SLR

workers in the Water Resources Department who have completed 500 days in service on 01/01/2011 as well as 10 years of service, shall be

regularised as Worker Grade II with effect from 01/01/2011 by creating necessary posts and to permit them to continue up to 58 years without any

entitlement for pension and the posts thereby created would be considered as vanished once those workers complete 58 years.

5. The learned counsel for the petitioners further submitted that by the decision rendered by the Honourable Apex Court in Rajkaran Singh v. Union of

India [(2004) 8 SCR 516], the questions involved in these cases are squarely covered and the Government is bound to provide pension to the

petitioners. Petitioners further placed reliance on the decisions in Lloyd Electric And Engineering Ltd v. State of Himachal Pradesh (AIR 2015 SC

494), Union of India v. International Trading Co. [(2003) 5 SCC 437], DS Nakara v. Union of India (AIR 1983 SC 130), S.Seshachalam & Ors. Etc.

v. Chairman Bar Council of Tamil Nadu (AIR 2015 SC 816), The State of Jammu and Kashmir v. Triloki Nath Khosa and Ors. (1973 INSC 178),

Dr.Subramanian Swamy v. Director, CBI & Anr. [(2014) 8 SCC 682], Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors. (AIR 1991

SC 101), Vinod Kumar v. Union of India (2024 (2024 INSC 332) and Rajkaran Singh v. Union of India (2024 INSC 621).

6. The learned Senior Government Pleader vehemently refuted the said contentions. According to him, it is purely a policy decision of the Government

that whom should be given a pension, after considering various circumstances. He further submitted that the petitioners were only Seasonal Workers

who had been engaged only during a particular season and if this court directs the Government to give pensions to them, the Government will be

compelled to treat tens of thousands of others who are similarly placed, which would certainly destabilise the exchequer. Learned Senior Government

Pleader further submitted that Ext.P3 Cabinet decision will have no legal effect until a Government order is issued for implementing that decision.

7. The upshot of the contentions of the petitioners rests on 3 aspects; firstly, similarly placed SLR workers in the Fisheries Department were given

pensionary benefits by the Government, secondly, by Ext.P3 Cabinet decision, the Government has already taken a policy decision to regularise all the

SLR workers who have completed 10 years in service and 500 working days and thirdly, the law declared by the Apex Court in Rajkaran Singh vs

Union of India (supra), the Government is bound to give pension to the petitioners.

8. In Rajkaran Singh's case (supra) certain employees who were appointed to manage the funds of the Special Frontier Force (SFF) which is a

welfare initiative funded through personal contributions of the SFF troopers were denied pension on attaining the age of superannuation. They claimed

pensionary benefits under the 6th Central Pay Commission. Their claim was rejected on the ground that they were not recruited under the regular

rules and their pay was not made from the public fund. After discussing various decisions on the point, the Apex Court found that the appellants

therein meet the characteristics of regular Government service and that they were appointed on a regular basis. The Apex Court made the following

observations and concluded in favour of the appellants therein, based on the decision of the Apex Court in Vinod Kumar and others v. Union of India

[(2024) (1) SCR 1230]:

29. Indisputably, the appellants have served SFF HQ Estt. No. 22 for over three decades. While the duration of service alone may not be determinative, it is a

significant factor when considered in conjunction with the other aspects of their employment. Such long-term service suggests a level of permanence and integration

into the governmental structure that belies their classification as temporary employees. The appellants performed duties similar to those of regular employees in the

Accounts Section of SFF HQ Estt. No. 22. This similarity in job functions further blurs the line between the appellants' status and that of regular government

employees, suggesting that the distinction may be more formal than substantive. The extension of significant elements from the 4th and 5th CPC to the appellants

further cements their plea of being employed in governmental functions.

30. Learned ASG appearing for the respondents has argued that the recruitment, selection, and promotion processes for SSD Fund employees did not follow the

procedures used for regular employees and that the appellants were not subjected to probation or given confirmation letters as permanent employees. However, this

Court finds such argument to be untenable as it fails to account for the substantive nature of the appellants' employment over an extended period running into

three decades. In this regard, reference may be made to the judgment of this Court in the case of Vinod Kumar v. Union of India, wherein this Court noted;

"5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the

initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of

regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment,

constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was

conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature

of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which

the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive

rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a

subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door

entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering

certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had

followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra)

case is reproduced hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR

128], R.N. Nanjundappa [(1972) 1 SCC 409] and B.N. Nagarajan [(1979) 4 SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned

vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of

tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in

the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps

to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover

of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled

up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify

that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the

constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved

over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their

continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.Ã¢â‚¬â€

(emphasis supplied)

31. As held in Vinod Kumar (supra), Ã¢â‚¬Å“the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the

actual course of employment has evolved significantly over time.

32. This Court fully associates with this principle and finds it wholly applicable in the present case, especially in light of the administrative orders and Board

proceedings referred to supra that have consistently treated the appellants as equivalent to regular government employees. The mere classification of employees as

Ã¢â‚¬Å“temporaryÃ¢â‚¬ or Ã¢â‚¬Å“permanentÃ¢â‚¬ is not merely a matter of nomenclature but carries significant legal implications, particularly in terms of service benefits and

protections.

33. In the present case, the totality of circumstances indicates that despite their formal classification as temporary employees, the appellantsÃ¢â‚¬ employment bears

substantial hallmarks of regular government service. The denial of pensionary benefits solely on the basis of their temporary status, without due consideration of

these factors, appears to be an oversimplification of their employment relationship with the government. This approach runs the risk of creating a class of employees

who, despite serving the government for decades in a manner indistinguishable from regular employees, are deprived of the benefits and protections typically

accorded to government servants.

34. Thus, we are of the opinion that the denial of pensionary benefits to the appellants is not tenable or justifiable in the eyes of law as the same is arbitrary and

violates the fundamental rights as guaranteed by Articles 14 and 16 of the Constitution of India. It is indeed relevant to note that the appellantsÃ¢â‚¬ batch seems to

be the last in their genre of SSD Fund temporary employees and thus, manifestly, the direction to extend the benefits of the 6th CPC and the RP Rules to the

appellants shall not form a precedent so as to have a detrimental effect on the financial health of the SSD Fund.Ã¢â‚¬â€

9. The observation in Vinod Kumar's case (supra) assumes some relevance in the present context. The Honourable Supreme Court observed that the

essence of employment and rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has

evolved significantly over time and the continuous service of the appellants as regular employees performing duties indistinguishable from those in

permanent posts and their selection through a process that mirrors that of regular recruitment constitute a substantive departure from the temporary

and scheme-specific nature of their initial engagement. The court also noted that the reliance on procedure formalities at the outset cannot be used to

perpetually deny the substantive rights that have accrued over a considerable period through continuous service and ultimately the court found that the

service condition of the appellants, as evolved over time warrant reclassification of their service from temporary to regular status, as the failure to

recognise the substantive nature of their roles and their continuous service akin to permanent employees run counter to the principles of equity and

fairness.

10. After going through the records before us, we are of the view that a comparison of the actual nature of the job of the petitioners in juxtaposition to

a regular employee of the Water Resources department cannot be made by this Court for arriving at a conclusion as indicated by the Apex Court,

especially when the data available before us in the form of pleadings are very limited. Such an exercise has to be done by the Government while

keeping in mind the decision taken by it, if any, in the case of similarly placed SLR workers in the Fisheries department as well as the Cabinet decision

cited by the petitioners. While making that exercise, the petitioners shall also be afforded an opportunity of hearing. The Government has to take a

decision in this regard within three months from today.

The Original Petitions are disposed of accordingly.