
(2001) 04 AP CK 0005

Andhra Pradesh High Court

Case No: Writ Appeal No. 529 of 2001

Managing Director,
Andhra Pradesh
Beverages Corp. Ltd.

APPELLANT

Vs

M. Peter and Others

RESPONDENT

Date of Decision: April 27, 2001

Citation: (2001) 4 ALT 119

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: G. Manohar, for the Appellant; Krishna, for Respondent Nos. 1 to 35 and G.P. for Excise for Respondent Nos. 36 to 38, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.

This appeal is directed against the judgment and order dated 20-12-2000 passed by a learned Single Judge of this Court whereby and whereunder following the earlier decision of the Apex Court in [Dist. Collector/Chairman and Others Vs. M.L. Singh and Others](#) directed that the services of the petitioners are liable to be regularized in terms of G.O.Ms.No. 212 as most of them had completed more than 5 years of service. The learned Judge, however, refused to give a direction to regularize all the unskilled workers without reference to the work load and, therefore, issued the following directions:

As the report of the National Productivity Council is about two years old, the respondent-Corporation is directed to reassess the workload and arrive at the number of unskilled workmen required to attend to the function of the Corporation within two months from the date of receipt of a copy of this order.

After ascertaining of required manpower to attend to the functions of the Corporation, the Government shall regularize the services of the temporary employees who have completed five years of service as on 25-11-1993 and others as and when they complete

five years of service as per the judgment of the Supreme Court in [Dist. Collector/Chairman and Others Vs. M.L. Singh and Others](#) without insisting for existence of clear vacancies as stipulated in Clause 5 of the G.O.Ms.No. 212 dated 22-4-1994 but subject to fulfillment of other conditions therein and the rule of reservation to be followed while fixing the inter se seniority among them. If required number of candidates from reserved categories are not available to be fitted in the roster, those posts may be carried forward and the backlog posts to be filled in the next recruitment.

On the basis of the report submitted by the Corporation, the Government shall take a final decision in the matter and pass orders with regard to the man power requirement to carry out the objectives of the Corporation and also consider the feasibility of absorbing them in some avocation keeping the length of service rendered by them as most of them have crossed the upper age limit for any Government appointment.

If the Government comes to the conclusion that it has no option except to terminate the services of the some of the unskilled workmen, it is made clear that the principle of "last come should go first" should be observed.

As the activity of the Corporation being an industrial activity the provisions of Industrial Disputes Act has to be applied if they want to retrench the services of any of the unskilled workmen.

If any need arises in future for recruitment of manpower, the Corporation has to recruit the required manpower from the retrenched employees as per their seniority. It is needless to observe that the unskilled workmen whose services are being regularized under G.O.Ms.No. 212 shall get their seniority from the date of 25-11-1993 for purposes of seniority and other attendant benefits. But monetary benefit is limited from the date of filing of the writ petition.

Judgment in Writ Petition 7175 of 1997 dated 8-12-2000 wherein general contentions of the State were dealt with forms part of this Judgment.

After completion of this exercise, the respondent-Corporation shall issue orders regularizing the services of the unskilled workmen as per seniority since all of them have completed five years of service within 12 weeks from the date of receipt of the order.

2. The writ petitioners were 35 in number.

3. The offer of appointment had not been produced. It is evident from the impugned judgment that the question as to whether all the writ petitioners had fulfilled the conditions of the aforementioned G.O.Ms.No. 212 had not been considered.

4. The learned Single Judge himself referred to the report of the Sub-Committee constituted by the Government for restructuring the public enterprise wherein it has been observed that the Corporation is over-staffed and the man-power requirement keeping in

view the present activity in mind has to be assessed by reputed consultancy agency whereupon the National Productivity Council was approached which has allegedly made recommendations for regularisation of the surplus temporary employees.

5. It stands admitted that the State has not yet taken any decision.

6. The learned Counsel appearing on behalf of the appellant submits that by reason of imposition of prohibition in January, 1995 the work of the A.P. Beverages Corporation had greatly reduced as a result whereof the workmen were either kept idle or under-utilized.

7. It has also been submitted that having regard to the provisions of Andhra Pradesh (Regularisation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structures) Act (Act 2 of 1994) which was amended by Act 3 of 1998 and further amended by Act 27 of 1998 only those who fulfil the conditions laid down under G.O.Ms.No. 212 could be regularized.

8. The vires of Act No. 27 of 1998 had been questioned and the learned Judge declared the said provision as ultra vires by a decision in [D. Sesharani and Others Vs. Managing Director, A.P. Women's Co-op. Finance Corporation and Others](#), .

9. G.O.Ms.No. 212 came up for interpretation before this Court and it was held that the said Government Order would apply to those who were in service on 28-11-1993, although they had not completed five years of service as on that date.

10. This Court held that the purported criteria laid down therein namely five years of continuous service and their continuing in service on 22-3-1993 were not conjunctive and if an employee was in service on that day and was to complete five years at any point of time, he may be regularised. The matter came up for consideration before the Apex Court in District Collector's case (1 supra) wherein it was held:

We have heard the learned Counsel for the parties. These matters relate to regularisation and payment of wages to the respondents who were employed on daily wage basis. By the impugned judgment the Division Bench of the High Court, while affirming with modification the order passed by the learned Single Judge has directed that all employees who have completed five years of continuous service should be considered for regularisation in accordance with the terms of G.O.Ms.No. 212, dated April 22, 1994 and that they should be paid their wages at par with the wages paid to the permanent employees of that category. As regards payment of wages there is no dispute between the parties that the same have to be paid from the date of regularisation. In so far as regularisation is concerned, we are of the view that the High Court has rightly directed that on the basis of the Notification G.O.Ms.No. 212, the respondent employees shall be regularized with effect from the date or dates, they completed five years" continuous service. It is, however, made clear that the other conditions laid down in the said G.O.Ms.No. 212 will have to be satisfied for the purpose of regularisation. The special leave petitions are disposed of accordingly.

11. It is therefore evident that the Apex Court clearly held that conditions laid down in G.O.Ms.No. 212 will have to be satisfied. The judgment of the learned Single Judge is clearly in variance with the decision of the Apex Court in so far as it held that the instructions for regularisation of the services of the concerned workmen should be made without insisting for existence of clear vacancies as stipulated in Clause 5 of the said Government Order.

12. Keeping in view the fact that the learned Single Judge has, while issuing the aforementioned directions, failed to take into consideration the provisions laid down in Act 2 of 1994 as amended by Act 3 of 1998 and Act 27 of 1998 the impugned judgment cannot be upheld. It is set aside accordingly. However, the appellant may consider the cases of the concerned employees for regularisation of their services strictly in terms of G.O.Ms.No. 212. The writ appeal is accordingly allowed. No costs.