

C. Balachandran & Ors vs State Of Kerala & Ors on 17 December, 2008

Equivalent citations: 2009 AIR SCW 847, 2009 (3) SCC 179, AIR 2009 SC (SUPP) 131, (2009) 1 SCT 530, (2009) 3 SERV LJ 338, (2009) 1 SCALE 195, (2009) 2 LAB LN 37, (2009) 120 FAC LR 834, (2009) 3 SERV LR 398, (2009) 1 ESC 62

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Bench: Cyriac Joseph, S.B. Sinha

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7351 OF 2008
[Arising out of SLP (C) No.3498 of 2004]

C. Balachandran & Ors.

... Appellants

Versus

State of Kerala & Ors.

... Respondents

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellants are before us aggrieved by and dissatisfied with the judgment and order dated 21st July 2003 passed by a Division Bench of the High Court of Kerala at Ernakulam affirming an order dated 07th November 2002 passed by a learned Single Judge of the said Court dismissing the writ petition filed by them seeking a writ of or in the nature of mandamus directing the Kerala Water Authority to reinstate and regularise them in service purported to be in terms of a judgment and order of this Court in the case of Jacob M. Puthuparambil & Ors. etc. v. Kerala Water Authority & Ors. etc. (1991) 1 SCC 28.

3. Appellants were said to have been appointed by the Kerala Water and Sewerage Authority (for short, 'the Authority') on daily wages in connection with carrying out of some projects. Their

services were terminated in the year 1987. A writ petition before the Kerala High Court was filed. The said writ petition was disposed of by an order dated 22nd May 1987 directing :

"4. The petitioner shall make representations before the Kerala Water Authority detailing their claims within two weeks from this date. Such representations, if any, shall be considered and disposed of by the Authority and the Government after giving the petitioners opportunity of being heard as expeditiously as possible, at any rate within a month from the date of receipt of the representation. There shall be further direction to allow the petitioners to continue in service till such disposal of the representation."

4. Indisputably, the question in regard to right of the employees of the Authority for regularisation in service was considered by this Court in the case of Jacob (*supra*). Upon taking into consideration the provisions of Section 69 of Kerala Water Supply and Sewerage Act, 1986 (for short, 'the 1986 Act') and Rule 9(a)(i) of Kerala State and Subordinate Service Rules (for short, 'the Rules'), it was opined :

".... Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service."

5. Indisputably, the appellants were not parties in the said matter before this Court. The judgment of this Court was rendered on 19th September 1990. Appellants made representations to the Authority on or about 19th November 1991 purporting to seek compliance of the judgment of this Court in the case of Jacob (*supra*) in their favour. Some of the employees who are said to be similarly situated filed a writ petition. Indisputably, the said writ petition was allowed. Certain observations were made therein. An intra-court appeal against the said judgment was filed by the Authority. Before the Division Bench of the said Court, an undertaking was allegedly given by the appellant-Authority that the said writ petitioners would be appointed on regular basis considering their respective qualifications. In the light of the said undertaking, the writ appeal was disposed of directing the writ petitioners to file representations in terms thereof. Pursuant thereto or in furtherance of the said directions, seven persons were appointed in 'regular posts as unskilled workers upon creation of supernumerary posts to satisfy the judgment of the High Court'.

6. Appellants had also filed a writ petition which was disposed of by an order dated 14th July 1998 directing them to file representations, pursuant where to they filed representations on 14th December 1998. However, their representations were rejected by an order dated 16th December 1998 by the Authority.

7. Appellants challenged the order of rejection of their representations by filing a writ petition which was disposed of on 10th October 2001 by directing :

"2. Therefore I dispose of the Original Petition directing the 1st respondent to afford another opportunity to the petitioners to present their case represented in Ext.P4. Final orders shall be passed in accordance with law within a period of four months from the date of production of copy of this judgment. Needless to say Ext.P7 will be subject in the said decision."

8. Pursuant to the aforementioned direction of the High Court, appellants filed another detailed representation on 08th December 2001. By an order dated 26th March 2002, their representation was rejected by the Principal Secretary (Power), In charge of Irrigation & Water Supply, stating :

"The claims of the petitioners have been examined in detail with reference to the records and the judgment of Supreme Court. The Supreme Court Judgment in Jacob Vs. K.W.A. is applicable only to the employees of the Kerala Water Authority who were recruited through Employment Exchange as per Rule 9(a)(i) and who were continuing on the date of judgment i.e. 19.9.1990. From the records it may be noted that the petitioners have not been issued any order of appointment on provisional basis and they were also not appointed through Employment Exchanges. It may also be noted that they were not in service on 19.9.1990. The petitioners were only engaged in daily wages for doing some particular works and they were disengaged on completion of that work. They were not appointed to any sanctioned posts, they were not treated on par with CLR workers in the matter of payment of salary etc. As per the decision of the Hon'ble High Court Division Bench the HR workers are not entitled for regularisation re-instatement in service. Hon'ble High Court has upheld the above decision in its judgment in O.P. No.15989/94 filed by one Chandrasekharan Nair and 46 others on a similar request. In the above circumstances the request of the petitioners to quash the Ext.P7 seems no consideration."

9. Appellants thereafter filed another writ petition which was dismissed by a learned Single Judge on 07th November 2002 holding :

"3. It is admitted case that the services of the petitioners were terminated in the year 1987-88. The Supreme Court pronounced the judgment in Jacob's case on 19.9.1990. Even assuming that the petitioners were in service either as daily wage workers or labourers on monthly payment basis it is disputable that they were not in service on 19.9.1990. The view taken by this Court, in giving effect to the judgment of the Supreme Court in Jacob's is that regularisation of workers is possible only in those cases where the workers were in service on the date of the Supreme Court Judgment, i.e., 19.9.1990. Since the petitioners were not in service on that date, the claim made by them that they are entitled to regularisation in view of Jacob's case cannot be sustained. Though other contentions also have been raised by the counsel for the petitioners, I do not think I should examine the merits of those contentions since in my view the petitioners are not entitled to the benefit of the Judgment of the Supreme Court. Unless the petitioners come within the purview of that judgment,

which is the Magna carta of the workers of the Kerala Water Authority appointed prior to the extension of the provisions of the Public Service Commission (Consultation) Regulations to the Kerala Water Authority, any other contention will not be of any avail. Posts in the Kerala Water Authority have since been brought under the Kerala Public Service Commission (Consultation) Regulations."

10. As indicated hereinbefore, an appeal preferred thereagainst has been dismissed by the impugned order.

11. Dr. K.P.K. Pillay, learned counsel appearing on behalf of the appellants would submit that the learned Single Judge of the High Court committed a serious error in passing the impugned judgment insofar as he failed to take into consideration that in view of the fact that seven persons, who were similarly situated were appointed, there was absolutely no reason as to why the case of the appellants should not have been considered by the Authority as also by the State Government having regard thereto. Delay in filing the representation and/or writ petition by the appellants, if any, it was urged, should be condoned by this Court in exercise of its power under Article 142 of the Constitution of India.

Learned counsel would furthermore contend that out of the four categories carved out by this Court in the case of Jacob (*supra*), the appellants' case falls in category (ii) and/or (iii) and thus it was not necessary for the appellants to be in service on the date of passing of the said judgment.

12. Mr. G. Prakash, learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

13. The Kerala Water and Waste Water Authority was constituted under the Kerala Water and Waste Water Ordinance, 1984 which came into force on 01st March 1984. The said Ordinance was repealed and was replaced by the 1986 Act. The employees of the said Authority having regard to the provisions of the said Act as also the amendments carried out thereafter were divided into four distinct groups :

"(i) Those who were in the employment of PHED before the constitution of the Authority and were transferred to the Authority;

(ii) Those whom the Authority employed between April 1, 1984 and August 4, 1986;

(iii) Those who were appointed between August 4, 1986 and July 30, 1988; and

(iv) Those who were appointed after July 30, 1988."

14. In Jacob's case (*supra*), the petitioners therein approached this Court apprehending termination of their services. They had been working in the Authority as cleaners, pump operators, draftsmen, drivers etc. having been appointed through the Employment Exchange between 1981 and 1988. It was contended that for the purpose of their appointment it was not necessary to consult Public

Service Commission. This Court noticed the provisions of the 1986 Act and the Rules framed thereunder to consider the question of regularisation of the petitioners therein who were continuing in service wherefor historical as also constitutional perspectives were taken into consideration. In terms of Rule 9(a)(i) of the Rules, the appointing authority could appoint a person temporarily otherwise than in accordance with the rule, if (i) it was necessary in public interest; and (ii) where an emergency had arisen to fill any particular post which has fallen vacant, immediately. Clause (iii) of Rule 9 of the Rules, however, stated that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (e) of Rule 9, however, provided that services of any person appointed under clause (i) of sub-rule (a) be regularised if he had completed continuous service of two years as on December 22, 1973, notwithstanding anything contained in the rules.

15. On the aforementioned premise, this Court held :

"(2) The services of workers employed by the Authority between April 1, 1984 and August 4, 1986 will be regularised with immediate effect if they possess the requisite qualifications for the post prescribed on the date of appointment of the concerned worker.

(3) The services of workers appointed after August 4, 1984 and possessing the requisite qualifications should be regulated in accordance with Act 19 of 1970 provided they have put in continuous service of not less than one year, artificial breaks, if any, to be ignored. The Kerala Public Service Commission will take immediate steps to regularise their services as a separate block. In so doing the Kerala Public Service Commission will take the age bar as waived."

16. The judgment rendered by this Court must be read in its entirety. It should not be read as a provision of a Statute. This Court took into consideration the constitutional scheme to opine that those who are in job should not be thrown out. The aforementioned observations, therefore, must be borne in mind while construing clauses (2) and (3) of the operative part of the judgment of this Court. Jacob (*supra*) did not and in fact had no occasion to take into consideration the cases of the daily wagers appointed against a particular project and whose services had been terminated after the project had come to an end.

17. Appellants herein in their writ petition before the High Court as also before us did not state as to how they had been appointed and for how many days or months they had worked. They did not disclose as to whether before their appointment any selection process was resorted to or that they were registered with the Employment Exchange. There is nothing on record to show that before their recruitment, the constitutional scheme of equality as envisaged under Articles 14 and 16 of the Constitution of India was complied with.

18. A Constitution Bench of this Court in the case of Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1 opined as under :

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."

29. Dr. Pillay, however, strongly relied upon the observations made in para 53 in the case of Umadevi (supra) which reads as under :

"53. One aspect needs to be clarified. There may be cases where regular appointments (not illegal appointments) as explained in *State of Mysore v. S.V. Narayanappa* (1967) 1 SCR 128, *R.N. Nanjundappa v. T. Thimmiah* (1972) 1 SCC 409 and *B.N. Nagarajan v. State of Karnataka* (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 aboveresferred 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."

20. A case of regularisation which thus attained finality and was not sub judice would not come within the purview of exception to the rule contained in para 53 of the said judgment. Appellants' case, thus, does not come within the purview thereof. Only those cases where regularisations had already been made were not to be re-opened. It is not in dispute that services of the appellants were terminated as far back as in 1987 and they did not question the legality or validity of the said order. It is only after the decision of this Court in Jacob's case (supra) representations were filed. Such representations were rejected both by Kerala Water Authority as also the State of Kerala.

21. Appellants, in our opinion, thus, neither in law nor in equity were entitled to be reinstated in service. The decision of this Court in Jacob's case (supra) being not applicable to the case of the appellants, we are bound by the ratio laid down in the case of Umadevi (supra). So far as paragraph 53 of the judgment of the Constitution Bench in the said case is concerned, the same has been considered by this Court in a large number of decisions. In the case of Punjab Water Supply & Sewerage Board vs. Ranjodh Singh & Ors., [(2007) 2 SCC 491, it was held :

"15. The question came up for consideration before a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi (3) (2006) 4 SCC 1 wherein it was held that no person who was temporarily or casually been employed could be directed to be continued permanently. It was opined that by doing so it would be creating another mode of public employment which is not permissible."

[See Mineral Exploration Corpn. Employees' Union vs. Mineral Exploration Corpn. Ltd. [(2006) 6 SCC 310]; State of M.P. & Ors. vs. Lalit Kumar Verma [(2007) 1 SCC 575]; and Postmaster General, Kolkata & Others vs. Tutu Das (Dutta) [(2007) 5 SCC 317].

22. For the reasons aforementioned, there is no merit in this appeal and the same is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

.....J. [S.B. Sinha]J. [Cyriac Joseph] New Delhi.

December 17, 2008