

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition NO.15071 OF 2000

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DATE:01.06.2015

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BETWEEN:

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Nagiri Dass .. Petitioner

And

The Govt. of A.P. rep. by its Prl.Secretary, Finance and Planning, Hyderabad
and four others

.. Respondents

HON'BLE SRI JUSTICE R. KANTHA RAO

WRIT PETITION NO.15071 OF 2000

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking regularization of services in the 5th respondent High School in the cadre of Class IV employee i.e. last grade servant pursuant to the G.O.Ms.No.237, dated 04.04.1985 and G.O.Ms.No.212 Finance and Planning (FW-PC-III) Department dated 22.04.1994 with effect from 01.01.1991.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. It is submitted by the petitioner that he was appointed as Scavenger in the 5th respondent High School vide Proceedings ROC.No.189-B2/52, dated 18.08.1951 of the Director of Public Instructions, Madras (Andhra Pradesh). He was appointed as Scavenger on 01.01.1981 as contingent employee and has been continuously working in the 5th respondent school. The 5th respondent which is an Aided High School recommended the name of the petitioner to the District Educational Officer-4th respondent herein for conversion of his services into last grade services vide letters dated 16.09.1989, 20.01.1992, 27.05.1996 and 04.11.1997. Despite the fact the petitioner has put up 19 years of service as Scavenger and passed 10th class in the year 1972, the 4th respondent did not consider the case of the petitioner for regularization of his services as last grade employee.

4. It is submitted by the petitioner that the first respondent issued G.O.Ms.No.212 Finance and Planning (FWPC-III) Department, dated 22.04.1994 and formulated a scheme for regularization of services of the persons appointed on daily wages/NMR/or on consolidated pay. The first

respondent by the aforementioned G.O. decided to regularize the services of such persons who worked continuously for a minimum period of five years and were continuing as on 25.11.1993. Though, the petitioner was on pay rolls as scavenger on 25.11.1993 and had put up continuous service of 13 years by then, his services were not regularized.

5. Nextly, it is submitted by the petitioner that the Division Bench of this Court in W.P.No.9045 of 1989 dated 25.03.1997 have regularized the services of D.Muralayya into Class-IV as per G.O.Ms.No.237, dated 04.04.1985. Therefore, the petitioner filed the present writ petition seeking a writ of mandamus to regularize his services and absorb him as Class IV employee with effect from the date on which he completed 10 years of service and to sanction grant-in-aid for the purpose of payment of salary as Class IV employee along with arrears of salary.

6. The respondents filed counter-affidavit contending *inter alia* as follows:

The petitioner was appointed as Part Time Scavenger in the 5th respondent school without any sanction of sanctioned post of scavenger by the competent authority. The management paid the salaries from their own funds and there is no approval by the competent authority either for creation of part time scavenger post or approval of the appointment of the petitioner as part time scavenger by the competent authority. Since the petitioner was appointed as part time contingent employee without a sanctioned post and his appointment which was made with effect from 01.01.1981 has no approval by the competent authority, G.O.Ms.No.237, Education, dated 06.04.1985 read with kG.O.Ms.No.212, Fin. dated 22.04.1994 has no application to the case of the petitioner. It is submitted that on the proposal of District Educational Officer and the Commissioner & Director of School Education has examined the request of the applicant and issued speaking orders dated 29.08.2012. This Court by orders, dated 06.09.2012 directed the respondents to secure proper instructions in touch with District Educational Officer, Vizianagaram to enable the Commissioner & Director of School Education to regularize the services of the petitioner at the earliest. In pursuance of the orders of this Court, on the proposals of the District Educational Officer, dated 20.09.2012, the Commissioner and Director of School Education submitted detailed proposals

to the Principal Secretary to the Government seeking suitable orders for implementation of the orders of this Court in respect of the petitioner. It is submitted that the matter is pending before the government and it takes some more time to pass orders after consulting Advisory Departments of Law, Finance and G.A.D.

7. The version of the petitioner is that he was appointed as scavenger against a sanctioned post and worked for a period of more than 19 years and therefore, his services have to be regularized.

8. On the other hand, it is the contention of the respondents that the petitioner was appointed as part time scavenger and as the said post was not sanctioned by a competent authority, his services cannot be regularized in terms of the G.O.Ms.No.237, Education, dated 06.04.1985 read with G.O.Ms.No.212, Fin. Dated 22.04.1994. The fact which cannot be disputed is that the petitioner was appointed as scavenger (contingent employee) to clean the premises of the school by order dated 01.01.1981 and since then he has been continuously working in the said post. As per G.O.Ms.No.212, Fin. Dated 22.04.1994, even the employees who were appointed on daily wages/NMR/or on consolidated pay are entitled to be regularized if they work for a minimum period of five years and are continuing as on 25.11.1993. The petitioner satisfies the above requirement in the aforesaid G.O. The petitioner filed the Xerox copy of the proceedings of the Director of Public Instructions, Madras, dated 15.08.1951 relating to the non-teaching staff of Aided C.B.M. Girls High School, Bobbili along with the writ petition. It is mentioned in the said proceedings that nine non-teaching staff have been approved provided the strength continues to be 500 below. In the said proceedings, the 9th employee i.e. scavenger is the petitioner. Therefore, I see no substance in the contention put-forth by the respondents that the post of the petitioner is not approved by the competent authority.

9. Therefore, in the considered view of this Court, the petitioner's services are to be regularized in the cadre of Class IV employee in the light of the G.O.Ms.No.237, Education, dated 06.04.1985 read with G.O.Ms.No.212, Fin. Dated 22.04.1994. The respondents are directed to regularize the services of the petitioner as an employee of Class IV with effect from the date on which he

completed 10 years of service from the date of his appointment and pay him the arrears of salary since the date of regularization.

10. The writ petition succeeds and the same is accordingly allowed. There shall be no order as to costs.

Miscellaneous petitions if any filed in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:01.06.2015

ccm

THE HON’BLE SRI JUSTICE R.KANTHA RAO

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