

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.4865 OF 2002

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ORDER:

The case of the petitioner is that he passed intermediate examination and was appointed as Section Writer on 18.02.1986 in the Mahaboobnagar District Scheduled Castes Services Co-operative Society Limited, and have been continuing in the said post without any interruption except artificial breaks for one or two days and is being paid daily wages by the Corporation and that by the time of filing writ petition he has completed 16 years of service and is being continued on NMR basis. The grievance of the petitioner is that though he competed more than 16 years of service, he is still being continued on NMR basis and his services have not been regularized. He further submits that he along with one Sri P.Yadagiri Chary filed WP.No.15301 of 1993 before this Court and this Court allowed the writ petition directing the respondents to regularize their services in the post of Section Writer in the time scale of pay 810-25-1060-30-1420 with effect from 01.11.1993 i.e. the date of filing of writ petition. This Court further held that in similar circumstances WP.No.19204 of 1987 was allowed on 12.04.1989 in respect of the Section Writers working in Ranga Reddy District and the Corporation carried the matter to the Supreme Court by filing SLP No.10384/1991 and the same was dismissed on 17.06.1991. Later on, several cases were allowed directing the Corporation to regularize the services of the petitioners therein with effect from the date of filing of the writ petition with minimum time scale. While so, the petitioner filed CC.No.295/1994 alleging violation of the orders dated 29.10.1993 passed by this Court in WP.No.15301 of 1993. After receiving the

notices in the contempt cases and after lapse of two years the Corporation filed WA.No.617/1995 and the same was dismissed and again the respondent preferred SLP No.3530 of 1996 and the same was disposed of directing the Corporation to regularize the petitioner's services as per G.O.Ms.No.212, dated 22.04.1994.

The grievance of the petitioner is that though four Junior Assistant posts were sanctioned with effect from 17.11.1994 vide circular dated 31.05.1996 and that besides the above four vacancies, there is another vacancy was already existing right from 1986, and that the petitioner has satisfied all the conditions contemplated in G.O.Ms.No.212, dated 22.04.1994, the respondents are not at all considering the petitioner's case for regularization. While the matter stood thus, the 2nd respondent, having recommended the case of the petitioner to the Head of Department by his letter dated 26.03.1998, who issued proceedings No.B/1180/93, dated 06.07.1998, rejecting the case of the petitioner on the ground that there is no vacancy available as on that day. Though petitioner is discharging the duties of Junior Assistant, he is not being paid minimum time scale attached to the post of Junior Assistant as per the Judgment of this Court in WP.No.26478 of 1998. Aggrieved by the same, the petitioner filed WP.No.15988 of 1999, wherein this Court granted interim direction to the respondents to grant minimum pay scale attached to the post of Junior Assistant to the petitioner pending disposal of the writ petition. Thereafter, since the respondents did not implement the interim orders of this Court, the petitioner filed CC.No.1515/2000 and after receiving notices in the CC, the 2nd respondent issued proceedings dated 03.03.2001, granting minimum scale attached to the post and thereafter ultimately the

said writ petition was disposed of on 18.04.2001, by following the Judgment reported in 2001(3) ALT 366 (DB), with a direction to consider the case of the petitioner in terms of G.O.Ms.No.212, Finance and Planning (FW.PC.III), Department dated 22.04.1994 and other relevant Government orders and circulars. While the matter stood thus, the 1st respondent issued proceedings dated 21.09.2001, directing the 2nd respondent to reject the case of the petitioner on the ground that the petitioner has not fulfilled condition No.5 of Para-2 of G.O.Ms.No.212. Basing on the same, the 2nd respondent issued proceedings dated 05.03.2002, rejecting the case of the petitioner for regularization on the ground that the petitioner has not fulfilled condition No.5 of para-2 of G.O.Ms.No.212, dated 22.04.1994. Aggrieved by the same, present writ petition is filed.

The respondents filed counter affidavit stating that in order to meet the urgent works and also in order to help the illiterate SC beneficiaries in filling up the forms and also for other services, the District societies engaged certain persons as Sections Writers from time to time temporarily on daily wage basis; that no appointment orders have been issued to the persons who have engaged as Section Writers, but they are continued in their services on daily wage basis on humanitarian grounds and also in view of the directions from the Courts; that services of the petitioner was utilized upto 28.02.1989 with short breaks in services; that again the petitioner was engaged by the Corporation due to the work load on 18.12.1990 on daily wage basis; that the petitioner has suppressed the facts that his service was disengaged from 28.02.1989 to 17.12.1990. It is further stated that the case of the petitioner was considered for regularization in

terms of G.O.Ms.No.212, dated 22.04.1994 and rejected on the ground that there is no vacancy. It is also stated that the circular dated 31.05.1996 is kept in abeyance and as such the Managing Director in his proceedings dated 07.06.1996 directing all the Executive Directors not to fill up the posts set out as per the staffing pattern appended to circular dated 31.05.1996. It is further stated that as petitioner was engaged on daily wages, he is not entitled for regular time scales till his services are regularized; and that in compliance with the directions of the orders of this Court, the Corporation has considered the case of the petitioner and issued proceedings dated 21.09.2001, rejecting the claim of the petitioner for regularization of his services as the post of Section Writer is not a sanctioned post as per the staffing pattern of the District society and that the petitioner has not fulfilled condition No.5 of para-2 of G.O.Ms.No.212, dated 22.04.1994 read with G.O.Ms.No.231 dated 16.10.1998 and that pursuant to the rejection of the claim of the petitioner for regularization of his services, the 2nd respondent by proceedings dated 5.03.2002 has withdrawn the time scales given earlier pending disposal of WP.No.15988/99. It is further stated that as per circular dated 12.01.1990 of the Corporation, the post of Junior Assistant has to be filled up by way of direct recruitment and the minimum qualification required is degree; and that the petitioner admittedly has passed only intermediate and does not possess degree, further the service rules are also not approved by the government, as such, the petitioner has no right to claim for regularization of his services in the post of Junior Assistant.

The respondents filed additional counter affidavit stating that the petitioner was working on daily wages in the society from

18.02.1986 to 28.02.1989 with a gap of 1 year 7 months and again working from 18.12.1990 to till date with a gap of two or three days in every month and that the petitioner was not appointed in any sanctioned post; that since the petitioner is not having continuous services and not completed 5 years as on the date 25.11.1993, as per the G.O.Ms.No.212, dated 22.04.1994, the petitioner is not eligible for the regularization of his services. It is further stated that Section-7 of Act-2 of 1994 (Regulation of appointments to public services and rationalization of staff pattern and pay structure), which has come into force with effect from 25.11.1993, demonstrates that “no person who is a daily wage employee and no person who is appointed on a temporary basis under section 3 and is continuing as such at the commencement of this act shall have or shall be deemed ever to have a right to claim for regularization of services on any ground whatsoever at the services of such person shall be liable to be terminated at any time without any notice and without assigning any reasons.” The respondents further relied on the Judgment rendered by the Supreme Court in **Secretary, State of Karnataka v. Uma Devi**^[1] wherein at para 53 it is stated that “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.” Ultimately, the respondents sought for dismissal of the writ petition.

The petitioner filed reply affidavit reiterating the contents in the writ affidavit and also stated that he has been working from 18.02.1986 till today in the Corporation and has completed 26 years of service as on today except some artificial breaks. He

further states that his case fall under para-53 of the Judgment relied on by the respondent in **Uma Devi** case. It is also reiterated that four vacancies are available in the office of the 3rd respondent and that the 2nd respondent in his letter dated 30.07.2015 recommended the case of one Sri Hanumanthu, Record Assistant for the promotion as Junior Assistant by duly requesting the management to accord permission to down grade the post of senior Assistant to Junior Assistant to accommodate the said person.

Learned counsel for the petitioners and learned Standing Counsel made submissions on the stand taken in their respective pleadings.

In the instant case, in pursuance of the directions issued by this Court in WP.No.15988 of 1999 on 14.08.2001, the case of the petitioner for regularization of his services is rejected only on the ground that petitioner has not fulfilled condition 5 of para-2 of G.O.Ms.No.212, dated 22.04.1994.

Condition No.5 of para-2 of G.O.Ms.No.212, dated 22.04.1994 reads as follows;

“5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.”

But, in the additional counter affidavit the respondents states that since the petitioner is not having continuous service and not completed 5 years as on 25.11.1993, he is not eligible for regularization. That is not the ground for rejection of the case of the petitioner. When the validity of the order is being questioned in

the writ petition the order has to be tested on the reasons given in the order. But they cannot be supplemented by way of affidavits as held by Apex Court in **Mohinder Singh Gill and another v. The Chief Election Commissioner** ^[2] which reads as follows;

“when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.”

As such grounds taken in the additional counter affidavit cannot be considered for supporting the impugned order.

So, now the only ground on which the impugned order has to be decided is whether the petitioner has fulfilled condition No.5 of para-2 of G.O.Ms.No.212, dated 22.04.1994.

The petitioner claims that there are vacant posts as per circular dated 31.05.1996, issued by the Managing Director. But in the counter it is stated that the same was kept in abeyance till the finalization of the service rules for the District society by the Government of Andhra Pradesh and that the Managing Director directed all the Executive Directors not to fill up the posts set out as per the staffing pattern appended to circular dated 31.05.1996. Even the letter dated 30.07.2015, filed along with reply shows there are four Senior Assistant posts vacant in the respondent office. But the learned Standing Counsel produced a chart signed by the Executive Director which shows sanctioned strength of Junior Assistants as 'one'. Though in the counter the issuance of circular dated 31.05.1996 is not disputed, they want to keep the same in abeyance, but how long it is kept in abeyance is not clear.

Even as per latest letter dated 30.07.2015, there is vacancy of Junior Assistant post. Be that as it may. Petitioner is continuing from the year 1986 with some artificial breaks and even according to respondents he is continuing from 28.02.1989, for almost 26 years and now admittedly petitioner is not continuing on the basis of any interim orders passed by this Court. Even according to respondents he is being continuing on humanitarian grounds. As such, it cannot be said that without any sanction post a person is being continued for 26 long years. More so, the respondent Corporation engaged the petitioner because they are in need of persons working for the respondent organization. That is the reason for issuing the circular in the year 1996 creating four vacant posts. Even as per the Judgment in **Uma Devi case** relied on by the respondents it is held that a person who worked without intervention of the courts for more than ten years in the sanctioned posts, their case should be considered for regularization. As such the petitioner is entitled for regularization of the services.

Since the impugned order is not rejected on the ground that petitioner is not having continuous services and not completed 5 years as on the date of 25.11.1993, the Judgment relied on by the respondents' counsel in **A.Manjula Bhashini and others v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporated Limited and another** ^[3] does not come to the rescue of the respondent Society, as this order is not being tested on that ground.

In view of the same, the impugned order dated 05.03.2002 issued by the 2nd respondent is set aside the respondents are directed to regularize the services of the petitioner with effect from

05.03.2002 since that is the date of consideration for regularization of the services of the petitioner. Obviously, by the date of consideration for regularization, vacancies do exist as per circular dated 31.05.1996.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

A.RAJASHEKER REDDY, J

13.08.2015
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[\[1\]](#) (2006) 4 SCC

[\[2\]](#) AIR 1978 SUPREME COURT 851

[\[3\]](#) (2009) 8 Supreme Court Cases 431