

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 8398 OF 2001

ORDER:

Sri Ch.Bhaskara Rao, typist, engaged on daily wage basis, filed this Writ Petition under Article 226 of the Constitution of India to issue a direction in the nature of *mandamus* declaring the action of the 1st respondent as illegal, arbitrary and unconstitutional; to declare the proceedings No. LC2/539/APSC/2001 dated 06-110-2004 issued by the 3rd respondent as illegal and contrary to law as declared by this Court and to direct regularization of the petitioner with all consequential benefits including seniority, arrears of salary *etc.,*.

The petitioner was appointed as a typist on 08-05-1991 by the 1st respondent on daily wage basis. Thereafter, from 1993 to March, 1995, the petitioner was paid consolidated pay of Rs.650/- per month. On the representation of the petitioner, the 1st respondent again enhanced the wage from time to time and he was receiving Rs.81/- per day by the date of filing the petition. The break of one day after completion of 89 days was given to deprive the petitioner from claiming the benefit of regularization.

It is further contended that the petitioner had been in continuous service from the date of appointment. The 1st respondent, co-operative society, fully funded and controlled by State Government is established for development of scheduled castes in the District. While the matter stood thus, the State Government issued G.O.Ms.No. 212 Finance and Planning Department dated 22-04-1994 to regularize the services of NMR/Daily Wage Employees working in Government Department, Undertakings *etc.,* subject to fulfillment of certain conditions stipulated therein. As per the conditions contained in the G.O., NMR/Daily Wage Employees have to complete 5 years of continuous service as on 25-11-1993. However, this Court, in ***Y.Rambabu and others etc., Vs. The University of Health Sciences,***

Vijayawada, and others^[1], interpreted the said cut off date to the effect that an employee is entitled to seek regularization as and when he completes 5 years of service. In view of the above judgment of this Court, though the petitioner did not put up continuous service of 5 years, he is entitled for regularization with all consequential benefits.

Despite making several representations by the petitioner, the respondents did not regularize his service. Hence, the action of the 1st respondent is illegal and arbitrary and requested to issue a *Writ* of *Mandamus* directing the 1st respondent to regularize the service of the petitioner with all consequential benefits.

The respondents filed counter admitting appointment of the petitioner as typist on daily wage basis but contended that the petitioner did not complete 5 years of continuous service as on the cut-off date; therefore, he is not entitled to claim any relief and prayed for dismissal of the petition.

During hearing, the main endeavour of learned counsel for the petitioner is that, in view of the judgment of this Court in **Y.Rambabu** (1st *supra*) , a person, who has completed 5 years of service even after cut-off date, is also entitled to claim benefit under the G.O. referred *supra*.

Per contra, learned counsel for the respondents contended that the principle laid down in the above judgment had no application in view of the subsequent judgment of the Apex Court in **A.Manjula Bhashini and others Vs. Managing Director, A.P. Women's Co-operative Finance Corporation Limited and another**^[2] and, therefore, prayed for dismissal of the petition.

In view of rival contentions, the sole point that arises for consideration is:

"Whether the petitioner, though not completed 5 years of continuous service as on 25-11-1993, is entitled to claim regularization of his service as per G.O.Ms.No. 212 Finance and Planning Department dated 22-04-1994?"

In Re. Point:

Undisputedly, the petitioner was appointed as typist on daily wage basis on 08-05-1991 and the cut-off date fixed in G.O.Ms.No. 212 was 25-11-1993. As per the said G.O., a daily wage employee working in the corporation has to complete 5 years of continuous service to claim benefit under G.O.Ms.No. 212. However, this Court, on liberal interpretation of cut-off date in ***Y.Rambabu*** (1st *supra*), took a view that NMR/Daily Wage Employee is entitled to claim regularization whenever he completes 5 years of continuous service but the principle laid down in the above judgment is no more good law in view of the principle laid down by the Apex Court in ***A.Manjula Bhashini*** (2nd *supra*). In the said judgment, the Apex Court held that, unless one completes 5 years of continuous service by cut-off date *i.e.* 25-11-1993, such daily wage employee or NMR is not entitled to claim regularization in the department. Applying the principle laid down by the Apex Court in ***A.Manjula Bhashini*** (2nd *supra*), I find no ground to grant any relief declaring the action of the respondents as illegal and arbitrary. Accordingly, the point is held against the petitioner and in favour of the respondents.

In the result, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 21st January, 2016.

JSK

[\[1\]](#) 1997 (1) SLR 503

[\[2\]](#) 2009 (5) ALD 58 (SC)