

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.21991 OF 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed to declare the action of the respondents in not considering the case of the petitioner for appointment as Sweeper-cum-Scavenger on regular basis in Marredpally Sub-Division office of respondent No.5 and not paying salary to the petitioner from 2011 onwards as arbitrary and illegal and consequently, direct the respondents to appoint the petitioner as sweeper cum scavenger and to pay salary from 2011 onwards with immediate effect.

2. The petitioner is working as Sweeper-cum-Scavenger from 2006 onwards in Marredpally Sub-Division office of the 5th respondent. The said office is located in 33/11 KV SS along with Marredpally section office, ERO Collection centre, EOC centre etc. Sub-division covers important areas like Mahendra Hills where IAS officers are residing. In order to maintain offices clean and neat, the petitioner was engaged to work as Sweeper from 2006 onwards and payment was made through temporary advance on the approval, issued by Circle Office upto 2010. Thereafter, no payment was being made, despite, the correspondence between respondents 4 and 5. Therefore, the petitioner is entitled to claim salary from 2011 onwards.

3. While the matter stood thus, the 5th respondent addressed a letter No.ADE/OP/Marredpally/City-5/F-EST/DNo.140/13, dated 14.05.2013 to the 4th respondent recommending regularization of the petitioner into service on permanent basis. But, till today the services of the petitioner were not regularized and no salary was paid, though, she is working as Sweeper-cum-Scavenger in the office of 5th respondent, as such, inaction of the respondents in not regularizing the services of the petitioner is illegal and arbitrary and prayed to issue

the aforesaid direction to the respondents.

4. Respondents filed counter admitting engaging the services of the petitioner to keep the office premises clean and further submitted that the petitioner was never appointed either on temporary basis or on contingent basis as a sweeper-cum-scavenger; that there is no contract between the petitioner and the respondents regarding appointment of the petitioner; that the petitioner has submitted a representation to consider her appointment on regular basis, but mere filing of representation does not confer any right on the petitioner to seek regularization of her services and payment of salary; that since the petitioner's services were disengaged, the 5th respondent is not liable to pay the salary from 2007 onwards.

5. Learned counsel for the petitioner would contend that since the petitioner is working as sweeper-cum-scavenger in the office of 5th respondent for more than nine years, she is entitled to claim regularization of her services and failure to pay salary from 2011 onwards is a grave illegality and as such the action of the respondents is to be declared as illegal and prayed to issue a direction for regularization of services of the petitioner and payment of arrears of salary from 2011 onwards.

6. On the other hand, learned counsel for the respondents denied the relationship of employee and employer between the petitioner and the respondents and non-payment of salary, since, services of the petitioner were disengaged after 2011; that the petitioner being a wage earner on daily basis is not entitled to claim regularization as the appointment was not based on any Rules or through process of recruitment and prayed to dismiss the Writ Petition.

7. The undisputed fact is that the petitioner was working as Sweeper-cum-scavenger in the office of the 5th respondent on contract basis. The only question is whether the petitioner is entitled to claim absorption or regularization of her services being a contractual employee. This question is no more *res integra* and covered by judgment of the Hon'ble

Apex Court in **SURINDER PRASAD TIWARI VS. U.P.RAJYA KRISHI UTPADAN MANDI PARISHAD AND OTHERS**^[1], wherein it is held that when the appointment of an employee on contract basis is made for a fixed period without following the procedure laid down under the Rules, such employee is not entitled to claim regularization of his services. It was further held referring the earlier judgments of Apex Court in **Karnataka State Private College Stop-Gap Lecturers Assn. V. State of Karnataka**^[2] and **Secretary State of Karnataka V. Umadevi**^[3], that an employee who is appointed on backdoor method without following the prescribed procedure is not entitled to claim regularization or absorption.

8. In **Nand Kumar V. State of Bihar and others**^[4], a similar question came up for consideration i.e, regularization of daily-wager. The Hon'ble Apex Court held that regularization or absorption of a daily wager whose services were engaged for a long period is not entitled to claim regularization as of right and such regularization is not as a matter of course, it would depend up the facts of the case following the Rules and Regulations and unless rules de hors for such regularization or absorption. Daily wagers are not appointees in strict sense of term appointment. They do not hold post on appointment, according to the Rules. Basing on the scheme of alternative appointment framed for regular employees of abolished organization cannot, therefore, confer similar entitlement on daily wagers of abolished or organization to such alternative employment.

9. The principal question before the Hon'ble Apex Court was that absorption of daily wagers into regular services. But, the Court concluded that the daily wagers are not entitled to claim absorption or regularization, the contract employees are not entitled to absorption or regularization whose appointment was by backdoor as observed in **Umadevi's** case.

10. Similarly, in **Vice-Chancellor, Lucknow University V. Akhilesh Kumar Khare and others**^[5], it was held that a Routine Grade

Clerk/Peon was appointed on daily wage basis, where such engagement was not permitted with the prior permission of the Vice Chancellor. Thereafter, the employee claimed absorption or regularization of his services. But, the Apex Court held that Lucknow University is a statutory body and is governed by the U.P. State Universities, Act 1973. The appointments are to be made by the university against the sanctioned posts created by the Government and the Government determines the pay scale and allowances of the employees. The Finance Officer by himself had no right to appoint any person and university has not created extra post of Routine Grade Clerk or Record Boy or Peon.

11. In the facts of the above judgment, the Finance Officer in the University engaged the respondent as daily wager for his Central Accounts Section. Admittedly, the respondents were not engaged by following due procedure and their engagement was not against any sanctioned posts. In order to curb the illegal practice of engaging daily wagers, Vice-Chancellor of the University issued an order dated 03.08.1990 clarifying that the daily wagers will not be allowed to continue after 31.12.1990 unless prior written approval is accorded by the Vice-Chancellor. Without such approval, the services of the respondents as Peon were engaged by the Accounts Officer, is against the Rules and not against the sanctioned post and without following the procedure for selection of employee, thereby the Peon engaged on daily wage is not entitled to claim relief of regularization of his services as he was not appointed in any sanctioned post. The Hon'ble Apex Court following the judgment in **Satya Prakash and others V State of Bihar and others**^[6], held that the appellants are not entitled to get the benefit of regularization of their services since they were not appointed in any sanctioned posts. The appellants were only engaged on daily wage in the Bihar Intermediate Education Council.

12. In the case on hand, it is not the case of the petitioner that she was engaged against a sanctioned post by following the procedure for

appointment, strictly adhering to the rules governing appointment of staff members in the respondent department, as such she is not entitled to claim regularization or absorption into the services on payment of regular pay scale in view of the law declared by the Hon'ble Apex Court in the judgments referred supra. Hence, the petitioner is not entitled to claim regularization.

13. The petitioner is claiming salary from 2011 onwards, but no material is produced before this Court that her services were engaged by the 5th respondent after 2011. Except making a recommendation to 4th respondent by 5th respondent to regularize her services vide letter, dated 14.05.2013 and calling for report by Chief General Manager, HRD, there is no other material to substantiate the case of the petitioner. But, these documents would be of no assistance to claim any relief in the petition, except to establish that the 5th respondent recommended for absorption/regularization of the petitioner into service. But, that would not confer any right on the petitioner to claim regularization being a contractual employee or daily wage employee, whose selection was not against a sanctioned post, strictly adhering to the procedure of selection of employees in the department. Therefore, I find no ground to grant any relief in the Writ Petition exercising the power of judicial review.

14. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

APRIL 19, 2016
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Date: 19.04.2016

- [1] (2006) 7 Supreme Court Cases 684
- [2] (1992) 2 SCC 29
- [3] (2006) 4 SCC 1
- [4] AIR 2015 SC 133

[\[5\]](#) AIR 2015 SC 3473

[\[6\]](#) (2010) 4 SCC 179