

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.26119 of 2013

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Irrigation and Command Area Development.

2. The petitioner was employed as a Hourly Rated Worker (Man Mazdoor) from 21-01-1988 to 07-02-2005 in the department of Irrigation and CAD Department at Kurnool. He was arrested along with the Deputy Executive Engineer, Kurnool by the Anti Corruption Bureau authorities and his services were dispensed with. Calendar Case No.18 of 2008 in which the petitioner was arrayed as accused by the ACB ended in petitioner's acquittal on 20-10-2009 as per the judgment of the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad. Thereupon, the Deputy Executive Engineer who was the co-accused of the petitioner was reinstated into service. The petitioner filed O.A.No.5229 of 2009 for reinstatement into service before the AP Administrative Tribunal, Hyderabad. On 08-09-2011 he declined to entertain the O.A. on the ground that he was not a Government Servant and the Tribunal has no authority to direct the respondent to engage him as HR worker. It granted liberty to the petitioner to approach the appropriate forum seeking relief.

3. On 13-12-2011 the petitioner made a representation to 1st respondent to reinstate him into service. Thereupon the 1st respondent called for a report from the Chief Engineer, Kurnool, who recommended his case for reinstatement on humanitarian grounds. This recommendation was also forwarded by 2nd respondent to 1st respondent but pursuant to the

impugned order dt.09-04-2013, the 1st respondent rejected the same on the ground that it is not feasible.

4. Learned counsel for the petitioner contends that having reinstated the Deputy Executive Engineer who was the co-accused along with the petitioner into service after the acquittal from the ACB Court, it was not open to 1st respondent to decline to take the petitioner back into service and that such action is fairly arbitrary and violative of Article 14 of the Constitution of India. If the petitioner had been convicted by the Criminal Court, there would have been a valid reason for not reinstating the petitioner but admittedly the petitioner had been acquitted by the Criminal Court.

5. In the counter affidavit filed by the respondents a stand is taken that the petitioner is not eligible for reinstatement as he was a Hourly Rated worker and he had no lean or right over the post in that, he should be disengaged by any reason and he cannot have right to the post of reemployment.

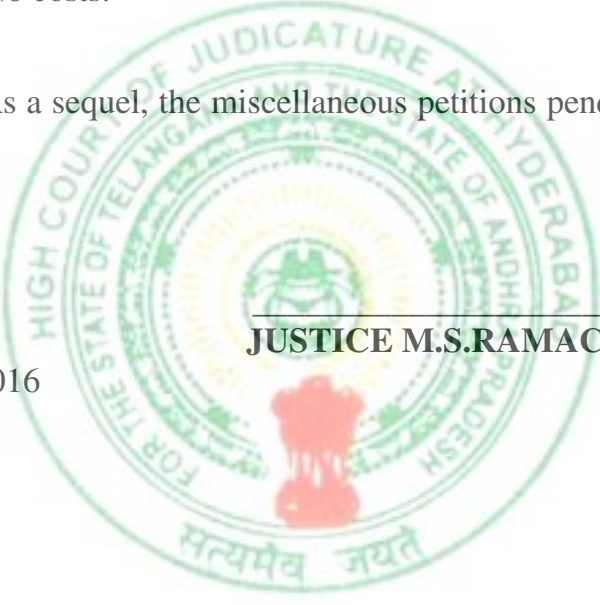
6. Admittedly, the services of the petitioner were utilized by the respondents from 21-01-1988 to 07-02-2005 as an Hourly Rated worker (Man Mazdoor). This is a period of seven years. Having utilized services of the petitioner for such a long period, it is not open to the respondents to contend that the petitioner had no right to the post and for seeking reemployment after his acquittal from the criminal case. In fact, this reason has not been given in the impugned memo. It is settled law that the correctness of an order passed has to be judged and its contents and new

reasons cannot be supplied to the counter affidavit. (**Commissioner of Police, Bombay Vs. Goardhandas Bhanji¹**).

7. Even otherwise, the reason assigned by 1st respondent in not reinstating the petitioner appears to be perverse and accordingly arbitrary and violative of Article 14 of the Constitution of India.

8. Accordingly, the Writ Petition is allowed and the respondents are directed to reinstate the petitioner into service as an NMR (HR) Worker on Daily Wage Basis within four weeks from the date of receipt of a copy of this order. No costs.

9. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 03-11-2016
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¹ AIR 1952 S.C. 16