

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.15923 OF 2014

ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

The writ petitioners 1 to 3 are the retired employees of the Judicial Department covered by the A.P. State Judicial Ministerial Service. After their superannuation in the regular Judicial Ministerial Service, from the notification in Dis.No.99/DLSA/KNR/2007, dated 03.02.2007 issued by the 1st respondent-Chairman-cum-District Judge, District Legal Services Authority, Karimnagar District pursuant to the written instructions of the 2nd respondent-State Legal Services Authority represented by its Member Secretary to fill up the posts of Head Clerk, Typist-cum-Assistant and Steno-typist etc., respectively from qualified retired persons of the Judicial Department to work in the permanent Lok Adalat (public utility service) of the Karimnagar District, they applied for the same and were interviewed and appointed by the Chairman of the District Legal Services Authority (R-1) viz., 1st petitioner-Ch.Ramaswamy, a retired Superintendent of the Senior Civil Judge's Court, Siricilla of Karimnagar District as Head Clerk, Syed Nabi, 2nd petitioner, a retired Senior Assistant in the Junior Civil Judge, Sultanabad, as Typist-cum-Assistant and S.V.M.Mohan Prasad, the 3rd petitioner, retired Stenographer as Steno-cum-Typist. The petitioners having joined in March, 2007 are working on consolidated monthly pay of 1st petitioner at Rs.6,000/- and petitioners 2 and 3 each at Rs.4,000/-. Among the petitioners, 1st petitioner-Ramaswamy was born on 12.06.1948, 2nd petitioner Syed Nabi was born on 08.03.1947 and the 3rd petitioner Mohan Prasad was born on 10.08.1952. There is no upper age or period of working is indicated in the appointment orders.

2) Their prayer in the writ petition is to direct the respondents to continue them in service till they complete the age of 69 years and to pass such just orders including interim direction to continue pending disposal of the main writ petition. Their averments in support of the writ petition prayer supra are that they are entitled to continue till completion of 69 years as per the guidelines issued by the Registrar (vigilance), High Court of Andhra Pradesh for employees of Special Magistrate Courts vide Roc.No.701/E1/2010, dated 23.04.2011 and the respondents are contemplating to retire them prematurely after 65 years, even before completion of 69 years respectively.

3) The counter filed by the 1st respondent also on behalf of the 2nd respondent is with the contentions that the petitioners being the retired employees of the Judicial Ministerial Service of Karimnagar unit in response to the notification issued by the 1st respondent dated 03.02.2007 to apply by those not completed 65 years as on that date, applied and were so appointed vide orders dated 17.03.2007 undisputedly. However, the guidelines issued by the Honourable High Court in

letter Roc.no.701/E1/2010, dated 23.04.2011 are no way applicable to the petitioners under the permanent Lok Adalat, as those guidelines were in relation to appointment of retired Judicial Ministerial Officers and retired Last Grade employees to work in the Special Magistrate Courts that were sanctioned under the scheme of XIII Finance Commission and as such they are not entitled to invoke the same muchless to claim pursuant thereto to continue them till completion of 69 years. It is contended that they are bound to relinquish their respective posts on completion of the age of 65 years and thereby as per the letter dated 09.06.2014 of the FAC.Chairman of the Permanent Lok Adalat-cum-V Additional District and Sessions Judge, Karimnagar, but for 3rd petitioner Mohan Prasad, the others Ramaswamy and Syed Nabi petitioners 1 and 2 crossed the age of 65 years were to retire. It is contended that the petitioners are not entitled to the relief in the writ petition to continue them respectively till completion of 69 years and thereby sought for dismissal of the writ petition.

4) Heard the learned counsel for the petitioners vis-à-vis respondents 1 and 2 and perused the material on record.

5) The notification dated 03.02.2007 undisputedly contains conditions for recruitment which speak only the qualified retired personnel available at District Head Quarters and more particularly retired from Judicial Department and those who have not completed 65 years of age as on the date of notification can apply. Once the eligibility to apply is by those not completed 65 years to say even just before a day for crossing 65 years such person is eligible, there is no meaning in the contention of the respondents to say after completion of 65 years, they are liable to be terminated. Even if the appointment is for one year duration, they can continue even crossed 65 years till completion of that one year period. Here it is not even the case of the respondents muchless from the notification or counter contest as to their appointments were notified for any fixed period of one or two years and thereafter they are not automatically entitled to continue unless the respondents satisfy with their performance and any need to continue any of them for any further period. Once undisputedly the appointment orders dated 17.03.2007 issued were pursuant to the notification dated 03.02.2007 and the same was based on G.O.Ms.No.161, dated 21.06.2006 which reads to constitute 23 permanent Lok Adalats one each district and of which six permanent Lok Adalats in the financial year 2006-07 at Hyderabad, Karimnagar, Guntur, Visakhapatnam, Chittoor and Kadapa in the first phase and proposed to appoint staff on outsourcing basis of one attender, one Head Clerk, one Typist-cum-Assistant, one Steno-cum-Typist, two members, one regular District Judge (entry level) for each of the permanent Lok Adalat to constitute and therein there is no age limit muchless any upper age for not to continue on such outsourcing basis once appointed, muchless even not mentioned as every appointment shall be for one year or for any other fixed term. The further circular instructions to the District Judge by the Member Secretary, dated 17.08.2006 is only to take necessary steps for appointment of staff to the permanent Lok Adalats, pursuant to the G.O.Ms.No.161 supra, in the same manner in the case of regular selection of staff of District Legal Services Authority and Mandal

Legal Services Committee procedurally but these appointments were only on consolidated pay and there is nothing more to say the maximum age till which to continue even on consolidated pay muchless to specify for any particular period of one year or the like.

6) Once the eligibility for applying from the notification dated 03.02.2007 supra is for those not completed 65 years (to say those not crossed 65 years are eligible), it is needless to say their continuation shall be even after completion of 65 years, but for to decide up to what maximum age they can be continued. If it is for a tenure like one year or so, undisputedly their continuation depends upon their performance to be assessed either not to continue or to continue from such appraisal, after expiry of such period of appointment. Here it is not even such case to say the petitioners have no absolute right to continue if the appointment is for a particular period, after afflux of time mentioned therein. Generally the appointments in the absence of one year to be reckoned is for maximum five years. Therefrom there is some justification in the claim of the petitioners for continuation atleast till completion of 69 years to say till attaining of 70th year. For that they placed reliance no doubt on G.O.ms.No.35, dated 31.03.2011. The guidelines therein are for constitution of 140 Special Magistrate Courts with staff on consolidated pay and outsourcing basis. So far as the Ministerial staff concerned, the condition No.8 speaks that Government accorded permission to the District and Sessions Judges respectively to recruit the proposed staff under the XIII Finance Commission grants to the Special Magistrate Courts either with retired officers of the A.P.Judicial Ministerial Service on contract basis and with consolidated pay towards their salary. The said G.O. refers to an enclosure Roc.No.701/E1/2010, dated 24.12.2010 addressed by Registrar of High Court to the Government and pursuant to it, the Government's Order to the District and Sessions Judges dated 23.04.2011, based on the circular issued by the Registry dated 23.04.2011, mentioning so far as the Ministerial staff and Last Grade Service concerned for Head Clerk, eligibility is those not attained 69 years, for Assistant, Typist and Stenographer, eligibility is by those not attained 69 years and even for attender, eligibility is by those not attained 69 years of age.

7) The object, apparently, is to better utilize the services of the Judicial Ministerial Service and Last Grade Service staff retired from their rich experience with the lesser staff pattern on outsourcing basis to get more work from their past experience and efficiency and it is not the object to put any outer limit of age restriction for continuation, but for purely at the discretion of the appointing authority from performance appraisal irrespective of no age provided.

8) Here, coming to the permanent Lok Adalat outsourcing staff supra concerned, the eligibility for applying is by those not crossing 65 years. Once such is the case, when for Special Magistrate Courts those not crossed 69 years even are eligible to apply, the permanent Lok Adalat staff can be continued to serve unless their services are not satisfactory, till completion of 69 years at least. Such a conclusion can be fortified by the interim orders passed by the Division Bench of this Court in W.P.M.P.No.8439 of 2013 in W.P. No.6732 of 2013 in respect of one Head Clerk of the permanent

Lok Adalat of Kadapa District for public utility service, where the order speaks that, applying the guidelines for appointment of retired Judicial Ministerial Service, he is entitled to continue till he attains the age of 69 years and in W.P.M.P.No.14362 of 2013 in W.P.No.11590 of 2013 in the case of Typist-cum-Assistant working in the permanent Lok Adalat for public utility service, Kadapa, another Division Bench observed with an interim direction prayed for not to retire after completion of 65 years but to continue till attaining the age of 69 years which orders are pending disposal of the main writ petitions supra.

9) Having regard to the above, when it is not even the counter contest of the respondents, that the performance of any of the petitioners is poor or unsatisfactory or their continuation is not conducive in the interests of the institution, they are entitled to be continued till attaining the age of 69 years for the appointment orders are silent regarding the tenure of their appointment.

10) In the result, the writ petition is allowed and the respondents are hereby directed to retain the petitioners and continue them in their respective posts till they attain the age of 69 years. It is however made clear that if any of their performance is poor and not worthy to continue in the interest of the institution, such of those can be terminated with advance notice indicating the reasons for the decision. There shall be no order as to costs.

11) Consequently, miscellaneous petitions in the writ petition pending, if any, shall stand closed.

SANJAY KUMAR, J

Dr.B.SIVA SANKARA RAO, J

14-07-2016
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