

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8901 OF 2011

Dated:29.09.2016

Between:

K. Bojjiyya, S/o. Venkata Swamy,
Aged about 42 years, Occ: Attender,
A.P. Tribal Welfare Residential School,
K.R. Puram, Buttayagudem Mandal,
West Godavari District

.. Petitioner

AND

The Principal, S.P. Tribal Welfare Residential
School, K.R. Puram, Buttayagudem Mandal,
West Godavari District and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8901 OF 2011

ORDER:

The petitioner was appointed as an Attender on 28.01.1985 in the Andhra Pradesh Tribal Welfare Residential School, K.R. Puram. This school was under the control of Andhra Pradesh Residential Educational Society. By proceedings, dated 23.07.1987, services of the petitioner were terminated. Aggrieved by the order of termination, the petitioner raised Industrial Dispute. The Labour Court at Guntur registered the dispute as I.D.No.665 of 1991 and passed award on 08.11.1996 holding that termination of the petitioner was illegal and thereby, directed his reinstatement with continuity of service, but without back wages. Aggrieved by the said award, the management of the school instituted W.P.No.17717 of 1997. This Court by order dated 06.08.1997 in W.P.M.P.No.21497 of 2007 granted interim suspension of the award on condition that the petitioner herein should be reinstated within a period of four weeks from the date of receipt of a copy of the order. As a consequence to the said interim order, the petitioner was reinstated into service by order dated 07.03.1998 and he resumed his duties on 18.03.1998. The Writ Petition was dismissed by judgment dated 15.03.2007 affirming the decision of the Labour Court.

2. The petitioner thereafter filed W.P.No.17123 of 2008 praying to regularise his services as Attender. The said Writ Petition was disposed of by order dated 16.04.2010 directing the respondents to consider the claim of the petitioner for

regularisation in terms of G.O.Ms.No.212, dated 22.04.1994. Consequent to the above directions of this Court, the respondents considered and rejected the claim of the petitioner by proceedings dated 25.01.2011, which is impugned in this instant Writ Petition, on the ground that he has not completed five years of service as on 25.11.1993 and therefore he is not eligible for regularisation of services in accordance with G.O.Ms.No.212, dated 22.04.1994.

3. Learned counsel for the petitioner would submit that the petitioner was initially appointed on 28.01.1985 and as a consequence to the declaration of termination as illegal and with further direction to hold that the petitioner is deemed to be in continuous service by the Labour Court, the entire service from the date of initial appointment should be counted for the purpose of computation of five years of eligibility to grant benefits of regularisation under G.O.Ms.No.212 and hence, the petitioner is entitled for regularisation of services.

4. Learned Standing Counsel representing the Andhra Pradesh Tribal Welfare Residential Society submits that the petitioner has not rendered five years of service in the Tribal Welfare Residential School. He would submit that the Tribal Welfare Residential Society was formed in the year 1999 and the School, in which, the petitioner was working now comes under the control of the Tribal Welfare Residential Society. The petitioner opted his services in Tribal Welfare Residential Society. The Tribal Welfare Residential Society was not a party to the earlier round of litigation before the Labour Court and the High Court and therefore the declaration given by the Labour Court is not binding

and since the petitioner has not rendered continuous service of five years, he is not eligible to be considered for regularisation according to G.O.Ms.No.212. He would therefore support the decision communicated to the petitioner.

5. The basic facts are not in dispute. The order of termination of service of the petitioner dated 23.07.1987 was held to be illegal by the Labour Court and therefore he was directed to be reinstated with continuity of service. On account of setting aside the order of termination, the petitioner reverted back to the position as obtaining prior to his termination. As a consequence to the grant of further relief of continuity of service, the service rendered by the petitioner prior to his termination and during the period of termination would count for all service benefits. Thus, the petitioner is deemed to have been in continuous service from 28.01.1985. According to G.O.Ms.No.212, a person is eligible to be considered for regularisation, if he has completed minimum of five years of service by 25.11.1993. Taking the date of initial appointment as 28.01.1985, the petitioner has completed five years of service by 25.11.1993. Therefore, he was eligible to be considered for grant of regularisation in accordance with G.O.Ms.No.212, subject, of course, to fulfilment of other conditions imposed in the said G.O. The rejection of the claim of the petitioner impugned in this Writ Petition is only on the premise that the petitioner did not work after his termination till he was reinstated and that service cannot be counted for the purpose of calculation of five years as prescribed in G.O.Ms.No.212. The stand of the respondents is erroneous. The respondents suffered the award of the Labour Court, which was affirmed by the High

Court. The Tribal Welfare Residential Society is a successor to Andhra Pradesh Social Welfare Educational Society. Thus, the petitioner carries with him all the benefits that accrued to him with the previous employer prior to establishment of Tribal Welfare Residential Society and therefore it is not open to the respondent Society to say that as this Society was not a party to the earlier round of litigation, the said decision is not binding on it.

6. Be that as it may, the question for consideration is, whether on account of declaration given by the Labour Court, the petitioner is entitled to compute the services after his termination till his reinstatement as service rendered for the purpose of determination of eligibility criteria in G.O.Ms.No.212. The award passed by the Labour Court having become final, I am of the considered opinion that the petitioner is entitled to compute entire service for the purpose of eligibility under G.O.Ms.No.212.

7. The Writ Petition is accordingly allowed and the impugned order is set aside. The respondents are directed to consider the case of petitioner for regularisation, treating that petitioner has completed minimum eligible service of five years as on 25.11.1993, and grant regularisation, if he is otherwise eligible, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to mention that as the petitioner has completed more than 20 years of service, the same should be duly taken note of while considering his eligibility for grant of regularisation. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date: 29.09.2016

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