

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+WRIT PETITION Nos.21893 & 21910 OF 2007

%02.11.2016

WRIT PETITION No.21893 OF 2007

D. Malyadri

..... Petitioner

AND

The Regional Manager, A.P.S.R.T.C., Nellore and 2 others.

.....Respondents

WRIT PETITION No.21910 OF 2007

P. Malyadri

..... Petitioner

AND

The Regional Manager, A.P.S.R.T.C., Nellore and 2 others.

.....Respondents

! Counsel for the petitioners (In both cases): Sri V. Mallik

^ Counsel for respondents (In both cases) : Sri P. Durga Prasad,
Standing Counsel for the Corporation

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? Cases referred:

1. (2008) 1 SCC 210
2. 2004(2) SCC 433

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.21893 & 21910 OF 2007

COMMON ORDER:

Both the writ petitions are filed questioning the common proceedings dated 10.08.2007, issued by the 2nd respondent.

Through the impugned proceedings, for the purpose of fixation of seniority, petitioner's initial appointment was taken as 01.09.1992 instead of 13.08.1991. It is the contention of the petitioner that he came to be appointed initially as a casual labourer on a daily wage basis on 07.06.1990 and the petitioner had completed 240 days by 12.08.1991 and the date of initial appointment as casual labourer was taken as 01.08.1992 and in the interregnum period as the petitioner was not being regularised, he approached this Court by filing Writ Petition No.23041 of 1996 and this Court by following the judgment dated 24.07.1995 passed by a Division Bench of this Court in Writ Appeal No.705 of 1995, directed the case of the petitioner to be considered for regularisation in terms of the order dated 31.10.1006 passed by this Court in W.P.No.23041 of 1996. Thereafter, by proceedings dated 29.01.1997, petitioner's date of initial appointment was taken as 13.08.1991 that is from the date of completion of 240 days of working. Now all of a sudden by the impugned proceedings, the same is sought to be altered to 1.8.1992 for the purpose of fixation of seniority instead of 13.08.1991. Hence, the writ petition on the ground that the order of this Court in W.P.No.23041 of 1996 became final and the same is binding on the respondent-Corporation.

Sri P. Durga Prasad, learned standing counsel appearing for the respondent-Corporation, placed reliance on the judgment of the Supreme Court in **Regional Manager, A.P.S.R.T.C vs. N. Satayanarayana and others**¹ wherein the Supreme Court had clarified about the judgment in **The Divisional Manager, A.P.S.R.T.C vs. P. Lakshmoji Rao and others**² and as such he submitted that the same cannot be relied on in the case on hand. He would further submit that while setting aside the judgment dated 24.07.1995, passed by the Division Bench of this Court, the Supreme Court made a general observation that in terms of the general order which has been made to pass the impugned order.

Having considered the respective submissions, one aspect of the matter which may be noted is that the order dated 31.10.1996, passed by the learned single Judge of this Court in W.P.No.23041 of 1996 following the judgment dated 24.07.1995 of a Division Bench of this Court in W.A.No.705 of 1995, had become final as no appeal was filed against the same. However, the law declared by the Division Bench of this Court stands modified by virtue of the judgment of Supreme Court in **P. Lakshmoji Rao (2 supra)**. In other words, the law as declared by the Supreme Court in **P. Lakshmoji Rao (2 supra)** is the law which needs to be applied in the case of the petitioner as well. The Supreme Court had taken care to protect the interest of the cases like the petitioner in whose cases, the Corporation did not file appeal and thereby the orders passed either by the single Judge or Division Bench of this Court allowed to become final.

¹ (2008) 1 SCC 210

² 2004(2) SCC 433

This aspect of the matter is clear from the observations of the Supreme Court in **P. Lakshmoji Rao (2 supra)**, which reads as under:

“In view of this peculiar situation and in order to avoid the anomalies that might otherwise ensue, while we hold that the respondent-employees have failed to establish their legal right to get the status of regular employees right from the date of their initial appointment on daily wage basis and the respective dates of regularisation assigned to the respondents cannot be legally faulted, we are inclined to mould the relief in modification of the directions given in the judgments under appeal and direct as follows : If any of the Conductors, junior to the respondents in the relevant seniority list of the concerned Division/Region, have got the benefit of seniority and regularisation OR are entitled to get the same by virtue of the judgments that have become final, then the respondents who are seniors to them, shall be given the same benefit on the same principle. With these directions and observations, the Civil Appeals are disposed of without costs.”

In the present case, it is not in dispute that pursuant to the orders of the learned single Judge applying the law laid down by the Division Bench of this Court, proceedings dated 29.01.1997 were issued taking the initial appointment of the petitioner as 13.08.1991 and the same were not withdrawn or revised. For the first time through the impugned proceedings dated 10.08.2007, the petitioner's seniority was sought to be fixed as on 01.08.1992. Now in the light of the judgment of the Supreme Court in **P. Lakshmoji Rao (2 supra)** particularly the portion that is extracted above the same cannot be done. So far as the judgment of the Supreme Court reported in **Satyanarayana (2 supra)** is concerned, in the matters before the Supreme Court, the Supreme Court refused to apply the ratio laid down in the judgment reported in **P. Lakshmoji Rao (2 supra)**. A close scrutiny of the above judgment discloses that the

same was done on the ground that the petitioners before the Court approached the Court after a long lapse of time and there was no reason to unsettle the settled issues. It may also be noted that the Supreme Court did not deviate from the law declared in the earlier judgment in **P. Lakshmoji Rao (2 supra)**. The result of the analysis is that the initial de-casualisation notified in the proceedings dated 29.01.1997 so far as the petitioner is concerned as on 13.08.1991 would stand for all the purposes.

In the result, both the writ petitions are allowed setting aside the proceedings dated 10.08.2007, issued by the 2nd respondent. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:02.11.2016,

Note:

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B/o.

Gk.

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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