

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.23990 OF 2011

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ORDER:

In the present writ petition, challenge is to the order of the 2nd respondent issued vide proceedings Ref.No.APCO/CO/Admn.I/ 2011/E.1/1630, dated 20.08.2011.

2. Heard Sri V.Venugopala Rao, learned counsel, appearing for the petitioner and learned Government Pleader for Industries and Commerce and Sri Venkata Raju Goud, learned standing counsel, appearing for the 2nd respondent.

3. According to the petitioner, she was initially appointed as Junior Assistant on consolidated pay of Rs.900/- per month, vide proceedings No.Est/1992-93/1944, dated 11.05.1992 of the Divisional Marketing Officer, Mahaboobnagar and the said pay was enhanced upto Rs.5,000/- per month. Her services were regularised in the year 2009. It is further stated that the

2nd respondent passed orders on 07.11.2000, redeploying and posting the petitioner to Electronic Data Processing Unit at Central Office, while she was working as Secunderabad Division and ever since, she has been working at the office of the 2nd respondent as Junior Assistant/Data Entry Operator.

4. Vide Memo No.6437/Tex.2/2008-1, dated 30.07.2008, the State Government accorded permission to the 1st respondent for fixing cadre strength as 756 including 60 posts of Junior Assistants/Data Entry Operators. Thereafter, vide proceedings Rc.No.5936/2008-A1, dated 18.08.2008, the 1st respondent permitted the 2nd respondent to fill up the resultant vacancies. Thereafter, vide proceedings

Rc.No.4778/2008-A1, dated 04.09.2008, the 1st respondent accorded permission to the

2nd respondent to absorb (2) data entry operators subject to fulfilment of conditions laid down in Section 116-C of the A.P.Cooperative Societies Act and Rule 28 and Rule 36(B) of the A.P.Cooperative Societies Rules, 1964.

5. Thereafter, pursuant to a resolution of the Managing Committee dated 10.02.2009 under Item No.14, resolving to appoint against available vacancy, the 2nd respondent vide proceedings Ref.No.Admn.I/GSR/DEO/Appointment/CO/09/790, dated 12.03.2009, appointed the petitioner as Junior Assistant/Data Entry Operator in the time scale of Rs.4595-10285 and she was put on probation. Subsequently, vide proceedings Ref.No.APCO/CO/Admn.I/2010/E.1/1254, dated 03.04.2010, the 2nd respondent declared the probation of the petitioner. Vide proceedings Ref.No. Admn.I/MK/JA/DEO/Increment/CO/10/ 1497, dated 22.04.2010, the 2nd respondent sanctioned annual grade increment also.

6. Certain daily wage employees of the 2nd respondent filed W.P.No.24359 of 2000 and in the said writ petition, petitioner therein sought to rely on the regularisation of the petitioners service and this Court, on 11.08.2010, disposed of the said writ petition. Thereafter, a show-cause notice vide Ref.No. APCO/CO/Admn.I/2011/E.1/876, dated 15.06.2011, was issued and the petitioner herein submitted a reply on 30.06.2011. Subsequently, the 2nd respondent passed an order vide Proceedings Ref.No.APCO/CO/Admn.I/2011/E.1/1629, dated 20.08.2011, cancelling the earlier orders dated 12.03.2009, wherein and whereby the petitioner was appointed as Junior Assistant/Data Entry Operator.

7. Challenging the validity and legal sustainability of the said order, the present writ petition came to be filed. This Court, while ordering '*Rule Nisi*' on 26.08.2011 passed an order in W.P.M.P.No.29421 of 2011, stating that the petitioner can be continued as regular employee with minimum time scale and her case shall not be treated as a precedent for regularisation of other employees.

8. A counter affidavit deposed by the 2nd respondent has been filed on behalf of the respondents, denying the averments in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

9. It is contended by the learned counsel for the petitioner that the action impugned is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India. It is also the submission of the learned counsel that in response to the show-cause notice issued, the petitioner herein submitted a detailed explanation and had the contents of the said explanation been considered by the respondents, the order impugned would not have emanated. It is further contended that having regularised the service earlier, having declared the probation and having sanctioned annual grade increments also, it is absolutely not open for the respondents herein to review the earlier orders, by way of the present impugned order and such a power is not vested with the respondents herein. It is further submitted by the learned counsel that the petitioners in W.P.No.24359 of 2000 also filed W.P.No.22287 of 2012 subsequently before this Court and this Court, by way of an order dated 10.11.2014, directed the regularisation of the petitioners therein and the said order was confirmed by this Court in W.A.No.108 of 2015 and the respondents herein had also taken the consequential action for regularisation.

10. On the contrary, it is vehemently contended by the learned counsel for the respondents that there is absolutely no illegality nor

there is any procedural infirmity in the impugned action and since the respondents herein passed the impugned order only after affording the complete opportunity to the petitioner, the questioned order is not amenable for judicial review under Article 226 of the Constitution of India.

11. In the above backdrop, now the issue that emerges for consideration of this Court is:

“Whether the questioned order is sustainable and tenable in the eye of law and whether the same requires any interference of this Court under Article 226 of the Constitution of India?”

12. As evident from the information available before this Court, the very genesis for initiation of the questioned action by the 2nd respondent obviously is Writ Petition No.24359 of 2000 filed by certain daily wage employees and the order passed in the said writ petition on 11.08.2010. A perusal of the said order in W.P.No.24359 of 2000, dated 11.08.2010, which is placed on record, discloses clearly that during the course of hearing of the said writ petition, petitioners therein brought to the consideration of this Court the aspect of regularisation of the petitioners and obviously attributed the element of discrimination in treatment. This Court, by way of an order dated 11.08.2010, disposed of the said W.P.No.24359 of 2000 and the operative portion of the said order reads as under:

“ The facts are not in dispute, particularly the date of appointment of the petitioners and finalization of termination proceedings and their reinstatement. Thus, petitioners have put in more than 25 years of service as of today. However, their services are not being regularized on the ground that they are daily wage employees. The fact that the petitioners are working for the last more than 25 years continuously is not denied. It is not the case of the respondent that the petitioners were appointed by way of back door method and are being continued on sympathetic grounds. The respondent has

categorically admitted that the petitioners were appointed on daily wage basis and not on regular basis. Therefore, not regularizing the services of petitioners is nothing but amounts to unfair labour practice. I am of the opinion that petitioners are entitled for regularization of their services on par with their juniors M.Kalavathi and G.S.Anna Rao. Therefore, I am of the opinion that the petitioners are entitled for regularization of their services on par with those who were appointed whether on consolidated basis or daily wage basis.

For the foregoing reasons, the writ petition is disposed of directing the respondent to consider regularizing the services of petitioners on par with juniors in the cadres in which they are entitled to be absorbed and put them on regular timescale and pass appropriate orders within a period of eight (8) weeks from the date of receipt of this order. No order as to costs.”

13. While referring to the said writ petition and the orders passed therein, the 2nd respondent issued show-cause notice dated 15.06.2011, calling upon the petitioner to show-cause as to why the earlier orders of regularisation should not be cancelled.

14. In fact, in response to the show-cause notice and the issues indicated therein, petitioner herein submitted an explanation on 30.06.2011 and brought the following points for consideration of the respondents:

“I have also fulfilled the conditions laid down in the regularization orders as indicated below.

- 1. Section 116-C of APCS Act deals with staffing pattern of the Coop Society and their approval by Register. The post of Jr.Asst/DEO created in APCO was with in the cadre strength approved by Govt. of A.P.*
- 2. Rule 28 of APCS Act 1964 deals with prescribed qualification and furnishing of securities required are also fulfilled as I passed Intermediate and acquired D.C.A. are remitted the required Cash Security Deposit also.*
- 3. Rule 36(B) deals with constitution of*

administrative and contingent fund. This is the condition to be fulfilled by the employer i.e., APCO.”

15. A perusal of the order impugned demonstrates that the 2nd respondent totally failed in considering and examining the points urged by the petitioner and the validity of the same. In fact the petitioner, as evident from the explanation, dispelled various deficiencies pointed out by the 2nd respondent in the show-cause notice as baseless, unsustainable and untenable and substantiated her stand in favour of the sustainability and validity of the earlier action of regularisation of her service. There is absolutely no controversy on the realities that the State accorded permission for fixation of the cadre strength including 60 posts of Junior Assistants/Data Entry Operators and the Managing Committee of the 2nd respondent passed the resolution, resolving to appoint the petitioner against the sanctioned post and the 2nd respondent, in terms of the same, passed an order, appointing the petitioner on regular basis and declared probation, granted increments also. There is also no dispute that the petitioner has been in service of the respondents since 1992.

16. Another significant aspect, which cannot be lost sight of and requires to be noted is that the petitioners in W.P.No.24359 of 2000 subsequently filed W.P.No.22287 of 2012 and this Court on 10.11.2014, allowed the said writ petition, directing the respondents to regularise the services of the petitioners therein in terms of the ratio laid down by the Hon'ble Apex Court within a period of two months. It is also significant to note that the respondents herein carried the said order in W.A.No.108 of 2015 and the Division Bench of this Court, by way of judgment dated 23.02.2015, dismissed the said appeal, confirming the orders passed by the learned single judge and the respondents also regularised their services and material to the said

effect is also placed before the Court. Therefore, this Court finds no justification absolutely in the impugned action. The persons whose writ petition and order passed therein formed the basis for impugned action, succeeded in having their services regularised and on this ground also, the writ petition deserves to be allowed. No provision of law is brought to the notice of this Court by the respondents which authorises them to review the earlier orders of regularisation.

17. Therefore, this Court finds absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned proceedings cannot be sustained in the eye of law.

18. For the aforesaid reasons, Writ Petition is allowed, setting aside the impugned proceedings Ref.No.APCO/CO/Admn.I/ 2011/E.1/1629, dated 20.08.2011 and consequently, the respondents are directed to continue the services of the petitioner as per the earlier orders of absorption dated 12.03.2009 and it is also made clear that the petitioner is also entitled for all the consequential benefits.

19. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

22.06.2016
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