

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
W.P.NOS.12498, 12561, 12573, 12575, 13342 AND 13369 OF 2015
COMMON ORDER (Per the Hon'ble Sri Justice G.Chandraiah)

Heard the counsel for both the parties.

2. Since the issue involved in all the writ petitions is one and the same, they are heard together and are being disposed of by this common order.

3. The respondents in all the writ petitions have been working as NMRs in Vijayawada Municipal Corporation, Vijayawada since 1989. Government issued G.O.Ms.No.823 MA and UD dated 28.11.2008 extending the minimum time scales. When the annual grade increments and H.R.A. from the date of payment of minimum time scale were denied, they filed O.A.Nos. 7976 of 2010 and 3286, 5297, 5375, 5601 and 6583 of 2012 on the file of A. P. Administrative Tribunal. By orders dated 16.11.2010, 24.4.2012, 4.7.2012, 6.7.2012, 13.7.2012 and 22.8.2012 respectively, the Tribunal allowed the claim of the respondents. For ready reference, one of the orders of the Tribunal in O.A.No.5297 of 2012 dated 14.7.2012 is extracted as under:

“The applicant filed the present O.A., seeking to declare the action of the respondent in not releasing the Annual Grade Increments, HRA and CCA from the date of payment of minimum time scale extended vide G.O.Ms.No.823 M.A., and U.D. Department dated 28.11.2008 along with arrears as illegal and arbitrary.

2. Similar O.As., were filed before this Tribunal in O.A.No.8128/2001 and batch, this Tribunal allowed the said batch on 29.9.2011. The operative portion of the said order reads as follows:

“5. As the subject matter of these applications is also similar to O.A.Nos.7915/2002 and 7335/2010, the orders, in which were confirmed by the Hon'ble High Court, the applicants therein also are entitled for release of increments, HRA and CCA and also revised pay scale along with arrears of pay and the respondents are directed to release the increments, HRA and CCA and revised pay scales to the applicants and release the arrears within a period of eight weeks from the date of receipt of a copy of this order.

6. The O.As, are accordingly allowed at the admission stage. No costs.”

These orders are confirmed by the Hon'ble High Court vide its judgment dated 7.6.2012 in W.P.No.759/2012 and batch. The present O.A., is also squarely covered by the aforesaid orders. Therefore, the applicants are also entitled to Annual Grade increments, HRA, CCA and Revised Pay scales along with arrears of pay.

3. In the light of the above circumstances, this O.A. is allowed directing the respondents to release Annual Grade Increments, HRA, CCA and Revised Pay Scales along with arrears of pay to the applicants within a period of eight weeks from the date of receipt of this order. No order as to costs."

4. Assailing the orders of the Tribunal, the Vijayawada Municipal Corporation filed present writ petitions contending that the State Government vide G.O.Rt.No.1475, PR & RD (E-11) Department dated 27.10.2007 by way of policy, clearly declared that the persons who are granted time scale shall not be entitled to increments and in G.O.Ms.No.823, MA & UD (K) Department dated 28.11.2008 under which the respondents were given time scale, stipulated a condition that they are not entitled to increments and the same was not challenged and further in the light of the law laid down by the Apex Court in *STATE OF KARNATAKA vs. UMADEVI*^[1], and in *MANULA BASHINI vs. STATE OF ANDHRA PRADESH*^[2], they are not entitled for regularization. Reliance is also placed on a Division Bench judgment of this court in W.P.No.30530 of 2012 and batch dated 28.8.2014 wherein this Court set aside the direction of the Tribunal, directing the Government to pay minimum time scale of pay together with dearness allowances and also back wages for three years prior to filing of aforesaid original applications and held that the writ petitioners therein are entitled to the wages equal to the salary at the lower grade of the employees of their cadre in their respective departments from the date of judgment of the Tribunal. With these averments *inter alia*, the impugned orders of the Tribunal are sought to be set aside.

5. This court by interim orders dated 27.4.2015 and 30.4.2015 granted interim suspension of the impugned orders of the Tribunal. For vacating of the said orders, the respondents filed vacate petitions in

WVMP.No.1994/2015 in W.P.No.12498/2015, WVMP.No.2159/2015 in WP.No.12561/2015, WVMP.No.2236/2015 in WP.No.12573/2015, WVMP.No. 1774/2015 in W.P.No.12575, WVMP.No.1861/2015 in W.P.No.13342/2015, WVMP.No.1775/2015 in W.P.No.13369/2015, 2159/2015 in W.P.No.12561/2015 and 2236/2015 in W.P.No.12573/2015. As the counsel appearing for the parties made submissions on the merits of the case, the writ petitions are taken up for disposal.

6. The learned counsel for the vacate petitioners/respondents submitted that along with the respondents 206 NMRs were given time scale by the Government in G.O.Ms.No.823 dated 28.11.2008 and when some of the similarly situated NMRs among them were not given time scale, annual grade increments and HRA, they approached the Tribunal in O.A.Nos.7088/2008, 7335/2010, 8617/2008 and by orders dated 9.9.2008, 27.10.2010 and 24.10.2008, the Tribunal allowed their claim. The relief sought for and the Operative portion in one of such orders in O.A.Nos.7335/2010 is referred to as under:

“This application is filed by the applicants to direct the respondents to release HRA and annual grade increments in the time scale wherein their pay was fixed.

...

Therefore, this application is allowed by directing the respondents to grant HRA and annual grade increments to the applicants in the time scale wherein their pay was fixed and also to pay the arrears. The respondents are further directed to extend the benefit of further pay revision made from time to time. The necessary orders, in this regard, shall be passed by the respondents within a period of 8 weeks from the date of receipt of this order.”

7. Aggrieved by the above order of the Tribunal, the Corporation and the Government filed writ petitions before this court in W.P.Nos.24130, 24330 and 24334 of 2011. The Division Bench of this court by common order dated 13.8.2011 dismissed the writ petitions. The Government carried the matter to Apex Court in SLP (Civil) Nos.29963 – 29965 / 2011 and by order dated 14.11.2011, the Apex Court taking into view that similar SLP (Civil).No.6422/2007 was dismissed by order dated

23/11/2009, dismissed the said SLPS. The learned counsel for the respondents also relied on the order of the Tribunal in O.A.No.7915/2002 wherein the applicants therein sought to release the periodical increments from the date of payment of minimum time scale i.e., 12.12.1998 and also to extend the revised pay scales of 1999. The Tribunal by order dated 26.8.2002 allowed their claim and in the writ petition in W.P.No.27214/2005, this court by order dated 23.8.2006 taking into consideration the law laid down in State of Karnataka v. Umadevi (1 supra), dismissed the writ petition and the appeal filed by the Commissioner, Bhongir Municipality in SLP (Civil) Nos.6422/2007 dated 23.11.2009 was dismissed by the Apex Court. Therefore, they submitted that as the respondents are not seeking regularization and only seeking for annual grade increments and HRA, as the time scale was already fixed and similar reliefs were granted to other similarly situated employees who were given time scale, sought to pass same orders and submitted that the matters are squarely covered by the above judgment of this court in W.P.Nos.24130/2011 and batch dated 13.8.2011. The learned counsel further submitted that after the dismissal of the SLPs the Corporation has extended the increments to the similarly situated employees and the learned counsel has produced copy of the said proceedings. He further submitted that in cases of certain similarly situated employees, even without court orders, such benefit has been extended and he produced copies of such proceedings. Relying on judgment of a Division Bench of this court in M.V.CHALAPATHI v. MANAGING DIRECTOR, APSRTC, MUSHEERABAD^[3], he submitted that such refusal to extent benefits of increments to the respondents and extending the same to other similarly situated employees, would amount to discrimination and the same cannot be allowed. He stated that the impugned orders of the Tribunal were passed during the year 2012 and the writ petitions have been filed after a period of about three years without proper explanation and on the ground of laches itself, the writ petitions are liable to be dismissed.

8. In reply the learned Standing Counsel for the writ petitioners – Vijayawada Municipal Corporation, reiterating the writ averments which are noted above, submitted that a Division Bench of this court in W.P.No.30530/2012 and batch dated 28.8.2014 held that the NMRs are entitled to the wages equal to the salary at the lowest grade of the employees of their cadre and they are not entitled for other allowances and back wages. The learned counsel submitted that in view of the judgment of a co-ordinate Division Bench in W.P.No.30530/2012, this court cannot take a different view and if this court is not inclined to agree with the view of co-ordinate Division Bench, the matter may be referred to a larger bench. To support this contention, the learned counsel relied on the judgments reported in UNION OF INDIA v. RAGHUBIR SINGH^[4] and JAISRI SAHU v. RAJDEWAN DUBEY^[5]. She submitted that extending the increments would amount to financial burden on the state exchequer and the respondents are not eligible for the same and hence courts cannot issue such directions to the Government. In support of her contention, the learned counsel relied on the judgment reported in STATE OF W.B. v. SUBHAS KUMAR CHATTERJEE^[6]. She further submitted that though based on the orders of this court, and may be under the pressure of contempt, if some of the similarly situated employees were given increments that cannot be a ground to grant similar relief to the present respondents and that if any illegality has been committed, that cannot be perpetuated. In support of her contention, she relied on the judgments reported in VICE-CHANCELLOR, M.D. UNIVERSITY v. JAHAN SINGH^[7], BIHAR PUBLIC SERVICE COMMISSION v. KAMINI^[8]. She contended that the cases of the similarly situated employees, which ended at the Apex Court in SLP (Civil).No.29963-29965 of 2011 dated 14.11.2011 were dismissed at the stage of admission and hence the order passed at the stage of admission dismissing the SLP in *limine*, does not amount to a precedent and hence no reliance can be placed on such order. She submitted that as the orders of the Tribunal were passed at the stage of admission, there was

no opportunity for the Government to place all these facts and hence the impugned orders were passed in violation of the principles of natural justice and hence the same cannot be sustained. In support of her contention, the learned Standing Counsel relied on a Division Bench judgment of this court reported in G.SIMHAGIRI v. GOVT. OF A.P.^[9]

With these submissions, the impugned orders of the Tribunal are sought to be dismissed.

9. There cannot be any dispute with regard to the proposition of law laid down by the Apex Court with regard to referring of the matter to Larger Bench, when a Division Bench is not inclined to follow the judgment of a Co-ordinate Division Bench and that illegality cannot be permitted to be perpetuated and that as laid down by a Division Bench of this court (9 supra) principles of natural justice are required to be followed. But it is also settled principle that law laid down in the decisions, cannot be made applicable in a strait jack formula without appreciation of facts and basing on facts and circumstances, the law has to be applied.

10. A perusal of the common order of the Division Bench of this court in W.P.No.30530 of 2012 and batch dated 28.8.2014, relied on by the counsel for the writ petitioners, would reveal that the applicants therein sought for a direction to the authorities to pay minimum time scale together with dearness allowance and back wages for three years prior to filing of the O.As. This court, in those facts and circumstances, following the law laid down by the Apex court in Umadevi's case (1 supra) held that the writ petitioners therein are entitled to the wages equal to the salary at the lower grade of the employees of their cadre in their respective departments from the date of judgment of the Tribunal and set aside the direction of the Tribunal in directing the Government to pay minimum time scales of pay together with dearness allowances and also back wages. But in the present case, the facts and circumstances are different. Government has already extended the minimum time scales under G.O.Ms.823 dated 28.11.2008 and the same has been implemented and

when some of the NMRS who were given time scale, were denied the annual grade increments and HRA, they approached the Tribunal and the relief was granted to them and eventually, the matter went up to the Apex court and the appeals were dismissed. The learned counsel for the respondents submitted that after the dismissal of SLPs by the Apex Court, Government implemented the orders of the Tribunal by issuing Memo No.2057/92/2003 dated 1.10.2010. The other contention of the learned counsel for the respondents, which has not been controverted, is that that even without the orders of this court, the Corporation has been extending the increments and the HRA to other similarly situated employees and he also produced copies of those proceedings. Further, it is not the case of the writ petitioner that under the pressure of contempt of this court, the orders have been implemented or that they have committed illegality in implementing the orders of this court and that the same cannot be perpetuated. When the cases of similarly situated employees ended at Apex Court by way of dismissal of SLPs filed by the Corporation, the orders of the Tribunal are liable to be implemented and accordingly they were implemented and in these circumstances, it cannot also be allowed to contend that under the pressure of contempt, the Corporation has extended the relief or that there is any illegality. Therefore, the law laid down by the Apex Court (7 and 8 supra), relied on by the Standing Counsel for the Corporation in this regard that illegality cannot be allowed to be perpetuated, though unexceptionable, cannot be made applicable in the present set of facts and circumstances.

11. The other contention of the learned Standing Counsel for the petitioners is that before the Tribunal, principles of natural justice have been violated. A perusal of the orders of the Tribunal would reveal that the Corporation was represented by the Standing Counsel and the Government Pleader represented the Government and the Tribunal after hearing the respective counsel, and considering that in identical matters arising out of the very same Corporation, relief sought for was granted and the same has been confirmed by this court, allowed the O.As.

Therefore, question of violation of principles of natural justice does not arise.

12. In view of the above facts and circumstances, we are of the considered view that denying the similar relief to the respondents herein would amount to discrimination and the issue raised in the present writ petitions is squarely covered by the Division Bench Judgment of this court in W.P.No.24130/2011 and batch dated 13.8.2011, which was confirmed by the Apex Court in SLP (Civil) No.29963-29965 of 2011 dated 14.11.2011.

13. For the foregoing reasons, the writ petitions are dismissed. No costs.

14. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

U.DURGA PRASAD RAO,J

DATE:29.02.2016

[\[1\]](#) (2006)3 SLR 1

[\[2\]](#) (2009)8 SCC 431

[\[3\]](#) 1999(3) ALD 644 (DB)

[\[4\]](#) (1989)2 SCC 754

[\[5\]](#) AIR 1962 SC 83

[\[6\]](#) (2010)11 SCC 694

[\[7\]](#) (2007)5 SCC 77

[\[8\]](#) (2007) SCC 519

[\[9\]](#) 2007(4) ALT 72 (DB)