

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**

WRIT PETITION No.42050 OF 2015

ORDER: (Per Hon'ble Sri Justice G.Shyam Prasad)

This is a Writ of Certiorari filed for quashing G.O.Ms.No.56, PR & RD (Mdl.UII) Department, dated 02.03.2012, as illegal and arbitrary.

Brief facts of affidavit, filed by the writ petitioner:-

2. The writ petitioner was appointed as Panchayat Secretary under the Medical Invalidation Scheme on contract basis vide proceedings in Rc.No.A7/2130/2001, dated 09.07.2003, in place of his father Sri K.Narayana, who retired from service on medical grounds on 15.10.2001 from Irrigation Department.

3. Subsequently, the first respondent - Government has withdrawn the scheme of appointment of dependants of those, who retired from service, on contract basis on medical invalidation, vide G.O.Ms.No.246, GA (Ser.II) Department, dated 30.05.2016. Consequently, the services of the petitioner were terminated, vide proceedings No.A2/967/2006-A7, dated 16.09.2006, of the second respondent.

4. Thereafter the Government issued G.O.Ms.No.124, dated 02.04.2008, permitting the second respondent - District Collector to reappoint the Panchayat Secretaries, whose services were terminated earlier, subject to outcome of writ proceedings, pending

before this Court. In pursuance of G.O.Ms.No.124, the second respondent had issued orders dated 16.04.2008, appointing the petitioner as Panchayat Secretary on contract basis, but the orders of appointment could not be communicated to the petitioner, as he has shifted his family to Nalgonda District. On knowing of the same, the petitioner submitted an application dated 09.03.2010 for his reappointment. On such representation, the second respondent has sought for clarification from the Government and the Government has issued G.O.Ms.No.1023, dated 13.06.2012, permitting the second respondent to reappoint the petitioner on contract basis. The petitioner was given posting orders dated 24.08.2012 and he has joined the duty on 03.09.2012.

5. Meanwhile, the Government had issued G.O.Ms.No.56, dated 02.03.2012, regularising the services of all the Panchayat Secretaries, who were appointed on contract basis. On knowing the same, the petitioner has submitted a representation for regularisation of his services in terms of G.O.Ms.No.56. The Government has rejected his request, by order in Memo No.1344/MDL.11/A2/2013, dated 07.08.2013, as he was appointed as Panchayat Secretary on contract basis as a special case on humanitarian grounds.

6. Challenging the said memo, the petitioner filed O.A.No.9057 of 2013 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad. The Tribunal, by order dated 10.06.2015, dismissed the said OA on the ground that the petitioner was appointed on

contract basis purely on humanitarian grounds and therefore he is not entitled for regularisation of his services.

7. Being aggrieved by the order dated 10.06.2015, of the Tribunal, the petitioner is before this Court by way of this writ petition.

The first respondent filed counter affidavit as follows:-

8. The first respondent filed counter-affidavit denying the material allegations of the affidavit filed in respect of the writ petition *inter-alia* contending that on receipt of the proposal for regularization of the services of the petitioner for the post of Contract Panchayat Secretary, they have consulted the Finance Department, who in turn advised them to send the proposal for regularization of contract persons in view of the orders issued in G.O.Ms. No.16, Finance (HRM.I) Department, dated 26.02.2016, read with Circular Memo No.308-A/51/A3/HRM-I/2014, Finance (HRM-I) Department, dated 26.02.2016 and also the compassionate appointment of Panchayat Secretaries was allowed *vide* G.O.Ms. No.56, PR & RD (Mdl.II) Department, dated 02.03.2012.

9. It is further contended that on the request of the Finance Department, the Deputy Commissioner, on the advise of Director, sent proposal to the Finance Department, as contained in the check list, for regularization of the services of the petitioner, as per the instructions/orders *vide* his letter dated 13.01.2016, which was received by the Government on 15.10.2016. Soon after receipt of

the information from the Finance Department, necessary action with regard to regularization of the services of the petitioner would be taken.

10. It is further contended that the petitioner cannot be equated with the persons who were regularized as per the G.O.Ms. No.56, dated 02.03.2012, as the petitioner failed to join the post of Panchayat Secretary (contract basis) in the year 2008, and later on humanitarian grounds he was appointed in the year 2012.

11. Hence, the claim of the petitioner for regularization of his services as Panchayat Secretary, in view of G.O.Ms. No.56, dated 02.03.2012, is untenable. Accordingly, prayed for dismissal of the writ petition.

12. The points that arise for consideration in this matter are:

- (i) Whether the act of the Government in rejecting the request of the petitioner for regularisation of his services in accordance with G.O.Ms.No.56, is in accordance with law?
And
- (ii) Whether the rejection of the request of the petitioner by the Tribunal based on findings of GO, and it is in accordance with law?

13. Heard the arguments of learned counsel for the petitioner Sri S.Satyanarayana Rao and learned Government Pleader for Services (T.S) appearing on behalf of first respondent.

14. In the year 2001, the father of the petitioner retired on medical invalidation. In the year 2003, the petitioner was appointed as Panchayat Secretary on contract basis. In the year

2006, the scheme of medical invalidation was cancelled. In the year 2008, the Government issued direction to the second respondent to give reemployment. The second respondent has issued orders of posting to the petitioner, but they were not served on him. In the year 2010, he approached the Government for his reemployment stating that the employment orders were not served on him. In the year 2012, the Government considered his request and issued appointment orders. In the same year of 2012, G.O.Ms.No.56 was issued regularising the services of the employees appointed on contract basis in the year 2008.

15. The contention of the writ petitioner was that his services were not regularised along with the other employees who were appointed in the year 2008. It is his contention that the orders of appointment were not communicated to him as he has shifted his residence from that District, he could not join duty. Therefore, he sought for regularisation of his services on par with other employees.

16. It is mainly contended that the order was not communicated to him, and therefore, he could not join the duty in the year 2008 along with other employees. As a matter of fact, his father had taken voluntary retirement under the medical invalidation scheme foregoing his 3 years of valuable service in order to provide employment to his son. Unfortunately, the petitioner was removed from service as the scheme was cancelled in the year 2006, after his appointment. Again, the Government has issued

G.O.Ms.No.124, dated 02.04.2008, permitting the second respondent for reemployment of the petitioner, but again to his misfortune, the orders of appointment issued by the second respondent, dated 16.04.2008, could not be communicated to him. There was no reason coming forth for the petitioner not joining the duty, if he had received the appointment orders in the year 2008 along with all other co-employees. Therefore, having waited for two years, he had approached the Government through second respondent and his request was considered and he was given reappointment as a special case on humanitarian grounds, as the Government must have felt that he lost his employment in the year 2006 and the orders of appointment could not be served to him in the year 2008.

17. O.A.No.9057 of 2013 was filed by the petitioner, Panchayat Secretary, for declaration that the action of the first respondent in not extending the same benefit that was extended to the other similarly situated persons appointed on contract basis as Panchayat Secretaries, under medical invalidation scheme, like applicant, and for regularisation of their services vide G.O.Ms. No.56, PR & RD (Mdl.II) Department, dated 02.03.2012, as illegal, arbitrary and against the principles of natural justice, and therefore, sought for setting aside the impugned memo 1344/MDL.II/A2/2013, dated 07.08.2013, with a direction to the first respondent to pay his arrears of salary from February, 2013 onwards and continue to pay the same. The Tribunal, by interim

order dated 24.12.2013, pending disposal of the OA, directed the first respondent to pay the salary to the applicant from February, 2013 onwards within a period of four weeks from the date of receipt of a copy of that order.

18. The Tribunal has passed an order in O.A.No.9057 OF 2013 dismissing the case of the petitioner on the ground that he was appointed as a special case on humanitarian grounds and that it was presumed that the service of appointment of orders deemed to have been served on the petitioner. In fact, there is no reason forthcoming for the petitioner having received the appointment orders not joining the service.

19. The Government is not going to lose anything by regularising his services, at least from the date of his appointment in the year 2012. The GO.Ms.No.56 has been issued for regularisation of the services of the employees who were appointed in the year 2008. Considering the same, the Government, in this regard, may take necessary steps for regularising his services.

20. Therefore, in view of the foregoing reasons, the Government is directed to take necessary steps for regularisation of the services of the petitioner from the date of his appointment in the year 2012, as per the existing Rules and Regulations in that regard. The order of the Tribunal dated 10.06.2015 in O.A.No.9057 of 2013 is set aside.

21. The writ petition is, accordingly, allowed. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand dismissed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 28.04.2016.
TJMR

