

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE DR JUSTICE SHAMEEM AKTHER

W.P. No. 12774 of 2009

O R D E R:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed seeking to quash the order dated 07.07.2008 in O.A.No. 644 of 2000 passed by the Tribunal, whereby the O.A. filed by the respondent was allowed.

The petitioners – Government averred in the affidavit that the respondent filed O.A.No. 644 of 2000 seeking declaration that the action of the petitioners in not condoning the break period for the purpose of regularizing the services of the respondent in Srikakulam Municipality, as arbitrary and illegal and violative of Articles 14 and 16 of the Constitution of India, and consequential direction to condone the break period for the purpose of counting that period for regularization of services as per scheme formulated by the Government vide G.O.Ms.No. 212, dated 22.04.1994, and the Tribunal by order dated 07.07.2008 allowed the O.A.

The Tribunal, in its order, held that the respondent is entitled to regularization of her services in terms of G.O.Ms.No. 272, dated 14.06.1998 and directed the petitioners to pass necessary orders regularizing her services in terms of G.O.Ms.No. 272, dated 14.06.1998.

The learned Government Pleader for Services appearing on behalf of the petitioners submits that the respondent was initially appointed as NMR in Srikakulam Municipality on 01.02.1984. She was engaged as and when there was requirement till April, 1987. Even during this period, there was no continuous engagement. After April, 1987 she was not engaged as her services were not required.

The learned Government Pleader further submits that the respondent does not fulfill the criteria for regularization of her services and she was only working since February, 1986, thus, she is not entitled to regularization.

In the counter affidavit filed by the Commissioner, Srikakulam Municipality before the Tribunal, it is accepted that the respondent was engaged in the year 1984 and subsequently her services were terminated in the year 1987 and in view of allowing of W.P.No. 12766 of 1993, the Government issued orders in G.O.Ms.No. 38 re-engaging the respondent and further the services of one Smt.B.Adilakshmi were regularized in view of G.O.Ms.No. 272, dated 14.06.1998. With regard to the case of the respondent, it is stated that as the respondent did not complete five years of service in accordance with G.O.Ms.No. 212, her services cannot be regularized.

It is an admitted fact that the respondent was appointed as N.M.R. in Srikakulam Municipality in the year 1984 by the Commissioner of that Municipality and she was continued as such up to April, 1987, and thereafter, her services were terminated. When some of the similarly situated persons were issued termination orders, they filed W.P.No. 5164 of 1983, and this Court passed the following order:

“It is not when the breaks which are given in each month over the long periods served by the petitioners was for any good or valid administrative reasons. It appears that these breaks were given if any, more with a view to deny the petitioners the benefit of the beneficial legislation viz. the Industrial Disputes Act, when most of them have served for more than two or three years to say that they are not entitled to the benefit of Chapter V-A of the Industrial Disputes Act is unsustainable in law, more as when the alleged breaks in their service have not been established to be warranted or justified.

We are, therefore, of the opinion that the termination of the petitioners, as it can be called is contrary to law. The petitioners must be re-employed forthwith in the same post as they were employed at the time of their termination. However, we do not see any warrant for directing payment of arrears of wages because they were not in regular service nor were they paid on monthly basis.”

When the respondent was given orders terminating her services, she filed W.P.No. 12766 of 1993, and this Court allowed the same in view of the orders passed in W.P.No. 5164 of 1983 dated 04.12.1984.

The case of the respondent is that one similarly situated person namely B. Adi Lakshmi, who was employed in the same

Municipality in the year 1984, in view of termination of her services, filed W.P.No. 1313 of 1992 and the same was allowed on 27.08.1992 in terms of the order passed in W.P.No. 5164 of 1983, dated 04.12.1984. In view of the disposal of that writ petition, her services were regularized under G.O.Ms.No.212, by virtue of the orders in G.O.Ms.No. 272, dated 14.06.1998.

The Tribunal allowed the O.A. filed by the respondent in view of the decision taken by this Court in W.P.No. 5164 of 1983 holding the termination as arbitrary and illegal, and further, in view of treating the gap period and regularizing the services of similarly situated persons, the respondent is also entitled to the same benefit for treating the gap period from the date of termination to the date of re-engagement, as on duty and for all other purposes, but not for payment of back wages etc.

The Tribunal, further held that the respondent is entitled to regularization of her services in terms of G.O.Ms.No. 272, dated 14.06.1998, and accordingly, directed the petitioners to pass necessary orders regularizing the services of the respondent in terms of G.O.Ms.No. 272, dated 14.06.1998 within a period of eight weeks from the date of receipt of a copy of the order.

It is pertinent to mention here that by virtue of the subsequent orders issued by the Government in G.O.Rt.No. 1245, dated 02.09.2009, the services of the respondent were already regularized.

In view of the facts recorded above and the fact that the issue raised by the respondent in O.A.No. 644 of 2000 has already been decided by this Court in W.P.No. 5164 of 1998, we find no discrepancy or illegality or perversity in the order passed by the Tribunal.

Hence, we find no merit in this writ petition and the same is accordingly dismissed confirming the impugned order of the Tribunal.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

30.06.2017

bcj

SURESH KUMAR KAIT, J

DR. SHAMEEM AKTHER, J