

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.24779 OF 2011

Dated:27.12.2017

S.K. Gouse, S/o. Khaja, Aged
36 years, Tenali Branch, Guntur
District and others

.. Petitioners

And

Chaitanya Godavari Grameena Bank,
Rep., by its Chairman, Brodipet,
Head Office, Guntur and another

.. Respondents



The Court made the following:

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WRIT PETITION No.24779 OF 2011

ORDER:

Heard Vedula Srinivas, leaned counsel for the petitioners and Sri K. Lakshmi Narasimha, learned Standing Counsel for the respondents.

2. Petitioners claimed to have been appointed as Messengers-cum-Sweepers on casual basis in various branches of Chaitanya Grameena Bank and Godavari Grameena Bank established under the Regional Rural Banks Act, 1976 [Later these two banks merged and formed Chaitanya-Godavari Grameena Bank]. Ever since, petitioners claim to be in continuous service, albeit in casual employment.

3. This Writ Petition is instituted at the stage when indent was placed by the bank vide letter dated 20.08.2011 with the District Employment Exchanges in Guntur, Kakinada and Eluru Districts to sponsor candidates for employment as Office Attendants (Multipurpose) against 78 vacancies available in three districts. Petitioners alleged that if the selection process is allowed to be continued and persons are allowed to be selected and appointed, they would lose their employment. It is contended that having utilized their services for quite a long time, dispensing with their services and inducting new persons is contrary to the mandate of the provisions of the Industrial Disputes Act, 1947 (for short, 'the Act'). It is mandatory under Section 25 of the Act that they should be given priority in selections before inducting any outsiders and this mandate is not followed while placing the

indent with the local employment exchanges. At the time of admission, this Court directed the respondents to consider the case of the petitioners under Section 25-H of the Act as and when bank proposed to retrench them.

4. It appears, no names were sponsored by the employment exchange and the selection process was not taken further pursuant to the indent placed with employment exchange vide letter dated 20.08.2011.

5. Petitioners filed W.P.M.P.No.49912 of 2017 praying to amend the prayer sought in the Writ Petition. While retaining the declaration sought when writ petition was filed, a further direction is sought to regularize the services of the petitioners as Office Attendants (Multipurpose) in Group – C with all consequential benefits. In support of the prayer sought in the said petition, petitioners contend that they were qualified in initial appointment and have been continuously discharging their duties and responsibilities of the post of Office Attendants without any break/interruption and therefore their services have to be regularized and not granting regularization is *ex facie* illegal and amounts to arbitrary exercise of power. It is also the case of the petitioners that in terms of Section 25-H of the Act, they are entitled to preferential treatment for appointment on regular basis. By separate order, the said WPMP is ordered.

6. Three counter affidavits are filed on behalf of the respondent – bank. The bank is opposing prayer originally sought in the Writ Petition and the amendment proposed. According to

the respondent-bank, petitioners were employed by local managers of respective branches, whereas appointing authority is the Chairman of the bank and therefore, those appointments are not valid and not binding on the bank. It is further contended that such appointments can be made only through employment exchange mode, whereas such mode was not adopted while inducting the petitioners. It is further contended that regulations governing service conditions of the Bank were formulated for the first time by the respective banks in the years 1987 and those regulations were revised from time to time. After merger of two banks and formation of Chaitanya Godavari Grameena Bank, fresh set of service regulations were formulated and in terms thereof, petitioners are not eligible.

7. Before appreciating the respective stands, it is necessary to note that petitioners have been continuously working without any interruption except S.K. Mastan, Shaik Shafi, O. China Chandraiah, Sk. Chand Basha and Jampana Swarupa Rani. Further, V. Srinivasa Rao, N. Srinivasa Rao and M. Naga Raju since died. Thus, except the above persons, all other petitioners are working in the respondent – Bank.

8. The record would disclose that having found the necessity to have supporting staff in the branches and regular posts are not created, as early as on 22.09.1983 orders were issued to branch managers authorizing them to employ Messengers-cum-Sweepers on daily wage/temporary/part time basis. The orders prescribe requirements for engaging such persons. For consideration of this case, it is appropriate to note two important requirements

prescribed, (i) person should not be a minor. In other words, one should have attained the age of 18 years; and (ii) should not have passed S.S.C. or equivalent examination, with no minimum educational qualification. In terms thereof, the petitioners were employed and have been in continuous service. Service regulations were formulated for the first time in the year 1987 and thereafter these regulations are reviewed and fresh set of regulations were notified from time to time.

9. The Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Regulations, 1987 prescribe procedure for selection and appointments. Qualification prescribed is 8th pass from a school recognized by the Government and candidate should be within the age of 18 and 26 years, which is relaxed to Scheduled Caste and Scheduled Tribe candidates. These regulations are replaced by a new set of regulations notified on 13.07.2010. In these regulations, minimum educational qualification is now scaled up to pass in 10th standard and he should require other skills for specific jobs. The age prescribed is between 18 and 28 years and selection process is based on interview. These regulations are further reviewed and fresh set of regulations are notified on 29.03.2017. These regulations retain the same requirements as in 2010 Regulations. However, the selection is based on the written test.

10. At this stage, it is appropriate to notice that when indent was placed with the employment exchange on 20.08.2011 the Regulations notified in the year 2010 were in force. It is also appropriate to notice that on 14.05.2011, respondent – bank has

approved creation of 78 posts of Office Attendants (Multipurpose). These 78 posts created are distributed to Guntur (46), East Godavari (17) and West Godavari (15) districts. It is not known, whether as of now additional vacancies are also created. Fact remains that petitioners have been working continuously and the respondent – bank recognizes the need and necessity of services of Office Attendants (Multipurpose) as early as in the year 1983. Permission was accorded to local Managers to recruit, albeit, on daily wage basis; recruitment was made; and they are continued in service without interruption. The work extracted from petitioners is one of perennial nature and cleaning of the premises of the respondent – bank branches is very much necessary. In addition, the persons are required to carry out menial work in the office of the branches. Thus, the nature of work extracted from petitioners is one of regular and continuous and having regard to the fact that the services of the petitioners are continuously utilized for all these years, it is safe to hold that their services are required on permanent basis. As noticed above, when initial permission for recruitment was granted, one of the important requirements prescribed was, person should not have passed X Standard and no minimum educational qualification was prescribed. Thus, whatever may be the educational qualification, people were engaged and on account of long service rendered by the petitioners, it is also safe to hold that petitioners acquired sufficient knowledge and experience on the work of office attendant.

11. However, learned counsel for the petitioners submits that all the petitioners have passed VIII Class and above, which is minimum requirement prescribed even in the 1987 Regulations. Thus, petitioners are qualified and suitable for appointment on regular basis. Furthermore, having regard to the orders passed by the bank on 22.07.1983 authorizing the local Branch Managers to recruit sweepers, it is not open to the respondent – Bank to contend that their appointment was not authorized and therefore Bank is not obliged to regularize their services as Chairman has not appointed them. Therefore, this objection fails.

12. It is further contended that the Service Regulations prescribe procedure for selection and it is mandatory to notify the vacancies to the employment exchange and only the candidates sponsored by the employment exchange are considered for employment.

13. In W.P.No.14457 of 2010 and batch, petitioners therein were working and/or claiming employment in Andhra Pradesh Grameena Bank, which is also a Regional Rural Bank. It was contended that only persons who were sponsored from the employment exchange alone are required to be considered and unless the petitioners' names are sponsored by the employment exchange, they cannot be considered.

13.1 This court considered precedent decisions of Supreme Court on the issue of considering candidates for employment even if Employment Exchange has not sponsored their names.

13.2 Relevant paragraphs of the judgment read as under:

“14.1.1 In ***Union of India v. N. Hargopal***¹, while repelling the contention that there need not be sponsorship by the Employment Exchange and publication of notification should be issued on the ground that many people do not register with the Employment Exchange, the Supreme Court at paragraph No.9 held as under:

“9. In the absence of a better method of recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution. With this modification of the judgment of the High Court, the appeals and the special leave petitions are disposed of. No orders are necessary in the writ petition.”

14.1.2. However, it is appropriate to note the observations of the Supreme Court in paragraph No.6. It reads as under:

“6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges.”

(emphasis supplied)

14.2. In ***Excise Superintendent, Malakpatnam, Krishna District, Andhra Pradesh v. K.B.N.***

¹ (1987) 3 SCC 308

Visweshwara Rao², after considering the earlier judgment of **Haragopal** (supra), the Supreme Court held at paragraph No.6 as under:

“6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. ***In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.***”

(emphasis supplied)

² (1996) 6 SCC 216

14.3. In **Arun Kumar Nayak v. Union of India**³, this very issue was considered and Supreme Court by following the judgment in **Excise Superintendent, Malakpatnam** (supra), at paragraph No.9 held as under:

“9. This Court in *Visweshwara Rao* [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , therefore, held that intimation to the employment exchange about the vacancy and candidates sponsored from the employment exchange is mandatory. This Court also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. ***The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better.***”

(emphasis supplied)

14.4. Yet again in **State of Bihar** (supra) Supreme Court considered the earlier decisions in **Haragopal** (supra), **Excise Superintendent, Malakpatnam** (supra) and **Arun Kumar Nayak** (supra) and approved the view taken in those three decisions and held at paragraph No.31 as under:

³ (2006) 8 SCC 111

“31. The ratio of the above noted three judgments is that in terms of Section 4 of the 1959 Act, every public employer is duty-bound to notify the vacancies to the employment exchange concerned so as to enable it to sponsor the names of eligible candidates and also advertise the same in the newspapers having wider circulation, employment news bulletins, get announcement made on radio and television and consider all eligible candidates whose names may be forwarded by the employment exchange concerned and/or who may apply pursuant to the advertisement published in the newspapers or announcements made on radio/television.

(emphasis supplied)

18. On a reading of the four judgments on the issue i.e., **Haragopal** (supra), **Excise Superintendent, Malakpatnam** (supra), **Arun Kumar Nayak** (supra) and **State of Bihar** (supra), as noted by the Supreme Court in **State of Bihar** (supra), every employer is duty bound to notify the vacancies not only through Employment Exchange, but also through advertisement in the newspapers having wider circulation, in employment news bulletin and announcements through radio and television and consider all eligible candidates. In view of the subsequent decisions of the Supreme Court by bench of Three judges in **Excise Superintendent, Malakpatnam** (supra), the respondent – Bank cannot fall back on decision of this Court in **State Bank of India** (supra) and **Naveen Kumar** (supra) to contend that the consideration is confined only to candidates sponsored from Employment Exchange or District Sainik Welfare Board or Organisations which are established/formed for the welfare of Scheduled Caste/ Scheduled Tribe/disabled persons. The interim directions issued by this Court in some of the writ petitions herein commands acceptance.”

14. Thus, sponsorship from employment exchange is not mandatory to consider a candidate's claim for employment. More so, in the case on hand, petitioners have rendered long service.

15. Question for consideration is whether petitioners can seek regularisation of their services without subjecting them to any selection process.

16. In **Secretary, State of Karnataka and Others Vs. Umadevi (3)**⁴, Supreme Court while deprecating the practice of back-door appointments, appointments on daily wage basis and subsequent regularization, directed formulation of scheme for regularization, if services of persons are utilized uninterruptedly for more than 10 years. Supreme Court held:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to

⁴ (2006) 4 SCC 1

regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

17. Considering the scope of decision in **Umadevi**, in **State of Karnataka and others Vs. M.L. Kesari and others**⁵ Supreme Court held:

“11. The object behind the said direction in para 53 of *Umadevi (3)* [(2006) 4 SCC 1] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi (3)* [(2006) 4 SCC 1] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more

⁵ (2010) 9 SCC 247

than ten years as on 10-4-2006 [the date of decision in *Umadevi (3)* [(2006) 4 SCC 1]] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi (3)* [(2006) 4 SCC 1] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi (3)* [(2006) 4 SCC 1] as a one-time measure.”

18. In ***Amarkant Rai v. State of Bihar***⁶, Supreme Court held that “The objective behind the exception carved out in this case was to permit regularisation of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years”. In that case, employee was working for 29 years. This decision approves earlier view expressed in ***M.L.Kesari*** (supra) extracted above.

19. In ***State of Jharkhand v. Kamal Prasad***⁷, similar view was taken. Supreme Court held:

“41.In view of the categorical finding of fact on the relevant contentious issue that the respondent employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in *Umadevi (3)* case [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] at para 53 squarely applies to the present

⁶ (2015) 8 SCC 265

⁷ (2014) 7 SCC 223

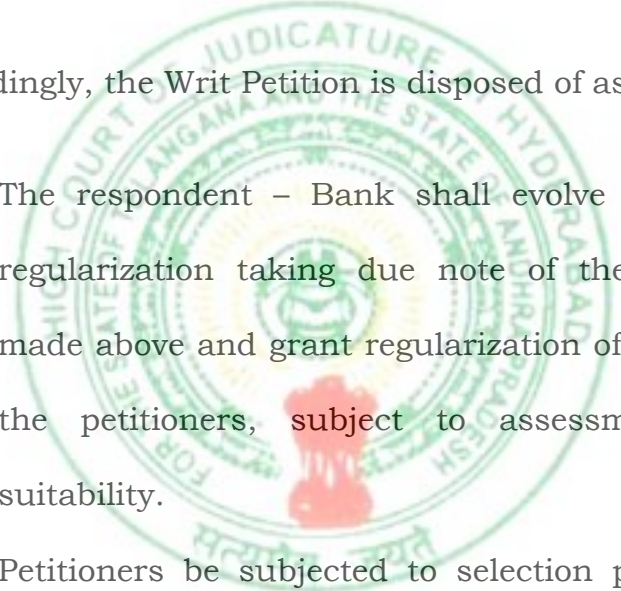
cases. The Division Bench of the High Court has rightly held that the respondent employees are entitled for the relief, the same cannot be interfered with by this Court.”

20. The facts on record as noted above would disclose that appointment of petitioners was not illegal but at the most irregular. Having regard to these facts and the fact that petitioners are continuously working, there are sanctioned posts, they are entitled for regularization of their services. Having regard to the peculiar facts and circumstances of the case, justice and equity requires that the respondent Bank should evolve a scheme to regularise the services of petitioners and fill existing vacancies of Office Attendants (Multipurpose) duly taking note of long service rendered by them. It is also appropriate to note at this stage as stated by learned counsel that though indent was placed on the employment exchange vide letter dated 20.08.2011, no further steps were taken and vacancies remained unfilled.

21. At this stage, the Court is not going into the details of eligibility criteria as required to be fulfilled in terms of the service regulations and the eligibility possessed by them. However, the eligibility with reference to the age has to be seen when they were initially engaged and if they were above the age of 18 years prescribed in the initial process of selection as seen from the letter dated 22.09.1983 authorising the Bank Managers to recruit, their claim for consideration should not be rejected on the ground that presently they are over-aged. Secondly, with reference to the educational qualifications, as noticed above, the initial requirement condition imposed was that the person should not have possessed S.S.C. and no minimum educational qualification

was prescribed and that all the petitioners have possessed minimum of VIII Standard and above. This being the requirement also in 1998 Regulations, the petitioners eligibility for consideration cannot be thrown out on the ground that they are not having the qualification of S.S.C. as required by the Regulations 2010 and 2011, more so having regard to the fact that the post of office attendant do not require professional/technical qualifications and no adverse remark of their functioning is pointed out. The long service rendered obviate any deficiency in educational qualification subsequently introduced.

22. Accordingly, the Writ Petition is disposed of as under:

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- (a) The respondent – Bank shall evolve a scheme for regularization taking due note of the observations made above and grant regularization of services of all the petitioners, subject to assessment of their suitability.
 - (b) Petitioners be subjected to selection process to the posts of Office Attendants (Multipurpose) sanctioned on 14.05.2011 without insisting that their names should be sponsored by Employment Exchange or any other agency.
 - (c) While considering for such recruitment, having regard to long service rendered by petitioners, the Bank may evolve some procedure/scheme to grant weightage to petitioners for the service rendered subject to such service being satisfactory. Their eligibility as to age

and educational qualification has to be assessed as directed in earlier paragraphs.

- (d) It is made clear that such consideration is confined only to those persons who are actually in service and it is not applicable to the persons who have left the service or died, names of whom are noted in the earlier paragraphs.
- (e) The entire exercise should be completed as expeditiously as possible, preferably within a period of six months.

No costs. Having regard to the same, Miscellaneous Petitions, if any pending, are closed.

Date: 27.12.2017

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P. NAVEEN RAO, J

