

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.12141 of 2013

ORDER: (Per Justice Sanjay Kumar)

The Government of Andhra Pradesh and its officials in the Rural Water Supply and Sewerage Department filed this writ petition aggrieved by the order dated 22.11.2011 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.8924 of 2011. By the said order, while relying upon its earlier order dated 19.01.2011 in O.A.No.8095 of 2008 which applied the ratio laid down by the Supreme Court in District Collector/ Chairman v. M.L. Singh¹, the Tribunal directed the authorities to regularize the services of the applicant in the present O.A. with effect from 25.11.1993 in terms of G.O.Ms.No.212 dated 22.04.1994.

By order dated 23.04.2013, this Court granted interim suspension of the order under challenge. W.V.M.P.No.920 of 2016 was filed by the respondent, the applicant in the O.A., to vacate the aforestated order.

It is not in dispute that the services of the respondent were regularized in terms of G.O.Ms.No.212 dated 22.04.1994 with effect from 18.08.2003. However, he completed five years of continuous service, as mandated by the said G.O., by the cut-off date stipulated thereunder i.e. 25.11.1993.

The issue is no longer open to debate in the light of the recent judgment of the Supreme Court in B. Srinivasulu v. Nellore Municipal Corporation². That was also a case relating to regularization of services under G.O.Ms.No.212 dated 22.04.1994. The Tribunal allowed the O.A. filed by one B. Srinivasulu and others directing regularization of their services with effect from the date they completed five years of service. The writ petition filed by the Nellore Municipal Corporation aggrieved by this direction was dismissed in the first instance by this Court. However, upon review being sought, this Court altered the date of regularization to be effective from the date of filing of the Original Applications. The matter thereupon went before the Supreme Court. The Supreme Court observed

¹ (2009) 8 SCC 480

² Civil Appeal No.6318 of 2015 dated 17.08.2015

that it found it difficult to accept the reasoning adopted by this Court and held that the right of the appellants to seek regularization flowed from G.O.Ms.No.212 dated 22.04.1994, in terms of which the Nellore Municipal Corporation effected regularization of their services. The Supreme Court therefore concluded that refusal of the benefit flowing from the said G.O. on the ground that the appellants had approached the Tribunal belatedly would not be justified. The appeal was accordingly allowed modifying the order passed by this Court and the Nellore Municipal Corporation was directed to regularize the services of the appellants in that case with effect from the date of their completing five years continuous service, as was laid down in M.L. Singh¹.

Though the learned Government Pleader for Services would contend that G.O.Ms.No.212 dated 22.04.1994 also stipulates the condition that a clear vacancy should be available for regularization of services to be effected from a particular date, we find that no mention has been made in the affidavit filed in support of this writ petition that such a clear vacancy was not available as on 25.11.1993, the date from which the services of the respondent were directed to be regularized by the Tribunal. In the absence of such a plea having been raised in the first instance, we are not inclined to allow the Government to raise additional grounds at this belated stage. All the more so, when the issue is squarely covered by the aforesaid decision of the Supreme Court.

The writ petition is found to be devoid of merit and is accordingly dismissed.

Interim order dated 23.04.2013 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

N. BALAYOGI, J

11th April, 2017
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