

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition Nos.12415 of 2006 and 16399 of 2015

% Date: 19-12-2017

Md. Rafee S/o Ghouse Mohiddin, Aged 35 years,
Masalchi cum Night Watchman, O/o CTO-1,
Proddatur, Chittoor Division, Kadapa District
... Petitioner in W.P.No.12415/2006

1. The State of A.P., Rep. by its Prl. Secretary,
Revenue (CT-II) Dept., Secretariat, Hyderabad
2. The Commissioner of Commercial Taxes,
Govt. of A.P., Nampalli, Hyderabad
3. The CTO-I, Proddatur, Kadapa District
... Petitioners in W.P.No.16399/2015
Vs.

- \$ 1. The Govt. of A.P., Rep. by its Secretary,
Revenue (CT) Dept., Secretariat, Hyderabad
2. The CTO-I, Proddatur, Chittoor Division, Kadapa District
 3. The Deputy CTO-I, Proddatur, Chittoor Division, Kadapa District
... Respondents in W.P.No.12415/2006
1. Marthadu Md. Rafi S/o M.Ghouse Mohiuddin,
Aged 39 years, Full Time Contingent Employee
(Masalchi cum Night Watchman), O/o CTO,
Proddatur, R/o Proddatur, Kadapa District
 2. The A.P. Administrative Tribunal,
Rep. by its Registrar, Puranahaveli, Hyderabad
... Respondents in W.P.No.16399/2015

! Counsel for Employee:	Mr. P.Suresh Reddy, Senior Counsel, representing Mr. T.V.P. Prabhakar
Counsel for Government:	G.P. for Services-I (A.P.)
Counsel for APAT:	---

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> Head Note:

? Cases referred:
1. (2006) 4 SCC 1

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Common Order: (per V.Ramasubramanian, J.)

Aggrieved by two different orders passed at two different points of time, but in favour of the very same person employed as Masalchi cum Night Watchman, the employee came up with the first writ petition in W.P.No.12415 of 2006 and the Government has come up with the other writ petition W.P.No.16399 of 2015.

2. Heard the learned Government Pleader for Services-I (Andhra Pradesh) and Mr. P.Suresh Reddy, learned Senior Counsel appearing for the employee.

3. Since the employee is the petitioner in one writ petition and the Government is the petitioner in another writ petition, we shall refer to them only as employee and the Government.

4. The employee was appointed as Masalchi cum Night Watchman in the office of the Deputy Commercial Tax Officer on daily wages basis on 26-4-1994. In the year 2002, he filed an application in O.A.No.3329 of 2002 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, seeking regularisation of his services. But the said application was dismissed by the Tribunal by an order dated 31-8-2005, forcing the employee to come up with W.P.No.12415 of 2006.

5. At the time of admitting the writ petition, this Court issued an interim direction to the respondents to pay minimum wages in the time-scale of pay. Pursuant to the said order, the employee is now being granted minimum pay in the time-scale of pay.

6. In the year 2012, the employee filed a second application in O.A.No.305 of 2012 seeking a direction to the respondents to pay minimum time-scale viz., Basic Pay and Dearness Allowance on par with 38 full-time contingent employees who were granted similar benefit under G.O.Rt. No.1122, Revenue (CT.III) Department, dated 16-8-2010. The Tribunal allowed the application by an order dated 17-12-2014 forcing the State to come up with W.P.No.16399 of 2015.

7. After the decision of the Supreme Court in **Secretary, State of Karnataka v. K.Umadevi**¹, the employee may not be entitled to sustain his claim for regularisation. The only hope for the employee was G.O.Ms. No.212, Finance & Planning (FW.PC.III) Department, dated 22-4-1994. But the employee in this case does not satisfy the criteria of completion of five years of service as on 25-11-1993 as stipulated in G.O.Ms.No.212. The employee was actually appointed only on 26-4-1994 and hence he is not entitled to the benefit of G.O.Ms.No.212. Hence, W.P.No.12415 of 2006 is dismissed.

¹ (2006) 4 SCC 1

8. Coming to the writ petition filed by the Government, the grievance of the State is that the petitioner was not in service as on the cut-off date to be eligible for the grant of revised time-scale of pay with Dearness Allowance and that in any case, the benefit under G.O.Rt.No.1122 was granted only in favour of full-time employees and not part time contingent employees such as the employee herein.

9. But both the above grounds appear to be factually incorrect. According to the State, the petitioner was only a part time contingent employee. But the order of appointment dated 26-4-1994 does not indicate that it was a part time contingency employment. The order of appointment dated 26-4-1994 reads as follows:

“In view of urgency and under oral instructions from the Commercial Tax Officer-I, Proddatur, Sri M.D. Rafee, S/o. M.Ghouse Mohiddin of Proddatur, is appointed as Masalchi cum Night Watchman in the office of the Deputy Commercial Tax Officer-I, Proddatur, with immediate effect, on daily wages as per Rules. His engagement is purely temporary and liable for termination at any later date on account of circumstances and compulsions.”

10. Therefore, it cannot be presumed that the employee was a part time employee in the light of the order of appointment.

11. Insofar as the cut-off date is concerned, the question of applying the cut-off date does not arise in this case, as the employee was appointed after G.O.Ms.No.212, dated 22-4-1994. Hence, we find no reason to interfere with

the order of the Tribunal. Therefore, W.P.No.16399 of 2015 is also dismissed.

12. In the result, both the writ petitions are dismissed. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

19th December, 2017.
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AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.12415 of 2006 and 16399 of 2015
(per VRS, J.)



19th December, 2017.
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