

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No.20900 of 2017

ORDER : (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioners have challenged the order dated 1st February 2016 passed in O.A.No.3168 of 2014, whereby, the O.A. filed by respondents 1 to 3 herein was allowed directing the petitioners to sanction and pay minimum time scales to respondents 1 to 3 in the posts in which they have been working, from the date of passing interim order i.e. 25th April 2014.

2. The respondents 1 to 3 herein have filed petition under Section 19 of the Administrative Tribunals Act, 1985 to declare the action of petitioners herein, in not regularising their services as illegal, arbitrary, unjust, discriminatory and violative of Articles 14, 16 and 21 of the Constitution and consequently direct the petitioners to regularize the services of applicants/respondents 1 to 3 with effect from the dates of their completion of five years service by extending all consequential benefits like periodical increments, revised pay scales, special pay upon completion of 8, 16 and 18 years of service including arrears of pay by counting the period of their temporary service for calculating the pensionary benefits.

3. We note that before the Tribunal, the applicants/respondents 1 to 3 did not press for the relief of regularisation of their services as they have not completed the requisite minimum service as per G.O.Ms.No.212, Finance

and Planning (FW-PC-III) Department, dated 22.04.1994. They only claimed for grant of minimum time scales.

4. Considering the rival contentions of the parties and by relying on the earlier order dated 30th April 2013 passed in O.A.No.5948 of 2011 as confirmed by this Court in W.P.No.25834 of 2013 and batch, the Tribunal has partly allowed the O.A. and directed the petitioners herein to sanction and pay minimum time scales to the applicants/respondents 1 to 3.

5. During the arguments before the Tribunal, respondents 1 to 3 herein submitted that the Municipal Administration Department had issued G.O.Ms.No.243, dated 06.11.2015, granting minimum time scales of pay to the employees, following the orders of this Court in W.P.No.25834 of 2013. Consequently, orders are issued by the Commissioner of Nandyal Municipality on 23.11.2015, granting minimum time scales. Thereafter, such employees were also given revised pay scales of 2013. In addition to above, respondents 1 to 3 have relied upon the order dated 20th August 2015 passed by the Tribunal in O.A.No.7487 of 2012. Considering the same, the learned Tribunal opined that the issue raised by the applicants in regard to grant of minimum time scales, is squarely covered by the above order. As far as the relief of regularisation of service is concerned, the Tribunal held that the applicants/respondents 1 to 3 are not entitled for regularisation of their services in view of G.O.Ms.No.212, Finance and Planning (FW-PC-III) Department, dated 22.04.1994.

6. Learned counsel appearing on behalf of petitioners submits that the applicants in O.A.No.7487 of 2012 were recruited on Nominal Muster Rolls

(NMR), whereas, respondents 1 to 3 herein are working as Sweepers-cum-Watchmen during night time in the office of the Deputy Commissioner of Commercial Taxes, thus, they are part-time employees but not NMRs. Hence, the order passed in O.A.No.7487 of 2012, dated 20th August 2015 is not applicable for the present case.

7. It is important to note that the learned counsel for petitioners has no explanation as to the order dated 30th April 2013 passed in O.A.No.5948 of 2011, which was confirmed by this Court in W.P.No.25834 of 2013 and batch, which has been relied upon by the Tribunal while passing the impugned order.

8. The case of respondents 1 to 3 is that they are working as Sweepers-cum-Watchmen in the office of Deputy Commissioner of Commercial Taxes. They used to work as Watchmen during night times and used to clean the office. We fail to understand, when a person who is working 8 hours in a day could be on Nominal Muster Rolls, then why respondents 1 to 3, who are working whole night as Watchmen and also doing sweeping service, are termed as part-time employees. By doing duty whole night, they are working more hours than the workers working during the day time, which is for maximum 8 hours. Therefore, in any stretch of imagination, respondents 1 to 3 herein cannot be termed as part-time employees, when the applicants in O.A.No.7487 of 2012 are on Nominal Muster Rolls. We note, in O.A.No.7487 of 2012, the learned Tribunal has relied upon the judgment of

Hon'ble Supreme Court in the case of **Secretary of State of Karnataka v. Umadevi**¹, wherein, it is held;

“When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post.

We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since they are only daily-wage earners, there would be no question of other allowances being paid to them.”

¹ (2006) 4 SCC 1

9. Basing on the above decision of the Supreme Court, a Division Bench of this Court in the order dated 28th August 2014 in W.P.No.30530 of 2012 and batch, came to the conclusion that the persons, who are appointed as NMRs, are entitled to wages equal to salary at the lowest cadre of the employees of the cadre in the respective departments, and that, since they were only daily wage earners, there would be no question of other allowances being paid.

10. In view of above, we find no merit in the instant petition. The writ petition is accordingly dismissed. No order as to costs.

11. We hereby direct the petitioners to pay minimum time scale to respondents 1 to 3 within four weeks from the date of receipt of this order, failing which, the petitioners shall pay interest at the rate of 9% per annum from the date of passing of order by the Tribunal i.e. 01.02.2016 till realisation of the amount.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

10th July 2017

ajr