

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.14310 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to declare the proceedings dated 18.08.2006 *vide* No.AM(P).785(8)/ 2002-FM.A of the 2nd respondent, the Regional Manager, APSRTC, Anantapur, as illegal and arbitrary and are in violation of Articles 14 and 21 of the Constitution of India, and consequently direct the respondents to regularise the services of the petitioner in view of completion of 240 days of work and pay all the arrears upto 30.06.2007.

2. I have heard the submissions of *Sri N. Aswartha Narayana*, learned counsel for the writ petitioner, and of *Sri P. Durga Prasad*, learned Standing Counsel for APSRTC (hereinafter, 'the Corporation') appearing for the respondents. I have perused the material record.

3. The case of the writ petitioner, in brief, is this:

He was appointed as a casual Sweeper in the respondent Corporation, on 19.11.1978. Later, his services were terminated without any notice. Aggrieved thereof he raised an Industrial Dispute in ID.No.34 of 1992 before the Labour Court, Anantapur. The Labour Court passed an Award, dated 24.03.1994, directing the Corporation to reinstate the petitioner into service. The writ petition in WP.no.1997 of 1995 preferred by the Corporation against the said Award was dismissed. Thereafter, the petitioner consistently requested the authorities of the Corporation for his reinstatement as per the Award of the Labour Court. However, for reasons best known to the respondents, the petitioner was reinstated into service on 02.05.1996 and he worked continuously upto

30.06.2007. On 30.06.2007 he attained the age of superannuation. All through he worked in the Corporation without obtaining any leave or any break in service. The petitioner made an application for regularisation, after completion of 240 days of continuous service. However, his services were not regularised. When the petitioner made a dispute before the Assistant Commissioner of Labour, Anantapur, an assurance was given by the respondents that the regularisation would be done. Therefore, on 30.11.2000, the said matter was closed. As the respondents failed to regularise the services of the petitioner, he filed WP.No.18136 of 2002 before this Court. This Court disposed of the writ petition, on 18.07.2005, directing the respondents to regularise the services of the petitioner as per circular No.PD8/ 2005, dated 14.03.2005. The writ appeal in W.A.No.1693 of 2005 preferred by the Corporation was dismissed, on 13.06.2006. Though the earlier appointment of the petitioner was as a Sweeper, after reinstatement, he was assigned the work of a Shramik and he worked as a Shramik. Though this Court specifically directed to regularise the services of the petitioner, the respondents rejected the case of the petitioner, *vide* proceedings, dated 18.08.2006, issued by the 2nd respondent, on the ground that the petitioner does not possess ITI qualification and is over aged. A number of Shramiks including A.M.Ahmed, K.Rasool Bee, K. Tikkanna and B. Lakshmana did not possess ITI qualification. However, even otherwise the Circular No.PD 40/ 1999, dated 10.05.1999, which stipulates the ITI qualification for appointment for the post of Shramik has no application as the petitioner is not requesting for appointment. The contention that the petitioner is over aged also has no relevance as the same has no application for regularising service of the petitioner who is already in-service. The petitioner worked continuously upto

30.06.2007 without obtaining leave and any break in service and the Corporation extracted work from him as a bonded labour without regularising his services and without extending any benefits. Hence, the writ petition is filed.

4. The case of the Corporation as stated in the counter affidavit of the Law Officer of the Corporation, in brief, is this:

The petitioner was engaged as a contract Sweeper on payment of Rs.6.30 ps per day, but, he was not appointed as a Casual Sweeper in the Corporation, on 19.11.2008, as falsely alleged by the petitioner. When he was asked not to attend work, he raised a dispute in ID.no.34 of 1992 after lapse of 14 years. He was negligent. The Labour Court directed the Corporation to reinstate the petitioner into service as a casual Sweeper afresh. The Award of the Labour Court was challenged in this Court by way of W.P.No.1997 of 1995. However this Court confirmed the Award of the Labour Court. The petitioner was reengaged as a casual Sweeper afresh with effect from 02.05.1996, at Dharmavaram Depot. As there were excess sweepers, the services of the petitioner were not regularised. He approached the Assistant Commissioner of Labour is true. The Assistant Commissioner of Labour disposed of the petition with a direction to regularise the services of the petitioner. The direction of this Court in W.P.No.1997 of 1995 is to regularise the services of the petitioner as per Circular No.PD8/ 2005, dated 14.03.2005. The Corporation preferred an appeal against the order of this Court in the writ petition. The writ appeal was dismissed. The services of the petitioner were not regularised as the circular speaks about confirmation of regular employees and not casual employees. As per instructions all regular sweepers were transferred as Shramiks and

accordingly the services of the petitioner were utilised as a Shramik. The persons mentioned in the affidavit of the writ petitioner do not possess ITI qualification is not correct as they were appointed as Shramik as per rules in force and there was no compulsion of ITI qualification to them. As per circular no.40 of 1999, dated 10.05.1999, for appointment to the post of a Shramik, the candidate should possess ITI qualification and must not be above 30 years of age as on 1st July of the year in which the recruitment is made. Prior to 10.05.1999, the same qualification has been followed in respect of OC candidates in direct recruitment for the post of Shramik. The petitioner was appointed afresh with effect from 02.05.1996. He was over aged by 17 years for the post of Shramik and he does not possess ITI qualification to consider for regularisation to the post of Shramik as directed in the orders of this Court in the writ appeal. The case of the petitioner could not be considered for the post of Shramik in the circumstances stated. Hence, the writ petition may be dismissed.

5. Learned counsel for the petitioner and the learned Standing Counsel made submissions in line with the pleaded cases of the parties, which are stated supra, in detail.

6. The petitioner filed W.P.No.18136 of 2002 before this Court impugning the action of the respondents in not regularising his services on par with his juniors and sought consequential direction for regularisation of services. Considering the contentions of both the parties, this Court, by order dated 18.07.2005, allowed the writ petition and directed the respondents to regularise the services of the petitioner as per circular no.PD8/ 2005, dated 14.03.2005. The writ appeal of the Corporation was dismissed by this Court *vide* orders dated 13.06.2006.

The operative portion of the said order reads as under: 'It would suffice, in the interests of justice, to direct the appellant-Corporation to consider the case of the respondent-workman for regularisation and pass appropriate orders in accordance with law. The Writ Appeal is accordingly dismissed directing the appellant-corporation to consider the case of the respondent-workman and pass appropriate orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.' Even after the orders in the writ appeal, the services of the petitioner were not regularised. However, the order now impugned was passed stating that the case of the petitioner for regularising cannot be considered on the ground that he was over aged and that he did not possess ITI qualification. Be that as it may. The petitioner approached Assistant Commissioner of Labour when his services were not regularised and on the assurance of the Corporation, the matter was closed by the Assistant Commissioner of Labour and the Corporation in its counter affidavit also stated that the Assistant Commissioner directed for regularisation of services of the petitioner. Admittedly, the petitioner was reengaged as a casual sweeper afresh with effect from 02.05.1996 at Dharmavaram Depot but his services were not regularised as there were excess number of Sweepers. However, the Corporation as per instructions transferred regular sweepers as Shramiks and utilised the services of the petitioner as a Shramik. At that time the petitioner approached the Assistant Commissioner of Labour, Anantapur, as already noted supra. Whether he possessed qualification or not, the fact remains that his services were utilised as a Shramik. Several Shramiks worked in the Corporation without possessing ITI qualification is not in dispute. The orders of this Court wherein the Corporation was directed to regularise the services of

the petitioner were passed in 2005. By placing reliance on a circular, dated 10.05.1999, the Corporation cannot be permitted to contend that the petitioner's case cannot be considered for regularisation, in view of the chronology of events, the orders of this Court in the writ petition and the writ appeal, more particularly in the light of the facts that several persons worked as Shramiks without ITI qualification and that the Corporation on its own transferred the petitioner from the post of Sweeper to that of a Shramik and utilised his services as a Shramik. Therefore, there is no justification on the part of the Corporation in not regularising the services of the petitioner and denying him the arrears of pay and other benefits upto 30.06.2007.

7. Viewed thus, this Court finds that the writ petition deserves to be allowed.

8. In the result, the Writ Petition is allowed as prayed for.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

17-02-2017
Vjl

M. SEETHARAMA MURTI, J