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

**WRIT PETITION No. 3690 of 2017**

**ORDER:** (*per Hon'ble Sri Justice Sanjay Kumar*)

The petitioner is the applicant in O.A.No.1410 of 2013 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. By order dated 16.12.2016, the Tribunal dismissed the said O.A.

The prayer of the petitioner before the Tribunal in the said O.A was to set aside the proceedings dated 30.10.2012 of the Commissioner, Commercial Taxes, State of Andhra Pradesh, and to consequently direct the authorities to give effect to G.O.Ms.No.10 dated 04.02.1991 by converting, absorbing and regularising the petitioner's services in an equivalent category post with all consequential benefits.

It is an admitted fact that the petitioner earlier filed O.A.No.12567 of 2009 before the Tribunal which was disposed of by order dated 19.06.2012. Perusal of the said order reflects that the Tribunal considered the grievance of the petitioner herein that the authorities were not absorbing his services in the equivalent post of Junior Assistant in terms of G.O.Ms.No.10 dated 04.02.1991. The stand taken by the authorities that the petitioner could not be considered for such absorption and regularisation by virtue of G.O.Ms.No.212 dated 22.04.1994 was dealt with on merits and rejected by the Tribunal. The Tribunal went to the extent of stating that the authorities could not take the stand that as per G.O.Ms.No.212 dated 22.04.1994, the petitioner had not put in the minimum service of five years as on 25.11.1993 and that his case is to be considered only as per G.O.Ms.No.10 dated 04.02.1991. The Tribunal accordingly directed the authorities to reconsider the entire issue in the light of G.O.Ms.No.10 dated 04.02.1991 and the Circular Memo dated 06.05.1994 and pass appropriate orders.

It is pursuant to the aforestated order that the Commissioner, Commercial Taxes, State of Andhra Pradesh, issued the proceedings dated 30.10.2012. Perusal of these proceedings demonstrates that the Commissioner once again cited G.O.Ms.No.212 dated 22.04.1994 as a factor weighing against the petitioner. This clearly manifests total non-application of mind by the Commissioner in the light of the earlier order passed by the Tribunal in O.A.No.12567 of 2009.

To further compound the erroneous approach adopted by him, the Commissioner filed a counter affidavit before this Court again reiterating the same stand. When the Government promulgated G.O.Ms.No.10 dated 04.02.1991 as a policy for regularising the Computer Personnel appointed through the Andhra Pradesh Technology Services Limited, the question of defeating the said policy by refusing to regularise the services of the petitioner who claims to be covered thereby by citing ***State of Karnataka v. Uma Devi***[1] does not arise.

That apart, at one stage, the Commercial Tax Authorities would state that the post of Data Entry Operator does not exist in the Department and at the same time, justify the regularisation of the services of one Smt. H. Aruna Kumari and Sri P. Vishnu Kumar, Data Entry Operators, under the provisions of G.O.Ms.No.212 dated 22.04.1994, in the equivalent posts of Junior Assistant/Typist. As the said G.O specifically requires existence of clear vacancies in the post concerned, the stand of the Commercial Tax Department is clearly self-contradictory.

The manner in which the Commercial Tax Authorities and more particularly, the Commissioner, Commercial Taxes, State of Andhra Pradesh, dealt with the petitioner's case pursuant to the order dated 19.06.2012 passed by the Tribunal in O.A.No.12567 of 2009 leaves this Court with no option but to set aside the proceedings dated 30.10.2012 of the Commissioner, Commercial Taxes, State of Andhra Pradesh, and remit the matter to him for consideration of the whole issue afresh in terms of the order passed by the Tribunal in O.A.No.12567 of 2009. Unfortunately, the Tribunal failed to take note of the aforestated aspects while dismissing O.A.No.1410 of 2013. In consequence, the order

[1] 2006 (4) SCC 1

dated 16.12.2016 passed by the Tribunal in O.A.No.1410 of 2013 is also set aside. The fresh exercise by the Commissioner, Commercial Taxes, State of Andhra Pradesh, shall be completed expeditiously and, in any event, not later than four weeks from the date of receipt of a copy of this order.

The Writ Petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

**SANJAY KUMAR, J**

**N. BALAYOGI, J**

Date: 20.03.2017
va