

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
&  
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.41594 of 2015

DATED: 11.10.2017

Between

A. Narsimha Reddy.

..PETITIONER

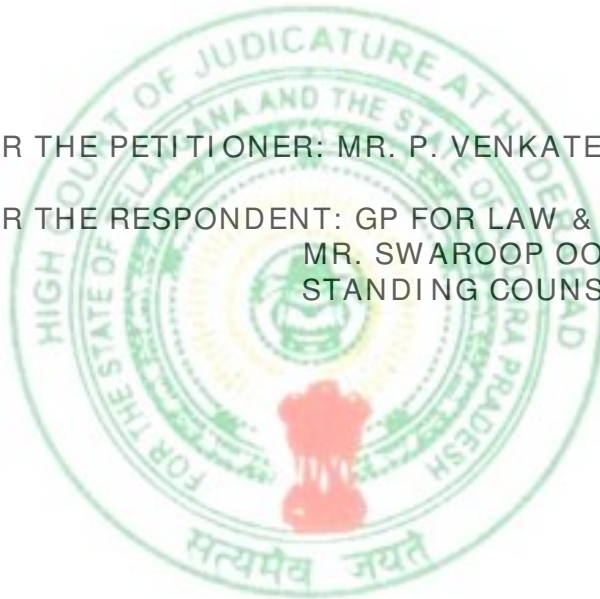
And

The State of Telangana, Rep. by its Secretary,  
Law Department, Secretariat,  
Hyderabad and others.

..RESPONDENTS

COUNSEL FOR THE PETITIONER: MR. P. VENKATESHWER RAO

COUNSEL FOR THE RESPONDENT: GP FOR LAW & LEG. AFFAIRS  
MR. SWAROOP OORILLA  
STANDING COUNSEL FOR TAPHC



THE COURT MADE THE FOLLOWING:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
&  
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.41594 of 2015

ORDER: (Per Hon'ble Smt. Justice T. Rajani)

Scorned by the slip caused by the minute shortfall of service, for the application of the circular of the High Court dated 06.01.2004, (herein after referred to as "the circular") directing to recruit the full time and part time Masalchies, who have put in more than 15/10/5 years of service in their respective units for recruitment to the posts of Attenders, the petitioner, who is also a part time masalchie, comes before us by way of this writ petition, seeking for such recruitment as an Office Subordinate. His long wait of all these seventeen long years, since the date of the circular, with a hope that history would repeat, did not fetch him any benefit of the like, which similarly placed employees earlier had.

2. Petitioner was appointed as part time masalchie on 31.07.1999 and has been working as such since then and also as on the date of the circular of the High court issued in the year 2004. Petitioner would have become eligible for recruitment as office subordinate under the said circular but for the shortage of few months to complete five years of service. He then made a representation to the High Court on 11.05.2015 stating that there is a post of office subordinate vacant in the Court of Special Judge for Economic Offences and he sought for relaxation of age, to become eligible for being appointed in the said vacancy. Petitioner still awaits reply from the High Court. Not being successful in the said attempt, the petitioner seeks to go under the circular dated 06.01.2004 drawing comparison with another employee,

who, he alleges, was recruited under the said circular, even after the date for the application of the circular has expired.

3. One M. Srinivasulu, part time masalchie, was recruited as an attender by relaxing his age, by virtue of the proceedings of the High Court dated 12.05.2009. Under an impression that since the direction was given on 09.04.2009, by which date this petitioner also became eligible by completing his five years of service as part time masalchie, the petitioner contends that he also is eligible for such recruitment. But a reading of the relevant material on record shows that, after the High Court issued the circular dated 06.01.2004, unit heads of various units forwarded the names of part time masalchies and the process of approving the said masalchies to be recruited under the circular was taken up by the High Court and the direction for appointment of said M. Srinivasulu is a consequence of such consideration. A list of 39 masalchies was approved by the High Court and M. Srinivasulu is one candidate in the list, figuring at **Sl.No.38**. Hence, the understanding of the petitioner that M. Srinivasulu was appointed subsequent to the said circular is misconceived and no parity can be drawn between them.

4. The vexed issue of appointment of masalchies into regular service came up before the Supreme Court in several cases. The High Court of Allahabad in *KRISHNA PRSAD v. STATE OF UTTAR PRADESH*<sup>1</sup> observed that Articles 14 and 16 of the Constitution of India have been considered by the Constitution Bench of the Supreme Court in *SECRETARY, STATE OF KARNATAKA v. UMA DEVI* [(2006) 4 SCC 44] and subsequently in the case of *STATE*

---

<sup>1</sup> LAWS (ALL) 2011 8 21

*OF BIHAR v. UPENDRA NARAYAN SINGH* [JT 2009 (4) SC 577]

in detail with reference to the appointment of the Daily Wager, ad hoc and temporary appointment. The Supreme Court in *UPENDRA NARAYAN SINGH*'s case observed that the equality clause enshrined in Article 16 of the Constitution of India mandates that every appointment to a public post or office should be made by way of open advertisement so as to enable all eligible persons to compete for selection on merit. The Supreme Court observed as under:

“Article 14 is the genus while Article 16 is a species. Article 14 declares that the State shall not deny any person equality before law or equal protection of the laws within the territory of India. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen shall be ineligible for or discriminated against irrespective of any employment or office under the State on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. Though, enacted as a distinct and independent fundamental right, because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and

dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

The Allahabad High Court referred to a decision of the Supreme Court in *ARUN KUMAR NAYAK v. UNION OF INDIA* [(2006) 8 SCC 111], wherein the Supreme Court observed as under:

"This Court in *Visweshwara Rao*, therefore, held that intimation to the employment exchange about the vacancy and candidates sponsored from the employment exchange is mandatory. This Court also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better."

The Supreme Court also further observed as under:

“Notwithstanding the basic mandate of Article 16 that there shall be equality of opportunity for all citizens in matters relating to employment for appointment to any office under the State. The spoil system which prevailed in America in 17th and 18th centuries has spread its tentacles in various segments of public employment apparatus and a huge illegal employment market has developed in the country adversely affecting the legal and constitutional rights of lakhs of meritorious members of younger generation of the country who are forced to seek intervention of the court and wait for justice for years together. However, the hope and expectation of the framers of the Constitution that after independence every citizen will get equal opportunity in the matter of employment or appointment to any office under the State and members of civil services would remain committed to the Constitution and honestly serve the people of this country have been belied by what has actually happened in last four decades.”

The observations also came with regard to the appointment of lower strata of the civil services and the scenario of appointment to lower strata is considered to be worst. The relevant observations of the Supreme Court are as under:

“... Those who have been bestowed with the power to make appointment on Class III and Class IV posts have by and large misused and abused the same by violating relevant rules and instructions and have indulged in favouritism and nepotism with impunity resulting in total negation of the equality clause enshrined in Article 16 of the Constitution. Thousands of cases have been filed in the Courts by aggrieved persons with the complaints that appointment to Class III and Class IV posts have been made without issuing any advertisement or sending requisition to the employment exchange as per the

requirement of the 1959 Act and those who have links with the party in power or political leaders or who could pull strings in the power corridors get the cake of employment. Cases have also been filed with the complaints that recruitment to the higher strata of civil services made by the Public Service Commissions have been affected by the virus of spoil system in different dimensions and selections have been made for considerations other than merit.

In *State of Haryana v. Piara Singh* [(1992) 4 SCC 118], this Court reiterated that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored by the employment exchange, some method consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner calling for applications and all those who apply in response thereto should be considered fairly, but proceeded to observe that if an ad hoc or temporary employee is continued for a fairly long spell, the authorities are duty bound to consider his case for regularization subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service.”

5. The concern of the Supreme Court was about the temporary appointments being made through back doors, defeating the rights of the other eligible persons. But the other side of the coin comes to our vision. The masalchies, who are appointed 5, 10, 15 years ago, were absorbed as regular attenders by virtue of the circular of the High Court, which goes to show that they could not be regularized immediately, after their appointment and they were not regularized

before five years. That would imply that the services of the petitioner and similarly placed masalchies were required by the Courts as an exigency and that they were not necessarily brought in through backdoors with an intention to get their entry first and regularise their services later. If they had the favour of the employer, they would not have been made to wait for so many long years without regularisation. The efficiency of the contract employees was recognised by the High Court of Allahabad in the decision *supra* and observed as follows:

“In the present scenario of Globalisation and Economic growth, the execution of work by engaging the persons on contractual basis, daily basis and part time basis has become well recognised system and its results are more productive, efficient and economical.”

The constitutionality of such appointments is spelled in the following lines:

“Having regard to the financial aspects the Central Government, State Government and their instrumentalities have right to engage daily **wagers** on the agreed wages, on contractual basis, ad hoc and temporary basis and there is no prohibition in the Constitution or under any law of the land. However, their appointment should be in accordance to law.”

6. Merely because the masalchies were not appointed by following the procedure prescribed for the post into which they are absorbed, it cannot be said in all cases, that their initial appointment itself was with ulterior motive. The penury of the petitioner and the likes may be one of the reasons for them to accept the employment with meagre wages. But, however, our sympathies to the petitioner, who has worked in the same capacity, with meagre wages, for several years, do not permit us to apply the circular to the petitioner as it is only issued as one time measure, as is made clear by the circular of the

High Court dated 26.07.2014 by the words that the circular is only one time arrangement and would be applicable to the existing incumbents as on the date of the circular.

7. How peaceful would the society be if the State can provide employment to all the needy persons, with wages sufficient enough to sustain their lives with dignity, we muse. With that thought, we can only recommend to the High Court to consider the case of the petitioner and other similarly placed employees and to explore the possibility and feasibility of issuing a circular similar to the circular issued earlier.

The writ petition is disposed of. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

October 11, 2017  
DSK

