

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Contempt Case No.1809 of 2013

ORDER:

This Contempt Case, under Sections 10 to 12 of the Contempt of Courts Act, 1971, is filed by the successful petitioner requesting to punish the respondent herein for committing contempt of Court by willfully disobeying the orders dated 05.10.2012, of this Court passed in W.P.No.9824 of 2008.

2. I have heard the submissions of *Sri M.Panduranga Rao*, learned counsel appearing for the petitioner and of *Sri A.Yadava Reddy*, learned counsel for respondent. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The Scheduled Castes Cooperative Finance Corporation Limited, Hyderabad, (hereinafter, 'Corporation') so far as Khammam District is concerned, issued an advertisement for filling up the posts of Assistant Engineer. According to the petitioner, he was selected and was placed in the waiting list; and, he was, however, taken on duty from 01st May 1987 as a Supervisor on daily wages. Thereafter, from 01.02.1989 onwards, he was asked to discharge the duties of the post of Assistant Engineer without being paid the scale of pay attached to the said post. The petitioner, hence, filed W.P.No.1792 of 1995 seeking regularization of his services in the cadre of Assistant Engineer as well as seeking regular scale of pay attached to the said post. The said writ petition along with other batch of writ petitions was disposed of by this Court by an order, dated 07.08.1995, with a direction that the services of the employees shall be regularized with effect from the dates they completed five years of continuous service and they shall also be paid wages on par with the wages paid to the permanent employees of their category and that the claim of the petitioner for regularization as Assistant

Engineer was to be kept in mind while passing appropriate orders. By order, dated 25.02.1996, of the District Collector and Chairman of the District Scheduled Castes Co-operative Societies, dated 25.02.1996, proceedings, dated 25.02.1996, were issued informing the petitioner that the District Collector is not competent to consider the case of the petitioner for regularization. The petitioner filed Contempt Case No.204 of 1996, being aggrieved of the said communication. This court having found that there is no deliberate disobedience on the part of the respondent herein, closed the contempt case, by order dated 26.06.1996. The petitioner, then, filed W.P.No.22039 of 1996 for a *mandamus* declaring the inaction of the respondents in regularizing the petitioner's services as Assistant Engineer as illegal and arbitrary. The said writ petition was allowed, by order dated 25.11.2004, by holding as follows:

“In the circumstances, there is absolutely no justification on the part of the respondents in denying the claim of the petitioner, especially when they are extracting the services of the petitioner as Assistant Engineer all along. The respondents were directed to pass appropriate orders within four weeks.”

In response thereto, the Vice Chairman and Managing Director of the Corporation passed further orders, dated 14.03.2005, informing the petitioner that as the petitioner is holding the post of only Work Inspector and as under the Service Rules, there being no provision for promotion of Work Inspector to the Technical Staff of Social Welfare Engineering Wing, the society has already resolved and approved amendment of Rule III of the Technical Services Rules, whereby the method of appointment of category-IV, in respect of Assistant Engineer is also provided by transfer from Work Inspectors Grade II and III within ten years of service; and, that the proposed amended rule is yet to be approved by the general body and that though the petitioner has completed ten years of service in the category of Work Inspector Grade II by 05.02.2005, he becomes eligible for promotion to the post of Assistant Engineer as per the amended Rules subject to their approval. Not being satisfied with the said

reply, the petitioner filed Contempt Case No.182 of 2005 alleging non-compliance of the orders in W.P.No.22039 of 1996, dated 25.11.2004. This Court closed the contempt case by order, dated 01.04.2005, giving liberty to the petitioner to question the correctness of the said proceedings of the Vice Chairman & Managing Director dated 14.03.2005. Therefore, the petitioner filed W.P.No.10057 of 2005 before this Court. The petitioner also filed W.P.No.9824 of 2008 to declare that the order passed by the Vice Chairman & Managing Director, AP Scheduled Castes Cooperative Finance Corporation Limited, Hyderabad in proceedings dated 15.04.2008, as illegal and arbitrary. This Court, by a common order, dated 05.10.2012, disposed of both the writ petitions. The operative portion of the said common order verbatim reads as under:

“Hence, this Writ Petition No.9824 of 2008 is allowed and disposed of with the following directions:

- 1) The impugned order of Vice Chairman and Managing Director, dated 15.04.2008, shall stand set aside.
- 2) The order of the District Collector, Khammam, dated 03.06.2005, shall also stand set aside. However, any benefits accrued to the petitioner including the post held by him and the pay already received by him in pursuance of said order, dated 03.06.2005, shall not be withdrawn or recovered and the post held by the petitioner as on today and the pay scales and salary attached to the post shall continue to be enjoyed by the petitioner till the direction given in the next paragraph is complied with.
- 3) The respondents shall consider the case of the petitioner afresh either under the Service Rules, which are being amended, or in the light of the scheme for regularization under G.O.Ms.No.212, dated 22.04.1994, and in due compliance with the directions of this Court in the writ petitions, referred to above, in accordance with law within three months from the date of receipt of a copy of this order and pass appropriate orders and communicate the same to the petitioner.
- 4) Since the petitioner was required to approach this Court over and over again in spite of succeeding in the very first writ petition, the respondent-Corporation shall pay costs quantified at Rs.10,000/- to the petitioner.

Since W.P.No.9824 of 2008 is allowed, no separate orders are required to be passed in W.P.No.100057 of 2005.

With the above directions, W.P.No.9824 of 2008 is allowed with costs. Consequently, W.P.No.10057 of 2005 shall stand dismissed as infructuous. All miscellaneous applications in either writ petitions shall stand dismissed.”

Thereafter, this Court dismissed the Review WPMP No.49716 of 2012 in Writ Petition No.9824 of 2008 filed by the Andhra Pradesh Education and Welfare Infrastructure Development Corporation, Hyderabad represented by its Managing Director. Writ Appeal No.1335 of 2013 filed against the order dated 05.10.2012 in W.P.no.9824 of 2008 passed by the learned Single Judge as reviewed in Rev.WPMP.No.49616 of 2012, dated 21.12.2012, was dismissed.

4. At the hearing, the learned counsel for the respondent placed copy of the order of the Division Bench of this Court in W.A.No.1335 of 2013. In the said Writ Appeal, this Court passed the following order:

“As the draft rules now have been notified, the case of the respondent is to be considered in terms of the rules for regularization of service.

Resultantly, we find no merit in this appeal and the same is dismissed. No costs. However, the appellant is given two (2) months time to implement the orders passed by the learned Single Judge.”

Thereafter, the petitioner filed this present contempt case.

5. In this setting of facts and chronology of events stated supra, the further case of the petitioner is this: ‘In view of the orders, dated 16.08.2013, of this Court in C.C.No.291 of 2013, he was hopeful that his services would be regularized in the category of Assistant Engineer as directed by this Court. However, to his utter dismay, a provisional seniority list has been issued, on 16.08.2013, by the respondent herein, vide Memo dated 16.08.2013; and, in the said list, the petitioner was shown in Khammam District, as a Technical Work Inspector even though there has been a specific direction from this Court

to regularize his services as Assistant Engineer. Therefore, he made a representation, on 04.09.2013, pointing out the said fact and raising an objection to the seniority list and also requesting to place him as Assistant Engineer as directed by this Court. However, no action has been taken. The petitioner has rendered services for more than 25 years as Assistant Engineer; and the Department is extracting his services as Assistant Engineer all along. His eligibility to work as Assistant Engineer including his selection at the initial recruitment is for the said post is not in controversy. This Court directed regularization of his services as an Assistant Engineer. Thus, the respondent had willfully violated the orders of this Court and hence, the respondent is liable for contempt of this Court's orders.

6. Per contra, the case of the respondent Corporation, in the counter affidavit, in brief, is this:

'The petitioner herein was informed through Memo No.E2/ 10435/ APEWIDC/ 2012 dated 16.04.2013 that there is no feasibility to consider his case under the scheme of regularization as per G.O.Ms.No.212, Finance & Planning (FW.PC-III) Department dated 22.04.1994, since there is no category of post of Work Inspector either in the staffing pattern of the erstwhile Social Welfare Engineering Wing or in the new staffing pattern of APEWIDC as sanctioned by the Government in G.O.Ms.No.36 Finance (SMPC-I) Department dated 23.02.2011. The petitioner was also informed that the claim for regularization in the post of Assistant Engineer shall be considered after the service rules, for the employees of APEWIDC are approved by the Government as a proposal has been made to include Technical Work Inspector as feeder category to the post of AE/ AEE with certain eligibility criteria. The draft service rules for the employees in Secondary Education (Genl. II) Department have been approved by the Government and the said service rules have been adopted in APEWIDC, vide Proceedings No.E2/ 10050/ APEWIDC/ 2010 dated 04.07.2013. Wherein, among others, a provision has been made in Rule-3

“Method of Appointment/ Promotion” for consideration of Technical Work Inspectors for appointment by transfer to the posts of AEE/ AE/ DM with certain eligibility criteria. Pursuant to the said service rules, the District wise provisional list of Technical Work Inspectors working in the Circles/ Divisions/ Sub Divisions in the State has been communicated vide Memo No.E2/ 3552/ APEWIDC/ 2013 dated 16.08.2013, to all the Technical Work Inspectors with a request to submit their objections/ claims, if any, along with necessary material on the provisional list within a stipulated period. The objections/ claims received from certain individuals have been examined and final list has been communicated vide Proceedings No.E2/ 3552/ APEWIDC/ 2013 dated 01.11.2013, to all the Technical Work Inspectors in APEWIDC, Multi Zone wise, in three categories, i.e., Graduates list, Diploma holders list and ITI holders list, since the posts of AEE/ AE/ DM have been made as Multi Zone wise posts in the APEWIDC Employees Service Rules, 2013. After finalization of the list of Work Inspectors as stated above, a proposal has been placed before the Departmental Promotion Committee (DPC) of APEWIDC to consider the candidature of Technical Work Inspector, who possessed the BE/ B.Tech., Civil Degree qualifications to the post of AEE, Multi Zone wise, based on the availability of vacancies. The DPC has considered the candidature of all the individuals mentioned in the final list including the candidature of the petitioner, who stood at serial number 29 in the list of Work Inspectors (LCE/ DCE), but, not recommended the candidates from serial nos.10 to 43 for want of vacancies. Thus, the candidature of the petitioner was not recommended and accordingly, he was informed by Memo No.E2/ 10435/ APEWIDC/ 2012 dated 13.12.2013, that his case will be considered for appointment by transfer to the post of Assistant Engineer as per his turn and Rules in vogue and as and when vacancies are available in Multi Zone II.’

7. The petitioner filed reply affidavit reiterating his case *inter alia* stating that the contentions in the counter affidavit are already negated by this

Court in the earlier orders from time to time and that, therefore, the said contentions are not open to the contemnor/ respondent herein.

8. This Court's orders clearly manifest that the respondent is obliged to regularize the services of the petitioner as an Assistant Engineer. However, the fact of the matter is that the name of the petitioner was shown in the provisional list of Technical Work Inspectors and his objections to the said list were not considered and a proposal has been placed before the Departmental Promotion Committee (DPC) of the Andhra Pradesh State Education and Welfare Infrastructure Development Corporation, Hyderabad (APEWIDC) to consider the candidature of the petitioner along with other eligible individuals for appointment by transfer to the post of Assistant Engineer. And, the DPC has not considered the candidature of the individuals from serial no.10 to 43 for want of vacancies. Since in the relevant final list of Work Inspectors, the petitioner's name stands at serial no.29, his candidature was not considered and he was denied promotion to the post of Assistant Engineer. Thus, the sum and substance of the contention of the respondent is that the petitioner's name was shown in the provisional list of Technical Work Inspectors at S. No.29 and his case though recommended for promotion for appointment by transfer to the post of Assistant Engineer, was not considered by the DPC for want of vacancy. However, the orders of this Court which are referred to supra, while stating the history of the case, clearly reflect that the petitioner was assigned the duties of Assistant Engineer and that the services of the Assistant Engineer were extracted from him although and that his services are to be regularized as Assistant Engineer. In fact, this Court while dismissing the writ appeal categorically held that the case of the respondent (petitioner herein) is to be considered in terms of the rules for regularization of service. In the contempt case also, viz., C.C.No.291 of 2013, the learned Standing Counsel while representing the respondent therein, stated that now that the draft rules have been notified and the case of the petitioner will be considered

within two months, as directed by the Division Bench in the Writ Appeal; and on the basis of such a submission, the said contempt case was closed. Therefore, the contentions of the respondent, which are adverted to supra, need no countenance as the said contentions, which were already raised in the writ proceedings were not countenanced by this Court. In fact, the District Collector, Khammam, by his order dated 03.06.2005, regularized the services of the petitioner, but as he was not competent to pass such orders, this Court directed that the respondents shall consider the case of the petitioner afresh either under the Service Rules, which are being amended or in the light of the scheme for Regularization under G.O.Ms.No.212, dated 22.04.1994, and in due compliance with the directions of this Court in the writ petitions, referred to above and in accordance with law within three months from the date of receipt of a copy of the common order in W.P.No.10057 of 2005 and 9824 of 2008. This Court categorically held that the eligibility of the petitioner to work as Assistant Engineer including his selection as Assistant Engineer is not in controversy. Hence, placing the petitioner in the provisional list of Technical Work Inspectors and in not considering his name on the ground of lack of vacancies is a clear disobedience of the orders of this Court. Therefore, this Court is of the considered view that such wilful disobedience to the orders of this Court warrants appropriate action.

9. Thus, from the conduct of the respondent throughout, it is clear that he had wilfully and deliberately violated the orders of this Court and had thus rendered himself liable for contempt. The point is accordingly answered holding that the petitioner had made out valid and sufficient grounds for issuing appropriate directions and punishing the respondent for contempt of Court in case of non-compliance of the said directions. Therefore, the respondent is found guilty for the contempt of Court.

10. In the result, the Contempt Case is allowed and the respondent is directed to regularize the services of the petitioner in the cadre of Assistant Engineer by duly complying with the orders of this Court passed in W.P.No.9824 of 2005, dated 05.10.2012, within one month from the date of receipt of a copy of this order. In the event of failure of the respondent to comply with the orders of this Court, as indicated above, he shall be detained in civil prison for a period of one week in accordance with the procedure established by law. His daily subsistence allowance is fixed at Rs.150/-.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this contempt case, shall stand closed.

27th February, 2017
RAR



M. SEETHARAMA MURTI, J