

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No. 20 of 2017

Date :24.7.2017

Between :

Chittimalla Eswaramma D/o late Veera Raghavacharyulu
57 years,, NMR Typist
O/o Grampanchayat, Bhadrachalam
Khammam district

Petitioner

And

The State of Telangana
Rep by its Principal Secretary,
Finance and Planning Department,
Telangana Secretariat, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner was appointed as NMR Gang Cooli on 4.2.1986, later on, petitioner was called as NMR Typist. It appears, earlier typing work was attended by a Clerical Attender who had knowledge of typing and after his transfer, the typing work of the Gram Panchayat was not attended to by anybody and petitioner's services were utilized as NMR Typist. After having appointed the petitioner as NMR-Gangman, Sarpanch of the Gram Panchayat addressed letter dated 29.12.1986 requesting the Collector (Panchayat Wing) to sanction one Typist post on NMR basis from out of 9 Gangmen posts proposed in the resolution of the Gram Panchayat dated 31.10.1986. In response of the said letter, the District Panchayat Officer vide memo dated 22.7.1987 permitted Gram Panchayat to engage one Typist on payment of daily wages to attend to the typing work of Gram Panchayat, from out of ten daily wage posts sanctioned. By proceedings dated 23.7.1987 Executive Officer of the Gram Panchayat appointed the petitioner as Typist on daily wage on NMR basis as per the wages fixed by the District Collector. Petitioner continued to work in the Gram Panchayat in the same capacity and retired from service on attaining the age of superannuation ordinarily prescribed to Government servants. Petitioner instituted O.A No. 6773 of 2011 praying to declare the action of the respondents in not regularising her services as arbitrary, violative of Articles 14, 16, 21 and 39 D of the Constitution and to consequently direct the respondents to regularize the services w.e.f. 22.4.1994 as per G.O.Ms.No. 212 dated 22.4.1994. On 11.9.2011 the District Panchayat Officer issued proceedings rejecting the proposal of the Gram Panchayat to regularize the services of the petitioner as Typist on the ground that the post of Typist does not exist. The Tribunal directed consideration of the

petitioner's claim for regularization. In response to the interim orders passed by the Tribunal, Deputy Commissioner (Panchayat Raj) office of the Commissioner, passed orders on 6.8.2014 rejecting the request of the petitioner, holding that since no typist post is sanctioned in the staffing pattern and that the petitioner is not covered by provisions of G.O.Ms No. 212 and 112, claim of the petitioner for regularization as Typist cannot be granted. Petitioner sought amendment of the prayer originally sought for in O.A and the same was granted. This O.A is transferred to this Court on exclusion of jurisdiction of A.P. Administrative Tribunal regarding the service disputes concerning State of Telangana.

2. In the facts as noted above, the only question for consideration is whether petitioner is entitled to seek regularization of her services ?

3. To curtail the back-door appointments to the public service, State enacted A.P. (Regularisation of Appointments to Public Services and Rationalisation of Staff Pattern and pay Structure) Act, 1994 (Act 2 of 1994). The Act imposed total ban on back-door entry into the public service and prescribes procedure of recruitment to public employment. It imposes penal consequences on officers indulging in back door appointments contrary to the mandate of the Act, 1994. However, large number of people were already appointed and working albeit by calling them contractual, daily wage, NMR, contingent etc., To mitigate their hardship, Government formulated scheme to regularize services of such of those persons and bring them into the regular stream. The scheme so formulated was notified vide G O Ms No,. 212 Finance and Planning (FW.PC.III) Department dated 22.4.1994. This scheme was given statutory recognition by amending Act 2 of 1994. By virtue of Act 97 of 1998 first proviso to Section 7 was incorporated which gives statutory recognition to scheme of regularization formulated in G O Ms No. 212 dated 22.4.1994.

4. The primary requirement of regularization under G.O.Ms No. 212 dated 22.4.1994 is person must have been appointed before 25.11.1993 and had completed 5 years of service by that date. On fulfilling this criteria, the claim for regularization can be considered subject to suitability of the candidate for a post, availability of the post and other parameters of employment.

5. Having regard to the date of initial engagement of the petitioner, petitioner crosses the initial hurdle as required by G.O.Ms No. 212 dated 22.4.1994. The next issue is whether the claim for regularization is valid and reasons assigned for rejection of the claim are justified?

6. In memo dated 11.9.2011 the claim for regularization of the petitioner as Typist was rejected. Reading of paragraph 3 of this order would show that the respondents were under the impression that petitioner was initially appointed by Sarpanch, whereas, Sarpanch is not competent to make such appointment, therefore the initial appointment was not valid in law and thus provisions of G.O.Ms No. 212 or 112 are not applicable. Another reason assigned was that there is no post of Typist sanctioned to Gram Panchayat and therefore regularization as Typist cannot be granted. The decision of the Deputy Commissioner of the office of Commissioner is on the same lines, though no detailed reasons are assigned.

7. As noted above, the basis requirement of application of G.O.Ms No. 212 is person must complete 5 years of daily wage employment. The facts on record and documents enclosed to the writ petition disclose that the petitioner was appointed as NMR initially on 4.2.1986 and by the Executive Officer of the Gram panchayat on 23.7.1987. By taking either of the dates, petitioner completed 5 years by 25.11.1993 as NMR. Thus, it is intriguing to note the reason assigned for rejection holding that petitioner has not fulfilled the requirement of G.O.Ms.212 or 112 without

specifying on sustainability of such reason. As noted above, one reason assigned by the District Panchayat Officer in his order dated 11.9.2011 was that petitioner was appointed by Sarpanch, whereas, same is not correct. This reasoning assigned by the District Panchayat Officer is contrary to record and shows total non application of mind. The letter of Sarpanch dated 29.12.1986 was addressed to District Collector informing him that there is dire need of Typist in the Gram Panchayat office after earlier person was transferred and nobody is attending to typing work and work is suffering, therefore the services of petitioner were engaged and sought for ratification and sanction of the post of Typist. The District Panchayat Officer vide memo dated 22.7.1987 accorded permission to engage services of petitioner on daily wage basis as Typist. Consequential orders were issued by the Executive Officer on 23.7.1987. Therefore it is no more open for the respondents to hold that initial appointment of the petitioner was not valid.

8. The only issue for consideration is whether the petitioner is entitled to claim regularization as Typist.

9. Whether not creating the post of Typist, though services of the petitioner were utilized for about 30 years is justified, need not be gone into, in view of the fair submission of the learned counsel for petitioner that petitioner would be satisfied if her services are regularized atleast in Class IV post.

10. In **Secretary, State of Karnataka and Others Vs. Umadevi (3)**¹, Supreme Court while deprecating the practice of back-door appointments, appointments on daily wage basis and subsequent regularization, directed formulation of scheme for regularization, if services of persons are utilized uninterruptedly for more than 10 years. Supreme Court held:

¹ (2006) 4 SCC 1

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

11. Considering the scope of decision in **Umadevi**, in **State of Karnataka and others Vs. M.L. Kesari and others**² Supreme Court held:

“11. The object behind the said direction in para 53 of *Umadevi* (3) [(2006) 4 SCC 1] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi* (3) [(2006) 4 SCC 1] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi* (3) [(2006) 4 SCC 1]] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi* (3) [(2006) 4 SCC 1] or that such exercise was undertaken only in

² (2010) 9 SCC 247

regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi (3)* [(2006) 4 SCC 1] as a one-time measure.”

12. In **Amarkant Rai v. State of Bihar**³, Supreme Court held that “The objective behind the exception carved out in this case was to permit regularisation of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years”. In that case, employee was working for 29 years. This decision approves earlier view expressed in **M.L.Kesari** (supra) extracted above.

13. In **State of Jharkhand v. Kamal Prasad**⁴, similar view was taken. Supreme Court held:

“41.In view of the categorical finding of fact on the relevant contentious issue that the respondent employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in *Umadevi (3)* case [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 ; 2006 SCC (L&S) 753] at para 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent employees are entitled for the relief, the same cannot be interfered with by this Court.”

14. In the instant case also petitioner has been working continuously from 23.7.1987 and retired on attaining the age of superannuation. The fact that petitioner has been working for long time, it is deemed that the nature of work undertaken by her is continuous and the post occupied by her is regularly required under the establishment of the respondent Gram Panchayat.

15. The memo dated 22.7.1987 of the District Panchayat Officer would disclose that he had sanctioned 10 last grade service posts on payment

³ (2015) 8 SCC 265

⁴ (2014) 7 SCC 223

of daily wages and permitted utilizing the services of the petitioner as Typist in one of those 10 posts on payment of daily wages. Accordingly, Executive Officer passed orders on 23.7.1987 and petitioner continuously worked ever since. Thus in ordinary course, it is deemed that there is regular and continuous requirement of the post of Typist in the Gram Panchayat. Bhadrachalam is a major Gram Panchayat, it is a pilgrimage centre in view of location of world famous 'Sitaramachandra Swamy temple'. Bhadrachalam was once notified as municipality and later reconverted as Gram Panchayat. For such a Gram Panchayat which has trappings of municipality, it cannot be said that there is no requirement of Typist.

16. Be that as it may, since petitioner was initially engaged against one of the 10 labourer posts, which were sanctioned and worked continuously till she attained age of superannuation, it is deemed that the post of Labour is permanently sanctioned, therefore, her services ought to have been considered for regularization to any of Group IV posts so sanctioned or available over a period of time. Continuing the petitioner as Typist for more than 30 years without granting the service benefits amounts to arbitrary exercise of power and is contrary to the constitutional mandate and settled principles of law. Since sanction was accorded and competent authority appointed the petitioner, initial appointment of the petitioner cannot be said as illegal. The respondents have gravely erred in not looking into the grievance of the petitioner to grant some benefits. Having utilized her services for long time, atleast they ought to have regularised her services in Class IV post, even assuming that post of Typist cannot be created.

17. Having regard to the above, respondents are directed to regularize the services of the petitioner in Class IV post on completion of 5 years of service or 25.11.1993 which ever is later and to grant retirement benefits

by treating the service from that date as regular and work-out the retirement benefits including pension payable to the petitioner. Petitioner is entitled to payment of arrears of amount consequent to the regularization from the date of institution of O.A.No.6773 of 2011 before the A.P. Administrative Tribunal. The entire exercise shall be completed and arrears of amounts due and sanction of pension shall be made as expeditiously as possible, preferably within a period of three months.

18. Accordingly, the writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:24.7.2017
TVK



P NAVEEN RAO,J

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