

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.25127 of 2017

Date:11.9.2017

Between:

The State of A.P., repto by its
Principal Secretary, Home
Department, Guntur District
and another.

..... Petitioners

And:

M.Haranath Benarjee,
S/o Suryanarayana

.....Respondent

Counsel for the petitioners: GP for Services (AP)

Counsel for the respondent: Mrs. B.Kavitha Yadav

For Mr. C.Srinivasa Baba

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed feeling aggrieved by order, dated 29.12.2016, in Original Application No.7006 of 2013 on the file of the Andhra Pradesh Administration Tribunal at Hyderabad (for short 'the Tribunal').

We have heard the learned Government Pleader for Services (Andhra Pradesh) and Mrs. B.Kavitha Yadav, learned counsel representing Mr. C.Srinivasa Baba, learned counsel for the respondent and perused the record.

The undisputed facts of the case are that the respondent was appointed as Office Assistant on 23.11.1981 under Arogya Bhadratha Scheme (for short 'the Scheme') in the Andhra Pradesh Police Welfare Society by petitioner No.2, who is the President of the said society, on a consolidated pay of Rs.300/- per month. Petitioner No.2 issued orders on 30.12.1982, whereunder the post held by the respondent was converted as 'Junior Assistant' in the scale of Rs.425-650 with usual allowances admissible to the said post in the State Government from time to time with effect from 01.12.1982. After being promoted to the newly created post, the respondent was placed on probation for a period of one year. By order, dated 07.10.1986, his probation was declared with effect from 30.11.1983. As his enrollment under the Scheme was withdrawn unilaterally, on the ground that he cannot be treated as a civil servant, he made a representation to the petitioners for regularisation of his services at

least in terms of G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22.4.1994 read with G.O.Ms.No.231, Finance & Planning (FIN.WING.PC.III) Department, dated 18.10.1998. Petitioner No.2 has, however, rejected his request. Subsequently, petitioner No.1 issued G.O.Ms.No.69, Home (Ser.III) Department, dated 17.4.2012, permitting petitioner No.2 to regularise the services of the respondent as Junior Assistant with prospective effect *i.e.*, with effect from the date of issue of appointment order by the Appointing authority. Accordingly, petitioner No.2 has issued C.O.O.No.195/2012, dated 08.5.2012, appointing the respondent as Junior Assistant with prospective effect. As a result of the said order, the respondent's salary which stood at Rs.34,744/- per month has got reduced to Rs.15,896/-. Feeling aggrieved by this action, the respondent has filed O.A.No.7006 of 2013 before the Tribunal.

Upon considering the respective pleadings of the parties, the Tribunal allowed the said O.A by order, dated 29.12.2016. In its order, the Tribunal has observed that the petitioners have not disputed the facts, *viz.*, consequent on creation of the post of Junior Assistant, the respondent was appointed in the said post on 01.12.1982 and was placed on probation and petitioner No.2 has declared that the respondent has successfully completed his probation on 30.11.1983. The Tribunal also referred to G.O.Ms.No.212, dated 22.4.1994, as per which, if a person has completed five years of continuous service as on 25.11.1993, he shall be entitled to regularisation of his services.

In our opinion, the petitioners have made a patently erroneous approach in treating the respondent as a temporary employee in spite of the fact that he was not only appointed in the post of Junior Assistant on 23.11.1981 and was placed on probation, but also his probation was declared with effect from 30.11.1983. Placing a temporary employee on probation is alien to Service Law Jurisprudence. Therefore, it is implied that the appointment of the respondent as Junior Assistant on 23.11.1981 was on regular basis. Evidently, the respondent has approached the petitioners for regularisation of his services at least under G.O.Ms.No.212, as a desperate measure, on noticing their attitude towards him. Such an act on the part of the respondent cannot be treated as a waiver of his right to be treated as a regular employee with effect from the date on which he was appointed as Junior Assistant.

In the above facts and circumstances of the case, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

As a sequel, WPMP.No.31155 of 2017 is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

11th September 2017

DR