

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

And

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.17700 OF 2016

ORDER: (Oral, *Per* Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present Petition, the petitioner assails the order, dated 01.10.2015, passed in O.A. No.5624 of 2015 by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'); whereby the O.A. filed by the 1st respondent-applicant, under Section 19 of the Administrative Tribunals Act, 1985, to declare the inaction of the respondents therein in not counting his past service as Full Time Contingent Sweeper, as per Government instructions issued in G.O.Ms. No.156, Finance and Planning, dated 29.04.1983, and consequently made him to retire in the contingent establishment as Full Time Sweeper, as illegal arbitrary and against Articles 14 and 21 of Constitution of India and direct the respondents therein to count the past service of the 1st respondent-applicant as ordered by the Tribunal in O.A. No.4409 of 2006, dated 18.12.2009, and order to release consequential monetary benefits, was allowed by the Tribunal.

1st respondent herein has filed O.A. No.5624 of 2015; wherein the learned Tribunal allowed the said O.A. granting similar relief in terms of its earlier order in O.A. No.4409 of 2006, dated 18.12.2009, treating it as covered matter.

Learned Government Pleader, appearing on behalf of the petitioner-7th respondent, submits that in O.A. No.4409 of 2006, the applicant therein was retired as Panchayat Secretary; initially, he was appointed as Farm Worker on 28.02.1977; subsequently, converted into scale worker on 17.10.1984 and, thereafter, appointed as Operative in the

year 1985 and, further, promoted as Farm Foreman in the year 1991 and got retired in the same cadre on 31.06.2006 *i.e.*, on attaining the age of superannuation. Since the applicant therein was appointed as Full Time Farm Worker and his services were also regularized but eight years of service rendered by him as Farm Worker/Skilled Worker was not considered for the purpose of sanction of pension in view of his retirement under G.O.Ms. No.156, dated 29.04.1983. The said G.O. is not applicable for Full Time Workers and is applicable for Full Time Workers who were regularized in accordance with G.O.Ms. No.38, Finance and Planning, dated 01.02.1980 and G.O.Ms. No.9, Finance and Planning, dated 08.01.1981.

Learned Government Pleader further submits that the case of the 1st respondent-applicant is that he was initially appointed as part time sweeper in the year 1982 and has been paid a consolidated sum of Rs.1,623/- p.m. till his regularization and he was finally regularized as last grade/office subordinate in view of G.O.Ms. No.315, Panchayat Raj and Rural Development (Estt.V), dated 03.07.2013 in terms of G.O.(P) No.112, Finance and Planning, dated 23.07.1997 *vide* proceedings No.B10/2906/2007-28, dated 12.09.2013. Accordingly, in view of the above circumstances, the 1st respondent-applicant is not covered under the order passed in O.A. No.4409 of 2006.

It is pertinent to mention here that the applicant in O.A. No.4409 of 2006 approached the Tribunal seeking a direction to the respondents therein directing to count the services rendered by him as Farm Worker and Skilled Worker for the purpose of sanction of pension. He was initially appointed as Farm Worker on 28.02.1977 and, subsequently, converted into scale worker on 17.10.1984 and thereafter appointed as Operative in the year 1985 and thereby promoted as Farm Foreman in the year 1991

and worked as such till attaining the majority *i.e.*, on 31.06.2006, till which time he had put up 21 years of service since 1977; since his eight years of service rendered as Farm Worker/Skilled Worker was not considered for the purpose of sanction of pension, approached the Tribunal by filing O.A. No.4409 of 2006.

Considering the rival contentions of the parties in O.A. No.4409 of 2006, the Tribunal referred G.O.Ms. No.156, dated 29.04.1983, wherein the relevant portion at Para 3 of the G.O. is extracted hereunder:

“As full time contingent employees are low paid employees and as it would be a hardship to these employees if the benefit of their past service is not reckoned for purposes of pension and also as a Social Security measure, government have decided after careful consideration and accordingly hereby order that the pre-absorption service of full-time contingent employees who are absorbed in Government service against posts of full-time contingent employees converted into Last Grade Posts, in accordance with the orders issued in the G.Os. 1st and 2nd read above, be counted for purposes of pension in combination with subsequent Government service in relaxation of Art.36 of C.S.Rs.

These orders shall come into force with effect from 1st April, 1981.”

The Respondents therein had filed their counter-affidavits stating that the applicant therein was not appointed through any recruitment agency, just he was engaged as daily wage worker basing on the work load in the units of Sericulture Department in Anantapur district and the wages were paid from contingencies and, moreover, he did not work in the sanctioned post. Subsequently, he was selected for the post of Operative by the Selection Committee chaired by the Project Director, D.R.D.A. and was appointed as such during the year 1985 as per A.P. State and Subordinate Service Rules and got promoted as Farm Foreman-II, during 1991.

In view of rival contentions of both the parties, the learned Tribunal considered G.O.Ms. No.156, dated 29.04.1983, wherein the orders were issued by the Government stating that the services of full time contingent employees, who were absorbed in Government Service against the post of full-time contingent, converted into Last grade Posts be counted for the purposes of pension in combination with subsequent Government service. Accordingly, the Tribunal recorded in the order that the applicant therein was appointed pursuant to the selection as Operative, thereafter re-designated as Technical Officer in the year 1985 and prior to that he was in contingent service for eight years. Accordingly, in view of G.O.Ms. No.156, dated 29.04.1983, the contingent service rendered by the applicant therein was considered to be eligible for counting for the purpose of pension by adding it to the Government service from 1985 and allowed the O.A. No.4409 of 2006.

Coming to the case of the 1st respondent herein, he filed O.A. No.5624 of 2015 stating that the respondents therein have not counted his past service as Full Time Contingent sweeper as per Government instructions issued in G.O.Ms. No.156, dated 29.04.1983. In the counter-affidavit filed by him before this Court, he specifically stated that he was initially appointed as sweeper on 30.04.1982 in the Zillah Praja Parishad Secondary School for Girls, Narsampet, Warangal District. Accordingly, his services were regularized in the Last Grade post of Office Subordinate *vide* proceedings No.B10/2906/2007-28 dated 12.09.2013 of the Chief Executive Officer, Zilla Parishad.

When similar issue came up for consideration before the Tribunal in O.A. No.4409 of 2006, the same was allowed by the Tribunal *vide* its order dated 18.12.2009. Subsequently, holding that the facts and circumstances of the case in O.A. No.4409 of 2006 are similar to the case in O.A.

No.5624 of 2015, the learned Tribunal allowed the O.A. No.5624 of 2015 holding that the matter is squarely covered to the facts in O.A. No.4409 of 2006, the 1st respondent-applicant is entitled for the relief.

In view of above, the 1st respondent-applicant is fully eligible and entitled to be converted into regular post of last grade but that was not done purposefully, wantonly due to the administrative reasons by the respondents therein for that the 1st respondent-applicant was put to irreparable loss. As per G.O.Ms. No.156, dated 29.04.1983, previous part time contingent service of the worker was considered as full time contingent service and, accordingly, gave the benefit for the purpose of pensionary benefits. Accordingly, G.O.Ms. No.156, dated 29.04.1983, is fully applicable to the case of 1st respondent herein.

Accordingly, we find no illegality or perversity in the impugned order dated 01.10.2015 passed by the Tribunal. Consequently, the Writ Petition is dismissed confirming the order dated 01.10.2015 passed in O.A. No.5624 of 2015. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

SURESH KUMAR KAIT, J

DR. JUSTICE SHAMEEM AKTHER, J

Date: 20-06-2017.
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(Order of the Division Bench delivered by
Hon'ble Sri Justice Suresh Kumar Kait)

Date. 20-06-2017

DSH