

HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No. 5402 of 2017

ORDER:

(Per HON'BLE SRI JUSTICE N. BALAYOGI)

1. The petitioners-Panchayat Raj & Rural Development Department, aggrieved by the order dated 17.08.2016 passed in O.A.No.7181 of 2012 by the Andhra Pradesh Administrative Tribunal preferred this Writ Petition seeking issuance of order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to the aforesaid order and after perusing the same, to set aside the said order declaring it as illegal, contrary to law and in excess of jurisdiction.

2. From the impugned order it appears that the respondents 1 to 19 herein are working as Bill Collectors/ Attenders/ Sweepers as the case may be in the various Gram Panchayats under the control of District Panchayat Officer, Krishna, Machilipatnam—third petitioner during the period from 1980 to 1983 and have completed 10 to 13 years of service as on 25.11.1993 and are continuing as such on the said date.

3. The erstwhile State of Andhra Pradesh issued G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department dated 22.04.1994 formulating a scheme for regularization of services of temporary and daily wage earning employees employed by the Local Bodies/Authorities or other Instrumentalities of the State who worked on daily wage/NMR or on consolidated pay continuously for a minimum

period of five years and are continuing as on 25.11.1993 subject to certain terms and conditions.

4. Further, the erstwhile Government of Andhra Pradesh issued G.O.(P) No.112, Finance & Planning (FW.PC.III) Department, dated 23.07.1997 formulating a scheme for regularization of services of persons appointed on part-time basis who have worked continuously as part-time workers for a minimum period of ten years and are continuing as on 25.11.1993 the date on which the A.P. (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short, Act 2 of 1994) came into force, subject to fulfillment of certain terms and conditions.

5. Inspite of issuing G.O.Ms.NO.212, dated 22.04.1994 and G.O.(P) No.112, dated 23.07.1997, respondents 1 to 19 are being continued in the service without there being any order for regularization of their services. Therefore, respondents 1 to 19 approached the Andhra Pradesh Administrative Tribunal and filed O.A.No.7181 of 2012 which was disposed of by order dated 17.08.2016 allowing the said OA. The relevant portion of the said order reads as follows:

“ The applicants in the O.A. as well as in the reply affidavit restricted their claim for notional fixation of pay only for the purpose of seniority and retrial benefits.

It is not in dispute that the applicants covered by this OA have completed minimum service of ten years as part time basis by 25.11.1993, the cut off date and also continuing as such by that date and therefore their services were regularized in terms of G.O.Rt.Nos.1977 and 1978, dated 26.11.2005 by way of

individual proceedings dated 13.12.2005, but with prospective date.

In the light of the law down by the Honourable Apex Court and the orders of this Tribunal confirmed by the High Court, the applicants covered by this OA are entitled for regularization of their services with effect from 25.11.1993, the cut off date.”

In view of the finding on the point, the OA is allowed directing the respondents to regularize the services of the applicants (Respondents 1 to 19 in WP) with effect from 25.11.1993 instead of from the date of issuance of the orders vide G.O.Rt.Nos.1977 and 1978, dated 26.11.2005 by the first respondent and the individual proceedings issued by the third respondent dated 13.12.2005 for the purpose of notional pay fixation and to count the service for pensionary benefits. “

6. Aggrieved by the same, the petitioners—Panchayat Raj & Rural Employment Department preferred present Writ Petition.

7. The contention of respondents 1 to 19 herein is that they are entitled for regularization on completion of minimum period of five years or ten years, as the case may be, from the date of 25.11.1993; whereas the writ petitioners-Panchayat Raj & Rural Development Department contend that respondents 1 to 19 herein are entitled for regularization of their services only from the date of issue of orders prospectively, but not from the cut off date i.e. 25.11.1993.

In the case of B.SRINIVASULU Vs. THE NELLORE MUNICIPAL CORPORATION, REPRESENTED BY ITS

COMMISSIONER in Civil Appeal No.6318 of 2015 (arising out of SLP (C) No.12432 of 2014), dated 17.08.2015, the Apex Court held as follows:

“.....The right of the appellants to seek regularization flows from the G.O.212 dated 22.4.1994. The appellants have been in service of the first respondent not only prior to the issuance of the said G.O. but even subsequent to the issue of G.O. till today. The respondent Municipality being a statutory body is obliged by the G.O.212 (supra). In spite of the above mentioned G.O. the respondents kept quite for almost 20 years without regularizing the service of the appellants and continued to extract work from the appellants.

.....In the circumstances, the appeal is allowed modifying the order under appeal by directing that the appellants' services be regularized with effect from the date of their completing their five year continuous service as was laid down by this Court in DISTRICT COLLECTOR/CHAIRPERSON & OTHERS vs M.L.SINGH & ORS (2009 (8)SCC 480)”

8. The aforesaid decision is applicable to the facts of the present case. In the case on hand, respondents 1 to 19 herein have completed 10 to 13 years of service as on 25.11.1993 as per G.O.Ms.No.112 dated 23.07.1997. Pursuant to G.O.Ms.Nos.1977 and 1978, dated 26.11.2005, the District Panchayat Officer-third petitioner herein issued orders vide Roc.No.66/2002 Pts3 dated 13.12.2005 regularizing the services of respondents 1 to 19 herein from the date of issue of the orders prospectively. The

respondents 1 to 19 herein are admittedly entitled to regularization of their services with effect from the date when they completed ten years of service for the purpose of seniority, notional fixation, pension and other retrial benefits. The Government without applying its mind issued G.O.Ms.Nos. 1977 and 1978 dated 26.11.2005 according permission to the petitioner authorities herein for regularization of services of Respondents 1 to 19 herein from the date of issue of the orders prospectively and accordingly the third respondent issued independent orders regularizing the services of respondents 1 to 19 herein prospectively.

9. It is settled law that the regularization of services, on completion of minimum period of five years as on 25.11.1993 in terms of G.O.Ms.No.212, dated 22.04.1994 or completion of minimum ten years as part time services and is continuing as on 25.11.1993 in terms of G.O. (P) No.112 dated 23.07.1997, should be from the cut off date but not from the date of issuance of orders of regularization prospectively. The Tribunal having considered G.O.Ms.No.212, dated 22.04.1994 and G.O.(P) No. 112, dated 23.07.1997 and further, G.O.Rt.Nos.1977 and 1978 dated 26.11.2005 and individual proceedings issued by the third petitioner herein dated 13.12.2005 pursuant thereto, and following the decision of the Apex Court in DISTRICT COLLECTOR/CHAIRMAN & ORS VS. M.L.SINGH & ORS {(2009) 8 SCC 480}, directed the petitioner authorities to regularize the services of respondents 1 to 19 herein with effect from

25.11.1993, instead of from the date of issuance of orders vide G.O.Ms.Nos.1977 and 1978, dated 26.11.2005 and orders issued by the third petitioner pursuant thereto dated 13.12.2005, for the purpose of notional pay fixation and to count the service for pensionary benefits.

10. Further, the Tribunal perfectly considered the provision under Section 7 of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 which speaks about the jurisdiction of Tribunal or other Authority in entertaining the claim for regularization of services from the date of its enforceability.

11. Having considered the contentions advanced by the learned Counsel on either side and the material available on record, we see no legal infirmity or irregularity In the order dated 17.08.2016 passed by the Andhra Pradesh Administrative Tribunal in O.A.No. 7181 of 2012.

12. For the foregoing discussion and in the result, the Writ Petition is dismissed while confirming the orders of the Andhra Pradesh Administrative Tribunal dated 17.08.2016 passed in O.A.No.7181 of 2012 and directing the petitioner authorities to implement the aforesaid orders of the Tribunal within a period of three months from the date of receipt of a copy of this order.

13. Miscellaneous petitions pending consideration, if any, shall stand closed in consequence. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE N. BALAYOGI

DATED 9th JUNE, 2017.
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