

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

WRIT PETITION No.26788 of 2017

Between:

P.Khadar Basha,

S/o Masthan Khan and four others.

... Petitioners

And

The State of A.P., retpd., by its

Principal Secretary, MA & UD

Department, Hyderabad

and others.

... Respondents

JUDGMENT PRONOUNCED ON 10.8.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No

3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes/No

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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

WRIT PETITION No.26788 of 2017

% 10.8.2017

Between:

P.Khadar Basha,

S/o Masthan Khan and four others.

..... Petitioners

And:

\$ The State of A.P., retpd., by its
Principal Secretary, MA & UD
Department, Hyderabad
and others.

.....Respondents

< Gist:

> Head Note:

! Counsel for the petitioners: Mr. P.Suresh Reddy

Senior counsel

For Mr. P.Raghavender Reddy

^ Counsel for the respondents: GP for Services (Andhra Pradesh)

? Cases Referred:

NIL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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

WRIT PETITION No.26788 of 2017

Date:10.8.2017

Between:

P.Khadar Basha,

S/o Masthan Khan and four others.

..... Petitioners

And:

The State of A.P., retpd., by its

Principal Secretary, MA & UD

Department, Hyderabad

and others.

.....Respondents

Counsel for the petitioners: Mr. P.Suresh Reddy

Senior counsel

For Mr. P.Raghavender Reddy

Counsel for the respondents: GP for Services (Andhra Pradesh)

The Court made the following:

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

Order, dated 14.10.2016, in Original Application No.3132 of 2013 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal') is assailed in this Writ Petition.

The petitioners have been working in the Last Grade Services in Kavali Municipality, Nellore District, since 1989. As their services have not been regularised in view of the fact that they did not put in five years of service as on 25.11.1993, the cut-off date mentioned in G.O.Ms.No.212, Finance and Planning (FW.PC-III) Department, dated 22.4.1994, they are being continued as NMWs/Daily Wage Workers all these years. However, the respondents have extended the minimum time scale to them. The petitioners have filed the above-mentioned O.A. before the Tribunal for a direction to the respondents to release the annual grade increments, HRA and CCA from the date of payment of the minimum time scale along with arrears. The said O.A. having been dismissed by the Tribunal, along with two other O.As, the petitioners filed this Writ Petition.

We have heard Mr. P.Suresh Reddy, the learned senior counsel representing Mr. P.Raghavender Reddy, the learned counsel for the petitioners and the learned Government Pleader for Services (Andhra Pradesh) and perused the record.

It is not in dispute that the petitioners have been extended the minimum time scale from the year 1997. However, while paying the minimum time scale to the petitioners, the respondents have not included any other components forming part of the regular pay scale including the annual grade increments. Therefore, the petitioners approached the Tribunal for extending those benefits, which, as observed above, was rejected by the Tribunal.

Learned senior counsel for the petitioners submitted that though his clients have sought for payment of the annual grade increments along with HRA and other allowances, they may not be entitled to any allowances other than the annual grade increments. He has further submitted that the Tribunal allowed certain O.As filed for payment of annual grade increments, while it dismissed certain other O.As and that, both the temporary employees as well as the Government have filed Writ Petitions which are pending before this Court. He has invited our attention to G.O.Rt.No.1387, Municipal Administration and Urban Development (D.1) Department, dated 19.10.2012, issued by the Government of Andhra Pradesh. It is profitable to extract the entire G.O. hereunder:

“In the reference read above, the Commissioner, Greater Visakhapatnam Municipal Corporation has stated that 113 Minimum Time Scale employees,

working in Greater Visakhapatnam Municipal Corporation have approached the Hon'ble Andhra Pradesh Administrative Tribunal in O.A.Nos.7749/2006, 7823/2006, 7811/2006, 375/2007 and 7781/2006 for sanction of annual grade increments and the Hon'ble Tribunal in its order, directed that the respondents to grant annual grade increments to the applicants in the time scale wherein their pay was fixed and also to pay the arrears and also extend the benefit of further pay revision made in 2005 and aggrieved by the above said orders of the Andhra Pradesh Administrative Tribunal, the Greater Visakhapatnam Municipal Corporation have filed W.P.Nos.5934/2008, 6622/2008, 9113/2008, 8611/2008 and 9067/2008 in the Hon'ble High Court and the said W.Ps were dismissed, vide orders dated 07.9.2011. The Commissioner, Greater Visakhapatnam Municipal Corporation has filed Special Leave Petitions in SLP(C).CC.Nos.6021/ 2012, 6024/2012, 5998/2012, 6031/2012 and 6028/2012 challenging the High Court order, dated 07.9.2011 and the said above petitions were also dismissed by the Hon'ble Supreme Court vide orders, dated 30.4.2012 and subsequently, the Hon'ble Andhra Pradesh Administrative Tribunal has issued notice in C.A.Nos.270/2012, 316/2012, 275/2012, 269/2012 and 274/2012 to implement the orders of the Andhra Pradesh Administrative Tribunal by 16.7.2012.

2. The Commissioner, Greater Visakhapatnam Municipal Corporation has stated that the Greater Visakhapatnam Municipal Corporation has exhausted all the legal options and as there is no other alternative for its disposal and also in view of the contempt cases posted on 16.7.2017, in the Hon'ble Andhra Pradesh Administrative Tribunal,

requested the Government to issue necessary orders to implement the orders of the Hon'ble Andhra Pradesh Administrative Tribunal, so as to avoid further legal complications.

3. After careful examination of the matter, in consultation with the advisory department and keeping in view of the orders of the Hon'ble Tribunal in O.A.No.7749/2006 filed by Sri K.Appa Rao and four others, O.A.No.7823/2006 filed by Sri Y.Venkata Rao and five others, O.A.No.7811/2006, filed by Sri S.V.Srinivasa Rao and 11 others, O.A.No.375 of 2007 filed by Sri D.Venkata Rao and 11 others and O.A.No.7781 of 2006 filed by Sri M.V.Ramana Murthy & 77 others working as Minimum Time Scale employees in Greater Visakhapatnam Municipal Corporation, the Government hereby accord permission to the Commissioner, Greater Visakhapatnam Municipal Corporation to grant annual grade increments to the applicants covered in the said O.As in the time scale, wherein their pay was fixed and also to pay the arrears and also extend the benefits of the further pay revision made in 2005, subject to condition, that the additional expenditure shall be met from the budget provisions of the Corporation funds only.

4. The Commissioner, Greater Visakhapatnam Municipal Corporation shall take action accordingly.

5. This order issued with the concurrence of Finance (PC.III) Department, vide order U.O.No.22050/307/A1/PC.III/2012, dated 18.8.2012, and vide their U.O.No.8096/PFS(RE)/2012, dated 28.8.2012."

From the above reproduced contents of the G.O., it is clear that certain O.As filed by the temporary employees of the

Greater Visakhapatnam Municipal Corporation (for short 'the GVMC') were allowed directing grant of annual grade increments in the minimum time scale and the Writ Petitions filed against the said orders were dismissed by this Court. The SLPs filed by the GVMC were also dismissed by the Supreme Court. In paragraph-2 of the said G.O., it is stated that the GVMC has exhausted all legal remedies and that, there was no alternative other than implementing the order of the Tribunal. Accordingly, the Government has issued the said G.O. granting the annual grade increments to the applicants in the said O.As in the time scale wherein their pay was fixed apart from granting arrears also.

The learned senior counsel has also drawn our attention to the judgment of a Division Bench of this Court in *Government of Andhra Pradesh and others Vs. S.Nageswara Rao and others*¹, wherein this Court allowed a similar claim made by NMRs/temporary employees of certain municipalities. In this context, it is apt to extract the observations of the Division Bench below:—

“There is no dispute that all of them were given regular scale of pay and also conferred the benefit of revised pay scales as and when new scales were implemented in the State of Andhra Pradesh. After giving regular scale of pay and also granting annual

¹ 2012 (2) ALD 26 (DB)

grade increments for some time, various Municipalities and Municipal Corporations stopped releasing increments and giving revised scales of pay, necessitating adjudication of the same by the Andhra Pradesh Administrative Tribunal. The respondents are casual/NMR/temporary Class-IV employees, who do similar work and discharge similar functions as any regular Class-IV employees. The principle of equal pay for equal work would bar the State or its agents from denying annual grade increments and revised scale of pay to the respondents. We are, therefore, not impressed with the argument that the grant of annual grade increments or grant of revised pay scales to the respondents would contravene the provisions of the A.P.Act 2 of 1994.”

In our view, the petitioners are entitled to the relief claimed by them based on the above-mentioned precedents. Even otherwise also, going by the definition of “time scale of pay” in Ruling-31(a) of Rule-9 of the Andhra Pradesh Fundamental Rules, the petitioners are entitled to payment of increments. This Rule reads as under:

“Time scale of pay” means pay which subject to any condition prescribed in these rules, rises by periodical increments from a minimum to maximum. It indicates the class of pay hitherto known as progressive.

The above-extracted definition of “time scale of pay” leaves us in no doubt that the scale of pay has to change with the change of times by addition of periodical increments.

Otherwise the expression “time scale” would have no meaning at all.

In the light of the above discussion, we are of the opinion that as the petitioners have been extended the minimum time scale, they are entitled to addition of increments from time to time in the minimum time scale without being entitled to all other allowances which a regular employee is entitled.

The learned Government Pleader for Services (Andhra Pradesh) submitted that the Court may consider limiting the grant of annual grade increments to the petitioners to a reasonable past period as, the relief of payment of arrears, if granted from the time of extension of the minimum time scale to the petitioners, would cause huge burden on the exchequer.

Though in strict sense, the petitioners are entitled to all the arrears, keeping in view the fact that they have approached the Tribunal only in the year 2013 and also the public interest, we restrict the said benefit only from the date of filing of the said O.A. by the petitioners. The Writ Petition is, accordingly, allowed in part to the extent indicated above. The respondents shall revise the minimum time scale of pay of the petitioners by adding the annual grade increments as and when they fell due from time to time.

As a sequel to disposal of the Writ Petition, WPMP.No.33252 of 2017 filed by the petitioners for interim relief is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

10th August 2017

Note:

LR copies to be marked.

B/o

DR

