

*** THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

+ WRIT PETITION No.27346 of 2007

% Dated : 17.04.2007

#B.V. Subba Rao,
S/o.(late) B. China Lingaiah,
Aged 47 years,
Working as Junior Assistant,
P.S. Telugu University,
Hyderabad.

..... Petitioner

AND

\$ The Potti Sreeramulu Telugu
University, Hyderabad,
Rep. by its Registrar.

..... Respondent

! Counsel for Petitioner : Sri P.V. Ramana

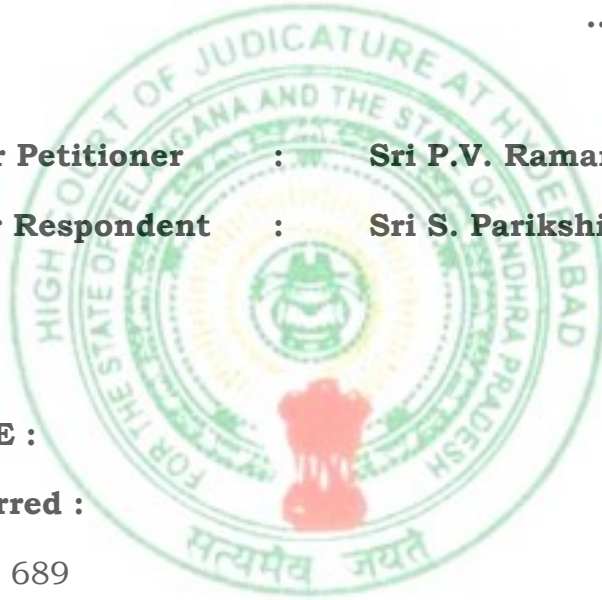
^Counsel for Respondent : Sri S. Parikshith

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? Cases referred :

(2007) 7 SCC 689



THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**WRIT PETITION No.27346 of 2007****ORDER:**

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“... be pleased to issue a Writ, Order or direction more in the nature of Mandamus declaring the action of the Respondent in not granting the benefit of regularization of services of the Petitioner on par with one Mr.Rajendar Kumar, B.Sudhakar Reddy and A.A.S.Venkateswara Swamy, and the attendant benefits of pay fixation from 1989 onwards as per the orders of the High Court in W.P.No.3604 of 1997 dated 2-9-2004 as arbitrary, illegal and violative of Article 14, 16 and 21 of the Constitution of India and consequentially declare that the petitioner is entitled for regularization and fixation of pay on par with the above persons with effect from 1989 with all consequential benefits including Encashment of Earned Leave at the rate of 15 days every year and to pass such other order or orders as this Honourable High Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of Sri P.V.Ramana, learned counsel for the petitioner, and of Sri S.Parikshith, learned Standing Counsel for the respondent-Corporation. I have perused the material record.

3. From the pleadings of the parties and the submissions made, the following facts emerge for consideration:

The petitioner is a Graduate. He, along with the aforesaid three individuals, joined in the service of the University in the year 1989 as Junior Assistant, on daily wage basis. According to the petitioner, the services of the other three individuals were regularized with effect from 1989, but, his services were not regularized. Hence, he filed W.P.No.3604 of 1997. The said writ petition was resisted by the University. On merits and by order, dated 02.09.2004, this Court while allowing the writ petition

directed the respondent University to regularize the services of the petitioner, with all consequential benefits, on par with the other similarly placed persons, whose services have already been regularized. The said direction in the said order was directed to be implemented within a period of two months from the date of receipt of a copy of the said order. Despite the said orders of this Court in the said writ petition, the petitioner's services were regularized with effect from 04.03.1993. Hence, the petitioner is before this Court. His grievance is that the respondent University did not take into consideration his service of four years prior to 04.03.1993 and that, therefore, great prejudice and hardship has been caused to him and that he is not in a position to even get sufficient pensionary benefits and hence, he is constrained to file this writ petition.

4. Per contra, the case of the respondent-University is this: 'The petitioner is not having the required continuous service of five years as daily wager whereas the other three individuals with whom the petitioner is comparing himself are having continuous services. Their services were regularized in the scheme formulated by the Government under Act 2 of 1994 read with G.O.Ms.No.212, Finance and Planning (F.W.PC III) dated 21.04.1994 as they were in continuous service from their respective dates of appointments and possessed requisite qualifications for the said post. The petitioner is not entitled to get the benefit of four years during which period he is not in continuous service. The petitioner's services were regularized only in view of the orders of this court in the earlier writ petition and regular time scale was given to the petitioner accordingly. As a matter of fact the petitioner gave an

undertaking, dated 18.05.2005, and entered into an agreement with the University, on 20.05.2005. In view of his undertaking and the agreement, he is not entitled to the relief claimed in the writ petition. Unless the Government approves the regularization of the services of the petitioner, the respondent University would not be in a position to regularize the services of the petitioner. The respondent University is not empowered to regularize the services of the petitioner. Therefore, the petitioner cannot compare his case with that of the other individuals; and, he cannot be treated on par with the said individuals/other employees whose services have already been regularized. In the facts and circumstances, the university is justified in regularizing the services of the petitioner from 04.03.1993 only.'

5. I have given earnest consideration to the submissions of both the sides.

6. A careful perusal of the earlier order of this Court in the earlier writ petition in W.P.No.3604 of 1994 would disclose that the said writ petition was filed by the petitioner questioning the action of the University in not regularizing his services on par with the persons who were appointed along with him or on par with his juniors. In the orders passed in the said writ petition, this Court noted that the grievance of the petitioner is that though the services of the other similarly placed employees were regularized, the petitioner's services were not regularized, though he was originally engaged in the year 1988, as there was a break in service on certain alleged irregularity. This Court further noted that it was later found that the allegations, which were made against the

petitioner, were found to be false and that when such is the position, the petitioner is also entitled to be treated on par with the other employees, whose services have already been regularised. In the defence raised in the aforesaid writ petition, the University contended that in view of the provisions of Act 2 of 1994, unless the Government approves the regularization of the services of the petitioner, the respondent University would not be in a position to regularize the services of the petitioner. Thus, it is pertinent to note that the same defence which is now being raised by the University was indeed raised in its counter in the earlier writ petition and that this Court having noted and considered all the contentions of the University, over ruled the same and held that the petitioner is also entitled to be treated on par with the other employees whose services have already been regularized. By that time there were vacancies to the posts of junior assistant. For all these reasons it is manifest that the University is not entitled to deny the relief to the petitioner by raising the self same contentions, which were considered and rejected by this Court in the earlier writ order.

7. In that view of the matter, this Court is of the considered view that it would be proper for the University to consider the case of the petitioner for regularization of his services on par with the other similarly placed employees as directed in the earlier writ orders. Be that as it may, despite adjudication of the issues involved and a writ order passed in favour of the petitioner, the petitioner was once again made to approach this court for the self same relief for the reason that the respondent University failed to implement the order of this court in letter and spirit, having

obtained an undertaking from the petitioner and having entered into an agreement with him while regularizing his services contrary to the orders of this Court. As rightly urged by the learned counsel for the petitioner, in the face of the writ orders of this Court, when the petitioner is entitled to the relief granted, the undertaking given by him and the agreement entered into pale into insignificance and do not disentitle the petitioner to the relief granted to him and now being claimed by him once again in this writ petition in view of the non implementation of the said orders by the University in letter and spirit.

8. In **Commissioner, Karnataka Housing Board v. C.Muddaiah**¹ the question as to whether a fresh writ petition could be filed claiming the benefits of an earlier order in the writ petition was squarely considered. The facts of this cited case reflect that an order earlier made in favour of the petitioner made it more than clear that the salary to be paid to the writ petitioner was from October 27, 1997 to February 28, 1998; however, contrary to the said orders, it was expressly stated by the respondent-Board that the writ-petitioner would not be entitled to arrears of pay and allowances for any earlier period "since he has not actually worked in the cadre of Superintendents and Assistant Revenue Officers"; it is thus obvious that inspite of a clear direction issued by a competent Court, no payment was made and an express order was passed to the effect that the writ petitioner would not be entitled to pay as he had not worked; the writ-petitioner, who had legitimate grievance against such direction filed a fresh substantive petition. In this setting of facts it was held that such substantive fresh

¹¹ (2007) 7 SCC 689

petition could be filed by him and that since he was entitled to such relief, the Division Bench was justified in granting the prayer.

It is apt to extract the relevant findings/observations in the cited case which are as follows:

We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where *ex facie* injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, *may* must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an *absolute* proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.

9. The ratio in the decision applies on all fours to the present case. This Court is of the considered view that when once a

direction by way of writ order was issued by this Court, it has to be obeyed and implemented without any reservation. The earlier writ orders of this Court cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court or on the alternate plea that the writ orders are nullified on account of the petitioner giving an undertaking or entering into an agreement with the University. Upholding of such defence would seriously affect and impair administration of justice. The argument of the University, therefore, has no force and must be rejected.

10. On the above analysis, this Court finds that the request of the writ petitioner merits consideration and that resultantly the writ petition deserves to be allowed.

11. In the result, the writ petition is allowed as prayed for.

Pending miscellaneous petitions, if any, shall stand closed.
There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

April 17, 2017
LMV

Note: L.R. copy to be marked.

(B/o.)
Vjl