

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.45379 OF 2016

ORDER: (Per Hon'ble Dr. Justice Shameem Akther)

1. This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners – State seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a Writ, order or direction more particularly one in the nature of “Writ of Certiorari” calling for the records relating to and connected with the order dated 19.07.2016 passed in Review M.A.S.R. No.4091/2016 in O.A. No.6051/2012 and the order dated 10.02.2015 in O.A. No.6051 of 2012 by the Hon'ble A.P. Administrative Tribunal, Hyderabad and to quash the same by holding it as contrary to Law and pass such other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Heard learned Government Pleader for Services, appearing on behalf of the petitioners, and Sri B. Krishna, learned counsel, appearing on behalf of the 1st respondent and perused the material available on record.

3. The case and the contention of the petitioners, in brief, is that the 1st respondent herein was appointed as a Menial, on a consolidated pay of Rs.261/- with other allowances, by 1st petitioner *vide* proceedings No.C/735/84, dated 25.03.1985. Subsequently, after issuance of Mc. No.20050/232/PRC.III/85, dated 23.08.1985, by the Government, the 1st petitioner absorbed the 1st respondent in the post of Attender in the A.P. Last Grade Service on 11.03.1991 and fixed his pay scale as per 1986 Revised Pay Scales. As per G.O.Ms. No.212 (Finance and Planning), dated 22.04.1994, the services of the 1st respondent have to be

regularized with effect from 04.04.1990 *i.e.*, the date on which he has completed five years of service; but, as his services were not regularized, he made a representation to the petitioners; subsequently, the 3rd petitioner issued G.O.Ms. No.14, dated 19.02.2007, permitting the 2nd petitioner to absorb the services of the 1st respondent in the post of Sweeper with effect from 19.02.2007; subsequently, the 2nd petitioner issued proceedings No.FII-1/20917/93, regularizing the services of the 1st respondent with effect from 26.02.2007. Having aggrieved by the action of the 2nd petitioner in regularizing the services of the 1st respondent with effect from 26.02.2007 but not from 04.04.1990, he again made representations to the petitioners, respectively, on 02.07.2008 and 14.07.2008 ventilating his grievance and, during the pendency of his representations with the petitioners, he preferred O.A. No.8943 of 2008 before the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'); wherein the Tribunal disposed of the said O.A. on 25.02.2011 by directing the petitioners herein to dispose of the representation of the petitioners and pass an appropriate order with respect to regularization of services of the 1st respondent with effect from 04.04.1990, within a period of four weeks from the date of receipt of a copy of the order. Accordingly, the 3rd respondent on 29.02.2012, *vide* Memo No.7041/TE.I/A1/2011-15, considered and rejected the request of the 1st respondent for regularization of his services with effect from 04.04.1990.

4. Further aggrieved, the 1st respondent preferred O.A. No.6051 of 2012 seeking to set-aside the proceedings *vide* Memo No.7041/TE.I/A1/2011-15, dated 29.02.2012 and regularize his services with effect from 04.04.1990; wherein, the Tribunal allowed the said O.A. on 10.02.2015, setting-aside the impugned order dated 29.02.2012, and

directed the petitioners herein to regularize the services of the 1st respondent with effect from 25.11.1993 *i.e.*, the cut off date mentioned in GO.M.S. No.212 with all notional consequential benefits and that such benefits should be confined only to his pension/retirement benefits.

5. Aggrieved by the order dated 10.02.2015 passed in O.A. No.6051 of 2012, the petitioners approached this Court by filing Writ Petition No.10930 of 2016, wherein a Division Bench of this Court dismissed the Writ Petition, however, granted liberty to the petitioners to file a Review Petition before the Tribunal within one month therefrom with a further direction to the Tribunal that, on filing such Review petition, the Tribunal should entertain the same without raising any objection as to the limitation and decide the same on merits, after issuing notice to the 1st respondent. Thereafter, the petitioners preferred Review M.A.S.R. No.4091 of 2016 in O.A. No.6051 of 2012; wherein, the Tribunal rejected the Review Petition, on the ground of limitation. Aggrieved by the orders dated 10.02.2015 passed in O.A. No.6051 of 2012 and 19.07.2016 in Review M.A.S.R. No.4091 of 2016 by the Tribunal, the petitioners are before this Court.

6. Learned counsel for respondent No.1 would submit that the services of respondent No.1 rightly regularised with effect from 25.11.1993; the petitioners have not filed the review petition within one month, as ordered by this Court vide the order dated 07.04.2016 in W.P. No.10930 of 2016; therefore, the learned Tribunal had rightly dismissed the review application; the Review M.P. and the writ petition are devoid of merits; and ultimately, prayed to dismiss the writ petition.

7. In view of the contentions put forth by both sides, the point for determination is, whether the order dated 19.07.2016 passed in Review M.A.S.R. No.4091 of 2016 in O.A. No.6051 of 2012 and the order dated

10.02.2015 passed in O.A. No.6051 of 2012 by the learned Tribunal are liable to be quashed as prayed for?

8. It is pertinent to state that while dealing with the Review Application, the learned Tribunal had reached to a conclusion that it is not filed within the time prescribed. This Court in W.P. No.10930 of 2016 passed an order on 07.04.2016 permitting the writ petitioners to file review application before the learned Tribunal within one month from the date of order and further stated that in the event of petitioners filing review application, the learned Tribunal shall entertain the same without raising any objection as to the limitation and decide the same on merits after giving notice respondent No.1. As per the record available, the petitioners have filed the review application before the learned Tribunal on 31.05.2016. As per the directions of this Court in the above noted Writ Petition, the review application is required to be filed on or before 07.05.2016, but the petitioners have filed the said review application on 31.05.2016. There was Summer Vacation for the Tribunal from 02.05.2016 to 27.05.2016 and it re-opened on 28.05.2016. So, the review application was required to be filed on re-opening day, i.e., on 28.05.2016, but it was filed on 31.05.2016. It establishes, the review application was filed not within one month, as directed by this Court by the order 07.04.2016 in W.P. No.10930 of 2016. Originally, the review application is required to be filed within thirty days from the date of the order passed in W.P. No.10930 of 2016; however, this Court had extended time in favour of the petitioners as stated supra.

9. Learned Tribunal had also elaborately dealt with the decision of the Hon'ble Supreme Court in ***D. Saibaba Vs. Bar Council of India and***

another*¹** and the decision of this Court in ***G. Narasimha Rao Vs. Regional Joint Director of School Education, Waranga² and, ultimately, dismissed the review application filed by the writ petitioners.

10. When there is a specific order in W.P. No.10930 of 2016 passed by this Court on 07.04.2016 to file a review application within one month from the date of order, the writ petitioners ought to have filed the same by 28.05.2016, *i.e.*, on the re-opening day of the learned Tribunal. The contention of the writ petitioners that they have filed the review application from the date of knowledge is not tenable. When the order is pronounced in the open Court, it is deemed that the parties to the proceedings have knowledge of the order on the date of pronouncement itself. Further, in view of the order of this Court, the petitioners cannot contend that they filed Review Application within one month from the date of knowledge. While dealing with the review application, the Tribunal had elaborately answered all the submissions made on behalf of the writ petitioners assigning valid reasons. It is not appropriate to take a different view. Further, since the petitioners have not filed the review application within time, as directed by this Court on 07.04.2016 in W.P. No.10930 of 2016, the order dated 10.02.2015 passed in O.A. No.6051 of 2012 attained finality and no relief as prayed can be granted to the petitioners in this writ petition. All the contentions raised on behalf of the writ petitioners do fail. The writ petition is devoid of merits and it is liable to be dismissed.

11. In the result the Writ Petition is dismissed. No order as to costs.

¹ Decided on 06.05.2003 in W.P. (Civil) No.528 of 2002

² 2005 (2) ALT 469 (FB)

12. As a sequel to dismissal of the Writ Petition, *interim* order shall stand vacated and W.P.M.P. No.55932 of 2016 and W.V.M.P. No.1297 of 2017 shall stand closed.

SURESH KUMAR KAIT, J

Dr. SHAMEEM AKTHER, J

Date: 29-06-2017.

DSH/SIVA



HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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(Order of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 29-06-2017

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