

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.3361 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to grant a writ of Mandamus declaring the inaction of the respondents in regularizing the services of the petitioners from the respective dates on which they joined the services and in extending the benefit of seniority and in considering the representations of the petitioners as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India. A consequential direction to the respondents to regularize the services of the petitioners from the respective dates of their joining the services by extending the benefit of seniority by duly considering their representations is also sought.

2. I have heard the submissions of Sri Challa Dhanamjaya, learned senior counsel, appearing for the petitioners; and of the learned Government Pleader for Tribal Welfare appearing for the respondents. I have perused the material record.

3. The case of the petitioners is this: - "The petitioners 1 to 3 worked as Hostel Welfare officers, Grade II at respective Tribal Welfare Hostels situated at various places. They are presently working under the jurisdiction of the Deputy Director, Tribal Welfare Department, Rampachodavaram - 3rd respondent. The petitioners 4 & 5 are working respectively under the jurisdiction of the Deputy Director, Tribal Welfare Department, Parvathipuram – the 4th respondent. The 6th petitioner is working under the jurisdiction of District Tribal Welfare officer, Prakasam District – 6th respondent. The

Government have taken a decision to fill up all (78 posts) (male and female) vacant posts of Hostel Welfare Officers, Grade II, on contract basis and 23 Hostel Welfare Officers, Grade II (females) on regular basis. A notification, dated 08.11.2007, was issued. Pursuant to the notification, a publication was issued in Andhra Jyothi and Vartha daily newspapers, on 14.11.2007, inviting applications from the eligible interested candidates for both categories, that is, contract basis appointments as well as regular basis appointments to fill up the vacant posts throughout the State of AP. All the petitioners herein applied for the said posts as per the guidelines in the notification. A written test was conducted, on 30.12.2007, as per the instructions given in G.O.Ms.No.33, dated 19.04.2005. The term of office is two years initially. All the petitioners were appointed by the respondents 3 to 6, by orders, dated 12.03.2008, by following the roster system. The petitioners are working without any blemish and to the satisfaction of their superiors and also one & all. Though the initial appointments are for a period of two years, the periods of appointment are extended on the representations made by the petitioners to the officers concerned, in May, 2010. Copies of the extension orders are filed along with the writ petition. The extension period expired in May, 2011. However, the petitioners are continuing in their respective posts at various places. The petitioners made a representation to the respondents, on 28.04.2011, bringing to the notice of the authorities concerned their pathetic conditions and requesting the said authorities to extend their respective terms of office. While so, the 2nd respondent – Commissioner/Deputy Director, Tribal Welfare Department, Vijayawada, Krishna District, issued a letter in Rc.No.A3/2891/2011, dated 27.04.2011, to the District Collectors requesting

them to close the contract services of Hostel Welfare Officers, Grade II engaged on contract basis during the year 2008-09 and of those who have completed three years of contract by 23.04.2011. The District Collectors were requested to take up contractual appointments afresh duly following the terms and conditions stipulated in G.O.Ms.No.33 SW (TW SER.III) Department, dated 19.04.2005. Questioning the said proceedings/letter of the 2nd respondent, the petitioners filed WP.No.15165 of 2011 contending that their appointments were made duly following the procedure and process of selection in terms of G.O.Ms.No.33, dated 19.04.2005 and also by following the roster system and that the petitioners were and are working since last three years without any remark or blemish from any quarter and that as such there is no necessity to take up fresh appointments on contract basis following the very same G.O.Ms.No.33. After considering the contentions of the petitioners, this Court granted an interim order, on 25.08.2011 in WPMP.No.18199 of 2011. The same was made absolute on 07.12.2011. All the petitioners who are appointed in the year 2008 are working at various places basing on their said appointments. The petitioners completed more than nine years of service. The appointments were made against sanctioned posts and in clear vacancies and as per roster system. The petitioners are qualified for appointment as Hostel Welfare Officers more particularly as their appointments are through regular process, that is, after conduct of written test and on following the roster system. The Financial Department also gave clearance for the posts. The salaries of the petitioners are also enhanced by virtue of G.O.Ms.No.3, dated 12.01.2011. The services of these petitioners whose appointments were made as per the notification are not regularized. The services of the rest of the

persons who were appointed along with these petitioners are regularized by the State of Telangana from 01.01.2017. The petitioners herein also stand on the same footing. Questioning the inaction on the part of the respondents in regularizing the services of the petitioners, who possessed requisite qualifications and service, the petitioners filed OAs to implement G.O.Ms.Nos.3 & 33 and the same were disposed of. Hence, the present writ petition is filed.'

4. On 05.02.2018, this Court admitted the writ petition and granted the following interim order in IA.No.1 of 2018: - **'There shall be interim direction as prayed for, since the petitioners have been working since 2008 and there is nothing adverse *prima facie* against them in discharge of their duties.'**

5. The official respondents filed IA.No.2 of 2018 requesting to vacate the afore-said interim order.

6. However, a joint request was made to dispose of the writ petition instead of the vacate petition.

7. The case of the official respondents as stated in the counter affidavit of the 3rd respondent – Deputy Director, Tribal Welfare Department, Rampachodavaram, in brief, is this:

The averments in the writ petition that the Government have accorded permission to fill up 23 lady Hostel Welfare Officer Post on regular basis and 78 Hostel Welfare Officer posts on contract basis *vide* G.O.Ms.No.33 and that accordingly, a notification, dated 08.11.2007, was issued and the same was

published in newspapers inviting applications from the eligible interested candidates for both the categories and that a written test was conducted as per the guidelines in G.O.Ms.No.33 and that the selection process was completed as per merit and roster are true. The selected candidates were allotted to various Districts as per vacancies. The petitioners 1 to 3 were allotted to East Godavari District; and, the 3rd respondent issued proceedings, dated 13.10.2008, appointing them as Hostel Welfare Officers Grade II on contract basis with lump-sum remuneration of Rs.6,200/- per month for a period of two years from the date of joining. The contract period of the petitioners was extended for one more year *vide* proceedings issued in May, 2010 by the Project Officer, ITDA, Rampachodavaram. The 2nd respondent issued a letter in Rc.No.A3/2891/2011, dated 27.04.2011, to the District Collectors requesting them to close the contract services of Hostel Welfare Officers, Grade II engaged on contract basis during the year 2008-09 and of those who have completed three years of contract by 23.04.2011. Questioning the same, the petitioners filed WP.No.15165 of 2011 before this Court. This Court granted interim orders, on 25.08.2011. As per the said orders, the Commissioner, Tribal Welfare, Hyderabad, *vide* proceedings, dated 09.12.2011, directed to continue the services of the contract Hostel Welfare Officers, who approached this Court, subject to the outcome of the writ appeal. The services of the petitioners are accordingly continued as Hostel Welfare Officers Grade II on contract basis *vide* proceedings, dated 12.12.2011, of the Deputy Director (TW), ITDA, Rampachodavaram. This Court passed orders, dated 17.12.2011 in WVMP.No.4214 of 2011 and WPMP.No.18199 of 2011 in WP.No.15165 of 2011 duly confirming the interim order and dismissed the vacate petitions.

Under Group-IV General Recruitment under notification No.55/2011, dated 28.12.2011, 17 Hostel Welfare officers Gr.II are allotted to the Deputy Director, Tribal Welfare, Rampachodavaram *vide* letter, dated 29.06.2013, of the Collector & District Magistrate, East Goadavari District, Kakinada. Accordingly, 11 candidates joined as Hostel Welfare Officer Gr.II on regular basis through APPSC under Group-IV general recruitment. The petitioners are engaged on contract basis. They are well aware that 78 Hostel Welfare Officer posts, which are notified *vide* notification, dated 08.11.2007, published are contract basis only and that they were accordingly appointed on contract basis only. They are continuously working since their joining. The engagement of the petitioners itself is only by method of contract appointment for a period of two years under sub-rule (a) of Rule 9 of A.P. State and Subordinate Service Rules, 1996. A person appointed under the said Rule shall not be regarded as member of the service in which the post to which he/she is appointed is included and shall not be entitled by reason only of such appointment, to any other service. The methodology of recruitment process for regular appointments and contract appointment is different. Merely because the petitioners are working as contract Hostel Welfare Officers Grade II for the last nine years temporarily on contract basis, no right accrues in their favour for regularization of their services as under rule 9(a) of A.P. State And Subordinate Service Rules, 1996, there is no provision to regularize the services of the petitioners keeping in view the judgment in Uma Devi v. State of Karnataka. After bifurcation of AP State, the services of the rest of the persons who were appointed along with these petitioners are regularized by the State of Telangana is not within the limitations of the AP State. Even though the petitioners are

qualified and appointed through notification, their services cannot be regularized as their appointments are purely on contract basis. Therefore, the interim order is liable to be vacated and the writ petition is also liable to be dismissed.'

8. Learned counsel for the petitioner and learned Government Pleader made submissions in line with the pleadings.

9. I have gone through the material record and I have given thoughtful consideration to the facts & submissions.

10. The narration of the facts is sufficient to safely conclude that the petitioners have a justification in seeking regularization in view of the manner & method of their appointments, though on contract basis, and their continuation in service by extensions from time to time. In-fact, the appointments were made prior to the bifurcation of the State of Andhra Pradesh. Admittedly, after the division of the State, the services of the appointees, who were allotted to the posts now occurring in the State of Telangana, were regularized by the authorities of the said State. However, a similar benefit was not extended to the petitioners herein who are of the State of AP. The petitioners contend that they are on the same footing as that of the others, whose services were regularized by the State of Telangana. Citing Rule position and the limitations, the respondents contend that similar benefit cannot be extended to the petitioners herein by the State of AP. The petitioners strongly contend that they are discriminated and that they are entitled to the same benefit of regularization of services and other benefits, which were extended to the appointees under the same notification by the State

of Telangana. On the above analysis and as one of the grievances of the writ petitioners is non-consideration of their representations, this Court finds that it is appropriate to dispose of the writ petition with necessary directions.

11. Accordingly, without expressing any views on merits of the matter, the writ petition is disposed of reserving liberty to the petitioners to submit, within two weeks from the date of receipt of a copy of this order, representation/s along with copies of earlier representation/s to the respondents. In the event, the petitioners submit representation/s, the respondents concerned shall consider and dispose of the same within four weeks from the date of receipt of such representation/s, however, by affording an opportunity of hearing to the petitioners and by following the procedure established by law; and communicate the decision taken to the petitioners within a week thereafter. In view of the fact that the petitioners are rendering unblemished service to the satisfaction of their superiors and they are continuing since a long time, their services shall be continued until an appropriate decision is taken on their representations as afore-stated and necessary exercise is completed in the said regard.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

4th October, 2018
Vjl