

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.420 OF 2018

J U D G M E N T
(*Per Sri Justice Sanjay Kumar*)

This appeal under Clause 15 of the Letters Patent arises out of the common order dated 26.08.2017 passed by a learned Judge of this Court in so far as it made absolute the interim order dated 18.11.2016 passed in WPMP No.54030 of 2015 in W.P.No.41896 of 2015.

Earlier, by order dated 05.01.2016 passed in WPMP No.347 of 2016 filed in the same writ petition, a learned Judge of this Court suspended the proceedings dated 16.12.2015 issued by the District Collector/Chairman, District Scheduled Castes Service Cooperative Society Limited, West Godavari District (*for brevity*, 'the Society'), whereby the annual grade increments sanctioned to the writ petitioners and their medical reimbursement facility were cancelled with immediate effect and they were directed to be continued in service as Section Writers on the minimum pay of Rs.7,740/- with usual allowances purely on temporary basis. By the later interim order dated 18.11.2016, a learned Judge directed payment of salaries to the writ petitioners according to the pay scale applicable to the cadre of Junior Assistant from September, 2015, till date and to continue such payments in future also, pending disposal of the writ petition. Aggrieved by these interim directions, the State of Andhra Pradesh and the authorities of the Society filed vacate stay petitions. WVMP No.1508 of 2017 was filed by them in relation to the order dated 18.11.2016 passed in WPMP No.54030 of 2015 filed in the writ petition while WVMP No.1749 of 2017 was filed by them to vacate the interim order dated 05.01.2016 passed in WPMP No.347 of 2016

filed in the writ petition. By the common order under appeal, the learned Judge dismissed the vacate stay petitions and made both the interim orders absolute.

However, the present writ appeal filed by the authorities of the Society only assails the aforestated common order in so far as it pertains to WVMP No.1508 of 2017 filed by them in relation to the interim order dated 18.11.2016 passed in WPMP No.54030 of 2015 filed in the writ petition with regard to payment of salaries. Surprisingly, they did not choose to file an independent appeal against the common order in so far as it related to the dismissal of WVMP No.1749 of 2017 with regard to the suspension of the proceedings dated 16.12.2015.

By order dated 13.03.2018 passed in this writ appeal, a Division Bench of this Court granted interim stay, taking note of the statement made by the Society that the writ petitioners were being continued in service and were also granted the minimum of the time scale of pay. I.A.No.3 of 2018 was filed by the writ petitioners to vacate the said interim order.

Heard Mr.D.Ramesh, learned Special Government Pleader representing Ms.S.Pranathi, learned counsel for the appellants-respondents, and Mr.P.Gangaiah Naidu, learned senior counsel appearing for Ms.M.Shalini, learned counsel for respondents 1 to 6-writ petitioners.

Parties shall hereinafter be referred to as arrayed in the writ petition.

The affidavit filed in support of the writ petition discloses the following averments: The writ petitioners were provisionally engaged by the Society as Section Writers on daily wage basis during 1983-1986. Petitioners 1, 4, and 5, along with another, filed WP No.12503 of 1993 before this Court seeking absorption of their services as Section Writers/Junior Assistants/Junior Accountants on regular basis with effect from their original dates of

appointment. The said writ petition was disposed of, *vide* order dated 05.11.1997, directing the authorities of the Society to consider their cases for regularization if they were still in service and were entitled, keeping in view the judgment of this Court in **ANDHRA PRADESH SCHEDULED CASTES CO-OPERATIVE FINANCE CORPORATION V/ s. T.NIRANJANA RAO**¹. According to the writ petitioners, prior to the year 2006, the qualification required for appointment as a Junior Assistant was only SSC and Ch.Johnson, K.Yohan and Ch.L.N.Krishnan, petitioners 2, 3 and 6, were promoted as Junior Assistants in 1993 but their services were not regularized. It is their further case that similarly placed persons, namely, T.Niranjana Rao, K.Chittaiah, P.Pravan Kumar, N.Yacob, A.Srinivas and S.Suryanarayana Sarma, who had joined the service of the Society as non-muster roll employees on daily wage basis, were absorbed into regular service and were thereafter promoted up to the posts of Executive Officers. They further claimed that they fulfilled the norms stipulated in G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.04.1994 but despite the same, no measures were taken to regularize their services on par with the others. They stated that they were all paid salaries as per the time scale applicable to the post of Junior Assistant from 1993 onwards and were extended various allowances and benefits, including medical reimbursement. They therefore assailed the action of the Society in not regularizing their services as was done in the case of their colleagues and a consequential direction was sought to do so from the date of their initial appointment in the posts of Junior Assistants.

The authorities of the Society however contested their claims. According to them, the qualification required for appointment as a Junior

¹ 1993 (3) ALT 527

Assistant is Graduation and not SSC. Further, they claimed that there was no clear vacancy in the posts of Junior Assistants in the Society and there was no post of Section Writer at all in the approved staffing pattern. They denied that petitioners 2, 3 and 6 were promoted as Junior Assistants, as claimed by them. They pointed out that petitioners 2 and 3 had filed WP No.7482 of 1990 before this Court while the sixth petitioner filed WP No.10236 of 1990, wherein they were directed by this Court to file representations and thereupon the authorities were directed to consider the same within a time frame. According to the Society, they did not file any representations for reasons best known to them. The Society further claimed that the plea for regularization in service was duly considered and rejected as there were no sanctioned posts of Section Writers in the approved staffing pattern and due to non-availability of vacancies in the posts of Junior Assistants.

It may be noted that the District Collector/Chairman of the Society addressed letter dated 16.01.1998 to the Managing Director of the Andhra Pradesh Scheduled Castes Cooperative Finance Corporation Limited, Hyderabad, stating that the petitioners in W.P.No.12503 of 1993 had the required educational qualifications and were working as Section Writers, having been appointed as long back as in the year 1986, but as there were no sanctioned posts available, their services could not be absorbed on regular basis and therefore, an appeal required to be filed against the order passed in the writ petition. However, it appears that no such step was taken. It is also not in dispute that by separate proceedings of the District Collector/Chairman of the Society in December, 1993 and July, 1994, time scale was extended to Section Writers/Junior Assistants with effect from 12.10.1993, 08.12.1993 and 07.07.1994. These facts are set out in the proceedings dated 26.06.2007 of the Executive Director of the Society. He also noted

therein that such Section Writers/Junior Assistants were sanctioned increments with effect from 01.04.2000 to 31.05.2007. He noted that all the Section Writers were allotted regular work and were discharging their duties without adverse remarks. He further noted that they had been entrusted office work on par with regular employees of the Society and were eligible to be regularized in service. He concluded by saying that the six Section Writers had been continued in the regular scale of pay of Junior Assistants and were eligible for regularization of services on par with T.Niranjana Rao. By his later proceedings dated 22.07.2008, the Executive Director of the Society took note of the fact that petitioners 1 to 5 had completed eight incremental years service and appointed them to special grade with effect from 01.04.2008.

While so, the letter dated 16.10.2015 of the District Collector/Chairman of the Society addressed to the Vice Chairman & Managing Director of the Andhra Pradesh Scheduled Castes Cooperative Finance Corporation Limited, Hyderabad, demonstrates that while recording the fact that the petitioners were engaged on daily wage basis during the years 1983, 1985 and 1986 in the service of the Society and were also extended annual grade increments apart from other allowances, the District Collector/Chairman of the Society opined, on the strength of the enquiry report dated 12.10.2015 submitted by the Joint Collector-II, West Godavari District, that they were not entitled to the increments sanctioned to them from time to time and requested that the ineligible increments sanctioned to them should be cancelled immediately. He also mentioned the details of the officers who had sanctioned such increments and requested that disciplinary action be taken against them. In turn, the Vice Chairman & Managing Director of the Andhra Pradesh Scheduled Castes Cooperative Finance Corporation Limited,

Hyderabad, informed the District Collector/Chairman of the Society, *vide* letter dated 30.11.2015, that he himself was the competent authority to take a decision up to the cadre of Senior Assistant at the district level and requested the District Collector/Chairman of the Society to take appropriate action as per rules. The District Collector/Chairman of the Society thereupon issued the proceedings dated 16.12.2015 recording the fact that the petitioners were allowed minimum time scale from October/December, 1993 and from April, 1994 respectively and all of them were permitted to draw increments from 01.04.2000. He then adverted to the enquiry report of the Joint Collector-II, West Godavari District, and cancelled the proceedings issued in June 2007, July 2008, April 2009, April 2010, April 2011, April 2012, April 2013, June 2014 and February 2014, numbering 11 in all, with immediate effect and directed that the petitioners be continued in service as Section Writers on the minimum pay of Rs.7,740/- in the Revised Pay Scales, 2010, with usual allowances on temporary basis.

Perusal of the common order dated 26.08.2017 passed by the learned Judge reflects that a specific complaint was made by the writ petitioners, by way of WPMP No.54030 of 2015 filed in the writ petition, that they were not being paid salaries since September, 2015. Thereupon, the interim order dated 18.11.2016 came to be passed in this WPMP, directing payment of salaries to them. The learned Judge took note of the fact that they had all been promoted as Junior Assistants long ago but their salaries were stopped without putting them on notice on the ground that they were not entitled to the pay scale and annual grade increments attached to the said post. Adverting to the claim of the Society that there was no sanctioned post of Section Writer in its approved staffing pattern, the learned Judge rejected the same, pointing out that in T.NIRANJANA RAO¹, a Division Bench of

this Court had taken note of the existence of the post of Section Writer in the Society and directed his regularization as such with effect from 01.02.1993. The learned Judge referred to the fact that the proceedings dated 16.12.2015 of the District Collector/Chairman of the Society directing stoppage of increments along with other monetary benefits to the petitioners and reducing their pay to the minimum of the time scale did not disclose that any prior notice was given to them before taking such action and held that even if the Joint Collector-II, Warangal, had afforded them an opportunity during his enquiry, the Society necessarily had to consider their explanation in response to the said enquiry report and in consequence, there was only a token compliance with the principles of natural justice. The learned Judge accordingly concluded that no grounds were made out to vacate the interim orders dated 05.01.2016 and 18.11.2016 and accordingly dismissed the vacate stay petitions, making the said interim orders absolute.

Certain crucial aspects require be taken note of at this stage. The proceedings dated 16.12.2015 passed by the District Collector/Chairman of the Society were not subjected to challenge in WP No.41896 of 2015. The prayer in the main writ petition was only to declare the action of the Society in not regularizing the services of the writ petitioners as was done in the case of other colleagues as illegal and to direct the authorities to regularize their services from the date of their joining in the posts of Junior Assistants along with all consequential benefits. In so far as their interim prayer was concerned, they merely sought release of salaries with 2015 Pay Revision forthwith, pending disposal of the writ petition. This interlocutory petition was numbered as WPMP No.54030 of 2015. WPMP No.347 of 2016 in WP No.41896 of 2015 was filed by them in January, 2016, seeking a direction to the District Collector/Chairman of the Society and the Executive Director of

the Society, the fourth and fifth respondents, to release their salaries along with the 2015 Pay Revision by suspending the proceedings dated 12.10.2015, 16.10.2015 and 16.12.2015. The order dated 05.01.2016 was passed in this WPMP granting interim suspension of the proceedings dated 16.12.2015. As already pointed out *supra*, these proceedings were not even subjected to challenge in the writ petition.

It was only thereafter that the order dated 18.11.2016 came to be passed in the earlier WPMP, i.e., WPMP No.54030 of 2015, directing payment of arrears of salaries and future salaries pending disposal of the writ petition. Having filed vacate stay petitions in relation to both the aforestated orders, the authorities of the Society strangely restricted their grievance only to the later order dated 18.11.2016 passed in WPMP No.54030 of 2015 which was made absolute. They did not file any appeal in relation to the interim suspension of the proceedings dated 16.12.2015, which was granted on 05.01.2016 in WPMP No.347 of 2016 filed in the writ petition, which has now been made absolute by the common order dated 26.08.2017. When the said proceedings were not even subjected to challenge in the writ petition, perhaps that would have been a wiser course for them to have adopted. Instead, they chose to file this writ appeal only against the confirmation of the interim order dated 18.11.2016 requiring them to pay and continue to pay salaries.

In this regard, it may also be noted that if the proceedings dated 16.12.2015 of the District Collector/Chairman of the Society remain suspended, rightly or otherwise, the question of stopping the salaries claimed by the writ petitioners as a consequence thereof does not arise. The direction in WPMP No.54030 of 2015 to release their salaries from September, 2015, would therefore find sustenance in the continued interim

suspension of the proceedings dated 16.12.2015 which remains unchallenged. The authorities of the Society therefore cannot maintain this appeal against such a direction when they ostensibly have no grievance with regard to the suspension of the proceedings dated 16.12.2015 passed by the District Collector/Chairman of the Society, which was made absolute by the very same common order. Further, there is no getting over the clear violation of the principles of natural justice pointed out by the learned Judge.

That apart, even on merits, it may be noticed that there is no clarity on the part of the Society in its dealings with the petitioners. It is an admitted fact that they were all engaged long ago in the years 1983, 1985 and 1986. They were allowed the minimum time scale from 1993-1994 and sanctioned increments from the year 2000. Though Mr. D.Ramesh, learned Special Government Pleader, would contend that not only disciplinary proceedings but also criminal proceedings have been initiated against all concerned in the exercise of release of such benefits to the petitioners, including the petitioners themselves, the fact remains that this was not a surreptitious or clandestine exercise which was kept under wraps. The factum of the petitioners filing WP No.12503 of 1993 and the steps taken thereafter, including the release of the minimum time scale, increments, allowances etc., would have been well within the knowledge of the authorities of the Society at all levels. The proceedings placed before this Court reflect that the Accounts Department of the Society was not kept in the dark with regard to release of such benefits to them. It is therefore too late in the day for the authorities of the Society to blithely blame some of the employees and claim ignorance of what was being done all along. Further, there is no explanation as to why the services of the petitioners were not regularized on par with T.Niranjana Rao, who seems to have been similarly

situated and who secured relief from this Court in T.NIRANJANA RAO¹ as long back as in October, 1993.

Though Mr.D.Ramesh, learned Special Government Pleader, would place reliance on RAM PREETI YADAV V/ s. U.P.BOARD OF HIGH SCHOOL AND INTERMEDIATE EDUCATION², we are of the opinion that this judgment is of no avail to the Society as it involved a case of fraud. No doubt, criminal proceedings have been initiated against the petitioners also but as already pointed out *supra*, everything that happened seems to have been in the open, right from the beginning, and there is no material placed before this Court to infer any fraud having been played by the writ petitioners in securing monetary benefits, be it in the year 1993 or in the year 2000 or even thereafter.

Mr.D.Ramesh, learned Special Government Pleader, would further contend that when the prayer of the petitioners in the main writ petition was for regularization of their services, the question of extending to them the regular pay scale along with additional benefits, including increments, medical reimbursement etc., would not arise at the interlocutory stage. Though, technically, this premise is sound, the facts of the case on hand mandate a deviation from the standard norm. When the Society, in its own wisdom, decided to extend to the petitioners the regular pay scale along with all incidental benefits as long back as in the year 2000, it is not open to it to bank on such technical pleas and seek to turn back the clock. It would be wholly arbitrary and unjust at this stage to undo and retract the benefits that were extended to the writ petitioners, so that they are reduced in rank and pay after all these years. This argument therefore does not merit consideration.

² (2003) 8 SCC 311

On the above analysis, this Court finds that, be it on technicalities or on merits, no grounds are made out to interfere with the order under appeal in so far as it pertains to WPMP No.54030 of 2015 in WP No.41896 of 2015.

The writ appeal is therefore devoid of merit and is accordingly dismissed.

Interim order dated 13.03.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

28th SEPTEMBER, 2018
PGS

