

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.A. No. 418 of 2018

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ appeal is preferred against the order dated 24.07.2017 in W.P.(TR).No. 20 of 2017 passed by learned Single Judge of this Court.

The brief facts of the case are that the respondent herein, who is the writ petitioner, was appointed as NMR Gang Cooli on 04.02.1986. Later on, the respondent was called NMR Typist. Earlier, typing work was attended by a Clerical Attender, who had knowledge of typing, and after his transfer, the respondent's services were utilized as NMR Typist in Gram Panchayat. Having appointed the respondent as NMR Gangman, the Sarpanch of the Gram Panchayat addressed a letter dated 29.12.1986 requesting the Collector (Panchayat Wing) to sanction one post of Typist on NMR basis out of 9 posts of Gangman proposed in the resolution of the Gram Panchayat dated 31.10.1986. In response to that letter, the District Panchayat Officer, vide Memo dated 22.07.1987, permitted Gram Panchayat to engage one Typist out of ten sanctioned posts on payment of daily wages. By proceedings dated 23.07.1987, the Executive Officer of the Gram Panchayat appointed the respondent as Typist on daily wage

on NMR basis as per the wages fixed by the District Collector. The respondent continued to work in the Gram Panchayat in the same capacity and retired from service on attaining the age of superannuation ordinarily prescribed to Government servants. The respondent instituted O.A.No. 6773 of 2011 seeking to declare the action of the appellants in not regularizing her services, as arbitrary and violative of Articles 14, 16, 21 and 39 D of the Constitution and consequently direct them to regularize the services with effect from 22.04.1994 as per G.O.Ms.No. 212, dated 22.04.1994. On 11.09.2011, the District Panchayat Officer issued proceedings rejecting the proposal of the Gram Panchayat to regularize the services of the respondent as Typist on the ground that the post of Typist does not exist. The Tribunal directed consideration of the respondent's claim for regularization. In response to the interim orders passed by the Tribunal, the Deputy Commissioner (Panchayat Raj), Office of the Commissioner, passed orders on 06.08.2014 rejecting the request of the respondent holding that since no post of Typist is sanctioned in the staffing pattern and that the respondent is not covered by provisions of G.O.Ms.Nos. 212 and 112, the claim of the respondent for regularization of her services as Typist cannot be granted. The respondent sought amendment of the prayer originally in O.A. and the same was granted.

The present O.A. is transferred to this Court on exclusion of jurisdiction of A.P. Administrative Tribunal regarding service disputes concerning the State of Telangana.

The learned Single Judge of this Court, while considering rival contentions, directed the appellants to regularize the services of the respondent in Class-IV post on completion of 5 years of service or 25.11.1993 whichever is later and grant retirement benefits by treating the services from that date as regular and work-out the retirement benefits including pension payable to her. It is further directed that the respondent is entitled to payment of arrears of amount consequent to the regularization from the date of institution of O.A.No. 6773 of 2011 before the A.P. Administrative Tribunal. It is further directed that the entire exercise shall be completed and arrears of amounts due and sanction of pension shall be made as expeditiously as possible, preferably within a period of three months.

The present appeal is filed on the ground that the learned Single Judge ought to have seen that the respondent was not appointed as NMR against the sanctioned post and therefore, treating the post in which the respondent worked, as regular post of the appellant –establishment, is contrary to law. Moreover, the learned Judge ought to have seen that as per the seniority list of erstwhile Khammam District, there

were 42 members, who were senior to the respondent, and moreover 9 members, who were engaged as NMPs. along with the respondent's services, were not regularized, and therefore, the respondent is not entitled to regularization of services as Class-IV employees.

The learned Government Pleader for Services (Telangana) appearing on behalf of the appellants, submits that the Government issued G.O.Ms.No. 112, dated 23.07.1997 by framing guidelines for regularization of services of employees, wherein the respondent has not fulfilled the requirement and already 12 members were regularized in vacant posts, and therefore, in the absence of any scheme directing regularization of services of the respondent, is contrary to the guidelines mentioned above. Thus, this appeal may be allowed.

The fact remains that the respondent was initially engaged against one of the 10 posts of Labourer which were sanctioned and she worked continuously till she attained the age of superannuation. Accordingly, the learned Single Judge opined that it is deemed that the post of Labourer is permanently sanctioned, therefore, her services ought to have been considered for regularization to any of the posts under Group IV category so sanctioned or available over a period of time.

We are of the view that continuing the respondent as Typist for more than 30 years without granting her service benefits amounts to arbitrary exercise of power and is contrary to the constitutional provisions and settled principle of law. Since sanction was accorded and the competent authority appointed the respondent, her initial appointment cannot be said to be illegal. Therefore, the appellants have gravely erred in not looking into the grievance of the respondent to grant her some benefits having utilized her services for a long time. At least, the appellants ought to have regularized her services in Class – IV category even assuming that posts of Typists cannot be created.

In view of the fact that the respondent has worked for more than 30 years, we find no ground to interfere with the well-reasoned order dated 24.07.2017 passed by the learned Single Judge.

The writ appeal is devoid of merit and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

12.06.2018

ABHINAND KUMAR SHAVILI, J

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