

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CONTEMPT CASE No.2592 OF 2016

AND

WV.MP.No. 5266 of 2017

IN

WP.MP.No.44230 OF 2016

IN/AND

WRIT PETITION No.35890 OF 2016

COMMON ORDER :

Parties will hereinafter be referred to as per their array in the Writ Petition.

Petitioner is the wife of one K.Nageshwar Rao, who was killed by extremists on 04.05.1989 without any reason. She was granted a sum of Rs.10,000/- as a temporary relief. She also sought employment under rehabilitation scheme for Schedule Castes and Schedule Tribes framed under G.O.Ms.No.29 dt.08.03.1985.

3. Under the said Scheme, apart from monetary relief, other rehabilitation measures including providing of employment to victims of atrocities such as the petitioner are provided. In particular, clause (x) states as under:

“(x) - Government Employment: In case of death or permanent incapacitation, one eligible member of the family including children or wife/husband or any adult member who would look after the family may be appointed to a suitable post under the Government or any Public Undertaking without the medium of Employment Exchange in relaxation of

the existing rules in this respect. After filling up the vacancy, the appointing authority will furnish all relevant particulars of the individual to the Employment Exchange with reference to the appointment made under this order. Such appointments should be made either by the District Collector concerned or with the prior approval of the District Collector.”

4. Though the said provision contemplated regular employment, petitioner was appointed as a Daily Wage Worker on 03.05.1991 in Government Social Welfare Girls Hostel, Mulkanur. She joined in the said post in May, 1991 and has been working since then for the last 25 years. She submitted representations to the 3rd respondent seeking permanent employment on 10.12.2014 and 21.09./2015.

5. Petitioner approached the A.P. Administrative Tribunal by filing O.A.No.606 of 2015 and the OA was disposed of on 14.10.2015 directing the 3rd respondent to dispose of her representation and also pass orders regarding payment of regular scale/minimum time scale within a period of six weeks.

6. Thereafter, proceedings No.A2/511/2010 dt.28.11.2015 were issued by the 3rd respondent stating that the petitioner did not fulfill the condition of completing 5 years of service as on 25.11.2015 as stipulated in G.O.Ms.No.112 dt.23.07.1997 and that she is not eligible for regularization of services. It is mentioned therein that petitioner is again given appointment as

Kamati in Government Social Welfare Girls Hostel, Husnabad in an existing vacancy in a time scale as against Roster Point No.71.

7. Later on 22.08.2016, the 3rd respondent issued a show cause notice to her, why her appointment to the post of Kamati issued in the proceedings dt.28.11.2015 shall not be cancelled.

8. Petitioner submitted an explanation thereto relying on G.O.Ms.No.29 dt.08.03.1985 and contending that G.O.Ms.No.212 dt.22.04.1999 would not be applicable to her.

9. On 26.08.2016, within four (04) days of the issuance of show cause notice, the 2nd respondent passed an order canceling the petitioner's appointment as Kamati and stating that she would continue as Daily Wage Worker at the same place.

10. Though the 3rd respondent referred to G.O.Ms.No.29, it is stated by the 3rd respondent that there is no specific order to provide permanent or temporary job and once she was appointed as a Daily Wage Worker, her regularization would be done only as per G.O.Ms.No.212 dt.22.04.1994 and that her services cannot be regularized for not fulfilling the condition of 5 years of service as on 25.11.1993 and availability of regular vacancies. It is also held that the petitioner is not eligible for regular appointment even now.

11. Aggrieved thereby, this Writ Petition is filed by the petitioner.

12. On 25.10.2016 in WP.MP.No.44230 OF 2016 in Writ Petition No.35890 of 2016 this Court passed the following order:

“Prima facie, the impugned order canceling the petitioner’s services cannot be sustained since the petitioner was given only two days time to submit explanation to the show cause notice. Moreover, the failure to regularize the services of the petitioner, even though she has been employed as Daily Wage Worker since May, 1991 without break, is not the fault of the petitioner for which she cannot be penalized by canceling her appointment order as a regular worker issued on 28.11.2015, by the 3rd respondent.

Therefore, there shall be interim direction as prayed for.”

13. Pursuant to this order, the petitioner claims that she should be continued in the post of Kamati at Government Social Welfare Hostel, Husnabad and that the impugned proceeding dt.26.08.2016 issued by the 3rd respondent stood suspended by the interim order dt.25.10.2016 passed in the above WP.MP.

14. When this order was not implemented, petitioner filed C.C.No.2592 of 2016 before this Court contending that she represented on 25.10.2016 to the respondents to implement the order dt.25.10.2016, but they have not implemented the same.

15. Thereafter, WV.MP.No.5266 of 2017 has been filed by the respondents to vacate the said interim order.

16. The respondents stick to the stand taken in the impugned order. The Government Pleader for Services also adopts the contentions recorded in the impugned order, which are reiterated in the counter.

17. From the facts narrated above, it is clear that there is no dispute about the petitioner being a widow of a person, who has been killed by extremists, and also the fact that she belongs to SC Community.

18. The government policy contained in G.O.Ms.No.59 Social Welfare(H) Department dt.08.03.1985 is to not only provide monetary relief but also to provide rehabilitation measures to the members of SC and ST, who are victims of atrocities committed by members of other communities.

19. Clause (x) thereof specifically provides for providing of employment to the member of the family in the event of death or permanent incapacitation of the bread winner of the family.

20. Therefore, in the first place, the petitioner ought to have been appointed as a permanent employee in the Government Social Welfare Girls Hostel, Mulkanuru on 03.05.1991 but sadly she was appointed on daily wage basis. When this continued, she had approached the Administrative Tribunal, which asked the 3rd respondent to consider her case for regularization.

21. The 3rd respondent initially on 28.11.2015 rightly understood the purport of G.O.Ms.No.29 dt.08.03.1985 and order of the Administrative Tribunal and directed appointment of petitioner as Kamati in the Government Social Welfare Girls Hostel, Husnabad, though there is an observation in the said order, that petitioner was not eligible for regularization of services since she has not completed 5 years of service as on 25.11.2015 as stipulated in G.O.Ms.No.212 dt.22.04.1999 and G.O.Ms.No.112 dt.23.07.1997.

22. However, the same Officer, within nine months did a volt face and passed the impugned cancellation order dt.26.08.2016.

23. It is unfortunate that an Officer, holding the post of District Collector, does not understand the policy of the Government in G.O.Ms.No.29 dt.08.03.1985 dealing with victims of atrocities and shows lack of compassion towards the petitioner and simply terminates her services and directs that she be continued as a Daily Wage Worker.

24. This conduct of the 3rd respondent shocks the conscience of the Court.

25. In a conflict between the policy annunciated in G.O.Ms.No.29 dt.08.03.1985 and the policy of regularization in G.O.Ms.No.212 dt.22.04.1999, in the considered opinion of this Court, the policy in G.O.Ms.No.29 dt.08.03.1985 to provide permanent rehabilitation in a permanent job, ought to prevail over

the provision for regularization mentioned by the 3rd respondent or in G.O.Ms.No.212 dt.22.04.1999.

26. It is a travesty of justice to not appoint the petitioner in a permanent job initially itself in 1991 and take away the permanent job which she was given on 28.11.2015 and compel her to continue as a Daily Wage Worker, in spite of the policy of the Government contained in G.O.Ms.No.29 dt.08.03.1985.

27. Therefore, the Writ Petition is allowed; the impugned order dt.26.08.2016 passed by the 3rd respondent is set aside on the ground that it is arbitrary, perverse and shocks the conscience of the Court apart from being violative of Articles 14, 16 and 21 of the Constitution of India; and a direction is given to the respondents to continue the petitioner as Kamati as per the order dt.28.11.2015 issued to her by the 3rd respondent; and the 3rd respondent shall also pay the scale of pay in the said post to the petitioner from 28.11.2015 till date, after deducting the emoluments she received as a Daily Wage worker, with interest @ 9% per annum. The 1st respondent shall also pay costs of Rs.20,000/-to the petitioner.

28. In view of this order, the Contempt Case is closed. However, liberty is given to the petitioner to file a fresh Contempt Case in case the final order passed in the Writ Petition is not implemented.

29. Consequently, WV.MP.No.5266 of 2017 is dismissed. Miscellaneous petitions pending if any, in both the Writ Petition and the Contempt Case, are dismissed.

M.S. RAMACHANDRA RAO, J

24th January, 2018.

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