

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION Nos.5556, 8486 and 8968 OF 2018

COMMON ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. All the writ petitions are heard together and are being disposed of by this Common order since the issue involved in these petitions is one and the same.

2. The above writ petitions are filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with the awards passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.3873 of 2014, dated 10.8.2017 and O.A.No.2369 of 2014 dated 6.7.2017, and to quash the same by declaring them as illegal and arbitrary, and consequently, to declare that the petitioners are entitled for regularization, for minimum time scale of pay, D.A., annual grade increments and other allowances with effect from the date of judgment dated 10.4.2006 rendered in **Secretary, State of Karnataka Vs. Uma Devi's** case, along with arrears.

3. For the sake of convenience, the facts in W.P.No.5556 of 2018 are dealt with.

4. Heard Sri G. Venkateswarlu and Sri G.R. Sudhakar, learned Counsel for the petitioners and the learned Government Pleader for Services I.

5. Brief facts of the case are as follows:

The petitioners are working in various capacities as Work Inspector, Office Assistant, Shroff Assistant, Electrician, Turn Cook, Mineral Water Plant in charge, Distribution Worker, Ladder Vehicle Driver Helper, Ladder Vehicle Driver, Jeep Driver, Water Tanker Helper, Tanker Driver, Well Repairer, Pump House Cleaners in Nandyal Municipality, Kurnool District. All of them have been working on daily wage basis as sub-staff either as temporary or contract or NMRs etc., since 1994. They filed the O.As impugned questioning non-regularization of their services from the date of completion of their five years of service and claiming that they are entitled for regularization under G.O.Ms.No.212 Finance and Planning (PC.III) Department, dated 22.4.1994. The Tribunal dismissed the O.As. Aggrieved by the same, the present writ petitions have been filed.

6. The learned Counsel for the petitioners contends that the respondent-authorities are not considering the case of the petitioners for regularization in spite of the fact that they have been working on par with the regular employees for the last several years

and that the learned Tribunal without perusing the material on record, erroneously dismissed the O.As. He further contends that similarly situated persons working under the same Municipality approached the learned Tribunal relying upon the judgment rendered in **Uma Devi's** case, upon which, the learned Tribunal directed the respondents therein to sanction and pay minimum time scale of pay, and that the said order of the Tribunal was upheld by this Court, whereas in respect of the petitioners in the present case, the learned Tribunal dismissed the O.As filed by them without considering the material on record. He further contends that as per the law laid down by this Court in W.P.No.26788 of 2017 dated 10.8.2017, the petitioners herein are entitled to the benefit, which extended to the petitioners therein.

7. The learned Government Pleader for Services I contends that as per G.O.Ms.No.212, dated 22.4.1994, the NMRs who put in continuous services of five years by the cut off date 25.11.1993 are entitled for regularization and the petitioners were admittedly appointed after cut off date during 1994 to 2004 and therefore, they are not entitled for regularization. Further, it has been contended that all the petitioners are engaged by a contractor and they are not engaged directly by Nandyal Municipality, and the wages are also not being paid by the Municipality directly to the petitioners. It has been further contended that the contractor placed the services of

the petitioners on outsourcing basis in the Municipality. It has been further contended that the case of the petitioners in the present writ petition and the case of the petitioners in W.P.No.26788 of 2017 are different and that the petitioners in W.P.No.26788 of 2017 were engaged by Kavali Municipality and wages were paid to them directly by Kavali Municipality, whereas in the present case the petitioners were engaged by a Contractor, and therefore, the claim of the petitioners is not sustainable.

8. We have considered the rival submissions made by the parties. From the material available on record, it is obvious that the nature of the duties being performed by the petitioners is perennial and the services of the petitioners have been continued since more than two decades. Though the petitioners initially sought a direction to regularize their services, but subsequently, they had given up their claim for regularization of their services, and filed miscellaneous applications before the Tribunal seeking for amendment of the prayer, and seeking only payment of minimum time scale of pay attached to their respective posts in the respondent-municipality.

9. It is pertinent to note that in identical circumstances in W.P.No.26788 of 2017, wherein the persons, who were working in Kavali Municipality, sought minimum time scale of pay, this Court

vide order dated 10.8.2017 held that the petitioners therein are entitled for grant of minimum time scale of pay and in addition to that, they are also entitled for grant of increments from time to time in the time scale of pay. But however, this Court in the above Writ Petition restricted the arrears only from the date of filing of the O.A. by the petitioners therein.

10. Apart from that, the Hon'ble Supreme Court in **State of Punjab and others Vs. Jagjit Singh and others**¹ considered the principle of equal pay for equal work and held that the persons who are discharging their duties on par with regular employees are entitled to the minimum scale of pay under the principle of equal pay for equal work.

11. In the light of the judgments referred to supra and in view of the fact that the services of the petitioners have been continued since two decades, we are of the view that the petitioners are entitled to minimum time scale of pay under the principle of equal pay for equal work, even though they were engaged by a private contractor. Therefore, the orders passed by the A.P. Administrative Tribunal Hyderabad in O.A.No.3873 of 2014, dated 10.8.2017 and O.A.No.2369 of 2014 dated 6.7.2017, are set aside.

¹ Civil Appeal No.213 of 2013, dated 26.10.2016

12. Accordingly, the Writ Petitions are allowed. The respondents are directed to grant minimum time scale of pay to the petitioners and also to add annual grade increments as and when they fell due from time to time. However, the petitioners are entitled to all the arrears from the date of filing of the O.As before the Tribunal. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd August, 2018.
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(Common Order delivered by the Hon'ble Sri Justice Abhinand Kumar Shavili)

23/08/2018

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