

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION Nos.33936 OF 2011;
20670, 24600, 36602 OF 2012;
35377 OF 2013;
39226 OF 2016;
11394, 11930, 21559, 21561, 21583, 21586 OF 2017;
2212, 2268, 4513 AND 6984 OF 2018

W.P.No.33936 of 2011

The Government of A.P. rep. by its
Principal Secretary, PR & RD Department
and others

... Petitioners

Vs.

N.Venkaiah and others

... Respondents

W.P.No.20670 of 2012

The Government of A.P. rep. by its Principal
Secretary, Municipal Administration &
Urban Development Department and others

... Petitioners

Vs.

G.Srinivasulu and others

... Respondents

W.P.No.24600 of 2012

The Zilla Parashad, Khammam

... Petitioner

Vs.

S.K.Rabbani and others

... Respondents

W.P.No.36602 of 2012

The Commissioner, Nagarapanchayat,
Sattupalli and another

... Petitioners

Vs.

P.Sivabalagangadhara Rao and others

... Respondents

W.P.No.35377 of 2013

The Government of A.P. rep. by its
Principal Secretary, Tribal Welfare Department
and others

... Petitioners

Vs.

T.Satyanarayana and others

... Respondents

W.P.No.39226 of 2016

The State of Andhra Pradesh rep. by its
Principal Secretary, Agriculture & Cooperation
(Hort.) Department and others

... Petitioners

Vs.

J.Chandra and another

... Respondents

W.P.No.11394 of 2017

N.Chandrasekhar

... Petitioner

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, MA & UD Department
And others ... Respondents

W.P.No.11930 of 2017

D. Laxmi Bai and others ... Petitioners

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, MA & UD Department
And others ... Respondents

W.P.No.21559 of 2017

A.Rammohan Reddy ... Petitioner

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, Municipal Administration &
Urban Development Department
And others ... Respondents

W.P.No.21561 of 2017

C.Mohan ... Petitioner

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, Municipal Administration &
Urban Development Department
And others ... Respondents

W.P.No.21583 of 2017

T.Ranga Chary ... Petitioner

Vs.

The State of Andhra Pradesh rep. by its
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And others ... Respondents

W.P.No.21586 of 2017

N.Prasad and others ... Petitioners

Vs.

The State of Andhra Pradesh rep. by its
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And others ... Respondents

W.P.No.2212 of 2018

P.S.Murali Mohan ... Petitioner

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, Municipal Administration &
Urban Development Department
And others ... Respondents

W.P.No.2268 of 2018

V.Munaswamy and others ... Petitioners

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, Municipal Administration &

Urban Development Department
And others

... Respondents

W.P.No.4513 of 2018

C.Krishnappa and another

... Petitioners

Vs.

The State of Andhra Pradesh rep. by its
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Urban Development Department
And others

... Respondents

W.P.No.6984 of 2018

The State of Andhra Pradesh rep. by its
Secretary, Finance and Planning (Ser)
Department and others

... Petitioners

Vs.

P.Jamal Basha and others

... Respondents

Date of Judgment Pronouncement: 2nd MAY, 2018

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to
see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

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> Head Note:

WP No.33936 of 2011

! Counsel for petitioners : GP for Services II
^ Counsel for respondent 1 : Sri S.Satyanarayana Rao
^ Counsel for respondents 2 and 3 : --

WP No.20670 of 2012

! Counsel for petitioners : GP for Services I
^ Counsel for respondents 1 to 3 : Sri P. Raghavender Reddy
^ Counsel for respondent 4 : --

WP No.24600 of 2012

! Counsel for petitioner : Sri P.Raghavender Reddy
^ Counsel for respondent 1 : Sri S.Satyanarayana Rao
^ Counsel for respondents 2 and 3 : GP for Panchayat Raj

WP No.36602 of 2012

! Counsel for petitioners : Sri N.Praveen Kumar
^ Counsel for respondent 1 : Sri P.Raghavender Reddy
^ Counsel for respondents 2 to 4 : GP for Services I

WP No.35377 of 2013

! Counsel for petitioner : GP for Services III
^ Counsel for respondent 1 : Sri M.Bharat Shah
^ Counsel for respondents 2 and 3 : --



WP No.39226 of 2016

! Counsel for petitioner : GP for Services I
 ^ Counsel for respondent 1 : Sri Kamalakara Rao Bathina
 ^ Counsel for respondents 2 : --

WP No.11394 of 2017

! Counsel for petitioner : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 to 3 : GP for Municipal Administration and Urban Development
 ^ Counsel for respondent 4 : --

WP No.11930 of 2017

! Counsel for petitioners : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1, 3 & 4 : GP for Municipal Administration and Urban Development
 ^ Counsel for respondent 2 : GP for Finance & Planning
 ^ Counsel for respondent 5 : --

WP No.21559 of 2017

! Counsel for petitioner : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 & 3 : GP for Municipal Administration and Urban Development
 ^ Counsel for respondents 2, 4 & 5 : --

WP No.21561 of 2017

! Counsel for petitioner : Sri P.Raghavender Reddy
 ^ Counsel for respondent 1 : GP for Municipal Administration and Urban Development
 ^ Counsel for respondent 2 : GP for Services
 ^ Counsel for respondents 3 to 5 : --

WP No.21583 of 2017

! Counsel for petitioner : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 & 2 : GP for Services
 ^ Counsel for respondents 3 and 4 : --

WP No.21586 of 2017

! Counsel for petitioners : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 & 3 : GP for services
 ^ Counsel for respondent 2 : GP for Finance & Planning
 ^ Counsel for respondents 4 & 5 : --

WP No.2212 of 2018

! Counsel for petitioner : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 & 3 : GP for Municipal Administration and Urban Development
 ^ Counsel for respondent 2 : GP for Finance & Planning
 ^ Counsel for respondent 4 : --

WP No.2268 of 2018

! Counsel for petitioners : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 & 3 : GP for Municipal Administration and Urban Development
 ^ Counsel for respondent 2 : GP for Finance & Planning

^ Counsel for respondent 4 : --

WP No.4513 of 2018

! Counsel for petitioners : Sri P.Raghavender Reddy
 ^ Counsel for respondents 1 & 3 : GP for Municipal Administration
 and Urban Development
 ^ Counsel for respondent 2 : GP for Finance & Planning
 ^ Counsel for respondent 4 : --

WP No.6984 of 2018

! Counsel for petitioners : GP for Services (AP)
 ^ Counsel for respondents 1 to 4 : Sri S.Krishna Sharma
 ^ Counsel for respondents 5 to 8 : --

? CASES REFERRED:

1. Civil Appeal No.6318 of 2015 decided on 17.08.2015
2. (2009) 8 SCC 480
3. (2009) 8 SCC 431
4. (2006) 4 SCC 1
5. 2014 (5) ALT 662 (D.B.)
6. 3(2010) 2 SCC 422
7. (2009) 5 SCC 65



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COMMON ORDER

(*per* Hon'ble Sri Justice Sanjay Kumar)

The core issue in this batch of cases is as to the scope of regularization of services under G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.04.1994 (*hereinafter*, 'G.O.Ms.No.212'). All the employees in these cases were regularized in service under the said G.O. but they seek benefit of such regularization from earlier dates.

W.P.No.33936 of 2011 was filed by the Government of Andhra Pradesh and its officials in the Panchayat Raj Department assailing the order dated 20.07.2011 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.433 of 2008. The said O.A. was filed by the first respondent in the writ petition. He was appointed as a Bill Collector in the service of the Karamchedu Gram Panchayat, Prakasam District, on 01.07.1988 on temporary basis. He filed O.A.No.8588 of 2000 before the Tribunal seeking regularization of his services as a Bill Collector from the date of his initial appointment. The said O.A. was allowed on 27.04.2001 holding that he was entitled to be regularized in service with all consequential benefits. The authorities were directed to regularize his services in terms of G.O.Ms.No.212 with all consequential benefits within a time frame. He moved contempt proceedings before the Tribunal and the District Panchayat Officer,

Prakasam District, issued proceedings dated 22.11.2002 rejecting his case for regularization. However, when personal appearance of the District Panchayat Officer was ordered by the Tribunal, G.O.Rt.No.1186, Panchayat Raj & Rural Development (Estt.IV) Department, dated 21.08.2007 was issued regularizing his services as a Bill Collector from the date of issuance of orders by the competent appointing authority, i.e., prospectively. Aggrieved by the denial of regularization from the date of his initial appointment with all consequential benefits in terms of the order dated 27.04.2001 in O.A.No.8588 of 2000, the first respondent/applicant filed O.A.No.433 of 2008. By the order under challenge, the Tribunal observed that the earlier order dated 27.04.2001 passed in O.A.No.8588 of 2000, holding the first respondent/applicant entitled to regularization in service as per G.O.Ms.No.212, had not been implemented until contempt proceedings were initiated before it and personal appearance of the District Panchayat Officer was ordered therein. The Tribunal noted that the authorities took six years to implement the earlier order though the time frame stipulated therein was only two months. The Tribunal accordingly held the first respondent/applicant entitled to regularization in service from July, 1993, as he had completed five years in service by then, and accordingly set aside G.O.Rt.No.1186 dated 21.08.2007 to that extent. The authorities were directed to regularize the services of the first respondent/applicant from the date on which he completed five years of continuous service, along with all consequential benefits, including notional fixation of pay, without arrears of pay. By order dated 06.02.2012, this Court granted interim suspension of the order under challenge. W.V.M.P.No.1349 of 2012 was filed by the first respondent/applicant to vacate the said order.

In W.P.No.20670 of 2012, respondents 1 to 3 were appointed as Non-Muster Roll (NMR) employees in Tirupathi Municipal Corporation in the year 1983. Their services were terminated in 1984 but they were again reinstated in service in 1988. When they were denied continuity of service, they approached the jurisdictional Labour Court by filing individual Industrial Disputes and basing on the awards passed therein, they were extended the benefit of continuity of service for the purpose of regularization. They then approached the Tribunal by filing O.A.No.2224 of 2000 seeking regularization of their services. By order dated 27.02.2001, the Tribunal disposed of the said O.A. directing the authorities to consider their claims for regularization. G.O.Rt.No.705, Municipal Administration & Urban Development (D2) Department, dated 23.06.2010 was issued regularizing their services against the posts of Public Health Workers in terms of G.O.Ms.No.212 from the date of issuance of the orders, subject to the condition that the said vacancies were clear, regular and continued from time to time till that date. Aggrieved by the denial of retrospective regularization from the date of completion of five years or with effect from 25.11.1993, the cut-off date stipulated in G.O.Ms.No.212, respondents 1 to 3 filed O.A.No.7908 of 2011 before the Tribunal. By order dated 22.09.2011, the Tribunal opined that the issue was squarely covered by its earlier order dated 19.01.2011 in O.A.No.8095 of 2008 and held that the respondents 1 to 3 in the writ petition were entitled to regularization of services with effect from the date on which they completed five years of continuous service as per G.O.Ms.No.212. They were however held disentitled to arrears of pay but held entitled to notional fixation of pay and seniority. The period spent on daily wage service was directed to be considered for the purpose of

qualifying service for fixing pension from the date of completion of five years or from 25.11.1993, in terms of G.O.Ms.No.212. Aggrieved by these directions, the State preferred the writ petition. By order dated 10.07.2012, taking note of the fact that the order in O.A.No.8095 of 2008 was subjected to challenge before this Court in W.P.No.26665 of 2011 wherein interim suspension thereof was granted, this Court granted interim suspension of the order under challenge. W.V.M.P.No.1309 of 2017 was filed by respondents 1 to 3 to vacate the said order.

In W.P.No.24600 of 2012, the first respondent was appointed as a NMR employee in the Zilla Parishad, Khammam, on 01.06.1988. His services were regularized *vide* G.O.Rt.No.682, Panchayat Raj and Rural Development (Estt.V) Department, dated 16.05.1998 against the post of Sweeper-cum-Watchman with prospective effect. Aggrieved by denial of regularization in service from the date that he completed five years in service in terms of G.O.Ms.No.212, he approached the Tribunal by way of O.A.No.8974 of 2011. By order dated 23.11.2011, the Tribunal took note of the submission that the issue was squarely covered by the earlier order dated 20.07.2011 passed in O.A.No.433 of 2008, wherein the authorities were directed to regularize the services of the applicant therein from the date on which he completed five years of continuous service and accordingly disposed of the O.A. directing the authorities to regularize the services of the first respondent from the date on which he completed five years of continuous service. He was also held entitled to all consequential benefits, including notional fixation of pay, but not arrears of pay. Aggrieved thereby, the respondents in the O.A. filed the writ petition. By order dated 09.08.2012, this Court granted interim suspension of the order under challenge.

In W.P.No.36602 of 2012, the first respondent was appointed as a NMR Sweeper in Sattupalli Gram Panchayat, Khammam District, in May, 1987. Sattupalli Gram Panchayat was upgraded as a Nagar Panchayat thereafter. He earlier approached the Tribunal during the year 2009 and pursuant to the order secured by him, he was given minimum time scale with effect from 01.06.2009. A proposal was also sent to the Government for regularization of his services. However, it was only by way of G.O.Rt.No.1132, Municipal Administration and Urban Development (G2) Department, dated 08.09.2011, that his services were regularized with effect from the date of issuance of orders by the competent appointing authority subject to the condition that the vacancy was clear, regular and continued from time to time till that date. Aggrieved by denial of regularization from the date he completed five years of service, he approached the Tribunal once again by way of O.A.No.5938 of 2012. By common order dated 25.07.2012 passed in the said O.A. and other O.A.s., the Tribunal took note of the fact that a similar case in O.A.No.8946 of 2011 was disposed of by order dated 22.11.2011, wherein the earlier order dated 19.01.2011 passed in O.A.No.8095 of 2008 was taken note of, and the authorities were directed to regularize the services of all the applicants in the O.A.s. with effect from 25.11.1993 as per G.O.Ms.No.212. The applicants were however held disentitled to arrears of pay as they were eligible only for notional fixation of pay. Aggrieved thereby, Sattupalli Nagar Panchayat filed the writ petition.

W.P.No.35377 of 2013 was preferred by the Government of Andhra Pradesh and its officials in the Tribal Welfare Department aggrieved by the order dated 17.08.2012 passed by the Tribunal in O.A.No.6158 of 2012. The said O.A. was filed by the first respondent in the writ petition. He was

appointed on daily wage basis under proceedings dated 20.08.1987 of the District Tribal Welfare Officer, Nizamabad, and posted at ST Boys Hostel, Banswada, Nizamabad District. His appointment was upon sponsorship by the District Employment Exchange, Nizamabad District. His services were regularized *vide* G.O.Rt.No.188, Social Welfare (TW Ser.III) Department, dated 08.03.2011, with effect from the date of issuance of the orders by the competent appointing authority, subject to the condition that the said vacancy was clear, regular and continued from time to time till that date. Aggrieved by the action of the authorities in not regularizing his services from the date of completion of five years of service or at least from the cut-off date mentioned in G.O.Ms.No.212, i.e., 25.11.1993, he approached the Tribunal by way of O.A.No.6158 of 2012. By order dated 17.08.2012, the Tribunal took note of its earlier order dated 22.11.2011 in O.A.No.8946 of 2011 and as the first respondent/applicant was similarly placed, the O.A. was allowed directing his regularization in service with effect from 25.11.1993, as per G.O.Ms.No.212. He was however held disentitled to arrears of pay but only eligible for notional fixation of pay. By order dated 05.12.2013, this Court granted interim suspension of the order under challenge. W.V.M.P.No.1432 of 2017 was filed by the first respondent to vacate the said order. Be it noted that the first respondent already retired from service on 30.11.2013.

In W.P.No.39226 of 2016, the order dated 13.04.2016 passed by the Tribunal in O.A.No.1957 of 2014 is subjected to challenge by the State and its officers in the Horticulture Department. The said O.A. was filed by the first respondent assailing the rejection of his claim for retrospective regularization in the light of the Government Memo dated 01.09.1997. The first respondent was appointed as a Field Assistant-cum-Typist in the

office of the Assistant Director of Horticulture-I, YSR Kadapa District, and worked continuously from 01.09.1986 to 31.05.1996. His services were regularized *vide* G.O.Rt.No.443, Agriculture and Cooperation (Horticulture) Department, dated 30.05.1996, against the post of Typist from the date of issuance of orders, i.e., with prospective effect. Aggrieved by denial of regularization in service from the date of completion of five years in service or from the cut-off date, 25.11.1993, in terms of G.O.Ms.No.212, he filed the subject O.A. By the order under challenge, the Tribunal took note of the judgment of the Supreme Court in *B.SRINIVASULU V/ s. NELLORE MUNICIPAL CORPORATION*¹ and also the fact that a clear vacancy in the post of Typist had arisen as long back as on 15.11.1986 upon the death of the incumbent, Hanumantha Reddy. It was in this clear vacancy that the first respondent/applicant was continued as a Typist on daily wage basis. The Tribunal therefore concluded that a clear vacancy was very much available as on the date of completion of five years in service by the first respondent/applicant and he was therefore entitled to be considered for regularization in service as against that clear vacancy as soon as he completed the required five years in service. The Tribunal accordingly set aside the Memo dated 15.01.2014 issued by the Government rejecting the request of the first respondent/applicant for retrospective regularization in service and directed the authorities to consider and regularize his services on completion of five years of service as a Typist, i.e., 01.09.1991. By order dated 16.11.2016, this Court granted interim suspension of the operation of the order under challenge. W.V.M.P.No.5114 of 2016 was filed by the first respondent to vacate the said order.

¹ Civil Appeal No.6318 of 2015 decided on 17.08.2015

In W.P.No.11394 of 2017, the petitioner entered the service of Kallur Gram Panchayat as a NMR Bill Collector under the proceedings dated 05.05.1986 of the District Collector, Kurnool. He filed O.A.No.5272 of 1997 before the Tribunal along with others seeking regularization in service. The said O.A. was disposed of by order dated 28.08.1997, but did not yield any result. The petitioner was permitted to draw minimum time scale *vide* proceedings dated 31.07.1999 of the District Panchayat Officer, Kurnool. Kallur Gram Panchayat merged with Kurnool Municipal Corporation in the year 2002. His services were regularized *vide* G.O.Rt.No.922, Municipal Administration & Urban Development (Co-Ordn) Department, dated 25.11.2014, against the post of Bill Collector in the retirement vacancy that arose on 30.06.2008. His regularization was however prospective, i.e., from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancy was clear, regular and continued from time to time till that date. He filed O.A.No.426 of 2017 assailing his prospective regularization and seeking a direction to the authorities to regularize his services from the date of completion of five years in service in terms of B.SRI NI VASULU¹. The said O.A. was dismissed by the Tribunal by order dated 21.02.2017, holding that the subsequent order of the Supreme Court would not give rise to a fresh cause of action as the petitioner had already accepted his regularization in service in terms of G.O.Rt.No.922 dated 25.11.2014. The Tribunal opined that the O.A. was barred by limitation and that the conditions stipulated in G.O.Ms.No.212 were not satisfied. The Tribunal further observed that the conditions in G.O.Ms.No.212 were not brought to the notice of the Supreme Court and the order rendered in B.SRI NI VASULU¹ was without reference to those conditions. On facts,

the Tribunal held that the petitioner did not satisfy the conditions in G.O.Ms.No.212 as on the date of completion of five years of service. Liberty was however given to the petitioner to make an application to the authorities to regularize his services with effect from 01.07.2008, being the date on which a clear retirement vacancy arose. Aggrieved thereby, he filed the present writ petition. The letter dated 21.04.2011 addressed by the Commissioner, Kurnool Municipal Corporation, Kurnool, to the Regional Director-cum-Appellate Commissioner, Municipal Administration, Ananthapur, was filed by the Director of Municipal Administration, Andhra Pradesh, along with his counter. This letter indicates that as against 23 sanctioned posts of Bill Collectors in the Corporation, only 17 were working as on that date and six posts were vacant. However, no details are forthcoming as to when these six vacancies arose.

In W.P.No.11930 of 2017, the petitioners, nine in number, were appointed as Community Health Workers in the Greater Visakhapatnam Municipal Corporation, Visakhapatnam, in the year 1988 on daily wage basis. Their services were regularized *vide* G.O.Rt.No.252, Municipal Administration & Urban Development (D1) Department, dated 14.02.2014, against vacancies in the posts of Public Health Workers with effect from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancies were clear, regular and continued from time to time till that date. They filed O.A.No.612 of 2017 before the Tribunal seeking regularization of their services with retrospective effect from the date of completion of five years of service as per B.SRINI VASULU¹. The Tribunal dismissed the O.A. on 09.03.2017 recording reasons alike as were mentioned by it in orders of similar nature. Aggrieved thereby, they are before this Court. It may be noted

that the certificate of vacancies furnished by the Commissioner, Greater Visakhapatnam Municipal Corporation, Visakhapatnam, indicated that retirement vacancies arose in the posts of Public Health Workers at the end of June, 2011, December, 2011, January, 2012 and September, 2012. It was against these retirement vacancies that the services of the petitioners were regularized, but with effect from February, 2014. These details are available in the material filed by the Director of Municipal Administration, Andhra Pradesh, along with his counter.

In W.P.No.21559 of 2017, the petitioner entered the service of Tirupathi Municipal Corporation, Tirupathi, as a NMR employee on 01.02.1982. His services were regularized against the post of Public Health Worker *vide* G.O.Rt.No.283, Municipal Administration & Urban Development (D2) Department, dated 18.02.2014, with effect from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancy was clear, regular and continued from time to time till that date. Seeking the benefit of the law laid down by the Supreme Court in B.SRI NI VASULU¹, he filed O.A.No.782 of 2017 before the Tribunal for retrospective regularization from the date of completion of five years in service for the purpose of seniority/pensionary benefits, without monetary benefits. The O.A. was dismissed by the Tribunal *vide* order 27.03.2017 recording reasons alike as were mentioned in the order referred to *supra*. Aggrieved thereby, he filed this writ petition. It may be noted that the Tirupathi Municipal Corporation issued Certificate of Vacancy dated 10.04.2013 stating that the vacancy of PH Worker arose as long back as on 30.06.1979 upon retirement of the incumbent therein and the same continued. It is against this vacancy that the services of the petitioner were regularized. This is borne out by the

check list dated 10.04.2013 issued by the Commissioner, Municipal Corporation, Tirupathi, which is made part of the record along with the counter filed by the Director, Municipal Administration, Andhra Pradesh.

In W.P.No.21561 of 2017, the petitioner was initially appointed in the year 1979 as a NMR/Badili Worker in Tirupathi Municipal Corporation, Tirupathi. His services were regularized *vide* G.O.Rt.No.869, Municipal Administration & Urban Development (Co-Ordn) Department, dated 05.11.2014, against the post of Public Health Worker with effect from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancy was clear, regular and continued from time to time till that date. Seeking the benefit of regularization of service from the date of completion of five years in service for the purpose of seniority/pensionary benefits, without monetary benefits, in terms of B.SRINIVASULU¹, the petitioner filed O.A.No.787 of 2017 before the Tribunal. The said O.A. was dismissed by the Tribunal *vide* order dated 27.03.2017, for reasons alike as were mentioned by it earlier. Aggrieved thereby, the petitioner is before this Court.

In W.P.No.21583 of 2017, the petitioner was originally appointed as a NMR employee on 01.06.1985 in Madanapalle Municipality, Chittoor District. He was extended minimum time scale on 01.02.1992 and increments were also released to him from the year 2000. The benefit of subsequent pay revision was also given to him. His services were regularized *vide* G.O.Rt.No.138, Municipal Administration & Urban Development Department, dated 03.02.2011, against the post of Public Health Worker in Madanapalle Municipality. Thereafter, G.O.Ms.No.717, Municipal Administration and Urban Development (G2) Department, dated 21.05.2012, was issued modifying the earlier order and directing his

regularization against the post of Fitter instead of Public Health Worker from the date of issuance of the orders, subject to the condition that the said vacancy was clear, regular and continued from time to time till that date. Seeking regularization with retrospective effect, in terms of B.SRINIVASULU¹, from the date of completion of five years of service, he filed O.A.No.696 of 2017 before the Tribunal. The Tribunal dismissed the O.A. by order dated 20.03.2017, for reasons alike as were mentioned in other cases. Aggrieved thereby, the petitioner filed this writ petition.

In W.P.No.21586 of 2017, the petitioners, seventeen in number, were appointed during the years 1986 and 1987 in the Public Health Department in Tirupathi Municipal Corporation but were not granted time scale. They filed O.A.No.3419 of 2004 before the Tribunal seeking regularization of their services in terms of G.O.Ms.No.543, Municipal Administration and Urban Development Department, dated 07.10.1994, but despite a direction therein to the Director to consider their cases for regularization in service, the Commissioner and Director of Municipal Administration, Guntur, sent proposals for their regularization in service in terms of G.O.Ms.No.212 much later, resulting in G.O.Rt.No.636, Municipal Administration and Urban Development (G2) Department, dated 29.09.2015, whereby their services were regularized with effect from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancies were clear, regular and continued from time to time till that date. Aggrieved by the denial of retrospective regularization, they approached the Tribunal by way of O.A.No.542 of 2017, seeking regularization of their services from the date of completion of five years of service, as held by the Supreme Court in B.SRINIVASULU¹. By order dated 06.04.2017, the Tribunal dismissed

the O.A. holding that the petitioners could not approbate and reprobate, as they had already taken the benefit of regularization *vide* G.O.Rt.No.636 dated 29.09.2015. The Tribunal further held that their O.A. was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 (*for brevity*, 'the Act of 1985'), and that they could not take advantage of the subsequent order passed by the Supreme Court in B.SRINI VASULU¹ on 17.08.2015. The Tribunal reiterated that it was not brought to the notice of the Supreme Court in B.SRINI VASULU¹ that G.O.Ms.No.212 stipulates certain conditions for regularization in service and one such condition, at Sl.No.5, was that absorption should be against clear vacancies of posts. The Tribunal observed that the question of regularizing NMR workers would not arise under G.O.Ms.No.212 if they were no sanctioned clear vacancies but as this condition was not brought to the notice of the Supreme Court while passing the order dated 17.08.2015, the Supreme Court had no occasion to render a judgment in terms of the said condition contained in the G.O. The Tribunal therefore concluded that in the absence of clear vacancies at the time when the petitioners were stated to have completed five years of service as NMRs, they could not be considered for regularization of their services for an anterior period. Aggrieved thereby, the petitioners filed the present case.

In W.P.No.2212 of 2017, the petitioner was appointed as a NMR employee in the Public Health Department on 05.01.1983. His services were regularized *vide* G.O.Rt.No.944, Municipal Administration and Urban Development (Co.Ordn) Department, dated 09.12.2014, against the post of a Public Health Worker in terms of G.O.Ms.No.212 with effect from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancy was clear, regular and continued

from time to time till that date. Aggrieved by the denial of retrospective regularization, he filed O.A.No.1906 of 2017 before the Tribunal seeking regularization from the date of completion of five years of service for the purpose of seniority/pensionary benefits, without monetary benefits, in terms of the order passed by the Supreme Court in B.SRINIVASULU¹. By order dated 17.07.2017, the Tribunal dismissed the O.A. for reasons alike as were mentioned in the orders passed in O.A.Nos.1968 and 1969 of 2017. Aggrieved thereby, he is before this Court.

In W.P.No.2268 of 2018, the seven petitioners were initially appointed during the years 1982 and 1983 as NMR employees in the Public Health Department of the State. They were regularized in service *vide* G.O.Rt.No.283, Municipal Administration & Urban Development (D.2) Department, dated 18.02.2014, against the posts of Public Health Workers in terms of G.O.Ms.No.212 from a prospective date, as per the Memo dated 01.09.1997, i.e., the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancies were clear, regular and continued from time to time till that date. Aggrieved by the denial of the benefit of retrospective regularization, they filed O.A.No.1969 of 2017 before the Tribunal seeking regularization from the date of completion of five years for the purpose of seniority/pensionary benefits, without monetary benefits, in terms of the order passed by the Supreme Court in B.SRINIVASULU¹. By order dated 17.07.2017, the Tribunal dismissed the O.A. on the same lines and for the same reasons as were mentioned in its order of like date in O.A.No.1968 of 2017. Aggrieved thereby, the petitioners are before this Court.

In W.P.No.4513 of 2018, the petitioners, two in number, were appointed in the year 1986 as NMR employees in the Tirupathi Municipal

Corporation, Tirupathi. Their services were regularized *vide* G.O.Rt.No.213, Municipal Administration & Urban Development (D.2) Department, dated 11.02.2013, with effect from the date of issuance of orders by the competent appointing authority, subject to the condition that the said vacancies were clear, regular and continued from time to time till that date. Aggrieved by the denial of the benefit of regularization from the date of their completion of five years in service, they approached the Tribunal by way of O.A.No.1968 of 2017. Therein, they sought regularization from the date of completion of five years for the purpose of seniority/pensionary benefits, without monetary benefits, in terms of B.SRINIVASULU¹. By order dated 17.07.2017, the Tribunal dismissed the O.A. The Tribunal opined that when the petitioners were regularized in February, 2013, they could not seek relief after a period of three years, contrary to their regularization orders. The Tribunal further opined that merely because the Supreme Court laid down a principle by the later judgment dated 17.08.2015 in relation to the same issue, the petitioners could not seek benefit on the basis thereof and therefore, their O.A. was barred by limitation under Section 21 of the Act of 1985. Aggrieved by the dismissal of their O.A., the petitioners are before this Court.

Lastly, in W.P.No.6984 of 2018, respondents 1 to 4 worked on contract basis in Telugu Ganga Project Circle, Nandyal, since 1988 onwards and were regularized in service *vide* G.O.Ms.No.260, Irrigation & CAD (Ser.V) Department, dated 08.10.2009. Consequential proceedings dated 13.11.2009 were issued by the District Collector, Kurnool. Their regularization in service was prospective. Aggrieved by the denial of such regularization with retrospective effect, in terms of the G.O.Ms.No.212, as they had completed five years of service on daily wage basis by the

cut-off date, 25.11.1993, stipulated thereunder, they filed O.A.No.6269 of 2015 before the Tribunal seeking a direction to consider their cases for regularization in service as per the G.O. with all consequential benefits. By order dated 21.06.2017, the Tribunal allowed the O.A. The authorities contended by way of their counter that respondents 1 to 4 in the writ petition were entitled to be regularized with effect from 25.11.1993 but as clear vacancies were not available as required under G.O.Ms.No.212, they could not be given the benefit of such regularization. The Tribunal however relied upon the judgments of the Supreme Court in B.SRINIVASULU¹ and DISTRICT COLLECTOR V/ s. M.L.SINGH² and held that in the light of these decisions, respondents 1 to 4 were entitled to count their service from the date they completed five years of service, i.e., 25.11.1993. The authorities were accordingly directed to count their services from 25.11.1993 till the date of regularization for the purpose of pension and pensionary benefits. Aggrieved by this direction, the authorities filed this writ petition. It may be noted that pursuant to the order dated 21.06.2017 passed in O.A.No.6269 of 2015, the Assistant Director, NCC Group Headquarters, Kurnool, issued proceedings dated 28.11.2017 counting the services of respondents 1 to 4 from 25.11.1993 for the purpose of pension and pensionary benefits. Further, though the authorities filed a counter before the Tribunal and the order was passed in the O.A. after hearing them, they made a factually incorrect statement in the writ petition that the Tribunal had passed an *ex parte* order without giving them an opportunity to file a counter.

The controversy essentially revolves around giving effect to G.O.Ms.No.212. This G.O. was issued by the Government noticing that

² (2009) 8 SCC 480

appointing authorities of institutions and establishments under the control of the State Government; Local Authorities; Corporations, owned and controlled by the State Government; and other bodies established by the State Government, had grossly violated the instructions issued from time to time and appointed persons indiscriminately to various categories of services, either on daily wage basis or temporary basis, without there being a post, without sponsorship by the Employment Exchange, and without observing the rule of reservation. The Government also noted that in most cases, persons appointed for a specific work had been continued even after their need ceased and that after lapse of some time, all these appointees were approaching the various Courts and Tribunals for regularization of their services and orders were being issued to the State to do so on the ground that they had long service to their credit.

As this practice was causing considerable drain on the finances of the State Government, it was thought imperative to prohibit the unauthorized and irregular appointments by a law, in public interest. The Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 1994) (*for brevity*, 'the Act of 1994'), was enacted in this regard with effect from 25.11.1993 so as to streamline recruitment along healthy lines and to enforce the Employment Exchange (Compulsory Notification of Vacancies) Act in its true letter and spirit so as to follow the rule of reservation enshrined in the Constitution with utmost strictness and to punish those who were guilty of violating the law.

Through Government Memo dated 02.02.1994, information had been obtained from various Government offices, local bodies, public sector undertakings etc. and it was found that appointing authorities had violated

instructions issued by the Government and appointed several individuals. Though there was no need to continue all these daily wage/temporary employees as none of them were appointed in sanctioned posts and in many cases and their recruitment was not through Employment Exchange, the Government observed that it was its endeavour to regularize as many NMR/daily wage employees as possible, who were otherwise qualified, keeping in mind the hardship that would be caused if their services were not regularized and also keeping in mind the judgment dated 12.08.1992 of the Supreme Court in Civil Appeal No.2979 of 1992, whereunder the State Government was directed to evolve an appropriate policy for regularization. The Government therefore stated that on a careful examination of the whole issue and in supersession of all previous orders on the subject, it had formulated a scheme for regularization of services, as per which, persons appointed on daily wage/NMR or on consolidated pay and were continuing on the date of commencement of the Act should be regularized in service, if they had worked continuously for a minimum period of five years and were continuing on 25.11.1993, subject to fulfillment of the following conditions:

- 1) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularized.
- 2) They should be within the age limits as on the date of appointment as NMR/Daily wage employee.
- 3) The rule of reservation wherever applicable will be followed and back-log will be set-off against future vacancies.
- 4) Sponsoring of candidates from Employment Exchange is relaxed.
- 5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.
- 6) In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the

expenditure on Workcharged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of last Grade Service.

The Government accordingly directed all the Departments of the Secretariat/Heads of Departments to process the cases for absorption/regularization of services of NMRs/Daily Wage employees pursuant to the scheme and obtain clearance of the Government in the Finance and Planning Department before issuing orders for regularization/absorption.

The Government also issued Memo No.573/225/A3/PC.III/97 dated 01.09.1997 through its Secretary to Government, Finance & Planning (Finance Wing-PC.III) Department, wherein it clarified that regularization as per G.O.Ms.No.212 is to give benefit of regularization of services to the person concerned only from the date of issuance of the order, making it prospective. It was further clarified that all benefits of regularization of services would be counted only from the date of issuance of the order and it cannot be assumed or presumed on the basis of any earlier order. The Government therefore cautioned that cases for counting of services for pension and any other purposes for the period prior to the effective date of regularization could not be acted upon.

As was to be expected, G.O.Ms.No.212 fell for consideration, time and again, before this Court and the Supreme Court in cases galore.

A learned Judge of this Court allowed a batch of writ petitions holding that all persons employed on daily wage basis or nominal muster roll or contract basis were entitled to be considered for regularization on completion of five years in service in terms of G.O.Ms.No.212. A Division Bench upheld this order in appeal, with the modification that daily wagers etc. would be entitled to regularization only with effect from the date of

completion of five years continuous service. The Special Leave Petitions filed by the State Government and others were dismissed by the Supreme Court *vide* M.L.SINGH². Therein, the Supreme Court observed that in so far as regularization was concerned, the High Court had rightly directed that on the basis of G.O.Ms.No.212, employees should be regularized with effect from the dates they completed five years continuous service but it was made clear that the other conditions laid down in the said G.O. would have to be satisfied for the purpose of such regularization.

In A.MANJULA BHASHINI V/ s. MANAGING DIRECTOR, ANDHRA PRADESH WOMEN'S COOPERATIVE FINANCE CORPORATION LIMITED³, the Supreme Court noted that a number of persons who were employed on daily wage basis/nominal muster roll/ consolidated pay who did not complete five years as on 25.11.1993 challenged G.O.Ms.No.212 before the Tribunal and thereafter, this Court. That apart, part-time employees who were not covered by G.O.Ms.No.212 also approached the Tribunal and then, this Court, claiming regularization of their services. Pursuant to the interim order passed by this Court, the Government issued G.O.P.No.112 dated 23.07.1997 for regularization of part-time employees who had worked continuously for a minimum period of ten years and were continuing as on 25.11.1993, subject to certain conditions. Amendments were also made to the Act of 1994 *vide* Amendment Act 27 of 1998. One such amendment was that the date for reckoning the eligibility for regularization should be 25.11.1993. Daily wage employees and others similarly situated who were affected by this amendment challenged the same in a batch of writ petitions before this Court. A learned Judge of this Court allowed all the writ petitions holding

³ (2009) 8 SCC 431

that the amendments were contrary to the rights guaranteed under Articles 14, 16 and 21 of the Constitution. This order was however reversed in appeal by the Division Bench. The Division Bench however held that daily wagers and the like who completed five years of service as on 19.08.1998, the date on which Amendment Act 27 of 1998 was published in the Gazette, would be entitled to seek regularization in service. This order was the subjected to appeal before the Supreme Court. Upon a conspectus of earlier case law on G.O.Ms.No.212, the Supreme Court framed the following questions for consideration:

- (i) Whether the persons employed on daily-wage basis or nominal muster roll or consolidated pay or as contingent worker on full-time basis in different departments of the Government of Andhra Pradesh and its agencies/instrumentalities are entitled to be regularized in service on completion of 5 years, and
- (ii) Whether amendments made in the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short "the 1994 Act") by Amendment Acts 3 and 27 of 1998 are ultra vires the provisions of the Constitution.

One of the arguments advanced before the Supreme Court was that once the policy contained in G.O.Ms.No.212 was given effect to and persons appointed on daily wages/nominal muster roll/consolidated pay acquired a right thereunder to be regularized in service, the State could not have deprived them of the said right by amending the Act of 1994. Another argument was that once the Supreme Court held that all persons appointed on daily wages/nominal muster roll/consolidated pay were entitled to be regularized with effect from the date of completion of five years of continuous service, the legislature was not justified in prescribing 25.11.1993 as the cut-off date for determining the eligibility of such daily wagers etc. for the purpose of regularization.

Upon consideration of the issue and case law, more particularly, the decision in M.L.SINGH², the Supreme Court opined that it was clear that it had earlier not considered the matter in the background in which the Act of 1994 was enacted and the mischief that was sought to be remedied by it. It was further observed that utter non-application of mind by the officers concerned resulted in the use of an ambiguous expression in the policy of regularization enunciated in G.O.Ms.No.212, which had generated enormous litigation and an avoidable exercise by the State and its employees. The amendments made to the Act of 1994 were held to be for the purpose of making the policy of regularization a part of the said enactment and to harmonize the same with the prohibition contained in Section 7 of the Act of 1994 against regularization of daily-wage and temporary employees. The Supreme Court held that the amendments made to the Act of 1994 did not have the effect of nullifying or overriding M.L.SINGH². It was further held that the policy of regularization contained in the first *proviso* to Section 7 inserted by the Amendment Act was a one-time measure intended to benefit only those daily-wage employees who completed five years of service on or before 25.11.1993 and those who did so after 25.11.1993 could not claim regularization. Dealing with the issue as to whether the cut-off date, i.e., 25.11.1993, specified in the first *proviso* to Section 7 of the Act of 1994, as amended, for determination of the eligibility of daily-wage employees to be considered for regularization, was arbitrary, irrational or violative of Articles 14 and 16 of the Constitution, the Supreme Court observed that fixation of the said cut-off date in the context of the Act of 1994 was justified and valid. The Supreme Court accordingly set aside the direction of the Division Bench that those who completed five years of service as on

the date of the Amendment Act, viz., 19.08.1998, were entitled to regularization in service. The Supreme Court however made it clear that daily wage employees and others who were covered by Section 7 of the Act of 1994, as amended, and whose services had not been regularized so far would be entitled to be considered for regularization and their services were directed to be regularized, subject to fulfillment of the conditions enumerated in G.O.Ms.No.212. With a view to obviate further litigation, the Supreme Court directed the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise of regularizing services of eligible employees within a time frame.

Unfortunately, this direction of the Supreme Court seems to have had no effect, as will be demonstrated hereinafter.

The amended first *proviso* to Section 7 of the Act of 1994 reads thus:

‘Provided that the services of those persons continuing as on 25-11-1993 having completed a continuous minimum period of five years of service on or before 25-11-1993 either on daily wage, or nominal muster roll, or consolidated pay or as a contingent worker on full-time basis, shall be regularized in substantive vacancies, if they were otherwise qualified fulfilling the other conditions stipulated in the scheme formulated in GO.Ms.No.212, Finance & Planning (FW.PC.III) Department dated 22-04-1994.’

It may be noted at this stage that all the employees in this batch of cases completed five years of service as on 25.11.1993 and were continuing in service as on that date. They therefore do not fall foul of the edict of the Supreme Court in A.MANJULA BHASHINI³. Further, as the scheme for their regularization dates back to the year 1994, the subsequent decision of the Supreme Court in SECRETARY, STATE OF

KARNATAKA V/ s. UMADEVI⁴, frowning upon regularization of temporary employees, has no application to them. In terms of the direction in A.MANJULA BHASHINI³, the State and its instrumentalities ought to have undertaken the exercise at least then to regularize all those eligible to claim relief as per G.O.Ms.No.212. However, it is manifest that no such concerted exercise was undertaken either then or even earlier.

There seems to have been neither clarity nor consistency in how the authorities went about giving effect to G.O.Ms.No.212. No regular and periodic exercise was ever taken up to ascertain when clear vacancies arose, be it before or after the promulgation of G.O.Ms.No.212, so as to extend the benefit thereof to deserving and eligible temporary/daily wage/NMR employees. For example, the first respondent in W.P.No.39226 of 2016 was regularized in service in May, 1996 but a clear vacancy in the post of Typist was available as long back as on 15.11.1986, when the incumbent died, and it was against this vacancy that the first respondent was continued upto 1996. Curiously, the petitioner in W.P.No.11394 of 2017 was regularized against a vacancy that arose on 30.06.2008 but the order in that regard was issued only on 25.11.2014. There is no explanation forthcoming for this delay. Similarly, the petitioners in W.P.No.11930 of 2017 were regularized in service in February, 2014, but the material placed on record indicates that clear vacancies arose in 2011 and 2012 itself. Again, there is no explanation for the delay. In W.P.No.21559 of 2017, the petitioner was appointed against a retirement vacancy that arose as long back as on 30.06.1979. It is against this vacancy that his services were regularized in 2014!

This is one aspect of the matter.

⁴ (2006) 4 SCC 1

The sheet-anchor of the argument of the learned Government Pleader for Services, Andhra Pradesh, is that even as per the law laid down in M.L.SINGH² and A.MANJULA BHASHINI³, regularization should be only upon fulfillment of the conditions enumerated in G.O.Ms.No.212. She would therefore contend that without evidence of clear vacancies being available as on the date of completion of five years of service or as on 25.11.1993, none of the petitioners can seek regularization from that date even for notional purposes.

It is no doubt true that in M.L.SINGH² and again in A.MANJULA BHASHINI³, the Supreme Court categorically held that the conditions mentioned in G.O.Ms.No.212 must be fulfilled. Be it noted that even in B.SRINIVASULU¹, the Supreme Court directed that the services of B.Srinivasulu and the others should be regularized with effect from the date of their completing five years continuous service, as was laid down by the Supreme Court in M.L.SINGH². However, no reference was made to the later observation in M.L.SINGH² to the effect that the other conditions laid down in G.O.Ms.No.212 would have to be satisfied for the purpose of regularization.

It cannot be gainsaid that when the Government formulated the policy for regularization in service of daily wagers and the like as a one-time measure *vide* G.O.Ms.No.212, the conditions stipulated therein must ordinarily be fulfilled before one can seek the benefit of such policy decision. However, on facts, the said policy was not implemented with promptitude, application of mind, despatch and consistency. Despite the Supreme Court directing the Government and its instrumentalities to undertake such an exercise fifteen years later in A.MANJULA BHASHINI³, the State and its instrumentalities even now show only an

inclination to dilute and water down the benefits extended under G.O.Ms.No.212. There is no indication of any serious exercise having ever been undertaken to ascertain as to when clear vacancies arose in any particular department or to take expeditious measures to give effect to G.O.Ms.No.212 by filling up such vacancies with those daily wage/temporary/NMR employees who had completed five years in service by 25.11.1993 and were still continuing in service. The policy under the G.O. required such an exercise to be taken up on a regular basis so as to benefit those covered by the G.O. However, the cases on hand bear out that though clear vacancies were available, no steps were taken to regularize those who were eligible in terms of the G.O. for years thereafter. Further, the Government Orders passed in each and every case in this batch demonstrate that regularization was directed to be prospective, i.e., from the date of issue of the orders, subject to the condition that 'the said vacancies were clear, regular and continued from time to time till that date'. This phrase clearly indicates that vacancies were available and continued from time to time till that date but no exercise was undertaken earlier by the authorities to ascertain as to when those vacancies arose and as to why they were immediately not filled up with eligible persons in terms of G.O.Ms.No.212. Be it noted that Condition No.5 in G.O.Ms.No.212 only mandates that absorption should be against clear vacancies of posts considered necessary to be continued as per the workload. It was therefore not for the beneficiary under G.O.Ms.No.212 to demonstrate that a clear vacancy was available. This aspect would only be within the knowledge of the State or its instrumentalities. That being so, it was for them to monitor as to when such clear vacancies arose and fill them up under G.O.Ms.No.212. The

laxity and lethargy on the part of the State and its instrumentalities in this regard cannot now be permitted to be taken advantage of by them to the detriment of the employees who would have been benefited had the exercise been taken up in right earnest as directed by the Supreme Court.

It is in this context that the decision of the Supreme Court in B.SRINIVASULU¹ gains significance. This judgment of the Supreme Court traces its origin to O.A.No.9177 of 2011 filed before the Tribunal by B.Srinivasulu and three others, who were Health Assistants/Public Health Workers in Nellore Municipal Corporation, Nellore District. They were initially appointed as NMRs in the Engineering Section of the Corporation on 16.09.1987, 19.09.1987, 15.07.1988 and 05.07.1988 respectively and claimed that they completed five years of service on 16.09.1992, 19.09.1992, 14.06.1993 and 04.06.1993 respectively. The services of the first and second applicants were regularized *vide* proceedings dated 30.10.2002, the services of the third applicant were regularized *vide* proceedings dated 31.10.2002 and the services of the fourth applicant were regularized *vide* proceedings dated 07.07.2006. Their regularization was with prospective effect. They filed the O.A. assailing the action of the Corporation in not regularizing their services on completion of five years and sought a direction to it to do so and to extend them the benefits that were given to the applicants in O.A.Nos.8095 of 2008 and 7108 of 2011.

By order dated 01.12.2011, the Tribunal observed that a similar issue had come up before it in O.A.No.8095 of 2008, which was decided on 19.01.2011, wherein it was held that the applicant was entitled to regularization of his services upon completion of five years of service but while holding him disentitled to arrears of pay, he was held entitled to notional fixation of pay. The Tribunal further observed that the same issue

arose in O.A.No.5472 of 2011 and the earlier order in O.A.No.8095 of 2008 was followed and the said O.A. was also allowed, *vide* order dated 29.06.2011. Opining that the issue involved in the subject O.A. was squarely covered by the earlier order in O.A.No.8095 of 2008 and as the applicants would be entitled to regularization in service on completion of five years of continuous service as per G.O.Ms.No.212, the Tribunal directed the Corporation to regularize their services from the said dates. The Tribunal further held that the applicants would not be entitled to arrears of pay but only to notional fixation of pay and seniority.

Aggrieved by this order, the Nellore Municipal Corporation filed W.P.No.11852 of 2012 before this Court. Therein, the Commissioner of the Corporation specifically took the ground that the applicants in the O.A. could not be regularized in service as there were no vacant posts available in the Engineering branch and that they were absorbed in vacant posts in the Public Health branch of the Corporation. B.Srinivasulu and V.Srinivasulu were absorbed in the posts of Drain Cleaners while M.Ram Babu and K.Giri Kumar were absorbed as Health Assistants, though there were no regular posts at the time of submission of proposals for their regularization. He admitted that they completed five years of service on the dates claimed by them but asserted that they could not be regularized even notionally without vacant posts. He adverted to Condition No.5 in G.O.Ms.No.212 and contended that the order under challenge was liable to be set aside on various grounds, one of which was that the applicants were regularized in service only when clear vacancies arose, but the Tribunal failed to appreciate the same. He asserted that there were no clear vacancies on the dates when they completed five years of service and in the absence of such clear vacancies, they could not seek

regularization from those dates. This writ petition was dismissed by order dated 25.04.2012. Therein, the Division Bench which heard the matter opined that as the Tribunal followed its earlier order dated 19.01.2011 in O.A.No.8095 of 2008, which was subsequently followed by the Tribunal in O.A.No.5472 of 2011, and there was no denial that the the said orders had become final, no error was there in the order passed by the Tribunal in O.A.No.9177 of 2011.

Review WPMP No.10968 of 2013 in W.P.No.11852 of 2012 was filed by the Corporation seeking review of the order dated 25.04.2012 dismissing the writ petition. The grounds of review reflect that one of the issues raised by the Corporation was that in terms of the conditions mentioned in G.O.Ms.No.212, there must be a clear vacancy existing as on the date of absorption but the Tribunal and this Court had not verified as to whether the applicants in the O.A. complied with all the conditions mentioned in G.O.Ms.No.212.

The review petition was ordered by a Division Bench other than the Bench which had dismissed the writ petition. The said order is dated 03.04.2014. The Division Bench observed therein that there could be no dispute that if the applicants fulfilled the conditions laid down in G.O.Ms.No.212, their services have to be regularized but, at the same time, simply because they completed five years of service, that would not mean that their services would be regularized automatically, unless it is shown that there are clear vacancies available for regularization of their services. Opining that when their services had not been regularized in terms of G.O.Ms.No.212, they had not approached the Tribunal but filed the O.A. at the fag end of their service in the year 2011 for regularization of their services with effect from the date of their joining in service, the

Division Bench held that there were lapses on their part in not approaching the Tribunal within a reasonable period of time. The Division Bench concluded that regularization could not be granted from the date of their initial appointment but, at the same time, there was a duty cast upon the Corporation to follow G.O.Ms.No.212 for regularization of their services whenever vacancies arose but that had not been done so far. Ultimately, the Division Bench directed the Corporation to regularize the services of the applicants from the date of filing of the O.A., i.e., 27.11.2011, for the purpose of fixation of pay and notional promotion without any monetary benefit, subject to availability of vacancies.

Pausing for a moment, it may be noted that the Division Bench completely lost sight of the fact that the applicants in the O.A. had already been regularized in service in the years 2002 and 2006. The factual misconception harboured by the Division Bench that the applicants had not been regularized in service at all was however allowed to remain and no clarification or correction was sought either by the Corporation or by the applicants in the O.A. The applicants however approached the Supreme Court by way of Civil Appeal No.6318 of 2015 aggrieved by the review order. Therein, they referred to the fact that the Corporation had regularized their services, *vide* separate proceedings dated 30.10.2002, 31.10.2002 and 20.07.2006, instead of regularizing their services with effect from 16.09.1992, 19.09.1992, 14.06.1993 and 04.06.1993, when they completed five years of service. The Corporation filed its counter before the Supreme Court, wherein it reiterated that absorption had to be against clear vacancies of posts in terms of the condition stipulated in G.O.Ms.No.212. The Corporation also referred to the fact that the services of the appellants before the Supreme Court had already been regularized

in the Public Health branch, without waiting for vacancies to arise in the Engineering branch, but they were seeking regularization from the dates when they completed five years in service. The Corporation categorically stated that though they had completed five years of service, they could not be regularized even notionally without vacant posts available. The Civil Appeal was however allowed by the Supreme Court *vide* order dated 17.08.2015. Unfortunately, the Supreme Court seems to have been under the same misconception as the Division Bench, which dealt with the review petition, that the applicants in the O.A. had not been regularized in service at all. This is clear from the observations of the Supreme Court that the appellants before it, in spite of issuance of G.O.Ms.No.212, still continued in the service of the Corporation without there being any order of regularization of their services. The Supreme Court further observed that it was due to this that they had approached the Tribunal and the Tribunal allowed their O.A. A portion of the order passed by the Tribunal was extracted and thereafter, the Supreme Court took note of the fact that the Corporation had filed W.P.No.11852 of 2012 before this Court, which was dismissed in the first instance by order dated 25.04.2012. The Supreme Court also took note of the fact that the Corporation sought review of the said order and thereupon, the impugned order came to be passed. Referring to the direction in the review order to regularize the services of the appellants from the date of filing of the O.A.No.9177 of 2011, *viz.*, 27.11.2011, the Supreme Court observed thus:

“We find it difficult to accept the reasoning adopted by the High Court. The right of the appellants to seek regularization flows from the G.O. No.212 dated 22.4.1994. The appellant have been in service of the first respondent not only prior to the issuance of the said G.O. but even subsequent to the issue of G.O. till today. The respondent Municipality being a statutory body is obliged by the G.O.212 (*supra*). In spite of the above mentioned G.O. the

respondents kept quite for almost 20 years without regularizing the services of the appellants and continued to extract work from the appellants.

In the circumstances, refusing the benefit of the above mentioned G.O. on the ground that the appellants approached the Tribunal belatedly, in our opinion, is not justified. In the circumstances, the appeal is allowed modifying the order under appeal by directing that the appellants' services be regularized with effect from the date of their completing their five year continuous service as was laid down by this Court in District Collector/Chairperson & Others vs. M.L. Singh & Ors. 2009 (8) SCC 480.

The appeal is accordingly disposed of."

We are informed that the Government of Andhra Pradesh issued G.O.Rt.No.331, Municipal Administration & Urban Development (G1) Department, dated 28.04.2017, implementing the aforestated order of the Supreme Court in relation to the retrospective regularization of the services of B.Srinivasulu and the other applicants. The Corporation and the State of Andhra Pradesh therefore accepted the decision of the Supreme Court in B.SRINIVASULU¹ and implemented it. Following that decision, other cases were also disposed of by this Court and we are informed that those orders have also been implemented.

Another contention of the learned Government Pleader is that the Tribunal as well as this Court were under a misconception of fact in assuming that the order dated 19.01.2011 passed by the Tribunal in O.A.No.8095 of 2008 had attained finality. She would submit that the said order was challenged before this Court in W.P.No.26665 of 2011 and interim suspension of the said order was granted therein. Thereafter, the writ petition itself came to be allowed by a Division Bench of this Court *vide* order dated 27.08.2012. The applicant in O.A.No.8095 of 2008 had sought regularization of his services from the date of his appointment, i.e., 01.08.1990, instead of 10.02.1999, when his services actually came

to be regularized. The Division Bench took note of the amended Section 7 of the Act of 1994 and the decision in A.MANJULA BHASHINI³ and held that in terms thereof, the right to be considered for regularization would be subject to fulfillment of the conditions enumerated in G.O.Ms.No.212. Therefore, *per* the Division Bench, even if a person completed five years service as on or before 24.11.1993, regularization could be only from the date he complied with the conditions in G.O.Ms.No.212.

It may be noted that deficiency in compliance with the conditions stipulated in G.O.Ms.No.212, in so far as the applicant in O.A.No.8095 of 2008 is concerned, was not spelt out in clear terms. Reference was made to A.MANJULA BHASHINI³ in the context of Condition No.1 therein relating to the requisite qualification. The issue of a clear vacancy not being available for his regularization did not find mention specifically. It is however interesting to note that the very same Division Bench which allowed W.P.No.26665 of 2011 and set aside the order in O.A.No.8095 of 2008, dismissed W.P.Nos.34034, 34035 and 34036 of 2011 filed by the Nizamabad Municipal Corporation aggrieved by the orders of the Tribunal dated 01.07.2011, 27.07.2011 and 21.07.2011 in O.A.Nos.5587, 6354 and 6207 of 2011 respectively. The Tribunal disposed of the said O.A.s. holding that the applicants therein were entitled to regularization of their services with effect from 25.11.1993, as they had completed five years of continuous service by then, in terms of G.O.Ms.No.212. The contention urged by the Nizamabad Municipal Corporation was that clear vacancies were not available to give them the benefit of regularization in service from earlier dates. However, the very same Division Bench did not find merit in this contention. Similarly, the order dated 27.06.2011 passed by the Tribunal in O.A.No.5239 of 2011 directing regularization of the

applicants with effect from 25.11.1993 on the ground that they had completed five years of service by then, was confirmed by the Division Bench presided over by the very same learned Judge who headed the Bench which decided W.P.No.26665 of 2011 and also the batch of cases in W.P.Nos.34034, 34035 and 34036 of 2011. Therein, it was observed that it was for the Hyderabad Metro Water Supply and Sewerage Board, the respondent in the O.A., to demonstrate that there were no clear vacancies as on the cut-off date and as that was not the case of the Board, the applicants in the O.A. were entitled to the relief granted.

It may also be noted that in GOVERNMENT OF ANDHRA PRADESH V/s. T.PRABHAKAR⁵, a Division Bench of this Court considered the entitlement of employees of the A.P. Agricultural University to be regularized in service under G.O.Ms.No.212. On facts, the Bench found that the employees, four in number, did not fulfill the conditions under G.O.Ms.No.212 though they had technically put in more than five years of service by the cut-off date, 25.11.1993, as part of their services were rendered before they attained the minimum age of 18 years. The University had refused to grant any relaxation. The Division Bench observed that regularization under G.O.Ms.No.212, being prospective in effect, the practical approach would be to see whether for a period of five years before such regularization, the employee was in service, duly fulfilling all the conditions, and if such an approach is adopted, the four employees did fit into the process. The Bench observed that ultimately one must see that the G.O. was not used as a device to enable or permit the Government or the University to exploit helpless unemployed persons and if the matter of their regularization was viewed in such a manner, the

⁵ 2014 (5) ALT 662 (D.B.)

fact that minor children were engaged to do hard labour and were exploited also had to be taken note of. The Division Bench further observed that the State and its agencies could not exploit the unemployed youth in such a manner and, therefore, regularization of the services of the four employees was held justified.

Learned Government Pleader also placed reliance on UMADEVI⁴ and, more particularly, Para 43 thereof, which reads as under:

‘43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would

not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.'

This principle was followed in UNION OF INDIA V/ s. KARTICK CHANDRA MONDAL⁶, wherein the Supreme Court observed that even if similarly placed persons were ordered to be absorbed, the same, if done erroneously, cannot be the foundation for perpetuating further illegality and if an appointment is made illegally, it cannot be the basis for further appointment, as an erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section thereof. Reference was also made therein to STATE OF BIHAR V/ s. UPENDRA NARAYAN SINGH⁷, wherein it was observed:

'25. "67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order .."

Relying on this legal principle, the learned Government Pleader would contend that even if benefit was given to the appellants in

⁶ (2010) 2 SCC 422

⁷ (2009) 5 SCC 65

B.SRI NI VASULU¹, as the said decision proceeded on a misconception of fact, the said benefit could not be claimed as a matter of right by others similarly situated, when there is no evidence forthcoming of the existence of clear vacancies for them to claim retrospective regularization.

It may be noted that in the counter filed before the Supreme Court in B.SRI NI VASULU¹, the Nellore Municipal Corporation categorically took the plea that there were no clear vacancies available for B.Srinivasulu and the others to claim regularization from the dates that they completed five years in service. Despite this specific ground being taken, the Supreme Court found no merit in this contention and allowed the appeal by the order dated 17.08.2015. Even if the said order recorded the facts incorrectly, in as much as the order seems to proceed on the erroneous assumption that the services of B.Srinivasulu and the others were never regularized, overlooking the fact that they had been regularized in service in the years 2002 and 2006, once the specific ground was taken that no vacancies were available for them to claim regularization from the earlier dates, the Supreme Court is presumed to have been aware of this aspect of the matter when it adjudicated the case. It is not for this Court to impute to the Supreme Court, ignorance of a ground specifically raised in the case. Despite the said issue being raised, the Supreme Court, in its wisdom, held that no grounds were made out to hold in favour of the Corporation and allowed the appeal *vide* the order dated 17.08.2015, directing the Corporation to regularize the services of B.Srinivasulu and the others from the dates that they completed five years in service.

As already pointed out, when no regular exercise was ever undertaken in any Department to assess the vacancy position so as to immediately extend benefit to those covered by G.O.Ms.No.212, it is not

open to the State to now come forward and say that there were no vacancies as on the date that the employees in question completed five years in service, on or before 25.11.1993. A mere assertion in this regard is nothing short of an unsupported self-serving *ipse dixit* on the part of the State and its instrumentalities and cannot be accepted at face value. Further, the facts in some of the cases on hand clearly demonstrate that despite clear vacancies being available, no timely steps were taken. Further, when such employees were retained in service for decades together, the necessity to continue them as per the workload is manifest and clearly demonstrated, requiring no further evidence. In such a situation where the State and its instrumentalities are responsible for the situation where it cannot be assessed now as to whether Condition No.5 in G.O.Ms.No.212 stood fulfilled as on the date of completion of five years in service by the employees concerned, the benefit of doubt would invariably have to be given to the said employees and not to the State. It is perhaps this very aspect that weighed with the Supreme Court in B.SRINI VASULU¹, as no mention was made therein of strict compliance with Condition No.5 in G.O.Ms.No.212, despite the said issue being brought up by the Nellore Municipal Corporation.

The question of the State Exchequer being saddled with additional expenditure in relation to such regularisation does not arise, as the relief already granted to some of the employees in the cases on hand is to reckon their services upon completion of five years on or before 25.11.1993 only for the purpose of their pension and pensionary benefits. They are not to be given any monetary benefits in the form of arrears of pay or otherwise. Similar relief would have to be extended to those employees who were non-suited by the Tribunal and are before this Court.

As all of them served the State or its instrumentalities for decades together, extending to them the benefit of such service only for the purpose of pension and pensionary benefits can hardly be said to be an onerous burden either on the State or the State Exchequer. Having utilised their services all along, the State and its instrumentalities cannot now turn their back on the loyal services rendered by these employees.

The learned Government Pleader would also point out that some of the O.A.s/writ petitions were filed with substantial delay after the regularization orders were passed, giving the benefit of G.O.Ms.No.212 with effect from the stipulated dates therein prospectively. She would assert that such settled matters should not be unsettled merely because the Supreme Court passed the subsequent order in B.SRI NIVASULU¹. It may however be noticed that the trajectory of developments since the issuance of G.O.Ms.No.212, as set out hereinbefore, demonstrates that there was no consistency even in the orders passed by the Tribunal and this Court. Identically situated people were treated differently. The narration *supra* in relation to this very batch of cases demonstrates that the Tribunal gave the benefit of B.SRI NIVASULU¹ to some and denied it to others. In such a fluid and uncertain situation, an employee cannot be blamed for seeking relief even after lapse of some years as there was no clarity as to the legal position. As the Supreme Court has now settled the same by way of its decision in B.SRI NIVASULU¹, employees who completed five years of service on or before 25.11.1993 and were already regularised in service with prospective effect cannot be found fault with for approaching this Court with some delay so as to seek the benefit of their past service in terms of G.O.Ms.No.212 at least for the limited purpose of their pension and pensionary benefits.

On the above analysis, the writ petitions are disposed of directing the authorities concerned to extend the benefit of B.SRINI VASULU¹ to the employees in this batch of cases by reckoning their services from the date of completion of five years in service, on or before 25.11.1993, for the purposes of their pension and pensionary benefits. They shall however not be entitled to actual monetary benefits for the said period, in the form of arrears of pay or allowances.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

2nd MAY, 2018

L/ R copy to be marked – Yes
B/ o PGS



SANJAY KUMAR,J

M.GANGA RAO,J