

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

WRIT PETITION NO.10456 OF 2018

ORDER: (Per Hon'ble Sri Justice M.Ganga Rao)

The petitioner, who is working as a Full Time Bill Collector in the 5th respondent-Gram Panchayat, filed this Writ Petition being aggrieved by the order dated 07.07.2017 passed in O.A.No.5785 of 2015 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the claim of the petitioner for regularization of his services as per G.O.Ms.No.212, Finance and Planning (FW.PC.III) department, dated 22.04.1994, was rejected confirming the orders issued in Memo No.2606/Estt.III/A1/2012-7 dated 16.06.2015 issued by the first respondent.

The 5th respondent-Panchayat Secretary, Gangavaram Gram Panchayat, vide proceedings in ROC No.9/1988 dated 30.10.1988, appointed the petitioner as a Fixed Pay Bill Collector exercising power conferred under Section 36 of the Andhra Pradesh Gram Panchayat Act, 1964 on fixed pay of Rs.150/- per month without any allowances and his appointment was ratified by the District Collector (Panchayat Wing), Chittoor District, vide letter No.4546/1989-B2 dated 12.09.1989. Since then, petitioner has been continuing as such on enhanced pay. As on today, the petitioner is being paid Rs.9,000/- per month as fixed pay. Earlier to the said appointment, the Government issued G.O.Ms.No.491, Panchayat Raj and Rural Development Department (Establishment-IV), dated 04.10.1986, accepting the proposals of the Gram Panchayats for creation of part time or full time posts or conversion of part time posts like Bill Collectors, Junior Assistants-cum-Bill Collectors, Sweepers, etc.

either with fixed pay or on daily wages into full time posts with regular scale of pay in the Gram Panchayats, subject to certain conditions. In pursuance of the same, the petitioner was appointed as Full Time Bill Collector. The 4th respondent-District Panchayat Officer, Chittoor District, submitted proposals on 21.04.2008 through the 2nd respondent-The Commissioner of Panchayat Raj to the 1st respondent to regularize the services of the part time and full time employees working in various Gram Panchayats in Chittoor District, as per G.O.Ms.No.212, Finance and Planning (FW.PC.III) department, dated 22.04.1994, and G.O.Ms.No.112, Finance and Planning (FW.PC.III) department, dated 23.07.1997, in which the name of the petitioner was shown at Sl.No.25. Based on the proposal submitted by the 4th respondent, the Government issued G.O.Ms.No.333, Panchayat Raj & Rural Development (Estt.IV) Department, dated 23.09.2011, regularizing the services of 25 individuals working in various Gram Panchayats in Chittoor District in terms of G.O.Ms.No.212 dated 22.04.1994. But, the service of the petitioner was not regularized along with others whose names were also proposed by the 4th respondent. However, it appears that again the 4th respondent, through the 2nd respondent, submitted petitioner's name treating as 'left over candidate' to the Government for regularization, vide letter in ROC No.364/2012-B2(Pts) dated 10.04.2013. Having received the same, the second respondent, vide his letter No.6569/CPR&RE/N1/2013 dated 30.12.2013, forwarded the same to the first respondent-Principal Secretary. Thereafter, the 4th respondent submitted the particulars/information pertaining to the petitioner, in the revised check list, in pursuance to the Fax Memo No.6569/CPR&RD/ B1/2013 dated 31.03.2015. After

considering all the material, the 1st respondent, vide impugned Memo dated 16.06.2015, rejected the claim of the petitioner for regularization on the ground that he has not fulfilled the conditions stipulated in G.O.Ms.No.112 dated 23.07.1997 as the petitioner was working as Part Time employee and he had not put in the requisite service of 10 years as on 25.10.1993, the cut off date, which is one of the conditions to be fulfilled as per G.O.Ms.No.112.

Being aggrieved by the same, petitioner filed O.A.No.5785 of 2015 seeking regularization of his services as per G.O.Ms.No.212 dated 22.04.1994 on par with his juniors who are working in other Gram Panchayats and whose names were proposed by the 4th respondent to the 2nd respondent on 10.04.2013 and 30.12.2013 as was done in the case of other similarly situated persons vide G.O.Ms.No.333 dated 23.09.2011 and G.O.Ms.No.325 dated 23.09.2011 with all attendant benefits. The Tribunal, on erroneous appreciation of facts and law, came to the conclusion that the petitioner was working as a part time Bill Collector and his case does not fall under G.O.Ms.No.212 dated 22.04.1994. However, to consider his case for regularization in terms of G.O.Ms.No.112 dated 23.07.1997, he has not put up the required length of service of 10 years as on 25.04.1993 as the petitioner was appointed on 30.10.1988 and held that there is no irregularity or illegality in the impugned memo dated 16.06.2015 and accordingly dismissed the O.A., against which, the present writ petition came to be filed by the petitioner seeking regularization of his services as per G.O.Ms.No.212 dated 22.04.1994 by declaring the action of the respondents as arbitrary, discriminatory and specifically contending that services of the similarly situated persons viz., O.Naga Raju and T.Jayaramaiah

were regularized whereas the same benefit was arbitrarily denied to him.

Sri P.Venkat Reddy, learned counsel appearing for Sri P.Raghavender Reddy, learned counsel for the petitioner, would contend that the petitioner was appointed by the 5th respondent by exercising power conferred under Section 36 of the P.R.Act on full time basis as per G.O.Ms.No.491 dated 04.10.1986. Since the petitioner worked as such for five years, he is entitled for regularization as per G.O.Ms.No.212 dated 22.04.1994. Accordingly, the 4th respondent sent proposals through the second respondent to the first respondent for regularization of services of the petitioner along with others. In the list of proposals, the name of the petitioner was shown at Sl.No.25. Government issued G.O.Ms.No.333 dated 23.09.2011 and G.O.Ms.No.325 dated 23.09.2011 regularizing the services of employees who are similarly situated to the petitioner. However, the services of the petitioner were not regularized. Hence, the name of the petitioner was separately sent by the 4th respondent through the 2nd respondent to the 1st respondent for regularization. But, the first respondent rejected the case of the petitioner for regularization, vide impugned memo, treating the petitioner as a part time employee and ineligible for regularization, which is contrary to the evidence available on record. Against the same, the petitioner approached the Tribunal. The Tribunal, on erroneous appreciation of fact and law, came to the conclusion that the petitioner is a part time employee and he has not fulfilled the condition of putting required length of 10 years of service as required under G.O.Ms.No.112 dated 23.07.1997 and thereby dismissed the O.A. confirming the impugned Memo, which is illegal and arbitrary and without considering the fact

that services of the persons similarly situated to the petitioner were regularized whereas the petitioner was singled out and his case for regularization was rejected, which amounts to discrimination. Learned counsel vehemently contended that the petitioner is eligible and qualified to be regularized as per G.O.Ms.No.212 dated 22.04.1994 along with similarly situated persons and prayed this Court to direct the respondents to regularize the services of the petitioner in terms of G.O.Ms.No.212 dated 22.04.1994 along with all other service benefits.

Per contra, the learned Government Pleader appearing for the respondents, while reiterating the averments of the counter, would contend that the petitioner was initially appointed as a part time Bill Collector of Gangavaram Gram Panchayat, on fixed pay of Rs.150/- per month vide proceedings dated 30.10.1988 of the Sarpanch and his appointment was also ratified by the District Collector, Chittoor, vide proceedings dated 12.09.1989. Petitioner has been continuing as part time Bill Collector on fixed pay basis till date. Hence, the first respondent has rightly considered the case of the petitioner for regularization and rejected the request in terms of G.O.Ms.No.112 dated 23.07.1997 for not fulfilling the condition of completion of ten years service as on the cut off date 25.11.1993. The Tribunal having perused the Service Register of the petitioner came to the conclusion that the petitioner was appointed as a Part Time Bill Collector in the 5th respondent-Gram Panchayat and he has not fulfilled the conditions stipulated in the G.O.s issued for regularization of services.

Learned Government Pleader would further submit that the contention of the petitioner that the services of other similarly

situated persons were regularized whereas the petitioner was denied the said benefit is untenable, for the reason that though they were referred as part time Bill Collectors, in fact, they are Full Time employees working for eight hours. Learned counsel would further contend that petitioner's case could not be considered for lack of sufficient information along with the persons though his name was found at Sl.No.25 and based on the subsequent proposals sent by the 4th respondent through the 2nd respondent to the 1st respondent, his case was considered and rejected. There is no illegality or irregularity either in the impugned Memo dated 16.06.2015 or the order passed by the Tribunal, which calls for interference of this Court under Article 226 of the Constitution of India.

Having considered the rival contentions of the counsel and perused the entire material available on record, we found that the petitioner was appointed as Fixed Pay Bill Collector on 30.10.1988 on fixed pay of Rs.150/- per month, which was enhanced from time to time. His appointment was ratified by the District Collector vide letter dated 12.09.1989. Initially, on 21.04.2008 the 4th respondent submitted proposal to the 1st respondent through the 2nd respondent for regularization of services of the part time and full time employees, including the name of the petitioner. The 1st respondent-Government had issued G.O.Ms.No.333 dated 23.09.2011 regularizing the services of 25 individuals including T.Jayaramaiah and O.Naga Raju, who are juniors to the petitioner. The contention urged by the learned Government Pleader is that the persons whose services were regularized are full time Bill Collectors whereas the petitioner is a part time Bill Collector. The Tribunal also held that the petitioner is a part time Bill Collector, considering the entries made in the Service

Register. But, it is to be noted that in pursuance of the fax Memo dated 31.03.2015, the 4th respondent furnished the particulars of the petitioner to the 1st respondent wherein it is clearly stated that the petitioner is a Full Time Bill Collector. The Tribunal grossly erred in holding that the petitioner is a Part Time Bill Collector, merely based on the entries made in the Service Register way back in the year 1988, contrary to the appointment order. Further, the evidence on record clearly reveals that services of other similarly situated persons viz., T.Jayaramaiah and O.Naga Raju, who are juniors to the petitioner, were regularized in terms of G.O.Ms.No.212 dated 22.04.1994 whereas the same benefit was not extended to the petitioner, which tantamounts to discrimination under Articles 14 and 16 of the Constitution of India. Since the petitioner was appointed on 30.10.1988, he fulfilled the condition of completion of five years as on the cut off date i.e. 25.11.1993, as stipulated under G.O.Ms.No.212 dated 22.04.1994. Hence, we are of the considered view that the action of the 1st respondent in denying the benefit of regularization of service to the petitioner as per G.O.Ms.No.212 dated 22.04.1994 while extending the very same benefit to other similarly situated persons and considering the case of the petitioner as per G.O.Ms.No.112 dated 23.07.1997 and rejecting his case on the ground that he is a Part Time employee, contrary to the appointment order, vide impugned Memo, suffers from arbitrariness and discrimination, which warrants interference by this Court under Article 226 of the Constitution of India.

Hence, the impugned memo dated 16.06.2015 issued by the 1st respondent and the order dated 07.07.2017 passed in

O.A.No.5785 of 2015 by the Tribunal are liable to be set aside and are accordingly set aside.

For the reasons stated supra, we direct the respondents to regularize the services of the petitioner on par with his juniors treating his appointment as Full Time Bill Collector and also pay all the service benefits to which he is entitled to, on par with his juniors. The above exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

5th September, 2018
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