

**THE HON'BLE SRI JUSTICE V. ESWARAI AH
AND
THE HON'BLE SRI JUSTICE N. RAVI SHANKAR**

WRIT PETITION Nos.34034, 34035 AND 34036 OF 2011

Date:26.12.2011

Between:

The Commissioner, Municipal Corporation,
Nizamabad, Nizamabad District .. Petitioner

And

A.Sailoo and others .. Respondents

THE HON'BLE SRI JUSTICE V. ESWARAIAH
AND
THE HON'BLE SRI JUSTICE N. RAVI SHANKAR

WRIT PETITION Nos.34034, 34035 AND 34036 OF 2011

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COMMON ORDER: (Per Hon'ble Sri Justice V.Eswaraiah)

All these three writ petitions are filed by the Commissioner, Municipal Corporation, Nizamabad, challenging the orders of the Andhra Pradesh Administrative Tribunal (Tribunal), Hyderabad, in O.A.Nos.5587, 6354 and 6207 of 2011 dated 01.07.2011, 27.07.2011 and 21.07.2011 respectively.

2. Respondents herein/applicants filed the said O.As. seeking to declare the proceedings in G.O.Rt.No.1143, Municipal Administration and Urban Development Department, dated 06.10.2010 of the Government and the consequential proceedings dated 27.10.2010 of the Commissioner, Municipal Corporation, Nizamabad, as illegal, arbitrary and contrary to the judgments of the Hon'ble Supreme Court of India and to direct the respondents therein to regularize the services of the applicants with effect from 25.11.1993 by which date they have completed more than five years of service in the posts in which they have been working with all consequential benefits like seniority and notional fixation of pay etc., in terms of G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22.04.1994.

3. The said O.As. were disposed of by the Tribunal following its earlier orders dated 19.01.2011 in O.A.No.8095 of 2008 holding that the applicants/respondents herein are entitled for regularization of their services w.e.f. 25.11.1993 as they have completed five years of continuous service as per above G.O.Ms.No.212, dated 22.04.1994 as on 25.11.1993 as stipulated in the said G.O. and accordingly gave directions to the petitioner, Government and other concerned authorities. It is further stated in the Tribunal orders that the decision of the Hon'ble Supreme Court in **District Collector v M.L.Singh**^[1] also supports the case of the applicants and that the earlier order of the Tribunal in O.A.No.8095 of 2008 was passed following the said Supreme Court decision.

4. Accordingly, the Tribunal directed the respondents therein/petitioners herein to regularize the services of the applicants in the posts in which they have been working if they have completed five years of service by 25.11.1993 from the said date and fulfilled other conditions prescribed in the said G.O.Ms.No.212, but they are not eligible for arrears of pay and eligible only for notional fixation of pay. Aggrieved by the said orders, the Commissioner Municipal Corporation, Nizamabad, filed the present writ petitions.

5. Learned Standing Counsel appearing for the Nizamabad Municipal Corporation submits that as per the orders of the Government in G.O.Ms.No.1143, dated 06.10.2010, the Government permitted the appointing authority i.e., the Municipal Corporation, Nizamabad, to regularize the services of 60 NMRs. of the Corporation against the concerned posts in terms of G.O.Ms.No.212, dated 22.04.1994 from the prospective date i.e., the date of issuance of the orders by the Nizamabad Municipal Corporation, subject to the condition that the said vacancy is clear, regular and continued from

time to time till date and no senior eligible person is overlooked/omitted. Pursuant to the said G.O., the Commissioner and Director of Municipal Administration, Hyderabad, issued consequential proceedings, dated 02.11.2010, permitting the Commissioner, Municipal Corporation, Nizamabad, to regularize the said

60 NMRs. subject to the fulfillment of the conditions imposed in G.O.Ms.No.212. Accordingly, the Nizamabad Municipal Corporation vide its proceedings dated 27.11.2010 regularized the services of the said 60 NMRs. with prospective date i.e., the date of issuance of the orders by the Government in G.O.Ms.No.1143, dated 06.10.2010.

6. Learned Standing Counsel contends that as per the orders of the Hon'ble Supreme Court, the NMRs. who have fulfilled the conditions enumerated in G.O.Ms.No.212 dated 22.04.1994 are entitled for regularization, but it is not mentioned whether they are entitled for regularization with retrospective or prospective effect and therefore the orders issued by the Commissioner, Nizamabad Municipal Corporation to regularize the services with prospective effect from the date of the G.O.Rt.No.1143, dated 06.10.2010, are valid and the Tribunal ought not to have directed them to regularize the services of the applicants on completion of five years by 25.11.1993 or in other words from the said date.

7. It should be noted that in G.O.Ms.No.212, the Government decided that the services of such persons who worked continuously for a period of five years and are continuing as on 25.11.1993 be regularized by appointing authority subject to fulfillment of the conditions therein. It is the contention of the petitioner that though the conditions stipulated in the said G.O. are fulfilled the NMR workers are entitled to be regularized only from the

prospective date on which the Government decides to regularize their services and that is why proposals were submitted by the Corporation for regularizing the NMR workers prospectively and the Government approved for their regularization with prospective effect as per G.O.Rt.No.1143, dated 06.10.2010. It may be noted that the terms of G.O.Ms.No.212, the NMRs, who have completed five years continuous service as on 25.11.1993 and if there is a clear vacancy as on that date are entitled to be regularized w.e.f. 25.11.1993. The Tribunal considered this aspect and passed the impugned orders following its earlier decision which has been given relying upon a Supreme Court decision which is already mentioned.

8. In the above circumstances, we are of the opinion that the Tribunal has rightly passed the impugned orders and it has also rightly held that the respondents herein who were the applicants before it are also not eligible for arrears of pay but only eligible for notional fixation of pay. Further, as these matters are covered matters, we do not see any reason to interfere with the Tribunal orders. The learned counsel for the Corporation lastly submitted that the Tribunal passed the impugned orders at the admission stage without issuing any notice to the petitioner Corporation. It may however be noted that the perusal of the impugned orders that the Tribunal heard the Government Pleader for Municipal Administration, Standing Counsel for Municipalities and also the Government Pleader for Finance and Planning before passing the impugned orders. Hence, it cannot be said that the Tribunal passed the orders without giving opportunity to the concerned authorities.

9. Accordingly, these writ petitions are dismissed at the admission stage. At the end the learned Standing Counsel for petitioner Corporation requests to grant reasonable time to

implement the orders of the Tribunal. Having regard to the same, we grant three months time for implementing the orders of the Tribunal. There shall be no order as to costs.

V. ESWARAIAH, J

N. RAVI SHANKAR, J

26.12.2011
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[\[1\]](#) (2009) 8 SCC 480