

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.290 OF 2003

ORDER

This writ petition is filed for the following relief:

“... to issue writ, order or direction more in the nature of Writ of Mandamus declare the order dated 9.7.2002 passed by 3rd respondent as illegal and arbitrary and set aside the same and consequentially direct the 3rd respondent (a) to regularize the service of the petitioner as per G.O.Ms.No.212, dated 22.04.1994 by counting the out of employment service as continuity of service from the date of initial appointment. (b) to direct the respondents to fix the pay of the petitioner by allowing notional increments during out of employment period. (c) to direct the respondents to extend all benefits to the petitioner on par with other employees by treating the petitioner out of employment service as in service and pay arrears.”

Heard Sri M.Pitchaiah, learned counsel appearing for the petitioner, and learned Government Pleader for Irrigation appearing for the respondents.

It is the case of the petitioner that he was appointed as NMR Luskar in the year 1982 and while working as such, the respondents have terminated him from service *vide* proceedings dated 1.5.1983. Hence, he raised I.D.No.184 of 1990 before the Labour Court, Guntur, under Section 2-A (2) of the Industrial Disputes Act, 1947. The Labour Court *vide*

order dated 28.09.1995 passed Award in favour of the petitioner by setting aside the termination order and directed the 2nd respondent to consider the case of the petitioner as per the guidelines issued in G.O.Ms.No.212, dated 22.04.1994, without any back wages. Pursuant thereto, the petitioner was reinstated into service on 01.05.1996. Thereafter, he submitted a representation to the respondents to consider his case for regularization in terms of G.O.Ms.No.212. But the respondents *vide* order dated 09-07-2002 rejected the said representation on the ground that the post in which the petitioner was working would soon be abolished and the petitioner is not working in a permanent post. Challenging the same, the present writ petition is filed.

Learned Government Pleader appearing for the respondents would contend that the petitioner is not entitled for regularization as he is out of employment as on 25-11-1993, the question of extending the benefit under G.O.Ms.No.212, dated 22.04.1994 in favour of the petitioner does not arise; apart from that the petitioner retired from service and at this stage, consideration of his case for regularization also does not arise. He further contends that the reason for rejection of regularization of the petitioner *vide* proceedings dated 09-07-2002 is that the post in which the petitioner being

continued would soon be abolished as there are proposals to abolish the said post and thereafter, no steps have been taken to abolish the said post and in fact, the petitioner was allowed to continue in service till 30th June, 2016. He placed reliance on the Division Bench judgment of this Court in W.P.No.33936 of 2001 and batch, dated 2-5-2018, wherein it was held that the persons, who have completed five years of service as on 25.11.1993 should be taken into consideration for the purpose of regularization of service in terms of G.O.Ms.No.212, dated 22.04.1994.

Since the petitioner was out of employment as on the crucial date of 25.11.1993, the Labour Court has passed Award in favour of the petitioner in I.D.No.184 of 1990, dated 28.09.1995, holding that the termination is invalid and the petitioner was directed to be reinstated into service with continuity of service, without back wages. When the Labour Court has directed to reinstate the petitioner into service, it should be understood that the petitioner was deemed to be on the rolls as on 25.11.1993. Hence, benefits of G.O.Ms.No.212 cannot be denied to the petitioner. The reason assigned by the respondents is that the post in which the petitioner is working would be abolished as there were proposals to abolish the

said post. But the said reasoning is totally incorrect as the petitioner continued in service till his retirement.

Having regard to the submissions made by the learned counsel on either side, this Court is of the considered view that ends of justice would be met if the respondents are directed to consider the case of the petitioner for regularization of his services in terms of G.O.Ms.No.212, dated 22.04.1994 afresh.

Accordingly, the impugned order dated 09.07.2002 passed by the respondents is set aside and the respondents are directed to consider the case of the petitioner for regularization of his services and entitlement of pensionary benefits to him and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

27th August, 2018
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