

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

WRIT APPEAL NO.1147 OF 2017

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

This Writ Appeal under Clause 15 of the Letters Patent is filed against the order dated 29.09.2016 passed in Writ Petition No.8901 of 2011 wherein the appellants herein were directed to consider the case of the first respondent for regularization of service.

Brief facts of the case are that the first respondent-writ petitioner was appointed as an attender on 28.01.1985 in the first respondent School. The school is under the control of Andhra Pradesh Residential Educational Society. The first respondent was terminated from service by proceedings dated 23.07.1987. Aggrieved by such termination, the petitioner raised an industrial dispute in I.D.No.665 of 1991 before the Labour Court, Guntur. The Labour Court vide Award dated 08.11.1996 held that termination of the petitioner was illegal and thereby directed his reinstatement with continuity of service, but without backwages. The management of the School filed Writ Petition No.17717 of 1997 questioning the award of the Labour Court wherein this Court granted interim suspension in W.P.M.P.No.21497 of 1997 on 06.08.1997 subject to the condition of reinstating the first respondent into service. Thus, by virtue of interim orders, the first respondent was reinstated into service by order dated 07.03.1998 and he joined in duties on 18.03.1998. Thereafter, Writ Petition No.17717 of 1997 itself was dismissed on 15.03.2007 affirming the Labour Court Award. Pursuant thereto, the first respondent filed W.P.No.17123 of 2008 seeking to regularize his services as attender. The said writ petition

was disposed of on 16.04.2010 directing the appellants to consider the claim of the first respondent for regularization of service, in terms of G.O.Ms.No.212 dated 22.04.1994. Accordingly, the first respondent's claim was considered and rejected by proceedings dated 25.01.2011, against which, the first respondent filed W.P.No.8901 of 2011 and the same was allowed on 29.09.2016. Questioning the same, the appellants are before us.

Learned counsel for the appellants would contend that the first respondent is not eligible for regularization in terms of G.O.Ms.No.212. He would further contend that as per policy matter of the Government and as per G.O.Ms.No.50 Social Welfare (V) Department dated 05.03.1987, all the posts of Attenders arising in the Scheduled areas shall be filled in by members of local STs and such appointments shall be regulated in terms of provisions of A.P. Last Grade Service Rules. He would further contend that in view of G.O.Ms.No.62 Social Welfare (E) Department dated 18.03.1987, the posts of cooks, Kamatees, Watchman and Contingent employees in the Government S.T. Hostels, Ashram Schools and Residential Schools in the scheduled areas of the State shall be filled in only by the local members of the Scheduled Tribes notwithstanding anything contained in any other order or Law in force.

It appears, the said plea was not urged before the learned single Judge. However, the said plea is contrary to Article 14 of the Constitution of India and also the ratio laid down by this Court in ***Principal Secretary, Government of Andhra Pradesh Health, Medical and Family Welfare (J2) Department vs. Ajmeera Raju***¹ wherein it has been held that there cannot be any sub-classification

¹ 2017 (1) ALT 291 (D.B.)

of Scheduled Tribes residing in scheduled areas of a District and Scheduled Tribes residing in a non-scheduled areas of the same unit of appointment.

Learned counsel would further contend that the services of the first respondent cannot be regularized as he did not put minimum period of five years and was not continuing as on the cut off date i.e., 25.11.1993, as prescribed under G.O.Ms.No.212.

Rebutting the same, learned counsel for the first respondent would contend that as per the Labour Court Award passed in I.D.No.665 of 1991, the first respondent shall be deemed to be in continuous service and have completed five years of service as on 25.11.1993. By virtue of the order of this Court dated 16.04.2010 passed in W.P.No.17123 of 2008, the action of the appellants rejecting the claim of the first respondent for regularization of services, is illegal and contrary to G.O.Ms.No.212. Thus, he would contend that the learned single Judge has rightly allowed the writ petition directing the appellants to consider the case of the first respondent for regularization, treating that the first respondent has completed minimum eligible service of five years as on 25.11.1993, and grant regularization. Learned counsel would further bring to our notice that in the impugned order the learned Single Judge has observed that as the first respondent has completed more than 20 years of service, the same should be duly taken note of while considering his eligibility for grant of regularization.

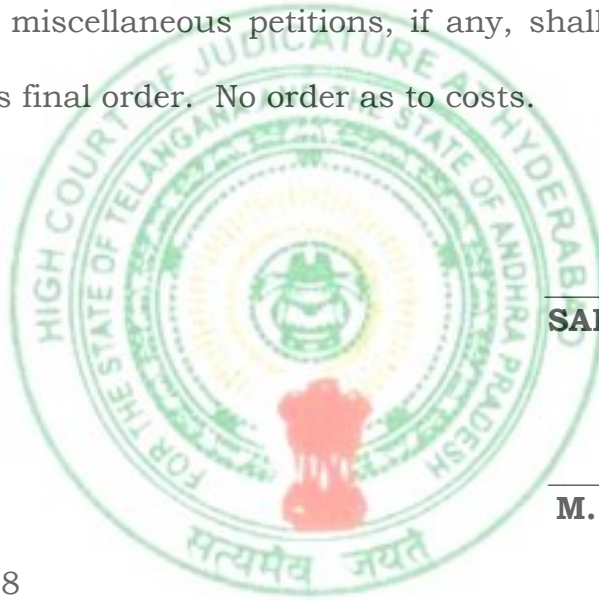
We have considered the rival contentions and perused the material on record.

Perusal of the record would indicate that the first respondent was initially appointed on 28.01.1985 and thereafter he was

terminated on 23.07.1987. However, as per the award of the Labour Court, Guntur, passed in I.D.No.665 of 1991 on 08.11.1996 he was reinstated with continuity of service. As such, the first respondent is deemed to be in continuous service and thereby he had fulfilled all the conditions stipulated in G.O.Ms.No.212 as he had completed five years of service as on 25.11.1993 and continuing in service. Hence, the first respondent is entitled for regularization as per G.O.Ms.No.212. We see no reason to interfere with the order of the learned single Judge.

Hence, the Writ Appeal is dismissed.

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

25th April, 2018
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