

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12174 OF 2017

ORAL ORDER: (per Hon'ble Sri Justice Suresh Kumar Kait)

1. Vide the present petition, the petitioner has challenged the order dated 06.11.2015 passed in O.A.No.1911 of 2012 by the A.P. Administrative Tribunal, Hyderabad.

2. The petitioner is working as a watchman in Integrated Child Development Scheme (ICDS) Project, Bourgumpahad, Khammam District. He was originally appointed as Part Time Sweeper on 26.9.1992. Subsequently, he was appointed as Night Watchman on daily wage basis from 1.1.1994 onwards by the 1st respondent. Previously, the petitioner filed O.A.No.7473 of 2006 for regularizing his services on par with his juniors. The said O.A. was disposed of by order dated 24.1.2008 directing the respondents to consider the petitioner's case for regularization of his services as per prevailing rules in view of fact that the respondents admitted that juniors to the petitioner were regularized as attenders. Thereafter, the petitioner filed C.A.No.569 of 2008 complaining that the aforesaid order in O.A.No.7473 of 2006 was not complied with. Then, the 1st respondent issued Memo No.A1/7473/2006, dated 16.10.2008 stating that the petitioner is not eligible for regularization of his services as Watchman as per G.O.Ms.No.212 Finance & Planning (FWPC-III) Department, dated 22.4.1994. Questioning the said memo of the 1st respondent, the petitioner filed O.A.No.9812 of 2008 before the Tribunal. The said O.A. was disposed of vide order dated 23.3.2011 as under:

“Therefore, the respondents are directed to examine whether the applicant was appointed in a regular vacancy and completed ten years of continuous service as on 10.4.2006, and whether R. Siva Rama Sastry, P.A. Rama Rao, S.S. Baji, Y.V. Prasad Rao, S. Rama Rao, D.V.S. Ramana, K. Subba Rao, Sk. Khajamohinuddin, D. Prahlad Kumar and T. Prabhu Dass, whose services were regularized are juniors to the applicant, the case of the applicant shall be considered for regularization, if he is otherwise eligible and qualified and pass appropriate orders within a period of two months from the date of receipt of the order. The O.A. is disposed of accordingly. No order as to costs.”

3. It is pertinent to note that the 1st respondent passed order in Memo No.A1/452/2006, dated 6.9.2011 to the effect that the petitioner has not put in minimum five years of service as on 25.11.1993 as per G.O.Ms.No.212 and he is not eligible for regularization of his services. Questioning the same, the petitioner filed O.A.No.1911 of 2012. The learned Tribunal dismissed the said O.A. by recording that admittedly, the petitioner has not put in minimum five years of continuous service as Full Time Contingent Worker as on the cut off date i.e., 25.11.1993, therefore, the petitioner cannot claim regularization of his services in terms of G.O.Ms.No.212.

4. On perusal of the order dated 23.3.2011 passed in O.A.No.9812 of 2008, it is obvious that the learned Tribunal issued directions to the respondents to examine i.e., (i) whether the petitioner was appointed in a regular vacancy and completed ten years of continuous service as on 10.4.2006; (ii) whether R. Siva Rama Sastry, P.A. Rama Rao, S.S. Baji, Y.V. Prasad Rao, S. Rama Rao, D.V.S. Ramana, K. Subba Rao, Sk. Khajamohinuddin, D. Prahlad Kumar and T. Prabhu Dass, whose services were regularized are juniors to the petitioner and (iii) whether the case of

the petitioner shall be considered for regularization, if he is otherwise eligible and qualified, and then, pass appropriate orders within a period of two months from the date of receipt of copy of the order, whereas the 1st respondent passed the order in Memo No.A1/452/2006, dated 6.9.2011 and stated that the petitioner has not put in minimum five years of service as on 25.11.1993 as per G.O.Ms.No.212 and the petitioner is not eligible for regularization of his services.

5. The aforesaid order passed by the 1st respondent is not in consonance with the orders of the Tribunal dated 23.3.2011 in O.A.No.9812 of 2008. Therefore, we hereby set aside the order dated 6.9.2011 in Memo No.A1/452/2006 by the 1st respondent.

6. Further, it is pertinent to mention here that vide order dated 6.4.2017, while issuing notice before admission, this Court directed the 5th respondent to file a counter-affidavit certifying as to whether the petitioner worked on daily wage basis from 1.1.1994 till date without a break and, if so, as to whether such continuance was on the strength of any interim orders/final orders passed by any Court or Tribunal.

7. In addition to the above, in terms of the law laid down by the Supreme Court in **Secretary, State of Karnataka Vs. Umadevi (3) [(2006) 4 SCC 1]** and its recent judgment in **State of Punjab Vs. Jagjit Singh [(2017) 1 SCC 148]**, this Court vide order mentioned above directed the respondents to pay the petitioner the minimum time scale of pay applicable to the regular post of Watchman, pending further orders.

8. Pursuant to the directions of this Court dated 6.4.2017, the respondents filed counter-affidavit admitting that the petitioner was appointed as Sweeper in the office of Child Development Project Officer,

ICDS Project, Burgampahad for Rs.150/- per month vide Process.Rc.No.E/ICDS/17/91, dated 26.9.1991 of the Programme Officer, District ICDS Cell, Khammam, and further, he was appointed as daily wage watchman vide Proceedings No.E/91-6, dated 8.1.1994 of Child Development Project Officer, ICDS Project, Burgampahad and he is still working as daily wage watchman at ICDS Burgampahad. It is further admitted that from 8.1.1994 till date without any break, the petitioner is working as night watchman on daily wage basis in the office of CDPO, ICDS Project Burghampad.

9. It is not in dispute that the petitioner is senior to R. Siva Rama Sastry, P.A. Rama Rao, S.S. Baji, Y.V. Prasad Rao, S. Rama Rao, D.V.S. Ramana, K. Subba Rao, Sk. Khajamohinuddin, D. Prahlad Kumar and T. Prabhu Dass, whose services have already been regularized. We do not see any reason why the services of the petitioner should not be regularized.

10. In view of the facts recorded above, we are of the considered opinion that the petitioner is entitled for regularization. Accordingly, the respondents are directed to regularize the services of the petitioner as watchman or any other Class-IV post, within a period of four weeks from the date of receipt of a copy of the order.

11. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 22nd February, 2018.
Nn.

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12174 of 2017

(Oral order delivered by the Hon'ble Sri Justice Suresh Kumar Kait)



22/02/2018

Nn.