

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No26843 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus declaring the action of the respondents in not regularizing the services of the petitioner as Attender from the date of his appointment, that is, 05.12.1985 in the time scale of 350-5-460-15-625; from 1986 in the time scale of 740-15-950-20-1150; from 1993 in the time scale of 1595-30-1625-40-1825; from 1999 in the time scale of 2780-60-3050-80-3450-100-3950; and, in the time scale of 7570-200-8170-215-8600 as on the date of the institution of the writ petition with all consequential benefits.

2. I have heard the submissions of Sri A.K. Jayaprakash Rao, learned counsel appearing for the petitioner, and of Sri B. Prudhvi Kumar, learned standing counsel appearing for the respondents 1 to 3. I have perused the material record.

3. The case of the petitioner, in brief, is this:

He belongs to Scheduled Caste (Madiga sub-caste) community. He studied upto 5th class. He worked with his father, who was a cobbler. He was made to work as a bonded labour with one Salla Obulesu of Venkatapuram, Dharmavaram Taluq. He was rescued from the said person by the then District Collector, Anantapur District. He was given training in leather goods manufacturing unit at Indira Gandhi Harijan Freed Bonded Labour Leather Industrial Co-operative Society Limited, Anantapur, for a period of 18 months,

i.e., from 01.11.1977 to 30.4.1979 as per the policy of the Government to provide proper employment opportunities to the freed bonded labour. He was appointed as leather instructor, on 05.12.1985, in the office of the 2nd respondent, that is, A.P.S.C.Co-op. Society Limited, Eluru, West Godavari District at Siddantam, from 05.12.1985 to 01.05.1986; and, from 01.06.1986 to 13.10.1986 at Eluru. From 13.10.1986 he was posted to Kolamuru Panchayat Samiti, Artisan Unit. Proceedings in RC.No.1636/87 SCI were issued posting him from Kolamuru Artisan Complex to leather goods manufacturing complex at Gunipudi, Bhimavaram Mandal, Eluru Artisan complex. The 2nd respondent assigned the job of being in touch with the beneficiaries and to organize & motivate them and to collect the loan amounts due to the Corporation. On 03.08.1987, the 2nd respondent, by proceedings in RC.No.1636/87, issued a memo directing the petitioner to act as an in-charge even for Siddantam Artisan Unit; and, on 13.06.1988, the 2nd respondent enhanced his salary/consolidated pay from Rs.800/- to Rs.1,350/- on the basis of the representation given by the petitioner. Subsequently, on 22.07.1994, the consolidated pay was increased to Rs.2,000/- after obtaining necessary approval of the Board through the District Collector. While so, the 2nd respondent issued a memo transferring the petitioner from Bhimavaram to Headquarters at Eluru. The petitioner discharged his duties at the head office as Attender from the above date till the date of the institution of the writ petition. On 01.06.1995, *vide* proceedings No.636/93 SC2, dated 01.06.1995, he was transferred to Bhimavaram Artisan Complex to oversee the activities of the SC beneficiaries and other beneficiaries. *Vide* proceedings in RC.no.357/95, S1, dated 14.09.1995, the 2nd respondent envisaged a training scheme for the SC

members who are in the age group of 18-25 and who have got a minimum qualification of 7th class. The petitioner was appointed as instructor and programme in-charge and the said programme commenced from 29.01.1996 and was running as on the date of the filing of the writ petition. Respondents 1 & 2 Co-operative societies have come into existence for the purpose of uplifting the downtrodden sections of the society especially those belonging to SC community. Crores of rupees are being pumped for their welfare and to provide necessary training to the deserving SC beneficiaries and to uplift their living conditions. The societies are also funded to provide employment to erstwhile bonded labourers like the petitioner. The petitioner is rendering unstinted and continuous services to the 2nd respondent, that too even without a single day break. However, the petitioner was not absorbed. His services were not regularized in the post of instructor. Nowhere in the correspondence addressed to the petitioner it is stated by the respondents that he was a temporary employee. The petitioner was treated as a permanent employee. Work of a permanent employee was extracted from him without paying the salary attached to the post. The petitioner discharged his duties honestly and with great care & caution and organizing the poor & needy SC men and women and teaching them the skills of foot wear making. After draining his physical capacities and taking his services for nearly 12 years, the respondents are contemplating to dispense with the services of the petitioner and already instructions have been issued for not paying salaries to the petitioner. The petitioner is eligible for regular salary with consequential benefits as per G.O.Ms.no.212 of 1994. The respondents constructed an Artisan Complex at Gunipudi, Bhimavaram, in the area of Ac.0.63 guntas wherein a permanent

structure has been developed to develop the leather industry for which the petitioner has been appointed not only as an instructor but also to oversee and was made to discharge the functions of a watchman. Thus, double work was extracted from him by paying a meager consolidated salary just because he belongs to SC community. He is not able to agitate his grievance in the proper forum. The respondents tried to discontinue the petitioner’s services. Hence, he approached this Court and filed WP.No.14728 of 1996. This Court disposed of the said writ petition with a direction to regularize the services of the petitioner. Though the respondents have not discontinued the services of the petitioner, they are not paying salary as per the time scale on par with the similarly situated employees. As such, the petitioner is entitled to time scales as mentioned infra.

YEAR	Grade No.	Existing Scales	Revised Pay Scales 1976
1978	IV	180-9-270-10-350	350-5-460-15-625
1986	IV	350-10-460-15-550	740-15-950-20-1150
1993 Schedule-I	IV	860-25-1110-30-1470	1595-30-1625-40-1825-50-2075-60-2375-75-2750-90-3020
Schedule-III	IV	1535-30-1625-40-1825-50-2075-60-2375-75-2750-90-2840	
1999	IV	2780-60-3050-80-3450-100-3950-120-4550-150-5300-170-5470	
Present scale		7570-200-8170-215-8600	

Though the petitioner is entitled to arrears as per pay scale, the respondents are deliberately paying a meager salary and their actions are affecting fundamental rights of the petitioner guaranteed under Articles 14 and 21 of the Constitution of India. Hence, the present writ petition is filed.

4. The case of the respondents, as stated in the counter of the Executive Director of the 2nd respondent Co-operative Society, in brief, is this: - ‘The 1st

respondent – A.P. Scheduled Castes Co-operative Finance Corporation was constituted and was registered under the provisions of the A.P. Co-operative Societies Act, 1964. The 2nd respondent was also similarly constituted and was registered under the provisions of the said Act. The main object of the Corporation is to evolve the schemes for upliftment of SC beneficiaries in the state level with financial aid provided by the State and Central Governments from time to time. The Corporation has supervisory powers over the District Societies. The date of birth of the petitioner is 06.02.1960. He studied upto 5th class. He is a rescued bonded labour. He was imparted training in leather goods manufacturing unit at Indira Gandhi Harijan Freed Bonded Labour Leather Industrial Co-operative Society Limited, Venkatapuram, Ananthapur District, for a period of 18 months from 01.11.1977 to 30.04.1979. His services were taken as leather instructor at Leather Goods Manufacturing Complex at Gunupudi, Bhimavaram *vide* the 2nd respondent memo in RC.No.1636/87/SC, dated 03.08.1987. The writ petitioner was kept as incharge for Artisan Complex at Siddantam. His consolidated wages were enhanced from Rs.800/- to R.1,350/- per month; and, later to Rs.2,000/- as fixed by the Wage Board on 22.07.1994. The services of the petitioner were utilized for some period in the West Godavari District Scheduled Castes Service Co-operative Society Ltd., Eluru. *Vide* proceedings, dated 01.06.1995, of the 2nd respondent, the services of the petitioner were utilized at Artisan Complex, Gunipudi; and, *vide* proceedings, dated 14.09.1995, of the 2nd respondent, a training programme was conducted to the SC candidates and the petitioner was kept as instructor and programme in-charge. The District Society can provide employment as per the approved staffing pattern fixed by

the VC and Managing Director, APSCCFC Ltd., Hyderabad. The petitioner is working as NMR on daily wage basis in the 2nd respondent society. It is true that as per the existing staffing pattern communicated by the 1st respondent, there is no post of instructor. Hence, the absorption and regularization of the services of the petitioner as instructor and the question of payment of salary which was attached to the post of instructor does not arise. As the training programme for leather goods manufacturing unit at Bhimavaram was completed, the petitioner is continuing in the respondent society as NMR. As per G.O.Ms.No.212 read with GOMs.No.231, dated 16.10.1998, the services of such persons who worked continuously for a minimum period of 5 years and are continuing on 25.11.1993 be regularised by the appointing authorities subject to fulfillment of the following conditions:

1. The persons appointed should possess the qualifications prescribed as per the rules in force as on the date from which his/her services have to be regularized.
2. They should be within the age limits as on the date of appointments as NMR/Daily Wage Employee.
3. The rules of reservation wherever applicable will be followed and back-log will be set off against future vacancies.
4. Sponsoring of candidates from Employment exchange is relaxed.
5. Absorption shall be against clear vacancies of posts considered necessary to be continued as per work load excluding the vacancies already notified to the APPSC/District Selection Committee.
6. In the case of work charged establishment, where there will be no clear vacancies, because of the fact that the expenditure on work charges is at a fixed percentage of P.S charges and soon as the work is over, the services of work charges establishment will have to be terminated, they shall be adjusted in the other departments, District Officer provided there are clear vacancies of Last Grade Service.

The petitioner has not fulfilled the primary conditions in GOMs.no.212 i.e., completion of five years as on 25.11.1993, as his services are utilized as NMR from 1996. The post of instructor is not a sanctioned post. The post of Attender is sanctioned post as per the staffing pattern communicated by the 1st respondent. Therefore, the post of Attender can be treated as substantive vacancy for the purpose of regularization. Absorption/Regularization shall be against substantive vacancies of posts as per condition no.5 of the afore-stated GO. The contentions of the petitioner that he was made to discharge functions of a watchman and also of an instructor and that double work was extracted while paying meager consolidated salary for one post just because he belong to SC community and that he is not in a position to agitate his grievances in the proper forum and other averments in the writ petition are all false. The petitioner filed WP.no.14728 of 1996 and this Court granted interim directions directing the 1st respondent to consider the continuance of the services of the petitioner as instructor in the 2nd respondent unit where he was working and that if there is no sufficient work to continue his work as instructor, the 1st respondent shall consider his case for appointment to any post in Class – IV service as he being a rescued bonded labour. Since then, his services were taken as NMR in the Corporation. This Court passed a final order directing that the case of the petitioner be considered strictly in terms of G.O.Ms.No.212 and other relevant Government Orders and Circulars in the light of the decision of this Court in **Secretary, A.P. Social Welfare Residential Educational Institutions Society v. P. Venkata Kumar** [2001 (3) ALT 366(DB)]. The 1st respondent, *vide* proceedings in RC.No.LC2/5509/APSC/96, dated 21.09.2001, passed speaking orders stating

that there is no sanctioned post of instructor in the staffing pattern of the DSCSCS Ltd., in the State; the services of the persons appointed on daily wage/NMRs/consolidated pay who worked continuously for a minimum period of five years and continuing on 25.11.1993 are to be regularized subject to fulfillment of conditions laid down in para 2 of G.O.Ms.No.212, Finance & Planning (FWPC-III) Department Dated.22.4.1994; absorption/regularization shall be against substantive vacancies of posts considered necessary to be continued as per work load excluding the vacancies already notified to the A.P.PSC/DSC as per condition no.5 of para no.2 of G.O.Ms.no.212, dated 22.4.1994 read with G.O.MS.No.231, dated 16.10.1998; the petitioner has not fulfilled the condition no.5 of the afore-stated GOs, therefore, his services cannot be regularized; the matter has been examined in the light of the orders of this Court passed in WP.no.14728 of 1996; and, the claim of the petitioner for regularization was considered and rejected as he has not fulfilled the condition no.5 of GOMS.no.212. But the petitioner is being continued in the 2nd respondent office as NMR. He is not entitled for the scale of pay on par with similarly situated employees. The claim of the petitioner is untenable. The petition is liable to be dismissed. There are three posts of Attenders which were sanctioned to each District. At present, the following persons are working as Attenders in West Godavari District: V. Subba Rao; K.W.Noble Kumar; and, K. Tirupati Swamy.'

5. I have given earnest consideration to the submissions of the learned counsel for the petitioner and of the learned standing counsel appearing for the respondents 1 & 2. There is no dispute with the terms of the G.O.Ms.No.212, dated 22.4.1994, and the conditions stated in the said GO, which are required

to be fulfilled for regularizing and absorption of daily wage NMR/consolidated pay. Admittedly, the petitioner was a rescued bonded labour. After his rescue by the then District Collector, Anantapur, he was imparted training for a period of eighteen months in leather goods manufacturing unit at Venkatapuram village of Anantapur District. Later his services were utilized as leather instructor from 03.08.1987. This Court already considered his case in WP.No.14728 of 1996 and directed by an order, dated 14.08.2001, for consideration of his case strictly in terms of G.O.Ms.No.212, dated 22.04.1994 and other relevant G.Os and Circulars in the light of the decision in **Secretary v. P. Venkata Kumar** [supra]. Though the respondents are contending that there is no sanctioned post of instructor in the staffing pattern of the 2nd respondent society and that the petitioner's services were utilized as a NMR from 1996 and that he did not fulfill primary conditions in G.O.Ms.No.212, that is, completion of five years as on 25.11.1993 and that he is being continued as an NMR and that, therefore, he is not entitled to the reliefs claimed in the writ petition, yet, it is an admitted fact that his services were first utilized in the year 1987 being a rescued bonded labour. Admittedly, his services were taken as leather instructor at Leather Goods Manufacturing Complex at Gunupudi, Bhimavaram *vide* the 2nd respondent memo in RC.No.1636/87/SC, dated 03.08.1987. He rendered whatever services that are extracted from him even from 1987 onwards is not in dispute. Had his services been utilized in a sanctioned post available in the staffing pattern instead of in posts not available in the staffing pattern, he would have fulfilled the requirements of the GO. For a reason for which he cannot be blamed, he cannot be faulted and denied the benefits more particularly when he is a rescued bonded labour and when he

worked to the satisfaction of his superiors tirelessly in whatever capacities he was asked to work. He is entitled to constitutional protection and it is the duty of the State to provide him the necessary economic empowerment. In this backdrop, if his services from 1987 are to be taken into consideration notwithstanding that the posts he worked are not in the staffing pattern, it follows that he had fulfilled the requirement of completion of five years of service as on 25.11.1993 as per terms in GO.Ms.no.212. In the considered view of this Court, for no fault of him, if he were to be denied the benefit which would have been otherwise due to him, it would amount to denial of economic justice besides right to life, which is a basic human right and a fundamental right. In that view of the matter, this Court is of the considered view that this writ petition can be disposed of with appropriate directions.

6. Accordingly, the Writ Petition is partly allowed directing the respondents to reconsider the request of the petitioner for regularization of his services as per the terms of GO.Ms.no.212 having regard to the peculiar facts and circumstances of the case and the avowed objective with which the Corporation was established. The necessary exercise in the above regard shall be completed within eight weeks from the date of receipt of a copy of this order and the decision taken thereon shall be communicated to the petitioner within a week thereafter. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

27.09.2018
Vjl