

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.7320 of 2017

ORDER: (Oral)

(Per Suresh Kumar Kait, J)

Vide the present writ petition, petitioner has challenged order dated 29.12.2016 passed in O.A.No.4423 of 2016, by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the application under Section 19 of the Administrative Tribunals Act, 1985 filed by him, has been dismissed.

2. Petitioner is working as NMR fitter in Greater Visakhapatnam Municipal Corporation (GVMC). Previously, case of the petitioner for regularisation of service under G.O.Ms.No.212 was rejected by the Government on the ground that the petitioner had not put in five years of service after attaining the age of 18 years. Therefore, the petitioner filed O.A.No.6248 of 2012 for consideration of his case for regularization in terms of G.O.Ms.No.212 Finance & Planning (FW.PC.II) Department dated 22.04.1994. The petitioner filed M.A.No.2432/2013 therein by raising additional grounds of seeking regularization under G.O.Ms.No.1320, Housing, Municipal Administration & Urban Development Department dated 15.12.1981 and G.O.Ms.No.300 Housing, Municipal Administration & Urban Development (C) Department dated 24.06.19085. The learned Tribunal vide order dated 18.12.2015 dismissed the said O.A., subject to following observations:

“Therefore, in case the applicant is of the opinion that he is entitled for regularisation under the said G.Os., it is for the applicant to put forth his claim before the authorities in the first instance, so that, they would consider the applicant’s new claim based on the above G.Os., and pass necessary orders or proposals to the Government. Such claim cannot be straightaway put forth before this Tribunal to surprise the other side. The applicant is at liberty to do so.”

3. Questioning the said order, petitioner filed W.P.No.7339 of 2016 before this Court. The same was disposed of vide order dated 10.03.2016, the operative portion of which reads as under:

“In this view of the matter, while declining to interfere with the order of the Tribunal, the petitioner is permitted to make fresh representation to respondent No.1. If such a representation is made, respondent No.1 shall consider it, take a decision and communicate the same to the petitioner within two months of receipt of such representation.”

4. Thereafter, petitioner made a representation to the Government on 26.03.2016 for his regularization. The Government of Andhra Pradesh after considering representation of the petitioner, issued Memo No.205553/G1/2016 dated 26.10.2016, holding that regularization of services of the petitioner as NMR in GVMC is not feasible for consideration and rejected the same as he has not put up the minimum required service of five years after attaining the age of 18 years, as per the conditions stipulated in G.O.Ms.No.212 dated 22.04.1994. Questioning the said Government Memo, petitioner filed O.A.No.4423 of 2016. The learned Tribunal, in para 3 of the impugned order, recorded that counsel for the petitioner has fairly stated that petitioner is not claiming any benefit of regularization under G.O.Ms.No.212 as he

did not satisfy the conditions prescribed therein for regularisation of his services as NMR, but the claim of the petitioner was under G.O.Ms.No.1320 and G.O.Ms.No.300.

5. However, on a perusal of the prayer made in O.A.No.4423 of 2016, it is clear that petitioner sought directions to declare Memo No.205553/G1/2016 dated 26.10.2016, issued by the 1st respondent, as illegal, arbitrary and further to declare that the petitioner is entitled for regularization of his service in the existing vacancy either in terms of G.O.Ms.No.212 dated 22.04.1994 as done in the case of similarly situated persons in terms of the orders passed in O.A.No.10048 of 2011 dated 31.05.2012 as confirmed by this Court in W.P.No.6804 of 2013 or in terms of G.O.Ms.No.1320, MA, dated 15.12.1981 read with G.O.Ms.No.33, MA, dated 24.06.1985 as held by this Court in W.P.No.14909 of 2002 and batch dated 10.11.2004, without insisting for completion of five years of service after attaining the age of 18 years.

6. Therefore, the prayer of the petitioner was not confined only to G.O.Ms.No.1320 or G.O.Ms.No.300, however, his prayer was also to consider his case under G.O.Ms.No.212 dated 22.04.1994.

6. It is not in dispute that petitioner was born on 25.09.1971 and appointed as NMR fitter on 01.08.1988. Thus, as on 25.11.1993, petitioner has not completed five years of service as per G.O.Ms.No.212 dated 22.04.1994. On the date of appointment as NMR fitter, petitioner was 16 years 10 months old. Therefore, the stand of the respondents is that since he has not completed five years of service after attaining the

age of majority as on 25.11.1993, therefore, he is not entitled for regularization from the date of initial appointment, i.e., 01.08.1988.

7. Similar issue came before this Court in W.P.No.6804 of 2013, which was disposed of vide order dated 26.04.2013, holding as under:

“In this case, it is not in dispute that the 1st respondent is working in the Municipal Corporation and as it is also not in dispute that the earlier orders issued by the Municipal Administration Department in G.O.Ms.No.1320, dated 15.12.1981 and G.O.Ms.No.300, dated 24.06.1985, were in force, and in view of the further judgment of the Hon’ble Supreme Court in Civil Appeal No.3567 of 2006, dated 26.04.2011, we are of the view that precisely, the subject matter of the writ petition is covered by the judgment of the Hon’ble Apex Court in Civil Appeal No.3567 of 2006, and in that view of the matter, we do not find any merit in the writ petition, so as to interfere with the directions of the Tribunal to deny regularization to the 1st respondent even after rendering 23 years of continuous service on NMR basis.

8. In addition to the above, in W.P.No.6558 of 2016 dated 03.03.2016, this court held as under:

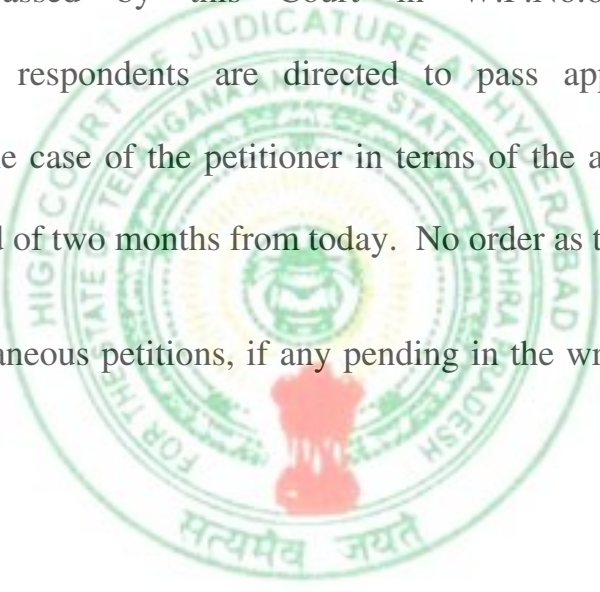
“We have given our earnest consideration to the facts of the present case, which as we observe supra, are very hard. No doubt, G.O.Ms.No.212, dated 22.04.1994, stipulates that the persons, who seek regularization, should be within the age limit as on the date of appointment as NMR/DWW. However, by the time the said G.O., was issued, respondent No.1 has completed five years service as DWW, which included the period of two years and three months as minor. Thus, this is not a case, where the engagement of respondent No.1 was made in violation of the conditions stipulated in the said G.O., after its advent. If respondent No.1, was engaged before he attained majority, in our opinion, the substantial blame shall be apportioned to the officer, who permitted him to work as DWW. Coming from a poor strata of society, respondent No.1 has

no choice, other than working as DWW even before attaining his majority. Undisputedly, since respondent No.1 attained his majority, he has put in a long number of years of service till date. Based on these hard realities, we are not inclined to deny the relief to respondent No.1 granted by the Tribunal, only on the ground that he did not satisfy one of the requirements of G.O.Ms.No.212, dated 22.04.1994, pertaining to his age.”

9. We are of the considered opinion that the case of the petitioner is wholly covered by the judgments cited above.

10. Accordingly, writ petition is allowed in terms of order dated 03.03.2016 passed by this Court in W.P.No.6558 of 2016. Consequently, respondents are directed to pass appropriate orders regularizing the case of the petitioner in terms of the afore-cited order, within a period of two months from today. No order as to costs.

Miscellaneous petitions, if any pending in the writ petition, stand closed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

March 6, 2018
MRR