

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Rev.W.P.M.P.No.1765 of 2017

In

W.P.No.16987 of 2008

And

CONTEMPT CASE No.559 of 2016

COMMON ORDER :

Rev.W.P.M.P.No.1765 of 2017 in W.P.No.16987 of 2008 has been filed by (i) the Government of Andhra Pradesh, (ii) Commissioner and Director of Intermediate Education, Andhra Pradesh at Guntur and (iii) the Regional Joint Director, Higher Education, Rajahmundry, who are respondents in the said Writ Petition seeking review of the order dt.12-11-2013 in W.P.No.16987 of 2008.

THE CASE OF REVIEW PETITIONER IN THE WRIT PETITION

2. The said Writ Petition was filed by 1st respondent in the Review petition seeking a direction to Review petitioners/respondent Nos.1 to 3 in the Writ Petition to ratify his appointment or to absorb him in the post of contingent employee as Watchman in the G.A & K Abhyudaya Junior College (Aided), Vijayawada, Krishna District (hereinafter referred as College) (respondent Nos.4 and 5 in the Writ Petition are the Secretary & Correspondent and Principal of the said College respectively, and they are arrayed as respondent Nos.2 and 3 in the Review petition).

3. The parties will be referred hereinafter to as per their array in the Review Petition.

4. Father of 1st respondent in the Review Application by name V. Ramaiah was working as watchman-cum-Gardener in the College. The claim of 1st respondent's father for regularisation was rejected vide G.O.Ms.No.107 Higher Education (CE.III) Department dt.09-10-2001 on the ground that he was aged 40 years at the time of his appointment, that he was over aged, and his case cannot be considered for regularisation in terms of G.O.Ms.No.212 Finance and Planning (FW.PC.III) Department dt.22-04-1999.

5. The 1st respondent's father died of heart attack on 02-12-2001 while he was working as contingent employee in the said college. The College took the 1st respondent into service on compassionate grounds and allowed him to discharge the duty as watchman on consolidated pay of Rs.1,000/- p.m.

6. The 1st respondent submitted a representation for his absorption into service and the College Management also submitted proposals on 09-09-2002 to the Collector of Krishna District to provide employment to the 1st respondent on compassionate grounds since his father died in harness. On 26-10-2002, the District Collector wrote to the College Management seeking necessary information. On 27-11-2002, the College Management provided the information sought by the Collector.

7. Thereupon, the 2nd petitioner in the Review Pertition/2nd respondent in the Writ Petition i.e. the Director of Intermediate

Education issued proceedings dt.03-01-2003 stating that 1st respondent's father did not work in any vacancy in grant-in-aid post, that there was no provision for appointment of dependent of a person who is not working in a grant-in-aid post and who was employed as a contingent employee, and so, the case of 1st respondent cannot be considered for absorption.

8. However, the Government of Andhra Pradesh i.e. 1st petitioner in the Review petition issued a memo dt.31-08-2007 seeking information from the College for taking necessary action on a representation dt.01-08-2007 made by the President of the Aided Degree and Junior Colleges Non-Teaching Staff Association (A.P.). Thereafter the 1st petitioner did not take any further steps in the matter.

9. The 1st respondent therefore filed W.P.No.16987 of 2008 seeking a Writ of Mandamus directing the petitioners herein to ratify or absorb him in the post of contingent employee (watchman) in the College w.e.f. 10-12-2001.

COUNTER AFFIDAVIT OF PETITIONERS IN REVIEW PETITION

10. Counter-affidavit was filed by the Petitioners in the Review Petition opposing the claim of 1st respondent in the Writ Petition. A specific point was canvassed by them before the learned Single Judge that the claim of 1st respondent's father for regularisation had been specifically rejected vide G.O.Ms.No.107 Higher Education

(CE.III) Department dt.09-10-2001 on the ground that he was over aged and he cannot be considered for regularisation in terms of G.O.Ms.No.212 Finance and Planning (FW.PC.III) Department dt.22-04-1999, and that even the subsequent appointment of 1st respondent by the College Management was without the prior approval of the Government.

11. The 1st respondent, however, took a plea in the Writ Petition that his case for compassionate appointment is liable to be considered in terms of G.O.Ms.No.118 dt.18-08-1999.

12. The said G.O. dealt with the issue of providing compassionate appointment to dependents of persons who were not regular employees of the Government, and who were employed on daily wage/NMR/Consolidated pay/part time employees. Condition (1) in the said G.O. stated that if the deceased daily wage or NMR or consolidated Pay person or Contingent worker on full time basis/part time basis was fully eligible for regularisation under Section 7 of Andhra Pradesh (Regulation of Appointment to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 r/w G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department dt.22-04-1994, and if such persons could not be regularised due to administrative reasons, their cases can also be considered for compassionate appointment from the date of issue of G.O.Ms.No.118 dt.18-08-1999.

13. The 1st respondent contended that his father died in harness as contingent employee and he would fall within the ambit of G.O.Ms.No.118 dt.18-08-1999 and that the petitioners' refusal to regularise his services despite the recommendation of the College Management, is not at all justified.

THE ORDER DT.12.11.2013 IN W.P.NO.16987 OF 2008

14. By its order dt.12-11-2013 in W.P.No.16987 of 2008, this Court allowed the Writ Petition. It held that 1st respondent's case squarely falls within the ambit of G.O.Ms.No.118 dt.18-08-1999 and directed the petitioners to pass appropriate orders as regards absorption of the 1st respondent against aided vacancy in terms of G.O.Ms.No.118 within two (02) months.

15. The Court considered the pleas of both parties and opined that 1st respondent was the dependent of his deceased father, a contingent employee, who died in harness; that refusal on the part of petitioners to regularise the services of 1st respondent's father on the ground that he was age barred by the time of securing employment would have no impact on the question of considering the case of 1st respondent; and that both issues stand on a different footing. It also held that what is required to be seen is whether the 1st respondent falls within the ambit of G.O.Ms.No.118 to be considered for compassionate appointment; since he is the son of a contingent worker, that the said G.O. would apply to 1st respondent; so his case is required to be considered for grant of compassionate appointment, particularly since as soon as his

father died, he was given employment, though on temporary basis, by the College Management and he is still in the post. Though Condition (1) of G.O.Ms.No.118 was noticed and extracted in the order, the contention of the petitioners on the basis of Condition (1) of G.O.Ms.No.118 was not accepted.

16. The Court also relied on judgments in **M.Sreedevi Vs. State of Andhra Pradesh and others¹** and **Farhat Anjum Vs. Vs. District Educational Officer, Mahaboobnagar District and others²**.

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17. When the order dt.12-11-2013 in W.P.No.16987 of 2008 was not implemented, the 1st respondent filed on 23-02-2016, C.C.No.559 of 2016 to punish the petitioners as well as the College Management for wilful disobedience of the order passed by this Court.

THE REVIEW PETITION

18. After receipt of notice in the Contempt Case, the petitioners filed Review W.P.M.P.No.1765 of 2017 in W.P.No.16987 of 2008.

19. Both the Review petition and the Contempt Case were listed before me on 23-02-2018 and both were heard together at the request of the parties.

20. It was mainly contended by the learned Assistant Government Pleader for Education appearing for petitioners in the Review petition

¹ 2010(6) ALD 185

² 2011(6) ALD 515

that once proposals for regularisation of the service of 1st respondent's father were rejected vide G.O.Ms.No.107 dt.09-10-2001 on the ground that he is over aged and he was not entitled to be considered for regularisation in terms of G.O.Ms.No.212 dt.22-04-1994 and there was no challenge to the said proceedings, this Court while deciding W.P.No.16987 of 2008 on 12-11-2013 could not have granted any relief to the 1st respondent. He contended that the proceedings in G.O.Ms.No.107 dt.09-10-2001 attained finality and bind the 1st respondent's father and 1st respondent, and if they were aggrieved, they ought to have questioned it; and without challenging the proceedings in G.O.Ms.No.107 dt.09-10-2001, the 1st respondent could not have been granted any relief by this Court in W.P.No.16987 of 2008. He therefore contended that there was an error apparent on the face of record in the order dt.12-11-2013 in W.P.No.16987 of 2008 and the order therefore deserves to be reviewed.

21. Learned counsel for 1st respondent, however, contended that there is a delay in filing the Review petition, and without there being any application filed for condonation of delay in filing the Review petition and assigning any sufficient cause for condonation of delay, the Review petition cannot be entertained. He also contended that there was no error much less any apparent error on the face of record in the order in the Writ Petition granting relief to the 1st respondent. He also placed reliance on the judgments in **Amarkant Rai Vs. State**

of Bihar and others³ and Lajwanti Vs. Haryana Vidyut Parsaran Nigam Limited and others⁴.

22. After considering the contentions of the parties, in my opinion, the following two questions arise for consideration:

- (a) Whether the Review petition ought to be dismissed on the ground of delay in filing it?
- (b) If the Review petition is not barred by limitation, whether there is any error apparent on the face of record warranting interference by this Court?

POINT (a)

23. The question whether law of limitation applies to Review applications filed seeking review of the orders passed in the Writ Petition, has been considered by a Division Bench of this Court headed by Hon'ble Sri Justice G.S.Singhvi in **M.Jagadeeswara Rao and others v. The Divisional Forest Officer⁵**. This Court categorically held that there is no period of limitation prescribed for filing review applications in Writ Petitions.

24. In this view of the matter, I reject the contention of the learned counsel for 1st respondent that the application filed by petitioners is barred by time.

³ (2015) 8 SCC 265

⁴ 2016(6) SLR 325 (Punjab. & Haryana.)

⁵ Order dt.1.9.2006 in W.A.No.881 of 2006

POINT (b)

25. I have already noted that the case of 1st respondent's father for regularisation in terms of G.O.Ms.No.212 was specifically rejected in G.O.Ms.No.107 dt.09-10-2001 on the ground that he was over aged. This was not questioned by 1st respondent's father or by 1st respondent.

26. Learned Government Pleader for Education appearing for Review petitioners contended that 1st respondent is not entitled to the benefit under G.O.Ms.No.118 Finance and Planning (FW.PC.III) Department dt.18-08-1999 and placed reliance on Condition-1 therein, which states as under:

“(1) If the deceased Daily Wage or N.M.R. or Consolidated Pay person or Contingent worker on full time basis/Part-time basis was fully eligible for regularization under section 7 of the Andhra Pradesh (Regulation of Appointment to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act 2 of 1994 r/w G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department , dated 22nd April, 1994 and G.O. (P) No.112, Finance & Planning (FW.PC.III) Department, dated 23rd July, 1997 who could not be regularised due to administrative reason, the case of dependents of only such deceased Daily Wage or N.M.R. or Consolidated pay person or Contingent worker can be considered for compassionate appointment from the date of issue of order;”

27. A reading of the said condition indicates that benefits under G.O.Ms.No.118 dt.18-08-1999 can be given to the dependents of deceased, who are the daily wage or NMR or consolidated pay person or contingent worker on full time basis /part time basis employee

provided that the deceased was fully eligible for regularisation under Section 7 of said Act of 1994 r/w G.O.Ms.No.212 dt.22-04-1994 whose services could not be regularised due to administrative reasons. In my opinion the said provision would apply if there has been an administrative delay in considering the case of such deceased employees, and before the consideration of the deceased employee's case, he died. Only in such circumstances would his dependents be entitled to benefits of G.O.Ms.No.118 dt.18-08-1999.

28. However, if the case of deceased employee for regularisation had been rejected prior to his death, Condition-1 cannot be fulfilled and therefore such employees would not be entitled to regularisation under G.O.Ms.No.118 dt.18-08-1999.

29. It appears that this aspect of the matter was not noticed by the Court when it decided W.P.No.16987 of 2008 and it merely considered the contentions of the 1st respondent on the ground that he was the dependent of his father who was a deceased contingent worker and who died in harness.

30. The view of the Court (that refusal on the part of the Government to regularise the services of 1st respondent's father on the ground that he was age barred would have no impact on the question of considering the case of 1st respondent and that both issues stand on different footings), in my considered opinion, is, in my opinion, a patent error apparent on the face or record. If 1st respondent's father's

claim for regularisation stood rejected, and the said rejection remained unchallenged by him prior to his death, the claim of the 1st respondent cannot be favourably considered by the petitioners and benefits under G.O.Ms.No.118 dt.18-08-1999 cannot be extended to 1st respondent.

31. In the decision in **Amarkant Rai** (3 supra), the Supreme Court was considering the case for entitlement for regularisation of a person whose appointment was not illegal but only irregular and it held that the case fell in exception carved out in **Umadevi (3)**⁶ wherein it was held that irregular appointments of duly qualified persons in duly sanctioned posts who had worked for 10 years or more could be considered on merit as one time measure for the purpose of regularisation.

32. This point would have been a valid point for consideration had the 1st respondent's father questioned the order in G.O.Ms.No.107 dt.09-10-2001 rejecting his case for regularisation. In the absence of such a challenge to G.O.Ms.No.107, it is not open to this Court to consider the said contention, that too in Writ Petition filed by 1st respondent seeking benefit of regularisation or absorption on the ground that his deceased father was entitled for regularisation. Therefore the said decision has no application.

33. The decision in **Lajwanti** (4 supra) also would not apply because in that case there was a finding recorded that the husband of the petitioner therein was entitled for regularisation as per policy of

⁶ (2006) 4 SCC 1

respondents, but he could not be regularised as subsequently he expired. It was held that husband of the petitioner was entitled to be treated as having been deemed to be regularised. Also that case only related to payment of family pension to the wife of deceased employee and was not a case dealing with appointment on compassionate grounds of dependent contingent workman. Therefore, the said decision also has no application.

34. In this view of the matter, I am satisfied that the order dt.12-11-2013 in W.P.No.16987 of 2008 suffers from an error apparent on the face of record.

35. Accordingly, Rev.W.P.M.P.No.1765 of 2017 is allowed; the order dt.12-11-2013 in W.P.No.16987 of 2008 is set aside; and the Writ Petition is dismissed. No costs.

36. In view of dismissal of W.P.No.16987 of 2008, the respondents in the Contempt Case cannot be punished for violation of the order dt.12-11-2013 in W.P.No.16987 of 2008. Therefore, Contempt Case is also dismissed. No costs.

37. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 22-03-2018

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