

HON'BLE SRI JUSTICE M.GANGA RAO

W.P.No.5371 of 2002

ORDER

The petitioner, who is working as cleaner in the 3rd respondent-depot, filed this writ petition, seeking to set aside the office order dated 21.8.2000 and 27.09.2001 and direct the 2nd respondent to regularize the service of the petitioner after completion of 240 days from the date of his initial appointment with all consequential benefits including protection of pay, service seniority on par with other employees and pay arrears.

The case of the petitioner is that initially, he was appointed as Cleaner in the respondent-Corporation on 1.4.1985 and continuously worked for more than 273 days upto 31.12.1985. In stead of regularizing his services, he was disengaged by the respondent-Corporation. Hence, he filed W.P.No.3773 of 1996 before this Court for appointment as Cleaner/Khalasi or any suitable post and to protect his seniority. This Court by order dated 18.7.1996 disposed of the same with costs of Rs.1,177/- and directed the respondents to appoint the petitioner to the post of Cleaner/Khalasi or any other suitable post within a period of two months. Pursuant to the said order, the Vice Chairman and Managing Director *vide* proceedings dated 10.09.1996, sanctioned the post, based

on which, the Regional Manager, Rajahmundry *vide* proceedings dated 10.10.1996, appointed the petitioner as Cleaner and posted him at Eleswaram Depot. It is further case of the petitioner that though his junior colleagues, who were appointed along with him, were regularized with effect from 02.04.1990 *vide* office order dated 07.04.1990, his case was not considered. Thereafter, he submitted another representation dated 11.10.2000 seeking regularization of his services on par with his juniors, who were regularized after completion of 240 days, but the same was rejected *vide* proceedings dated 27.09.2001 stating that he had completed 227 working days as on 31.07.1997 to decasualize his services in the year 1997. Thereafter, no sanctioned vacancies of Shramik were available in the E.G Region till February/March, 2000. Hence, the services of the petitioner as Shramik were decasualized with effect from 01.08.2000. Being aggrieved by the same and questioning the orders dated 27.09.2001 and 21.8.2000, the present writ petition is filed by the petitioner.

The respondent-Corporation filed counter-affidavit stating that the petitioner was engaged as piece rate worker for washing and cleaning of buses at the rate of 0.20 paisa per bus at Ramachandrapuram Depot, with effect from 01.10.1984 and was disengaged on 01.01.1986. He had worked for 452

days from 01.10.1984 to 1.1.1986. At the request of the Deputy Chief Personnel Manager, Vizianagaram, the petitioner along with 9 others were deputed to the Regional Work Shop, Vizianagaram and they were engaged as Shramiks on casual basis from 02.08.1989 and the services of the other persons were regularized with effect from 02.04.1990. The petitioner was not working at the time of deputing the candidates to the Regional Work Shop, Vizianagaram, as he was disengaged on 01.01.1986. In pursuance of the orders of this Court dated 18.07.1996, the petitioner was given appointment order as Cleaner on casual basis on 10.10.1996 and the same was given effect to on 22.10.96 and he was posted at Eleswaram Depot. The Executive Director, Vizianagaram, has accorded sanction to regularize four casual Cleaners of East Godavari Region with effect from 31.7.1997, to those who have been recruited and engaged earlier to 31.12.1993 and completed 240 working days and accordingly, their services were regularized *vide* office order dated 26.06.1998. The petitioner has completed only 224 working days as on 31.07.1997, as he was engaged on 22.10.96. Hence, his services were not regularized with effect from 31.7.1997. As there were no sanctioned vacancies of Cleaners in East Godavari Region, his services were not regularized till 01.08.2000. When the petitioner was posted to

substantive post of Cleaner on casual basis, he has to complete 240 working days, and the question of regularization will arise only when there is a clear vacancy. As the petitioner challenged his disengagement after lapse of 10 years, the writ petition is liable to be dismissed on the ground of laches.

Sri P.Govindarajulu, learned counsel appearing for the petitioner states that initially, the petitioner was engaged in the year 1985; thereafter, he was disengaged while the services of his junior colleagues were continued, which is contrary to Section 25-F of the Industrial Disputes Act, 1947 and the principle of last come first go. Questioning his disengagement, the petitioner filed W.P.No.3773 of 1996. This Court *vide* order dated 18.7.1996, allowed the same with costs, directing the respondents to appoint the petitioner to the post of Cleaner or Khalasi or in any other suitable post; In pursuance of the said direction, the Vice Chairman and Managing Director sanctioned the post of Cleaner *vide* letter dated 10.9.1996 and the petitioner was given appointment *vide* order dated 10.10.96; that the respondents have rejected the representation of the petitioner on the ground that he was engaged on daily wage basis and the same was decasualized with effect from 1.8.2000 vide order dated 27.09.2001, which is

illegal and contrary to the orders passed by this Court in W.P.No.3773 of 1996, dated 18.07.1996.

Per contra, Sri S.V.Ramana, learned Standing Counsel appearing for the respondents, while reiterating the contentions in the counter-affidavit, would contend that pursuant to the order dated 18.07.1996 passed in W.P.No.3773 of 1996 by this Court, the petitioner was given appointment order as Cleaner on casual basis on 10.10.1996 and his services as Shramik were decasualized with effect from 1.8.2000 *vide* order dated 27.09.2001 and the petitioner's representation was considered and rejected; He further contends that certain workmen approached this Court for regularization of their services after completion of 240 days by filing W.P.No.14991 of 2010, but same was dismissed *vide* order dated 13.03.2018, on the ground that regularization of casual/daily wage workers must be done prospectively and regularization from back date will disturb seniority of regularly appointed employees in that cadre. He also placed reliance on the Division Bench judgment of this Court dated 17.08.2016 in W.A.No.900 of 2005 filed by APSRTC, which was allowed. The decisions in W.P.No.14991 of 2010 and W.A.No.900 of 2005 are not applicable to the facts of the case. In the case on hand, the petitioner is entitled for regularization from the date of his

initial appointment as the post in which the petitioner was working was sanctioned as per the orders of this Court in W.P.No.3773 of 1996, dated 18.07.1996, in pursuance of which, he was appointed in the said vacancy.

It appears that initially, the petitioner was engaged as Clearner/Shramik in the respondent-Corporation in the year 1985. Thereafter, while continuing the services of his juniors, the services of the petitioner was disengaged, contrary to the provisions of the 25-F of the Industrial Disputes Act, 1947 and on the principle of last come first go. Being aggrieved by the dis-engagement, the petitioner filed W.P.No.3773 of 1996 before this Court and this Court by order dated 18.07.1996 directed the respondents to appointment the petitioner to the post of Cleaner/Khalasi. In pursuance of the said order, the Vice Chairman and Managing Director sanctioned the post of Cleaner *vide* letter dated 10.09.1996 and the petitioner was appointed as Cleaner on 10.10.1996. However, in the said proceedings dated 10.10.1996, the word 'daily wages' was introduced, which is contrary to the order passed by this Court. Thereafter, the petitioner's services were decasualized *vide* proceedings dated 27.09.2001 with effect from 01.08.2000. The representation submitted by the petitioner for regularization after completion of 240 days as

was done to his junior colleagues was rejected. The contention of the counsel for the respondent-Corporation that the petitioner is not entitled for regularization after completion of 240 days is untenable and applicable to the facts of the case.

Having regard to the facts and circumstances of the case, this Court is of the considered view that as per the orders of this Court passed in W.P.No.3773 of 1996, dated 18.7.1996, the petitioner was appointed as Cleaner against the sanctioned vacancy and is entitled for regularization with effect from 10.10.96.

Accordingly, the impugned orders are set aside and the writ petition is allowed directing the respondents to regularize the services of the petitioner as a Cleaner from the date of his appointment i.e., 10.10.1996 in pursuance of the orders passed by this Court in W.P.No.3773 of 1996 and he is entitled for fixation of his seniority from 10.10.1996, but not for any monetary benefits. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.GANGA RAO

2nd August, 2018
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