IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

[3463]

APHC010636582012

WEDNESDAY ,THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR
PRESENT

THE HONOURABLE SRI JUSTICE G.NARENDAR

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 8894 OF 2012

Between:
CH. SURYA PRAKASHA RAO, KRISHNA DIST. **...PETITIONER(S)**

AND
PRL SECY P R DEPT 4 ORS AND OTHERS **...RESPONDENT(S)**

Counsel for the Petitioner(s):SRI. PEDDI VIJAYBHASKAR

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV

The Court made the following:

ORDER: (per Hon'ble Sri Justice G.Narendar)

Heard learned counsel for the petitioner and learned Government Pleader for Panchayat Raj appearing for the respondents.

2. The petitioner is before this Court being aggrieved by the order, dated 19.03.2010, passed in O.A.No.4164 of 2007, whereby the Tribunal has been pleased to hold that the order of regularization i.e. under G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22.04.1994, is prospective in

nature and that the contention otherwise claiming that the petitioners are entitled for regularization from the initial date of appointment itself came to be rejected.

3. The Tribunal has placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of **A.Manjula Bashini v. A.P. Women's Co-op. Finance Corporation Ltd.**[1] to buttress its finding regarding the prospective nature of G.O.Ms.No.212, dated 22.04.1994. The said position is no more *res integra* in view of the law settled by the Hon'ble Apex Court in **A.Manjula Bashini**'s case[1].

4. That apart, the learned counsel for the petitioner would place reliance on the ruling rendered by a Co-ordinate Bench of this Court in W.P.No.5402 of 2017, which came to be disposed of by an order, dated 09.06.2017, whereby the Co-ordinate Bench of this Court was pleased to uphold a similar interpretation of the G.O.Ms.No.212 by the Tribunal therein and was pleased to reject the Writ Petition preferred by the State.

5. That apart, it is seen that the Co-ordinate Bench of this Court has not looked into the conditions and criteria stipulated under the said G.O. The compliance of which alone would enable

[1] (2009) 8 SCC 431

a part-time worker/N.M.R./daily wager or one engaged on consolidated pay for seeking regularization of services. Having looked into the said order, we see that this aspect has not been gone into and is of no assistance in determining the issue that arises for consideration in the instant Writ Petition.

6. The G.Os. of 1994 and 1997 came up for consideration before the Hon'ble Apex Court in **A.Manjula Bashini**'s case[1] and the Hon'ble Apex Court has after detailed hearing and consideration observed as under:

> "**10.** The relevant portions of the G.O. dated 22-4-1994 are reproduced below:
>
> "The Government notice that appointing authorities of the institutions and establishments under the control of the State Government, local authorities, corporations owned and controlled by the State Government and other bodies established by the State Government grossly violated the instructions issued from time to time by the Government and appointed persons indiscriminately to various categories of services either on daily-wage basis or temporary basis without there being a post and without being sponsored by employment exchange and without observing the rule of reservation to the Scheduled Castes, Scheduled Tribes and Backward Classes.
>
> In most of the cases, the persons appointed for a specific work have been continued even after their need ceased. After a lapse of some time, all these appointees have approached the various courts and tribunals for regularisation of their services and

courts and tribunals have been directing the State Government to regularise the services on the ground that they have a long service to their credit.

This practice has been causing considerable drain on the finances of the State Government. The Government have thought it imperative to prohibit the unauthorised and irregular appointments by a law in the public interest. Accordingly the State Government have enacted law regulating the appointments to public services and for rationalisation of the staff pattern and pay structure in the reference read above. This will streamline the recruitment along healthy lines, to enforce the Employment Exchanges (Compulsory Notification of Vacancies) Act in its true letter and spirit, to follow the rule of reservation enshrined in the Constitution with utmost strictness and to punish those who are guilty of violating the law. The above Act came into force with effect from 25-11-1993.

2. Though the reference second cited, information has been obtained from various government offices, local bodies, public sector undertakings, etc., from the information received by the Government it is seen that appointing authorities have violated the instructions issued by the Government and appointed several individuals. Appointments have been made indiscriminately in the government offices, local bodies, universities, public sector undertakings and various other bodies and institutions operating on government finances. In fact, there is no need to continue all these daily-wage/temporary employees for the reasons that not all of them are appointed in sanctioned posts and the recruitment was in many cases not through employment exchange. Their appointment was made without following rule of reservation and in the case of work-charged employees, there is no work for them as the specific work for which they were appointed has already been completed.

Though the Act provides that no person who is daily-wage employee and no person who is appointed on temporary basis shall have any right to claim for regularisation of service on any ground, it has been the endeavour of the Government to regularise as many as NMR/daily-wage employees as possible who are otherwise qualified depending on the requirement of the workload while keeping in mind the hardship that would be caused if their services are not regularised. The Hon'ble Supreme Court in its judgment dated 12-8-1992 [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403. **Ed.**: *Piara Singh case* has been overruled in *Umadevi (3) case*, (2006) 4 SCC 1.] in Civil Appeal No. 2979 of 1992 and batch have also observed to evolve an appropriate policy for regularisation.

Accordingly, the Government after careful examination of the whole issue and in supersession of all previous orders on the subject including GOMs No. 193, General Administration Department, dated 14-3-1990 and keeping in view the above judgment of the Supreme Court of India, have formulated a scheme for regularisation of services of the persons appointed on daily wage/NMR or on consolidated pay and are continuing on the date of commencement of the Act. The Government accordingly decided that the services of such persons who worked continuously for a minimum period of five years and are continuing on 25-11-1993 be regularised by the appointing authorities subject to fulfilment of the following conditions:

(*1*) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularised.

(*2*) They should be within the age-limits as on the date of appointment as NMR/daily-wage employee.

(*3*) The rule of reservation wherever applicable will be followed and backlog 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 workload excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/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-charged establishment is at a fixed percentage of PS charges and as soon as the work is over, the services of work-charged establishment will have to be terminated, they shall be adjusted in the other departments, district offices provided there are clear vacancies of last grade service."

13. The special leave petitions filed by the State Government and agencies and instrumentalities of the State were dismissed by this Court vide the judgment titled *District Collector/Chairman* v. *M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] , which is reproduced below: (SCC p. 480, paras 1-4)

"*1*. We have heard the learned counsel for the parties. These matters relate to regularisation and payment of wages to the respondents who were employed on daily-wage basis.

2. By the impugned judgment, the Division Bench of the High Court, while affirming with modification the order passed by the learned Single Judge has directed that all employees who have completed five years of continuous service should be considered for regularisation in accordance with the terms of GOMs No. 212 dated 22-4-1994 and that they should be paid their wages on a

par with the wages paid to the permanent employees of that category.

3. As regards payment of wages there is no dispute between the parties that the same have to be paid from the date of regularisation. Insofar as regularisation is concerned, we are of the view that the High Court has rightly directed that on the basis of Notification GOMs No. 212, the respondent employees shall be regularised with effect from the date or dates, they completed five years' continuous service. It is, however, made clear that the other conditions laid down in the said GOMs No. 212 will have to be satisfied for the purpose of regularisation.

4. The special leave petitions are disposed of accordingly. No costs."

41. We may now advert to the Statement of Objects and Reasons contained in the Bill introduced in the Andhra Pradesh Legislative Assembly. A perusal thereof shows that between 1976 and 1993, the total number of employees of the State Government, agencies/instrumentalities of the State and bodies/institutions receiving aid from the Government increased by 82% i.e. from 6.78 lakhs to 12.34 lakhs and in 1993-1994, the State Government had to spend more than 80% of the total revenue in payment of salaries, allowances, pension, etc. of the employees causing severe strain on the revenue of the State which adversely affected implementation of the welfare schemes and development programmes. That apart, there was growing dissatisfaction among several thousand unemployed persons including those belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, who were registered with the employment exchanges but could not get opportunity of competing for selection for appointment against the sanctioned posts.

42. With a view to redeem the situation, the State Government decided to totally prohibit employment on daily wages and also restrict appointment on temporary basis and, at the same time, ensure that all appointments are made against the sanctioned posts only on the recommendations of the specified recruiting agencies. In furtherance of that decision, the Governor of Andhra Pradesh promulgated the Ordinance, which was replaced by the 1994 Act.

55. Unfortunately, that did not happen because, in spite of the prohibition contained in Section 7 against regularisation of the existing daily-wage employees and persons appointed on temporary basis, the State Government wilted under the pressure exerted by the vested interests and issued the G.O. dated 22-4-1994 incorporating therein policy for regularisation of the services of those appointed on daily wages or nominal muster roll or consolidated pay, who had continuously worked for 5 years and were continuing on 25-11-1993 i.e. the date of enforcement of the 1994 Act. This was intended to be a one-time measure and not an ongoing process/scheme for regularisation of the services of all daily-wage employees on their completing 5 years.

60. We may observe that if the officers responsible for drafting the G.O. dated 22-4-1994 had bothered to carefully read the provisions of the 1994 Act then instead of using the expression "such persons who worked continuously for a minimum period of five years and are continuing on 25-11-1993", they would have employed the expression "such persons who have completed minimum five years of continuous service on or before 25-11-1993 on daily wages or nominal muster roll or consolidated pay". However, utter non-application of mind by the officers concerned resulted in the use of an ambiguous expression in the policy of regularisation which generated

enormous litigation requiring the individual employees and the State Government to invest money for an avoidable exercise.

61. In order to remove the ambiguity and imperfectness in the language of the G.O. dated 22-4-1994 and make the policy of regularisation an integral part of the 1994 Act, the legislature enacted Amendment Acts 3 and 27 of 1998. The purpose of making the policy of regularisation a part of the 1994 Act was not to dilute the main object of the 1994 Act i.e. to curb the menace of irregular appointments and also ensure that appointments are made against the sanctioned posts only from among the candidates selected by the designated recruiting agencies but also to harmonise the same with the prohibition contained in Section 7 against regularisation of daily-wage and temporary employees.

63. The language of the first proviso to Section 7 by which the policy of regularisation was engrafted in the 1994 Act shows that the amendments were made with the sole object of removing the ambiguity in the policy contained in the G.O. dated 22-4-1994 and the same were not intended to nullify or override the judgment in *District Collector/Chairman* v. *M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] .

64. We have no doubt that if the language of the policy contained in the G.O. dated 22-4-1994 was similar to the one contained in newly inserted proviso to Section 7 and there was no ambiguity in it, the courts would not have interpreted the same in a manner which would entitle all persons employed on daily wages before 25-11-1993 to claim regularisation irrespective of the date of completion of five years' service. Here it will also be apposite to mention that the policy contained in the G.O. dated 22-4-1994 did not confer an indefeasible right upon all daily-wage employees [as the term has been defined in Section 2(*ii*) of the 1994 Act] to be regularised in service dehors

the date of enforcement of the Act. Therefore, it cannot be said that by incorporating the policy of regularisation in the 1994 Act, the legislature has taken away an accrued or vested right of the daily-wage employees.

68. It is also well settled that the legislature cannot by bare declaration, without anything more, directly overrule, reverse or override a judicial decision. However it can, in exercise of the plenary powers conferred upon it by Articles 245 and 246 of the Constitution, render a judicial decision ineffective by enacting a valid law fundamentally altering or changing the conditions on which such a decision is based. Such law can also be given retrospective effect with a deeming date or with effect from a particular date. The question whether the legislature possesses the power to enact law apparently affecting pre-existing judgment or amend the existing law which has already been interpreted by the Court in a particular manner, has been considered in several cases.

89. In view of the above discussion, we hold that the amendments made in the 1994 Act by Acts 3 and 27 of 1998 do not have the effect of nullifying or overriding the judgment in *District Collector/Chairman* v. *M.L. Singh* [(2009) 8 SCC 480 : (1998) 2 An LT 5] . We further hold that the policy of regularisation contained in the first proviso to Section 7 inserted by Act 27 of 1998 is a one-time measure intended to benefit only those daily-wage employees, etc. who completed 5 years' continuous service on or before 25-11-1993 and the employees who completed 5 years' service after 25-11-1993 cannot claim regularisation. (emphasis by this Court)

93. The 1994 Act was enforced with effect from 25-11-1993 i.e. the date on which the Ordinance was published in the Official Gazette. Therefore, that date had a direct bearing on the policy of regularisation circulated vide the G.O. dated 22-4-1994,

which was issued by the State Government in exercise of its executive power under Article 162 of the Constitution. When that policy was engrafted in the 1994 Act in the form of the proviso to Section 7, the legislature could not have fixed any date other than 25-11-1993 for determining the eligibility of daily-wage employees who fulfilled the requirement of 5 years' continuous service. If any other date had been fixed for counting 5 years' service of daily-wage employees for the purpose of proviso to Section 7, the object sought to be achieved by enacting the 1994 Act would have been defeated, inasmuch as the regular recruitment could not have been made for appointment against the sanctioned posts and back door entrants would have occupied all the posts. Therefore, the cut-off date i.e. 25-11-1993 prescribed by the legislature for determining the eligibility of daily-wage employees and others covered by Section 7 of the 1994 Act cannot be dubbed as arbitrary, unreasonable, irrational or discriminatory.

100. A reading of paras 54, 67, 68 and 72 of the impugned judgment shows that even though the Division Bench did not find the cut-off date i.e. 25-11-1993 specified in the first proviso to Section 7 for determining the eligibility of daily-wage employees for regularisation to be arbitrary, irrational or discriminatory, yet it changed the said date from 25-11-1993 to 19-8-1998 solely on the premise that Act 27 of 1998 was enforced with effect from that date. In our view, once the Division Bench negatived the challenge to the validity of Acts 3 and 27 of 1998, there was no warrant for altering the date of eligibility specified in the first proviso to Section 7 of the 1994 Act and thereby extend the zone of eligibility of daily-wage employees who could be considered for regularisation.

102. The declaration made by the Division Bench that the ban on regularisation will be effective from 19-8-1998 i.e. the date on which Act 27 of 1998 came into force and that all persons who

> have completed 5 years' service as on that date would be entitled to be considered for regularisation of service is set aside. It is, however, made clear that the daily-wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularised so far, shall be entitled to be considered for regularisation and their services shall be regularised subject to fulfilment of the conditions enumerated in the G.O. dated 22-4-1994."

7. The learned counsel for the petitioner would reiterate his contention that G.O.Ms.No.212, dated 22.04.1994, enables or vests a right in the class of persons stated supra to seek regularization from the date of their initial appointment.

8. Having heard the learned counsel for the petitioner and the Ld. G.P., we find that the said contention is a clear misconception of the frame of the policy set out by the State under G.O.Ms.No.212, dated 22.04.1994. A bare reading of the said G.O. would make it obvious that regularization or absorption is not automatic and is contingent on the persons complying with the criteria stipulated therein. The first criterion that the aspirant is required to comply with is that, he/she should possess the prescribed qualification as on the date on which his/her services are to be regularized. The second criterion that the concerned individual is required to meet is that, he/she should not have been over-aged or in other words he/she should be within the age

limit as on the date of his appointment as an N.M.R./part-time worker/daily wager. The third criterion which the worker is required to comply with is that, the rule of reservation would be applied and the backlog would be set-off against future vacancies. The fourth criterion is that the absorption would be subject to the availability of clear vacancies and further subject to the condition that the vacancy is not already notified for appointment by the A.P.P.S.C. or the District Selection Committee. Lastly, the notification places an embargo on absorption of workers engaged with the work charged establishment in view of the fact that no clear vacancy would be available in a work charged establishment.

9. In the case on hand, we find that there is no pleading either with regard to the date on which a clear vacancy arose and the same would have to be assessed and adjudged, keeping in view the roster points. This, in our considered opinion, is a critical date or which can be construed as a cut-off date and which cut-off date would be the date from which the class of persons would be entitled for reckoning their regularization of services. The G.O. clearly stipulates that the absorption would be against a clear vacancy only.

10. In that view of the matter, G.O.Ms.No.212, dated 22.04.1994, in our opinion, is merely an enabling proceedings, which would enable the class of persons to seek for appointment after establishing compliance with the criteria stipulated therein. The most critical and crucial of the criteria, is the one relating to absorption in a clear vacancy. Till such clear vacancy arises, the worker, in our considered opinion, would not be entitled to seek for absorption in the post. Hence, the crucial date of reckoning for regularization is the date on which a clear vacancy arises. Neither in the proceedings below nor before this Court is such a date canvassed by the petitioner. Unless and until such a date is canvassed and established, any order directing regularization from an earlier period, in our considered opinion, would be contrary to the scheme of G.O.Ms.No.212, dated 22.04.1994. The G.O. being a beneficial scheme, ought to be implemented within the contours of the scheme as promulgated under the G.O. and it will not be open to the Courts to deviate or extend the boundaries of the scheme. In fact, we draw sustenance from the observations rendered by the Hon'ble Apex Court in **Secretary, State of**

Karnataka v. Umadevi (3)[2], wherein the Hon'ble Apex Court has been pleased to observe in paras.52, 53 and 54, as under:

> **"52.** Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.)* v. *Governing Body of the Nalanda College* [1962 Supp (2) SCR 144 : AIR 1962 SC 1210] . That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.
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> **53.** One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but

[2] (2006) 4 SCC 1

> without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."
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> **54.** It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

11. The Constitutional Bench taking note of the prevailing state of affairs and the fact that several workers were languishing without future prospects and also taking note of the fact that the appointments are contrary to the constitutional scheme, took a dim view of the situation. But, keeping in view the long period of service rendered, permitted the State to formulate a scheme. In

the instant case, the State has drawn a scheme apparently benefiting backdoor entrance. The appointment itself being irregular, it ought not to be open to such entrants to dictate terms contrary to the scheme evolved by the State.

12. In that view of the matter, the Writ Petition stands rejected. No costs. Though the writ petition is rejected, but in view of the huge number of cases that we have been coming across with regard to regularization from an anterior point of time, it would be appropriate that a direction be issued to the employers to draw up a list of dates, more particularly, the date on which a clear vacancy has arisen and reckon the said date as a cut-off date for the purpose of directing regularization of the services of the employees who come within the ambit of G.O.Ms.No.212, dated 22.04.1994, and G.O.Ms.No.112, Finance and Planning (FW.PC.III) Department, dated 23.07.1997. The authorities shall mandatorily draw a satisfaction regarding the compliance with the criteria stipulated in the aforesaid G.Os. and thereafter pass a speaking order fixing the appropriate date from which the daily wager would be entitled for regularization and absorption in the vacant post.

13. The Chief Secretary to circulate the copy of this order to all the concerned Heads of Departments. Any violation should be followed by disciplinary action and the same should be expedited.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

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JUSTICE G.NARENDAR

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JUSTICE NYAPATHY VIJAY

Date:14.02.2024.
Note:
L.R. copy to be marked.
B/O
cs/anr

*** THE HON'BLE SRI JUSTICE G.NARENDAR**
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

+ Writ Petition No.8894 of 2012

% Dated 14-02-2024

Ch.Surya Prakasha Rao

..... Petitioner

Vs.

$ 1.The Govt. of A.P., rep. by Principal Secretary,
Panchayat Raj and Rural Development Dept., & Ors.

..Respondents

! Counsel for the Petitioner : Sri Peddi Vijaya Bhaskar

^ Counsel for the Respondents : Ld.G.P. for Panchayat Raj

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> HEAD NOTE:

? Cases referred :

1. (2009) 8 SCC 431
2. (2006) 4 SCC 1

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

+ Writ Petition No.8894 of 2012

Ch.Surya Prakasha Rao

..... Petitioner

Vs.

1.The Govt. of A.P., rep. by Principal Secretary,
Panchayat Raj and Rural Development Dept., & Ors.

..Respondents

JUDGMENT PRONOUNCED ON: 14-02-2024

THE HON'BLE SRI JUSTICE G.NARENDAR
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

1) Whether Reporters of Local newspapers may be allowed to see the Judgments? -Yes-

2) Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-

3) Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE G. NARENDAR