



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA
WRIT PETITION NO: 768 OF 2020

Between:

1. M.V.N. Nataraju, S/o M.V. Ramana Raju,
Aged about 60 years,
Clerk-cum-typist/Junior Assistant, Maharajah's College (Autonomous),
Vizianagaram, R/o.Plot No. 1, Kusumagajapathi Nagar, Cantonment,
Vizianagaram City, Vizianagaram.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep.by its Principal Secretary, Collegiate Education Department, Secretariat Buildings, Velagapudi, Amaravathi, Andhra Pradesh.
2. The Special Commissioner of Collegiate Education, Vijayawada, Krishna District
3. Regional Joint Director of Collegiate Education, Rajamahendravaram
4. Maharajah's College (Autonomous), . Rep. by its Correspondent, Vizianagaram, A.P.
5. The Principal, Maharajah's College (Autonomous), Vizianagaram

...RESPONDENTS

Counsel for the Petitioner(s): A RAJENDRA BABU

Counsel for the Respondents: GP FOR EDUCATION (AP)

The Court made the following: ORDER



HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No. 768 of 2020

ORDER:

This writ petition is filed to declare the proceedings dated 25.07.2018 of the 1st respondent and the consequential proceedings dated 23.11.2018 issued by the 2nd respondent directing to regularise the services of the petitioner with effect from 05.11.1994 in the cadre of Attender as illegal, arbitrary and contrary to the orders of this Court in W.P.No.12232 of 1996.

2. Heard Sri A. Rajendra Babu, learned counsel for the petitioner, and learned Government Pleader for Services appearing for respondent Nos.1 to 3. In spite of service of notice to respondent Nos.4 and 5, none appeared for them.

3. In brief, the case of the petitioner is that the Secretary, Mansas, Fort, Vizianagaram, by proceedings dated 24.08.1988 appointed him as Clerk-cum-Typist in the Mansas, ITI, on a consolidated pay of Rs.425/- per month with effect from the date of joining until further orders in the place of one C.A.V.J.A.



Ramaraju. He continued in the said post till 03.11.1994. On 04.11.1994, he was transferred to M.R. College (Autonomous), Vizianagaram and posted as Clerk in the Examination Section. Accordingly, he joined in the said college on 05.11.1994 and continued thereat till he retired from service on attaining the age of superannuation i.e., on 31.12.2017.

i) The post in which the petitioner was initially appointed is an aided post. The 4th respondent addressed letters to the 2nd respondent for admitting him into an aided post on 27.12.1995 and 29.12.1995. But, the 2nd respondent by proceedings dated 10.04.1996 rejected the proposals submitted by the 4th respondent on the ground that the initial appointment of the petitioner was made without following the due procedure or through the employment exchange.

ii) Aggrieved by the order of rejection dated 10.04.1996, the petitioner approached this Court by filing a writ petition vide W.P.No.12232 of 1996 and sought for absorption of his services into the aided post of Clerk with effect from 01.03.1992 with all



consequential benefits. This Court by an order dated 16.03.2002 allowed the said writ petition with a direction to consider the case of the petitioner for absorption into the aided post of Clerk w.e.f. 01.03.1992 while setting aside the order of rejection dated 10.04.1996. Challenging the order dated 16.03.2002 in W.P.No.12232 of 1996, the 2nd respondent preferred an appeal in W.A.No.965 of 2002. The Division Bench of this Court by an order dated 11.06.2002 dismissed the writ appeal.

iii) Subsequently, the petitioner submitted a representation dated 22.08.2015 to the 2nd respondent who, in turn, addressed a letter dated 13.10.2015 to the 1st respondent for absorption of the services of the petitioner. Without considering the case of the petitioner in a proper perspective, the 1st respondent issued G.O.Rt.No.44, Higher Education (CE) Department, dated 15.03.2017 regularising the services of the petitioner against an existence vacancy in the category of Attender in terms of G.O.Ms.No.212, Finance (PC.III) Department, dated 22.04.1994, with prospective effect i.e., from the date of issuing orders by the



competent authority subject to condition that the said vacancy is clear, regular and continued from time to time and no senior eligible person is overlooked. Pursuant thereto, the 2nd respondent issued proceedings dated 30.03.2017.

iv) Thereafter, the petitioner submitted a representation to the respondents seeking to regularise his services with retrospective effect. Then, the 2nd respondent addressed a letter dated 18.12.2017 to the 1st respondent with a request to issue suitable orders on the request of the 4th respondent to consider the case of the petitioner at least from the date of transfer to M.R.(A) College, Vizianagaram i.e., 1994 notionally for the purpose of pensionary benefits or from the date of judgment along with monetary benefits on humanitarian grounds. Considering the same, the 1st respondent by memo dated 25.07.2018 permitted the 2nd respondent to regularise the services of the petitioner with retrospective effect from 05.11.1994 for computation of pensionary benefits without salary arrears and other monetary benefits. In compliance thereof, the 2nd respondent issued orders instructing the 4th respondent to implement the orders



of the 1st respondent. Questioning the same, the petitioner filed the present writ petition.

4. A counter affidavit is filed on behalf of respondent Nos.1 and 2 wherein it is stated that the proposal for absorption of the petitioner submitted by the 4th respondent was rejected by the 2nd respondent vide proceedings dated 10.04.1996, since the appointment of the petitioner was made without following any known selection procedure and without sponsoring the list of eligible candidates, more particularly, the name of the petitioner by the Employment Exchange and also in violation of the instructions issued under G.O.Ms.No.1119 dated 18.02.1976. Subsequent to dismissal of W.A.No.965 of 2002 filed by the 2nd respondent against the orders dated 16.03.2002 passed by this Court in W.P.No.12232 of 1996 directing the respondents to consider the case of the petitioner for absorption into aided post of Clerk w.e.f. 01.03.1992, the Commissioner of Collegiate Education examined the case of the petitioner for absorption into aided post of clerk and by proceedings dated 22.08.2002 rejected the claim on the grounds



that the appointment of the petitioner is not in notified regular procedure nor has any jurisdiction to the Commissioner of Collegiate Education; more so, the petitioner was transferred to MR (A) College, Vizianagaram as Clerk to do work in the examination branch w.e.f. 04.11.1994 where there is no vacancy or post; in fact, the Act 2/94 (Rationalisation of staff pattern and pay structure) banned the recruitment of non-teaching staff and same was already in force, when the petitioner (unaided), Junior Assistant, was appointed in the respondent college; and as per G.O.Ms.No.680, dated 12.09.1980, filling up of upper category of non-teaching posts by direct recruitment shall be considered only after effecting the promotion in respect of internal candidates and as there are many candidates available/fully qualified in the feeder category at the respondent college, they cannot be deprived of their right.

i) Aggrieved by the orders dated 22.08.2002, the petitioner filed another writ petition in W.P.No.19003 of 2002 which was disposed of on 09.02.2012 with a direction to the Commissioner of



Collegiate Education to re-consider the petitioner's case. The Commissioner of Collegiate Education complied the said orders and passed rejection orders vide proceedings dated 17.07.2012 and the factual report was sent to the Government for appropriate orders through proceedings dated 17.08.2012. In turn, the 1st respondent issued memo dated 29.01.2013 and rejected the claim of the petitioner.

ii) Later, the petitioner leaving aside all these submitted a representation dated 24.10.2014 requesting the Commissioner of Collegiate Education to consider his case for the post of Record Assistant/Attender on humanitarian grounds, as he was crossing 57 years. However, the 1st respondent considered his case and regularised his services in the cadre of Attender as a special case in terms of G.O.Ms.No.212 dated 22.04.1994 with prospective effect from the date of issue of orders by the competent appointing authority, vide G.O.Rt.No.44 dated 15.03.2017.

iii) Further, the claim of the petitioner for absorption as Clerk/Junior Assistant in MR (A) College, Vizianagaram, is not



feasible for the reasons that the petitioner worked upto 03.11.1994 in Mansas, ITI, as a temporary clerk-cum-typist on consolidated pay and it is purely an unaided institution; Mansas, ITI, and MR (A) College, Vizianagaram, are the separate units and hence the petitioner cannot claim for absorption as clerk in MR (A) College, Vizianagaram since he is not in the rolls of MR (A) College; some of the eligible candidates approached this Court by way of W.P.No.15191 of 2002 with a prayer not to consider the case of the petitioner for regularisation as Junior Assistant (Aided) which will affect their promotion as Junior Assistant and this Court by an order dated 19.09.2002 in W.P.M.P.No.19030 of 2002 in W.P.No.15191 of 2002 directed that no vacancies in the category of Junior Assistant in MR (A) College, Vizianagaram be filled up until further orders; and the claim of the petitioner is not in accordance with G.O.Ms.No.212 dated 22.04.1994 as he was appointed in MR (A) College, Vizianagaram on 04.11.1994 and he has not completed five years of continuous service as on 25.11.1993.



iv) In view of the above reasons, the petitioner is not eligible for regularisation in the cadre of Junior Assistant. There are no merits in the writ petition and hence, the same is liable to be dismissed.

5. Learned counsel for the petitioner would contend that in view of G.O.Ms.No.212 dated 22.04.1994, the petitioner is entitled for regularisation of services after completion of five years from 01.03.1992 and also in view of the judgment rendered by this Court in W.P.No.12232 of 1996 dated 16.03.2002 and 19003 of 2002 dated 09.02.2012. In support of his contention, he relied upon the ratio laid down by the Hon'ble Supreme Court in ***B.Srinivasulu Vs. Nellore Municipal Corporation*** (Civil Appeal No.6318 of 2015 dated 17.08.2015) and ***Vice Chancellor Anand Agriculture University Vs. Kanubhai Nanubhai Vaghela*** (Civil Appeal No.4443 of 2021 dated 26.07.2021).

i) In ***B. Srinivasulu*** case, it is held as follows:

“Aggrieved by the same, the first respondent herein filed writ petition No.11852 of 2012 which was dismissed by an order dated 25.4.2012. Subsequently, the first respondent sought a review of the said order by filing Review Writ Petition Misc. Petition No.10968 of 2013. In



the said review application, the impugned order came to be passed. The relevant portion of the order reads as follows:

“Considering the facts and circumstances of the case, we direct the review petitioner/Corporation 4 to regularize the services of the unofficial respondents/applicants from the date of filing of the Original Applications i.e. on 27.11.2011 for the purpose of fixation of pay and notional without any monetary benefits subject to availability of vacancies.”

Hence the instant appeal aggrieved by the order insofar as it went against the appellants herein. Though the High Court confirmed the order directing the respondents to regularise the services of the appellant herein, the High Court restricted the regularization only with effect from the date of filing of O.A. No.9177 of 2011 dated 27.11.2011.

We find it difficult to accept the reasoning adopted by the High Court. The right of the appellants to seek regularization flows from the G.O. No.212 dated 22.4.1994. The appellant have been in service of the first respondent not only prior to the issuance of the said G.O. but even subsequent to the issue of G.O. till today. The respondent Municipality being a statutory body is obliged by the G.O. 212(supra). In spite of the above mentioned 5 G.O. the respondents kept quite for almost 20 years without regularising the service of the appellants and continued to extract work from the appellants.

In the circumstances, refusing the benefit of the above mentioned G.O. on the ground that the appellants approached the Tribunal belatedly, in our opinion, is not justified. In the circumstances, the appeal is allowed modifying the order under appeal by directing that the



appellants' services be regularised with effect from the date of their completing their five year continuous service as was laid down by this Court in District Collector/Chairperson & Others vs. M.L. Singh & Ors. 2009 (8) SCC 480.”

ii) In ***Kanubhai Nanubhai Vaghela*** case, it is held thus:

“11. We have heard Mr. P.S. Patwalia, learned senior counsel for the university and Mr. Nachiketa Joshi, learned counsel for the respondents. The main contention of the university is that after the judgment of this Court in Secretary, State of Karnataka and Ors. vs. Umadevi and Ors. (2006) 4 SCC 1, the respondents are not entitled for regularization as there are no sanctioned posts available. Another submission made on behalf of the appellant is that the judgment of this Court dated 18.01.2001 in Gujarat Agricultural University (supra) does not survive after the judgment of this Court in Uma Devi. It is no doubt true that in Umadevi’s case, it has been held that regularization as a one-time measure can only be in respect of those who were irregularly appointed and have worked for 10 years or more in duly sanctioned posts. However, in the instant case the respondents are covered by the judgment of this Court in Gujarat Agricultural University (supra). This Court approved the proposed scheme of the State of Gujarat and directed regularization of all those daily wagers who were eligible in accordance with the scheme phase-wise. The right to be regularized in accordance with the scheme continues till all the eligible daily-wagers are absorbed. Creation of additional posts for absorption was staggered by this Court permitting the appellant and the State of Gujarat to implement the scheme phase-wise. We are not impressed with the submissions made on behalf of the university that the judgment of this Court in Umadevi’s case overruled



the judgment in Gujarat Agricultural University (supra). The judgment of this Court in Gujarat Agricultural University (supra) inter partes has become final and is binding on the university. Even according to Para 54 of Uma Devi's case, any judgment which is contrary to the principles settled in Umadevi shall be denuded of status as precedent. This observation at Para 54 in Umadevi's case does not absolve the university of its duty to comply with the directions of this Court in Gujarat Agricultural University (supra).

13. By an order dated 17.10.2011, persons similarly situated to the respondents were absorbed by being given the benefit of regularization. The Division Bench of the High Court has taken note of the discriminatory approach of the university in conferring the benefit of regularization to some and not to all those daily wagers who are eligible. There is no error in the Judgment of the High Court which warrants interference by this Court. Eligible daily wagers in accordance with the scheme have been eagerly awaiting regularization as per the judgment of this Court in Gujarat Agricultural University's case (supra). The right of the respondents for regularization has been correctly recognized by the High Court."

6. *Per contra*, learned Government Pleader for Services would contend that the petitioner was appointed without following any selection procedure and without sponsoring the candidature of the petitioner through employment exchange and hence, it is an irregular appointment. He would further contend that the petitioner was transferred to Maharaja Arts College, Vizianagaram, w.e.f.



04.11.1994 as Junior Assistant and there is no vacant post in the said college and also there is a ban regarding recruitment of non-teaching staff in the aided colleges. In view of the same, the petitioner is not entitled for regularisation of his services. For which, he relied upon the judgment of the Hon'ble Supreme Court in *Surendra Kumar Vs. Greater Noida Industrial Development Authority*¹ wherein it is held as under:

“11. At the outset, it is to be pointed out that when the vacancies for the post of Assistant Manager (Civil) were advertised on 20-11-2002, the scheme for regularisation of contractual employees was not in vogue and it was only subsequently on 16-4-2003, Respondent 1 had taken a policy decision regarding regularisation of 27 contractual employees and the scheme was approved by the State Government vide Letter dated 5-3-2008 and it is only thereafter, the appellants came to be appointed on 6-8-2010. Thus, when the vacancies were initially advertised, the appellants did not have any substantive right against the notified vacancies. The appellants cannot be said to have acquired such right to be regularised by virtue of the decision of the learned Single Judge in Surendra Kumar v. State of U.P. [Surendra Kumar v. State of U.P., 2005 SCC OnLine All 899 : (2005) 61 ALR 538] as in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , this Court held that the High Court should not issue directions for regularisation, unless the recruitment itself was made in terms of the constitutional

¹ (2015) 14 SCC 382



scheme and the wide power under Article 226 are not intended to be used for issuance of such directions for regularisation. The appellants were actually regularised only by virtue of the policy decision taken by Respondent 1 and not by virtue of the decision of the High Court.

12. *In the impugned judgment [Greater Noida Industrial Development Authority v. Surendra Kumar, 2013 SCC OnLine All 9827 : (2014) 102 ALR 418] , the Division Bench proceeded on the premise as if Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] held that the State Government, in no circumstance, can regularise the services of contractual employees. In para 53 of Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , the Constitution Bench carved out an exception by observing that the Union of India/State Governments/their instrumentalities should take steps to regularise the services of such irregular employees who have worked for more than ten years and para 53 reads as under: (SCC p. 42)*

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa [AIR 1967 SC 1071 : (1967) 1 SCR 128] , R.N. Nanjundappa v. T. Thimmiah [(1972) 1 SCC 409] and B.N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] 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 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



aboveresferred 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.” (emphasis in original)”

7. It is an admitted fact that the petitioner was initially appointed as a Clerk in ITI College on 04.08.1983 and he was continued as Clerk till his transfer on 03.11.1994 and he was paid a consolidated pay all these years. It is also an admitted fact that the petitioner was transferred by promotion as Junior Assistant on 04.11.1994 to Maharaja Arts College (Autonomous). It is not in dispute that the ITI College as well as Maharaja Arts College (Autonomous) are under the management and control of Mansas Trust, Vizianagaram. The petitioner acquired required



qualification of Intermediate and Typewriting when he was appointed as Clerk-cum-Typist in the ITI College. The said post is an aided post and the same was intimated by the 4th respondent to the 2nd respondent vide proceedings dated 27.12.1995. It is an admitted fact that the rejection of absorption of the services of the petitioner and for consequential benefits from 01.03.1992 was challenged in W.P.No.12232 of 1996 wherein this Court passed an order dated 16.03.2022 allowing the writ petition and setting aside the rejection order of the 2nd respondent dated 10.04.1996. It is also an admitted fact that the same was assailed by way of W.A.No.965 of 2002 by the 2nd respondent and sought for setting aside of the orders of the learned Single Judge dated 16.03.2002. The said writ appeal was dismissed vide order dated 11.06.2002. It is also a fact that it became final. It is not in dispute that the services of the petitioner were regularised vide G.O.Rt.No.44 dated 15.03.2007 in an existing vacancy in the cadre of Attender prospectively i.e., from 30.03.2017. It is also not in dispute that on 25.07.2018, the 1st respondent issued a memo directing the 2nd respondent to regularise the services of the petitioner from the date



of transfer to Maharaja Arts College i.e., from 05.11.1994 notionally for the purpose of pensionary benefits without any monetary benefits.

8. For the aforesaid reasons and in view of the ratio laid down by the Hon'ble Supreme Court in the judgments referred supra on which the learned counsel for the petitioner placed reliance, this Court is of the considered opinion that the petitioner is entitled for absorption of his services from the date of his entitlement i.e., from 01.03.1992.

9. In the result, the Writ Petition is allowed and the proceedings dated 25.07.2018 issued by the 1st respondent and the consequential proceedings dated 23.11.2018 issued by the 2nd respondent are hereby set aside. The respondents are directed to approve the absorption of the services of the petitioner from 01.03.1992 with all consequential benefits including pension and pensionary benefits, within a period of three months from the date of receipt of a copy of this order. No order as to costs.



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

4th April, 2023
cbs

VENKATESWARLU NIMMAGADDA, J



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cbs



*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

+Writ Petition No.768 of 2020

% 04-04-2023

M.V.N.Nataraju

.. Petitioner

Vs.

\$ The State of Andhra Pradesh,
rep. by its Principal Secretary, Collegiate
Education Department, Secretariat Buildings,
Velagapudi, Amaravathi, Andhra Pradesh
and others

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner

: Sri A. Rajendra Babu

^ Counsel for respondent Nos.1 to 3

: The Government Pleader for
Services

^Counsel for respondent Nos.4 and 5

: None appeared

? CASES REFERRED :

1. (2015) 14 SCC 382



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No. 768 of 2020

Between:

M.V.N.Nataraju

.. Petitioner

Vs.

The State of Andhra Pradesh,
rep. by its Principal Secretary, Collegiate
Education Department, Secretariat Buildings,
Velagapudi, Amaravathi, Andhra Pradesh
and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 04.04.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

VENKATESWARLU NIMMAGADDA, J



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