



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA
WRIT PETITION NO: 12308 OF 2021

Between:

1. P.D.Suryanarayana Reddy, S/o Anjina Reddy, Aged about 55 years, R/o D.No. 1-750, Fl A, Back side of Rajadhani Hotel, Nidamaru Road, Mangalgiri, Guntur District.

...PETITIONER(S)

AND:

1. Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC) Rep. by its Chairman and Managing Director, Mangalagiri, Guntur Dist.
2. The Chief General Manager, (Personal), APIIC, Mangalagiri, Guntur Dist.

...RESPONDENTS

Counsel for the Petitioner(s): MANASA KANNEGANTI

Counsel for the Respondents: J UGRANARASIMHA (SC FOR APIIC)

The Court made the following: ORDER



HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION Nos. 12308 and 26947 of 2021

COMMON ORDER:

Since the issue to be resolved in these two writ petitions is same, I deem it appropriate to dispose of them by this common order.

2. Heard Ms. K. Manasa, learned counsel for the petitioner in W.P.No.12308 of 2021, Sri P. Raghavender Reddy, learned counsel for the petitioner in W.P.No.26947 of 2021, Sri J. Ugranarasimha, learned standing counsel for the respondents in W.P.No.12308 of 2021, and learned Government Pleader for Services appearing for the official respondents in W.P.No.26947 of 2021. Perused the record.

Pleadings in W.P.No.12308 of 2021

3. This writ petition is filed to declare the action of the respondents in not regularising the services of the petitioner as NMR either in terms of G.O.Ms.No.212 dated 22.04.1994 or in view of his continuous service for more than ten years as NMR from 01.12.1988, as illegal and arbitrary.



4. In brief, the case of the petitioner is that he was appointed as a Man Mazdoor on NMR basis on 01.12.1988 in the respondent corporation. In the year 1995, the petitioner along with others filed W.P.No.23786 of 1995 seeking regularisation of their services as per G.O.Ms.No.212 dated 22.04.1994. This Court disposed of the said writ petition on 10.04.1997 directing the respondent corporation to consider the case of the petitioner. During pendency of the said writ petition, the petitioner filed W.P.M.P.No.29232 of 1995 seeking a direction to the respondent corporation to pay the minimum time scale of pay attached to the post held by him and the said application was ordered. In compliance thereof, the 2nd respondent by proceedings dated 16.12.1995 fixed the scale of pay at Rs.1,375/- - Rs.2,375/- w.e.f. 27.11.1995. Thereafter, in pursuance of the orders dated 10.04.1997 in W.P.No.23786 of 1995, the Executive Director of the respondent corporation vide Memo dated 06.08.1997 considered and rejected the claim of the petitioner on the ground that he did not satisfy the requirement of continuous service for a period of five years, by disengaging the services of the petitioner as NMR with immediate effect. Aggrieved by the same, the petitioner filed another writ petition



being W.P.No.19962 of 1997 and by an order dated 14.12.2000, this Court allowed the said writ petition. Challenging the same, the respondent corporation preferred an appeal in W.A.No.525 of 2001 which was allowed on 08.04.2001 setting aside the order of the learned Single Judge. Subsequently, since the respondent corporation required the services of the petitioner, the petitioner has been continued as NMR(T) and the respondent corporation also revised the pay scale of the petitioner. The petitioner submitted representations dated 01.02.2020, 09.11.2020 and 06.01.2021 to the respondent corporation seeking to consider his case for regularization of his services. But so far, no action is initiated by the respondent corporation. Hence the writ petition.

5. A counter affidavit is filed by the respondent corporation stating that in obedience of the orders of this Court dated 10.04.1997 in W.P.No.23786 of 1995, the case of the petitioner was considered and rejected as he did not satisfy the requirement of five years of continuous service in terms of G.O.Ms.No.212 dated 22.04.1994. There is every justification in rejecting the claim of the petitioner for regularization by taking into consideration the cut-off date i.e., 25.11.1993. The petitioner was engaged on casual



basis where there is no prohibition for such engagement. As the Government had issued instructions not to engage NMRs in the Government/Public enterprises, the services of the petitioner were disengaged with effect from 01.04.1989 and continued on hand receipt (HR) basis. The respondent corporation has nothing to do with anyone working on HR basis under a contractor and the corporation did not pay wages to the petitioner on HR basis individually at any time. There are no merits in the writ petition and it is liable to be dismissed.

Pleadings in W.P.No.26947 of 2021

6. This writ petition is filed to declare the action of the respondents in not regularizing the services of the petitioner in terms of G.O.Ms.No.212 dated 22.04.1994 by correcting her date of appointment in the proposals sent by the 3rd respondent vide proceedings dated 12.11.2008, as illegal and arbitrary.

7. According to the petitioner, she was initially appointed as a Sweeper-cum-Night Watchman in the office of the 5th respondent on 27.10.1988 in the place of her husband who died while in service. Though she is entitled for appointment on compassionate



ground on permanent basis in terms of G.O.Ms.No.118 dated 18.08.1999, but she was appointed on contingent basis. The 3rd respondent sent proposals by proceedings dated 12.11.2008 for grant of minimum time scale and in the said proposals, the name of the petitioner was figured at Sl.No.35 and her date of appointment was shown wrongly as 01.09.1989 instead of 27.10.1988, due to which, her claim has not been considered for regularization. Hence, the petitioner submitted a detailed representation to the 3rd respondent through the 6th respondent on 15.09.2021 with a request to rectify the mistake occurred in the proposals dated 12.11.2008 and to regularize her services. As no action is taken by the respondents so far, the petitioner is forced to approach this Court by filing the present writ petition.

8. A counter affidavit is filed on behalf of the 6th respondent wherein it is stated that the petitioner was appointed as a Sweeper-cum-Night Watchman in the office of the 5th respondent on 27.10.1988 on temporary basis and this appointment does not confer any right to seek regularization. One Sri Nagaseshulu, one of the full time contingent employee of Atmakur unit, was absorbed as an Attender (promotion), one of the post mentioned in



last grade service rules. When the existing post of full time contingent employee was converted as last grade service as was done in the case of Sri Nagaseshulu, the post of full time contingent employee was ceased to exist as per the instructions of the Government. Since Sri Nagaseshulu was converted to the post of last grade service, the post of Sweeper-cum-Night Watchman was no longer exist in the unit of appointment from where the full time contingent employee was converted. As the case of Sri Nagaseshulu was already considered for absorption as last grade service, the question of continuing the post of full time contingent employee does not arise. Considering the above fact into consideration, the proposals to regularize the services of the petitioner were not considered by the Government. The petitioner had requested to grant minimum of time scale attached to the last grade service as alternative plea in support of her contention. Granting of minimum of time scale is a prerogative of the Government as per its policy. Insofar as the petitioner's representation dated 15.09.2021 is concerned, the date of appointment as Sweeper-cum-Night Watchman said to have been wrongly typed will be considered by the 3rd respondent as the



petitioner's representation was pending with the Head of the Department. However, it was not explained by the petitioner as to how the date of appointment is detrimental for granting minimum time scale on par with others. In the light of the above, the writ petition is liable to be dismissed.

9. Learned counsels for the respondents would mainly contend that as per Act 2 of 1994, both the petitioners did not satisfy the criteria of completion of continuous service for five years, since the petitioner in W.P.No.12308 of 2021 was appointed on 01.12.1988 and the petitioner in W.P.No.26947 of 2021 was appointed on 01.09.1989 but not on 27.10.1988; and that as the petitioners were appointed on temporary basis and they were not appointed in clear vacancies of sanctioned posts, their services cannot be regularized.

10. Having regard to the respective submissions made by the learned counsel for the parties and the admissions made in the counter affidavits of the respondents, it is not in dispute that the petitioner in W.P.No.12308 of 2021 has been working as a Man Mazdoor on NMR basis in the respondent corporation since 01.12.1988 and the petitioner in W.P.No.26947 of 2021 has been



working as a Sweeper-cum-Night Watchman in the office of the 5th respondent since 27.10.1988 on contingent basis. It is also not in dispute that the petitioner in W.P.No.12308 of 2021 has been discharging his duties as a Man Mazdoor since 01.12.1988 which is just six days short of the cut-off date as per Act 2 of 1994 i.e., 25.11.1993, but he continued more than ten years from 01.12.1988 till 10.04.2006 on which date the Constitutional Bench of the Hon'ble Supreme Court rendered a judgment in *Secretary, State of Karnataka Vs. Umadevi(3)*¹. Whereas the petitioner in W.P.No.26947 of 2021 completed five years of service by the cut-off date 25.11.1993 and she is eligible for regularization even as per the Act 2 of 1994. It is an admitted fact that that the petitioner in W.P.No.26947 of 2021 was appointed as a Sweeper-cum-Night Watchman on contingent basis, though she is entitled for regular employment under compassionate appointment scheme, which is against the object and in violation of compassionate appointment scheme as formulated under G.O.Ms.No.118 dated 18.08.1999. It is settled law that any appointment under compassionate appointment scheme shall be on regular basis subject to probation,

¹ (2006) 4 SCC 1



but cannot be contingent basis which is against all the canons of fair play. As per the ratio laid down by the Apex Court as well as this Court, once the legal heir of the deceased employee is eligible for employment under compassionate appointment scheme, the respondents are under a statutory obligation to appoint such person on regular basis only, but not on contingent basis on any ground, more particularly, on the ground of non-availability of regular vacancies. As such, the petitioner in W.P.No.26947 of 2021 is entitled for regularization from the date of her appointment i.e., 27.10.1988. Likewise, the petitioner in W.P.No.12308 of 2021 has complied the criterion as laid down at para 53 of the judgment of the Constitutional bench in *Umadevi* case that the services of the petitioner continued more than ten years from 01.12.1988, as such, there is a presumption that if the respondents continued the services of the petitioner more than ten years, it is conclusive that there is regular workload and clear vacancy. Moreover, the order of rejection of regularization of the petitioner is only on the ground that the petitioner has not completed five years of service as per G.O.Ms.No.212, but not other grounds. Therefore, the selection of the petitioner is not illegal and he is duly qualified to hold the post



on regular basis. More so, the services of the petitioner are continued till date in view of work load, but not on the basis of any order and judgment by any court of law. Hence, the petitioner is also entitled for regularization of his services as per the judgment rendered by the Hon'ble Supreme Court in *Umadevi* case referred supra wherein it is held thus:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore Vs. S.V.Narayanappa, R.N.Nanjundappa Vs. T. Thimmaiah and B.N.Nagarajan Vs. State of Karnataka 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 regularization 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 above referred to and in the light of this judgment. In this context, the Union of India, the State Governments and their instrumentalities should take steps to regularize 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.”



11. The Division Bench of the composite High Court of Andhra Pradesh at Hyderabad in *U.V.S.R. Prasad Vs. State of Andhra Pradesh, rep. by its Prl. Secretary, Municipal Administration & Urban Development* (W.P.No.27217 of 2017 dated 19.09.2017 dealt with the aspect of regularization of the services of the employees and observed and held as under:

“12. *In State of Karnataka vs. M.L.Kesari (3 supra), a two-Judge Bench of the Supreme Court has explained the true purport of the directions contained in Para 53 of the judgment in Uma Devi (1 supra) in the below reproduced part of the judgment:*

“6. *The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.*

xxxx xxxxxx xxxxxx xxxxx

8. *The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-*



hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.” (Emphasis is ours)”

13. *If we consider the judgment in Uma Devi (1 supra) as clarified in M.L.Kesari (3 supra) in juxtaposition to Act 2 of 1994 along with its amendments and the judgment in A.Manjulabhashini (2 supra), the following position emerges.*

Act 2 of 1994 prohibits regularisation and regulates recruitments in public employment. However, in order to consider the claims for regularisation of the employees as onetime measure, the State Government has issued G.O.Ms.No.212 dated 22-04-1994, wherein it has decided that the services of the persons, who have completed a continuous and minimum period of 5 years of service on or before 25-11-1993 and been continuing as on that date, shall be regularised in substantive vacancies, if they satisfy conditions 1 to 6 stipulated therein. Several orders of the Courts were made placing different interpretations on G.O.Ms.212, dated 22-04- 1994, mainly with respect to the requirement of completion of five years of service. In order to allay the confusion, Section 7 of the Principal Act was amended



by 1998 amendment Act by insertion of the proviso, which reads as under:

“Provided that the services of a person, who worked on daily wage/NMR/Consolidated pay/Contingent worker on full time basis continuously for a minimum period of five years and is continuing as such on the date of the commencement of the Act shall be regularised in accordance with the scheme formulated in G.O.Ms. No. 212, Finance & Planning (FW.PC. III) Department, dated the 22nd April, 1994. ”

14. While some orders were passed holding that a person is entitled to regularisation even if he has not completed five years of service as on 25-11-1993, such orders were reversed by a Division Bench of this Court, which was confirmed by a two-Judge Bench of the Supreme Court in *A.Manjula Bhashini (2 supra)*, holding that in order to be entitled for regularisation, a person must have completed 5 years of continuous service as on 25-11-1993.

15. Concededly, the Supreme Court in *A.Manjula Bhashini (2 supra)* has not referred to the judgment in *Uma Devi (1 supra)*. Thus, in our opinion, the directions given in Para 53 of the judgment in *Uma Devi (1 supra)* and the provisions of Act 2 of 1994 along with its amendments and the judgment in *A.Manjula Bhashini (2 supra)* operate in different situations.

16. It is trite that the law declared by the Supreme Court is binding throughout the country under Article 141 of the Constitution of India. It is noteworthy that by the time the judgment in *Uma Devi (1 supra)* was rendered, the provisions of Act 2 of 1994 and G.O.Ms.No. 212, dated 22-04-1994, were in existence. The Supreme Court, while denouncing the practice of regularization and absorption of persons, who entered



service through backdoors by giving a go-bye to the due procedure prescribed for appointments to public posts, consciously ordered for onetime absorption/regularization of those, who were working for a period of not less than 10 years. It has given directions in this regard to all the State Governments and also Union of India. The Supreme Court is presumed to be conscious of various State enactments such as Act 2 of 1994 and executive orders such as G.O.Ms.No. 212, dated 22-04-1994, while giving directions in Para No. 53 of the judgment in Uma Devi (1 supra). But still, it has not made any exception in favour of the States where State enactments banning regularization/absorption exist. Therefore, Act 2 of 1994 and G.O.Ms.No. 212, dated 22.04.1994, do not whittle down the width and the judgment in Manjula Bashini (2 supra) does not lower the trajectory of the directions issued by the Supreme Court in Para 53 of its judgment in Uma Devi (1 supra). It is, therefore, not permissible for the respondents to take shelter under Act 2 of 1994 and G.O.Ms.No.212, dated 22-04-1994, to deny regularization to the petitioners, who have, admittedly, satisfied the criteria laid down in Para No. 53 of the judgment in Uma Devi (1 supra).”

12. From the above analysis, this Court drawn the factual conclusions that the petitioners were appointed by the respondent authorities in duly sanctioned posts and without the benefit or protection of any interim orders of any court or tribunal they rendered/continued their service for a period of more than ten years, as such, it cannot be said that they are not eligible for regularisation as per the ratio laid down by the Apex Court in



Umadevi case as well as this Court in *U.V.S.R.Prasad* case referred above. Therefore, the petitioners in both the writ petitions are entitled for regularisation of their services.

13. For the afore-mentioned reasons, both the Writ Petitions are allowed with a direction to the respondents to consider the cases of the petitioners for regularisation of their services against the existing vacancies and appoint them having satisfied the criteria laid down in para No.53 of the judgment in *Umadevi* case. This process must be completed 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.

VENKATESWARLU NIMMAGADDA, J

28th March, 2023
cbs



HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

W.P.Nos. 12308 and 26947 of 2021

28th March, 2023

cbs



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Writ Petition Nos. 12308 and 26947 of 2021

W.P.No.12308 of 2021

Between:

P.D. Suryanarayana Reddy

.. Petitioner

Vs.

Andhra Pradesh Industrial infrastructure
Corporation Ltd. (APIIC) rep. by its Chairman
& Managing Director, Mangalagiri, Guntur
District and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 28.03.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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|--|--------|
| 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



*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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% 28-03-2023

W.P.No.12308 of 2021

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.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Ms. K. Manasa

^ Counsel for respondents : Sri J. Ugranarasimha

? CASES REFERRED :

1) (2006) 4 SCC 1

2) Order dated 19.09.2017 in W.P.No.27217 of 2017