

T. Nagaraju and Others Vs. District Collector and Chairman, Rural Development Agency, West Godavari Dist. and Another

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Court : Andhra Pradesh

Decided On : Feb-22-1999

Reported in : 1999(3)ALD702; 1999(2)ALT367

Judge : B. Sudershan Reddy, J.

Acts : Minimum Wages Act; [Constitution of India](#) - Article 226; Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act

Appeal No. : WP No. 7447 of 1996

Appellant : T. Nagaraju and Others

Respondent : District Collector and Chairman, Rural Development Agency, West Godavari Dist. and Another

Advocate for Def. : Government Pleader for Panchayat Raj

Advocate for Pet/Ap. : Mr. K.G. Krishna Murthy, Adv.

Judgement :

ORDER

1. All the three petitioners herein were appointed as NMR Section Writers by the 2nd respondent on 4-1-1992 on daily wagebasis. They are being paid a sum of Rs.60/-per day as per the orders of the 1 st respondent under the Minimum Wages Act. All the petitioners herein claim that they possess the required qualifications to hold the post of Section Writer/Junior Assistant. It is submitted that they are discharging their regular duties on par with the other Section Writers in the respondents's organisation, it is their case that the functions discharged by them are similar and same as those of the other employees who were regularly appointed as Section Writers/Junior Assistants. It is submitted that the 2nd respondent had already recommended their cases to the Commissioner of Panchayat Raj and Rural Development through letter dated 6-6-1993 for regularisation of their services and for payment on regular pay scales. However, the matter rests with the 1st respondent and no action as such is taken even as on today. As on the date of filing of the writ petition, the petitioners have completed more than three years of service. Since the respondents failed to grant the regular pay scales to the petitioners, the present writ petition has been filed invoking the extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#). The petitioners accordingly pray for issuance of an appropriate writ particularly one in the nature of mandamus declaring the action of the respondents in not absorbing the petitioners as Section Writers/Junior Assistants as illegal, improper and unjust. The petitioners also pray for issuance of consequential directions to the respondents to absorb the petitioners as Section Writers/Junior Assistants.

2. In the counter-affidavit filed by the respondents, it is inter alia state that the petitioners have been engaged orally on 4-1-1992 to work in the District Rural Development Agency on daily wage basis without giving any written posting orders. Their appointment is purely on temporary basis. The petitioners were instructed orally to work as Section Writers on NMR basis as they are having qualifications. It is stated that the 2nd respondent has not recommended the names of the petitioners to the Commissioner of Rural Development, Andhra Pradesh, Hyderabad for regularisafion and for payment of regular time scales as stated by the petitioners in their affidavit. But, the 2nd respondent has sent only the list of daily wage workers working in DRDA to the Commissioner, Rural Development Andhra Pradesh, Hyderabad vide letter No.A3/i MS/ DRDA/93,

dated 6-6-1993 as called for by the Commissioner. It is the case of the respondents that Act 2 of 1994 i.e., A.P. (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act prohibits appointment or regularisation of any temporary employee or employees on daily wage or NMR basis. The petitioners will not come within the conditions prescribed by G.O. Ms. No.212, dated 22-4-1994, Finance and Planning Development.

3. In nutshell it is the case of the respondents that the services of the petitioners cannot be regularised for the simple reason that they do not fulfil all the conditions laid down by the Government in its policy decision contained in G.O. Ms. No.212, dated 22-4-1994.

4. The main objection raised by the respondents relates to the condition of continuous minimum period of service of 5 years as on 25-11-1993. It is admitted that the petitioners possess the requisite qualifications. Of course, it is the case of the respondents that they were purely appointed on temporary basis. Admittedly, the petitioners were appointed on 4-1-1992 and as on the date of filing of the writ petition, they do not satisfy the condition relating to continuous service of minimum period of five years as on 25-11-1993. The petitioners have hardly put in service of one year and eleven months as on the cut off date.

5. This Court had an occasion to consider the question relating to the condition of working continuously for a period of five years as on 25-11-1993 in *Y. Rambabu v. University of Health Sciences, Vijayawada (A.P.)*, 1997 (1) An.WR 61 = 1997 (1) SLR 503. After an elaborate consideration of the matter, this Court held as under;

'I am of the considered opinion that since the scheme itself came into force only in 1994 by which date the ban on recruitment had already taken place with effect from 25-11-1993, the proper and reasonable construction would be that those who were in service for five years whether before or after that date would be entitled to the regularisation if any sanctioned post is available in respect of their needed services. I find that in the case of K. Narasimha Rao who was appointed ad hoc on 28-11-1988 the University referred the matter to the Government and by letter dated 8-4-1994 the Government merely requested the University to apply the provisions of G.O. Ms. No.212 and accordingly his services were regularised from

23-4-1992 on which date the post was sanctioned. Since he had not completed five years of service as on 25-11-1993, it is obvious that both the Government and the University have construed G.O. Ms. No.212 to mean that the condition of 'being in service on 25-11-1993' and the condition of 'working continuously for a minimum period of five years are to separate conditions and not to be read conjunctively.'

6. I am told that a Division Bench of this Court confirmed the judgment rendered by the learned single Judge in Y. Rambabu's case (supra) and the same has become final as the Special Leave Petition preferred in the matter was also dismissed on 6-2-1998 (vide the order in SLP Nos.27275 to 27277 of 1995). Thus I am bound by the said Judgment. Viewed from that angle, there is no dispute whatsoever that the petitioners have completed five years of service as on to-day and are admittedly in service of the respondents. Therefore, the respondents cannot refuse to consider the request of the petitioners for regularisation of their services on the ground that they do not satisfy the condition relating to continuous service for a period of five years as on 25-11-1993. However, the learned Government Pleader brings to my notice the decision rendered by a Division Bench of this Court in WA No.75 & 76 of 1998 filed against the decision in Y. Rambabu's case (supra) filed by the department of finance and planning. The Division Bench of this Court with a view to provide proper and fair opportunity to the department of finance and planning set aside the judgment of the learned single Judge and remitted the matter for fresh consideration on merits after giving an opportunity to the department. It is the case of the Government in the said case that it is the department of finance and planning which would be virtually affected by the directions that are granted by this Court for regularisation of the services of the employees in terms of G.O. Ms. No.212. It is their contention that the decision in Y. Rambabu's case (supra) does not hold the field in view of the judgment of the Division Bench. But, the learned Counsel for the petitioner promptly brings to my notice an order passed by the Apex Court in Civil Appeal Nos.82-83/98, dated 11-1-1999 setting-aside the order passed by this Court in WA Nos.75 and 76 of the 1998 and reiterating its earlier decision in SLP No.27276 of 1995 dated 6-2-1998 upholding the order of the learned single Judge in Y. Rambabu's case (supra). I have no option except to hold that the decision rendered by this Court in Y.

Rambabu's case (supra) still holds the field.

7. In the result, I hold that the respondents cannot refuse to consider the request of the petitioners for regularisation of their services on the sole ground that they have not completed five years of continuous service as on 25-11-1993. Consequently, the respondents are directed to consider the case of the petitioners for regularisation of their services in accordance with G.O. Ms. No.212, dated 22-4-1994. It shall however be opened to the respondents to consider as to whether the petitioners fulfil and satisfy the other conditions laid down in G.O. Ms. No.212 dated 22-4-1994 relating to the qualifications prescribed for holding the said post in respect of which they are claiming relief. The respondents are entitled to consider as to whether the petitioners satisfy the condition relating to age and follow the rule of reservations. They are also entitled to consider as to whether there are any clear vacancies of the posts as per the work load excluding the vacancies already notified to the A.P. Public Service Commissioner or the District Selection Committee. - The respondents are also entitled to take into consideration as to whether there is any other legal impediment for consideration of the case of the petitioners for regularisation.

8. However, it is required to notice that there is no plea whatsoever in the affidavit filed in support of the writ petition that the petitioners were recruited though on temporary basis, after a public advertisement and by a properly constituted selection committee. On the other hand, in the counter affidavit, it is inter alia stated that the petitioners were appointed purely on temporary basis but orally on daily wages subject to availability of work. Even the counter affidavit is also silent as to whether such appointments were pursuant to any advertisement or by a properly constituted selection committee in accordance with rules.

9. Under those circumstances, it shall be open to the respondents to take into consideration the above said aspects also while considering the case of the petitioners. It is declared that the petitioners are not entitled for regularisation of their services unless it is clearly established that they satisfy all the conditions laid down under G.O. Ms. No.212 dated 22-4-1994 and also the condition relating to their appointment at the inception itself as mentioned above. These are all the

relevant factors that are required to be taken into consideration by the respondents.

10. The writ petition is accordingly disposed of directing the respondents to take an appropriate decision in the matter in accordance with law in terms of the aforementioned directions within a period of three months from the date of receipt of a copy of this order. No costs.

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