

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH  
AND**

**HON'BLE MR. JUSTICE B. KRISHNA MOHAN**

**WRIT PETITIONS No. 2812 of 2021 AND 21961 OF 2020**

WRIT PETITION No.2812 of 2021:

1. Union of India, Rep. by its Chief Commissioner, Central Excise and Customs, Visakhapatnam Zone, Visakhapatnam.
2. The Commissioner, Customs and Central Excise, Kannavarithota, Guntur, Guntur District.

... Petitioners

Versus

1. G.Venkat Babu, S/o.Yesobu, aged about 38 years, Occ: Casual Labour (Temporary Status), O/o. The Commissioner, Customs, Central Excise & Service Tax, Guntur Commissionerate, Guntur, R/o.Type-II, Central Excise Quarter, GT Road, Guntur.
2. B.Muralidhar Rao, S/o.Bapana Raju, aged about 53 years, Occ: Casual Labour (Temporary status), customs, Central Excise & Service Tax, Guntur Commissionerate, Guntur, R/o.Type-II, Central Excise Quarter, GT Road, Guntur.

... Respondents

Counsel for the petitioners : Mr.N.Harinath,  
Learned Assistant Solicitor General.

Counsel for the respondents : Mr.J.Sudheer  
Senior Advocate

WRIT PETITION No.21961 of 2020

1. M.Rambabu, S/o.M.Venkateswara Rao, aged 46 years, Occ: Temporary Employee, O/o.Commissioner of Customs, Central Excise & Service Tax, Guntur Commissionerate, Kannavari Thota, Guntur.
2. P.Devadas, S/o.Musalaiah, aged 56 years, Occ: Temporary employee, O/o.Commissioner of customs, Central Excise & Service Tax, Guntur Commissionerate, Kannavari Thota, Guntur.
3. K.Gangaiah, S/o.Venkateswarlu (Died)

4. K.Sumathi, W/o. Late K.Gantaiah, aged about 38 years, Occ: House Hold, r/o.6-30-86, Srinagar, Guntur.
5. K.Vasantha Lakshmi, D/o.Late K.Gantaiah, aged 22 yars, Occ: Student, R/o.6-30-86, Srinagar, Guntur.
6. K.Venkata Sai, S/o.Late K.Gantaiah, aged about 20 years, Occ: Student, R/o.6-30-86, Srinagar, Guntur.

(Petitioners No.4-6 are LR's of Late Petitioner No.3)

... Petitioners

Versus

1. Government of India, Ministry of Finance Department of Revenue, Central Board of Customs & Excise, North Block, New Delhi, Rep. by its under Secretary.
2. Central Board of Customs & Excise, North Block, New Delhi, Rep. by its Special Secretary.
3. The Commissioner of Customs, Central Excise and Service Tax, Guntur Commissionerate, Kannavarithota, Guntur.
4. The Additional Commissioner (P&V), Customs, Central excise and Service Tax, Guntur Commissionerate, Kannavarithota, Guntur.

... Respondents

Counsel for the petitioners : Mr.N.Harinath,  
Learned Assistant Solicitor General

Counsel for the respondents : Mr.N.Vijay,  
Advocate

### **ORAL COMMON JUDGMENT**

**Date 02.11.2021**

*(Per Hon'ble Mr. Justice Ahsanuddin Amanullah)*

Heard Mr. N. Harinath, learned Assistant Solicitor General, and Mr. J. Sudheer, learned senior counsel for the parties.

2. The petitioners have moved the Court being aggrieved by the order, dated 14.10.2020, passed in OA.No.020/01166/2014 by the learned Central Administrative Tribunal, Hyderabad Bench (for short, the 'Tribunal').

3. The respondents, who are the original applicants before the Tribunal, were appointed as casual labour under the petitioners in the year 1995 and 1993 respectively. They filed O.A.No.203 of 2003 being aggrieved by introducing the contractor for payment of wages and sought regularization of services. The said O.A.No.203 of 2003 was disposed of on 21.07.2004 directing the petitioners not to disengage the original applicants; not to introduce the contractor for payment of wages and to consider their claim for grant of temporary status and regularization. The services of the original applicants were terminated by the petitioners on 03.12.2004. They again approached the Tribunal in O.A.No.97 of 2009 for a direction to the petitioners for granting them temporary status as such benefit had been given to others. The same was disposed of on 05.04.2010 directing the petitioners to grant temporary status to the respondents and to extend all benefits available to them. The petitioners approached this Court in W.P.No.26716 of 2010 against the judgment of the learned Tribunal, dated 05.04.2010, in O.A.No.97 of 2009 which was dismissed on 08.11.2010. The respondents filed C.P.No.87 of 2010 in O.A.No.97 of 2009 alleging non compliance of the order dated 08.11.2010. The petitioners approached the Hon'ble Supreme Court in SLP.No.6357 of 2011 against the order dated 08.11.2010 in W.P.No.26716 of 2010 and the same was dismissed on 02.03.2011. The C.P.No.87 of 2010 was disposed of in view of the stand taken by the petitioners that the order of the learned Tribunal dated 05.04.2010 in O.A.No.97 of 2009 has been complied with and the salary would be paid in two months.

The respondents along with three others again approached the learned Tribunal in O.A.No.1411 of 2013 claiming revision of pay and arrears of salary etc. The same was disposed of on 18.11.2013 directing the petitioners to consider the representation of the original applicants and dispose of the same within three months. Once again the claim of the respondents along with three others was rejected by the petitioners on 20.03.2014. The respondents filed O.A.No.560 of 2014 challenging the order dated 20.03.2014. Other two similarly situated persons filed O.A.No.1166 of 2014 against the same order dated 20.03.2014. O.A.No.560 of 2014 was dismissed by order dated 31.01.2020 while O.A.No.1166 of 2014 was partly allowed by the learned Tribunal by order dated 14.10.2020.

4. Learned counsel for the petitioners submitted that O.A.No.560 of 2014, which was filed by similarly situated persons, came to be dismissed by the Tribunal on 31.01.2020 but O.A.No.1166 of 2014, was partly allowed by the Tribunal by order dated 14.10.2020 which is impugned in the present writ petition. Learned counsel submitted that in O.A.No.560 of 2014, by order dated 31.01.2020, it has rightly been held that once the original applicants had worked under the service of the labour contractor, they can seek their remedy, if any, by approaching the appropriate forum since the relationship between the contract labour and labour contractor is governed by the provisions of the Contract Labour (Regulation & Abolition) Act, 1970, and the matter was not interfered with since the Tribunal was held not to be the forum to deal with matters of such nature.

5. Learned counsel submitted that the order was a valid and good order in the eyes of law and the Tribunal in O.A.No.1166 of 2014 was not justified in taking a contrary view and directing for payment of salary/wages for the period 03.12.2004 till 04.03.2011 and granting grade pay of Rs.1,800/- along with the relevant scale for which they would be eligible as on 01.01.2006 as per 6<sup>th</sup> CPC and based on the same the scale of pay had to be fixed over the years and arrears to be arrived at and further that the amount of arrears so worked out be paid restricted to a period of three years from the date of filing of the original application. The time granted for implementing the order was three months.

6. *Per contra*, learned counsel for the respondents submitted that the order dated 14.10.2020 passed in O.A.No.1166 of 2014 is a well reasoned order and has considered all aspects and has arrived at the finding that the original applicants had legal right to the relief claimed and that justice cannot be ignored to them and the technical lacunae committed by the applicants at appropriate time would not stifle justice as it was well settled law that substantive justice would prevail.

7. Having considered the facts and circumstances of the case and submissions of the learned counsel for the parties, we do not find any merit in the present writ petition. In the order dated 21.07.2004 in O.A.No.203 of 2003, it was held that as the applicants who were engaged by the respondents and were being paid by the respondents directly, and had been working for years together, the petitioners shall not disengage the applicants till

such time work is available and they shall also not be replaced by any fresher. It was also directed that the petitioners shall not direct the applicants to get a contractor for payment of wages/salaries. However, with regard to regularization of the services the same was left open for future if such scheme was introduced and the applicants made representation to the petitioners to consider their case for grant of temporary status and regularization. Thus, once they have violated the direction of the learned Tribunal not to disengage them and also not to get the contractor for payment of wages/salaries, the petitioners initially terminating the respondents on 03.12.2004 and thereafter taking work from them through a contractor was itself in the teeth of the order dated 21.07.2004. Later, the respondents were given temporary status on 05.03.2011 retrospectively from the date of their respective engagement as casual labour. Thus, it is clear that the nature of the job was perpetual and could not have been continued in the temporary capacity by not paying the respondents the regular salary of the post they held *inter alia* on the principle of same pay same work. Moreover, the issue was only with regard to payment of arrears. Once the Tribunal in its order dated 21.07.2004 had directed that such payment would be made directly, as was being done by the petitioners to the respondents, their payment being made through a contractor cannot be said to be in accordance with law. Thus, taking a overall view of the matter, Writ Petition No.2812 of 2021 stands dismissed.

8. In W.P.No.21961 of 2020 the petitioners are the original applicants in O.A.No.560 of 2014, which was dismissed by order, dated 31.01.2020, by the learned Tribunal.

9. As the issue is identical to the one dealt with in W.P.No.2812 of 2021, relying upon and adopting the reasons assigned by the learned Tribunal in its order dated 14.10.2020, passed in O.A.No.1166 of 2014, Writ Petition No.21961 of 2020 is allowed.

10. Accordingly, the judgment and order, dated 31.01.2020, passed in O.A.No.560 of 2014 by the learned Tribunal, is set aside. A direction is issued to the respondents in similar terms to that of O.A.No.1166 of 2014 contained in order dated 14.10.2020, which is reproduced herein:

“Thus, keeping the above in view, we set aside the termination of the applicants w.e.f. 03.12.2004 being illegal and consequently, direct the respondents to consider granting relief to the applicants as under:

(i) Respondents shall work out salary/wages for the period 03.12.2004 till 04.03.2011, to be paid to the applicants as if they were directly working for the respondents, in consonance with the order of the Tribunal in O.A.No. 203/2003 and then deduct the amount paid to the applicants through the service contractor for the said period. The difference amount has to be thus arrived at.

(ii) Applicants shall be granted Grade Pay of Rs. 1800/- along with the relevant scale for which they would be eligible as on 01.01.2006 as per 6<sup>th</sup> CPC and based on the same, their scale of pay has to be fixed over the years. Arrears accordingly have to be arrived at.

(iii) The amount of arrears so worked out as at (i) and (ii) above, shall be restricted to be paid for a period of three

years from the date of filing of this OA in terms of para 5 of the judgment of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008.

(iv) Time calendared to implement to the order is three months from the date of receipt of this order.

(v) With the above directions, the OA is partly allowed. Parties shall bear their own costs.”

11. In view of prayer made by the learned Assistant Solicitor General, the Court is inclined to grant three months time from today for complying with the order passed in W.P.No.2812 of 2021 and W.P.No.21961 of 2020.

12. Miscellaneous applications pending, if any, also stand disposed of. There shall be no order as to costs.

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**(AHSANUDDIN AMANULLAH, J)**

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**(B. KRISHNA MOHAN, J)**

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**HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH  
AND  
HON'BLE MR. JUSTICE B. KRISHNA MOHAN**

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**WRIT PETITIONS No. 2812 of 2021 AND 21961 OF 2020**

November 2, 2021

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