

APHC010068952021



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

[3310]

FRIDAY ,THE EIGHTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

**WRIT PETITION NOS. 5009, 3589, 4862, 24357, 24383, 26525,
29140 of 2021 and 4465 of 2020**

WRIT PETITION NO: 5009 OF 2021

Between:

G.Ramakrishna and others

...PETITIONER(S)

AND

The State of Andhra Pradesh and others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.P RAGHAVENDRA REDDY

Counsel for the Respondent(S):

1.GP FOR SERVICES I

2.GP FOR SERVICES II

The Court made the following:

COMMON ORDER:-

The batch Writ Petitions filed by the petitioners to regularize their services from the date of completion of 10 years of service in terms of the orders passed by the composite High Court in W.P.No.24377 of 2007 as confirmed in W.A.No.782 of 2010 and W.P.No.27217 of 2019, dated

19.09.2017 and the order passed by the High Court for the State of Telangana in W.P.No.23057 of 2019, dated 21.04.2020.

2. Heard Mr. P. Raghavender Reddy, Mr. G.V.Gangadhar, Mr. Pitchaiah, learned counsel for the petitioners and Mr. E. Sambasiva Prathap, learned Additional Advocate General for the official respondents.

3. These Writ Petitions arise out of the same issue and therefore are being disposed of by a common order.

4. The main grievance of the petitioners in W.P.No.5009 of 2021 is that they were appointed as N.M.Rs on different dates in the year 1988 to 1993 in Greater Visakhapatnam Municipal Corporation, Visakhapatnam i.e 4th respondent (in short 'the Corporation'). Subsequently they were allowed to draw the time scale pending regularization and they were getting all the benefits on par with the regular employees, but their services are not being regularized inspite of several requests as per judgments of Hon'ble Supreme Court. Therefore, inaction of the respondents is questioned in this writ petition.

5. The case of the petitioners in W.P.No.3589 of 2021 is that they were initially appointed as NMRs in the year 1986 and their services were terminated without following due procedure and thereafter their services were taken over in the year 1990, since then they have been working in Tirupati Municipal Corporation, Tirupati i.e 4th respondent (in short 'the Corporation') and subsequently they were allowed to draw the time scale pending

regularization, though they were getting all the benefits on par with the regular employees, but their services are not being regularized in spite of several requests as per decisions of the Hon'ble Apex Court, though number of vacancies are kept unfilled, which were fallen vacant either due to retirement, death or promotions. The petitioners have completed more than 27 years of service in the Corporation. Hence the present writ petition came to be filed. **(The petitioners 1, 2 and 14 to 16 are dismissed as withdrawn as per order of this Court dated 13.04.2023 vide I.A.No.1 of 2023)**

6. The case of the petitioners in W.P.No.4862 of 2021 is that they were initially appointed as NMRs in the year 1998 to 1993 on various dates in the 4th respondent/ The Greater Visakhapatnam Municipal Corporation, Visakhapatnam (in short 'the Corporation') and they were allowed to draw the time scale pending regularization and they are getting all the benefits on par with regular employees, but their services are not being regularized in spite several requests, though more than one thousand existing last grade vacancies are kept vacant. The petitioners have completed more than 25 years of service in the Corporation. Hence, the present writ petition came to be filed.

7. The case of the petitioners in W.P.No.24357 of 2021 is that they were initially appointed as Full Time Contingent Employees in the respondents/ Commercial Tax Department in different places in the state of Andhra Pradesh and the Government has granted Minimum Time Scale and D.A to them and

other subsequent Revision of Pay Scales were extended to them from time to time. At present number of existing vacancies in the department, in fact the 2nd respondent send proposals to the 1st respondent dated 04.08.2009, in the said proposals it has been categorically stated that there are 339 vacancies are available in the Department and proposed for regularization of their services. The petitioners were allowed to draw the time scale pending regularization and they are getting all the benefits on par with regular employees, but their services are not being regularized in spite several requests. Hence, the present writ petition came to be filed.

8. The case of the petitioners in W.P.No.24383 of 2021 is that they were appointed as Bill Collectors in Nagari Municipality, Chittoor District i.e 4th respondent on daily wage basis in the year 1989 and they were extended minimum time scale. Their claim for regularization has not been considered only on the ground that they have not put in 5 years of service as on 25.11.1993 in terms of G.O.Ms.No.212, dated 22.04.1994, though there are number of existing vacancies in 4th respondent/ municipality. The petitioners have completed more than 28 years of service in the Municipality and they are fully eligible and qualified for regularization in the vacant position in the Municipality. Hence, this writ petition came to be filed to direct the respondents to regularize their services in the existing vacancies from the date of completion of 10 years of service in terms of decisions of Hon'ble Supreme Court.

9. The case of the petitioners in Writ Petition No. 26525 of 2021 is that they were initially appointed as Watchman on daily wage basis under the control of respondents on 26.10.1992, 01.04.1990 and 01.06.1991 and they have completed more than 28 years of service under the control of respondents. At present there are number of vacancies in the department, in which the petitioners are working. Though they have put in considerable length of service, but their services are not being regularized by the respondents, which is illegal and arbitrary. Hence, the present writ petition came to be filed.

10. The precise case of the petitioners in W.P.No. 29140 of 2021 is that they were initially appointed in the 4th respondent Municipality on daily wage basis in the year 1989-90 in respect of various categories and they have completed more than 30 years of service. The Commissioner have furnished vacancy position under Right to Information Act dated 02.02.2021, wherein it was shown 16 existing vacancies in the municipality in the last grade categories, but inspite of the same, their services were not regularized on the ground that they have not completed 5 years of service as on 25.11.1993 in terms of G.O.Ms.No.212, dated 22.04.1994. The petitioners are eligible for regularization. Hence, the present writ petition came to be filed.

11. The precise case of the petitioners in W.P.No.4465 of 2020 is that they were originally designated as casual labourers in the 3rd respondent University. Recognizing their continuous service, the 3rd respondent issued

proceedings dated 08.10.2008 placing the petitioners on Time-Scale and the same is being revised from time to time as and when new PRC came into force, petitioners are being granted DA, HRA and CCA from time to time. Though there are vacancies, the 3rd respondent did not choose to regularize their service for the past 27 to 35 years. Therefore, the petitioners are seeking relief to regularize their services in the 3rd respondent University. Hence, the present writ petition came to be filed.

12. During hearing, learned counsel for the petitioners would contend that the petitioners have been working in the respondents Corporation/ Municipality/ Commercial Tax Department in the State of Andhra Pradesh in various categories, since long time i.e more than 10 years continuously without any interruption on par with regular employees. It is further contended that they were allowed to draw the time scale, but not regularized their services inspite of best efforts and repeated representations made to the respondents. Therefore, the petitioners are eligible and entitled to claim benefit for regularization in these matters as per decisions of the Hon'ble Apex Court.

13. Whereas, learned Additional Advocate General for the respondents vehemently argued that the respondents rejected the claim of the petitioners that Time Scale Employees in the Corporation/ respondents for regularization of their services as they are not eligible for regularization due to non-completion of 5 years of service as NMRs by the cut-off date i.e 25.11.1993 in

terms of G.O.Ms.No.212, dated 22.04.1994 and also act 2 of 1994. In support of their contention, relied on a decision of the Hon'ble Supreme Court in **“Vibhuti Shankar Pandey v. State of Madhya Pradesh and Others”**¹, wherein the Hon'ble Division Bench held as follows:-

*“4. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **State of Karnataka v. Umadevi**², as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily-rated employee must be working. These two conditions were clearly missing in the case of present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.*

14. Further, relied on a decision of the Hon'ble Division Bench of the Hon'ble Apex Court in **“University of Delhi v. Delhi University Contract Employees Union and Others”**³, wherein the Hon'ble Division Bench discussed **Umadevi's case** and held, are not entitled to benefit of regularization only for the reason that they had put in minimum 10 years of continuous service as envisaged and further held that though benefit of regularization cannot be granted, window of opportunity must be given to them to complete with available talent through public advertisement, considering that as of now most of them had completed 10 years of contractual service.

¹ (2023) 3 SCC 639

² (2006) 4 SCC 1

³ (2021) 16 SCC 71

Further relied on a decision of the Hon'ble Division Bench of Apex Court in **"Upendra Singh v. State of Bihar and Others"**⁴, wherein it was held as follows:-

"8. Law pertaining to regularization has now been authoritatively determined by a Constitution Bench judgment of this Court in Secretary, State of Karnataka & Ors v. Umadevi & Ors. (2006) 4 SCC 1: (AIR 2006 SC 1806). On the application of law laid down in that case, it is clear that the question of regularization of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be disputed by the learned counsel for the appellant as well. That is why she continued to plead that the appointment of the appellant was made after following due procedure and in accordance with law.

The appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their initial appointment by the Managing Committee was in consonance with Article 14 of the Constitution of India by open advertisement and competitive merit selection. On account of various interpretations by more than one Bench of M.L.Kesari (AIR 2010) SC 2587) (supra) reference was made to the Full Bench. We have already noticed from the order refusing regularization dated 13.08.2003 that the appointment of the Appellants on daily wage was not in consonance with the law."

15. Learned Additional Advocate General for the official respondents further contended that in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant

⁴ AIR 2018 SC 1315

posts. Mere continuation of service by an temporary or *ad hoc* or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service. Even temporary, *ad hoc* or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if they are not working against a sanctioned post as held by the Hon'ble Supreme Court in ***“State of Rajasthan and Others v. Daya Lal and Others”***⁵. Further, relied on a recent decision of this Court in ***“Sudhamani and Others v. State of Andhra Pradesh and Others”***⁶, wherein learned Single Judge held that mere publication of an advertisement does not make the petitioners appointment a valid appointment as per the constitutional scheme. It was also clarified that merely because of a temporary employee continued beyond the term of their appointment, they would be absorbed into regular service and made permanent merely on the strength of such continuance, if the original appointment was not by a 'due process' of selection. Therefore, this Court following the decisions of the Apex Court in ***Umadevi and M.L. Kesari's case*** held that proper method of selection is need to be notified. There should be an advertisement/ wide publicity, examination, interview or the like to prove that there was a competitive testing/ elimination process after a proper screening of the applicants. That is the approved/ recognized scheme for appointment. Then only the petitioners were duly appointed.

⁵ AIR 2011 SC 1193

⁶ 2021 (6) ALD 519 (AP)

16. Therefore, the petitioners are not duly appointed by proper procedure in the matters and hence, they are not entitled to claim any benefit in these writ petition and requested to dismiss the same.

17. Perused the records.

18. During hearing, learned counsel for the petitioners relied on a decision of erstwhile High Court of Andhra Pradesh in **Kodali Raju and Others v. APSRTC, Hyderabad and Others**⁷, wherein it was held as follows:-

“18.....Here it is a case of casual appointment and may not be through selection process. It can at best be said to be an irregular appointment, but not an illegal appointment. The sweeping and cleaning of buses is a perennial work attached to the main activity of the Corporation. Since the petitioners have been treated as working continuously for more than 10 years, regularization of their services have to be considered in the light of the said judgment. During the years 2004 and 2010, more than 4000 posts were sanctioned by the Government for regularizing the services of temporary/ contract employees working in the Corporation. The judgment rendered in Umadevi's case further was explained in State of Karnataka v. L. Kesari (supra), wherein it is stated that the true effect of the direction at paragraph 53 of judgment in Umadevi case is that all persons who have worked for more than 10 years as on 10.04.2006 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 continuation of petitioners in the Corporation of petitioners in the Corporation for the last more than 21 years itself can be construed that there are vacant posts available and the petitioners are entitled for regularization of their services and to be put on regular timescale.”

⁷ 2011(1) ALD 234

19. In **“C. Mahender and Others v. Pottisreeramulu Telugu University, Hyderabad”⁸**, wherein the Hon’ble Division Bench of High Court for the State of Telangana, held as follows:-

45. *There is no dispute that petitioners have been working on daily wage since 1990 and have put in almost (30) years of service by now. They have been given minimum time-scale from the year 2000. They have been continuously working without any Court orders in their favour from 1990 till date.*

.....

48. *It is not known why the 1st respondent has not followed the decision in Umadevi’s case (supra), as explained in M.L.Kesari’s case (supra) and undertaken a one-time exercise of preparing the list of daily wage employees, who had worked for more than ten (10) years without the intervention of the Courts and Tribunals as on 10.04.2006 and subject them to a process verification as to whether they are working against vacant posts and possess requisite qualifications for the posts, and if so, regularize their services.”*

20. He further relied on a decision of composite High Court at Hyderabad in **“U.V.S.R.Prasad and Others v. State of Andhra Pradesh and Another”⁹** wherein the Hon’ble Division Bench held as follows:-

10. *From the material discussed above and the admissions made in use counter- affidavit of respondent No.2, it is not in dispute that the petitioners have been working as Work Inspectors from the years 1990-1992. It is also not in dispute that by the time the judgment in Uma Devi’s case (supra), was rendered in the year 1996, they have completed more than 10 years of service. Para 53 of the judgment in Uma Devi’s case (supra), reads as under:*

⁸ 2020(4) ALD 379 (TS) (DB)

⁹ 2018(2) ALD 282 (DB)

"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; R.N.Nanjundappa, (1972) 1 SCC 409 and B.N.Nagarajan, (1979) 4 SCC 507 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 that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the 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."

11. The respondents have not disputed the fact that the petitioners fully satisfied the criteria laid down in the above reproduced Para in Uma Devi's case (supra). But, as noted herein before, they have taken the stand that as Act 2 of 1994 governs the services of the petitioners, unless the latter satisfy the requirement of completing 5 years of service as on 25.11.1993, they are not entitled to be considered for regularisation.

12. In State of Karnataka v. M.L Kesari (supra), a two-Judge Bench of the Supreme Court has explained the true purport of the directions contained in Para \$3 of the judgment in Uma Devi's case (supra), in the below reproduced part of the judgment

5. It is evident from the above that there is an exception to the general principles against "regularization' enunciated in Umadevi's case (supra), if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in July sanctioned post without the benefit or protection of the interim order of

any Court or Tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointment are not made or continued sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointment are considered to be regular....”

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's case (supra), was rendered, the provisions of Act 2 of 1994 and G.O. Ms. No.212, dated 22.4.1994, were in existence. The Supreme Court, while denouncing the practice of regularization and absorption of persons, who entered service through back doors by giving a go-bye to the due procedure prescribed for appointments to public posts, consciously ordered for one-time 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 22.4.1994, while giving directions in Para No.53 of the judgment in Uma Devi's case (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 22.4.1994, do Work Inspectors not whittle down the width and the judgment in Manjula Bashini's case (supra), does to their satisfying not lower the trajectory of the directions Para No.53 of its judgment in Uma devi's case (supra). It is therefore, not permissible for the respondents to take shelter under Act 2 of 1994 and G.O. Ms. No.212, dated 22.4.1994, to deny regularization to the petitioners, who have, admittedly, satisfied the criteria laid down in Para No.53 of the judgment in Uma Devi's case (supra).

21. Therefore, learned counsel for the petitioners vehemently argued that the petitioners have long service for about 10 years and above in the Corporation and discharging their duties without any interruption and the same was recommended for consideration of regularization. It is further argued that there are number of vacancies in the department/ corporation, therefore, repeated requests were made on several occasions for legalization in the vacant posts by considering their eligibility, though the petitioners are qualified and suitable.

22. The petitioners in W.P.No.5009 of 2021 have preferred an application before the A.P.Administrative Tribunal in O.A.No.2366 of 2017 for regularization of petitioners services from the date of completion of 10 years of service as held by this Court in W.P.No.24377 of 2007, which was confirmed by the Hon'ble Division Bench of this Court in W.A.No.782 of 2010 followed by the Apex Court Judgments. In similar circumstances of this case, the High Court for the State of Telangana in ***Pottisreeramulu Telugu University's Case (cited supra)*** held that the petitioners therein have been working on daily wage since 1990 (30 years of service by then) have been given minimum time scale from the year 2000. In the instant case, the petitioners were allowed to draw the time scale and they are getting all the benefits on par with the regular employees, but except their services not being regularized, which is only the issue involved in this writ petition. The same principle would squarely applies to this case.

23. As per information furnished by the petitioners would show that there are number of vacancies in the department, which kept unfilled, which were fallen vacant either due to retirement, death of promotions. Most of the petitioners have completed 10 years and above. Further the Hon'ble Division Bench of this Court in W.A.No.782 of 2010 confirmed the W.P.No.24377 of 2007 i.e **Kodali Raju's case** (cited supra) held that the continuation of petitioners in the Corporation for the last more than 21 years itself can be construed that there are vacant posts available and the petitioners are entitled for regularization of their services and to be put on regular time scale. Therefore, the issue as held by this Court in earlier proceedings are very clear to regularize the services of the petitioners.

24. Under these circumstances, the decisions relied by the learned Additional Advocate General for the official respondents would not apply as the case of the petitioners for continuation of service in the Corporation more than a decade. Further, there are clear vacancies in the department and further the petitioners were allowed to claim draw time scale on par with regular employees. Further there is no dispute with regard to working on daily wages/ contract by the petitioners in this case. Therefore, the petitioners are entitled to claim benefit of regularization of their services.

25. Having regard to the facts and circumstances of the case and considering the submissions of both the counsel and following the decisions of this Court relied by the learned counsel for the petitioners, the case of the

petitioners can be considered for regularization by considering their long standing position in their respective cadres in the corporation.

26. In view of foregoing discussion, this Court is inclined to allow the batch Writ Petitions, while setting aside the impugned orders (except W.P.No.4465 of 2020) issued by the respondents as it is contrary to law, illegal and arbitrary. The respondents are directed to regularize the services of all the writ petitioners from the date of completion of 10 years of their service in terms of the order **Kodali Raju's case i.e** W.P.No.24377 of 2007 as confirmed by the Hon'ble Division Bench of this Court in W.A.No.782 of 2010, within a period of four (04) months from the date of receipt of a copy of this order. There shall be no order as to costs.

27. With the above direction, the batch Writ Petitions are allowed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

DR. JUSTICE K. MANMADHA RAO

Dated: 18.10.2024.

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