

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE TENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT



HONOURABLE SRI JUSTICE G.NARENDAR

AND

HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT APPEAL NO: 88 OF 2024

Writ Appeal under Clause 15 of the Letters Patent preferred against the Order dt- 06.12.2023 in W.P.No. 32872 of 2013 on the file of the High Court.

Between:

1. Food Corporation of India, Zonal Office 111, Haddows Road, Chennai-600006, Represented by its Zonal Manager.
2. Food Corporation of India, . Regional Office, Amaravati, Rajanarendra Buildings, Patamata, D.No. 74-14-2 A, Krishna Nagar, Eanamalakuduru Road, Vijayawada, Rep by the Senior Regional Manager/ General Manager, (Region).
3. Food Corporation of India, Regional Office, 3rd Floor, HACA Bhavan, Public Garden Road, Hyderabad-500004, Represented by its General Manager,A.P.
4. The District Manager, Food Corporation of India, District Office, Nellore.

...APPELLANT(S)

AND

Smt. G. Mary, W/o. Yesudas, Major, Scavenger, Food Corporation of India,
District Office, Nellore.

...RESPONDENT

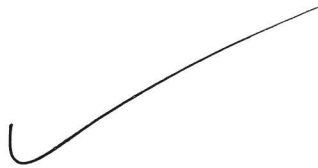
IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the orders 06-12-2023 made in W.P.No. 32872 of 2013 of this Hon'ble Court, pending disposal of the Writ Appeal in the interest of justice.

Counsel for the Appellant(s): SRI. MAHESWARA RAO KUNCHEAM

Counsel for the Respondents : SRI G JONATHAN

The Court made the following: ORDER



HON'BLE SRI JUSTICE G.NARENDAR
AND
HON'BLE SRI JUSTICE NYAPATHY VIJAY

W.A.No.88 of 2024

JUDGMENT:

The present writ appeal is filed questioning the order dated 06.12.2023 in W.P.No.32872 of 2018 directing the respondents to regularize the petitioner services with effect from 06.09.2002 with all benefits attached to the said post.

2. For the sake of convenience, the parties are hereinafter referred as they are arrayed in the writ petition.
3. The facts leading to this appeal are as under:

The Petitioner was appointed as Scavenger in appellant/Food Corporation of India (FCI), Nellore in the year 1980 on a consolidated pay of Rs.35/- per month and Rs.75/- per month from the year 1986-88. The pay of the petitioner was enhanced to Rs.6/- per day from 1994-97 and subsequently to Rs.50/- per day from 06.10.1997. It is the case of the petitioner that she has been sincerely discharging her duties to the satisfaction and has been working as a Safai Karmachari since 1988. The petitioner made a representation on 15.01.1993 for regularization of services; though the details

of the petitioner were sought, no action was taken on the representation requesting regularization.

4. The petitioner filed W.P.No.3021 of 2001 before this Court and an interim direction was passed therein directing the respondents to extend time scale attached to the post in WP.MP.No.2543 of 2001 vide order dated 24.04.2002. The Respondent-Corporation vide Office Order No.Estt.II/30 (18)/2001 dated 05.09.2002 appointed the petitioner to the post of "Safaiwala" on consolidated pay of Rs.3,850/- per month. The District Manager, Nellore vide orders dated 28.04.2003 directed the petitioner to attend the duties at HK.section.

5. On 09.04.2010, the scale of pay and allowances were revised for category III and IV employees with effect from 01.10.2017, but the same was not extended to the petitioner. The petitioner then filed Miscellaneous Petition in W.P.No.2031 of 2001 seeking for extending the revised pay scale. The said writ petition was disposed of vide order dated 27.02.2013 directing the Respondent-Corporation to continue to pay minimum wages to the petitioner in the last grade service of FCI considering the case of the petitioner for regularization.

6. Though the Respondent-Corporation filed W.A.No.1299 of 2013, the same was dismissed on 19.08.2013. While the Writ Appeal was pending, the Respondent-Corporation vide proceedings dated 08.07.2013 rejected the request of the petitioner for regularization on the ground that the petitioner is 43 years old and had studied only upto 5th standard and as per

FCI (Staff) Regularization, 1971 the age prescribed for post in the Directorate General of Food is 25 years and should be able to read and write the language and hence, the writ petition was filed seeking regularization with effect from 06.09.2002 with all consequential benefits. In the pleadings in support of the Writ petitioner, various grounds were urged justifying the claim of regularization as the nature of work is perennial in nature.

7. The Respondent-Corporation filed its counter contending that the petitioner was appointed in the year 1986 as a contingent and later on temporary basis. It was contended that Scavenging work was not a full time work and the petitioner was only required to work for one hour in the morning and one hour in the evening. The further plea was that there is no post of Scavenger in FCI, A.P. Region. It was also contended that though the Government of India lifted the ban for full entry level category IV post, the same was applicable only to the individual who completed three months service as on 02.05.1996 on full time basis. As the petitioner was appointed in June, 1986, she was not entitled for regularization of services.

8. The Learned single Judge after considering the contentions of the respective parties directed the Respondent-Corporation to regularize the services of the petitioner as 'Safaiwala/housekeeping staff with effect from 06.09.2002 and also held that the petitioner is entitled to all consequential benefits with effect from 06.09.2002. Hence, the present appeal has been filed.

9. Heard Sri P.Veera Reddy, learned senior counsel for the appellants and Sri G.Jonathan, learned counsel for the Respondents. The issue that falls for consideration in “*whether the petitioner is entitled to seek for regularization of her service*”?

10. It is an admitted fact that the petitioner was working as Safaiwala from June, 1986 and in a couple years time i.e. 2026, the petitioner would be completing 40 years in the Respondent-Corporation. The defense that there was no post of Labour in FCI, A.P. Region for considering the case of the petitioner for regularization does not reflect fairness on the part of the Respondent-Corporation after extracting work for nearly forty years.

11. In the earlier round of litigation, the same defense was taken by the Respondent-Corporation and this Court while disposing of the W.P.No.2031 of 2001 on 27.2.2013 held at para No.9 as under;

“9. It may be noted that day in and day out, all said and done, there is a need for scavenging work in the public offices which include offices of the Government of India undertakings also. This apart, a copy of the statement showing various categories of posts in FCI would show that there is a post of Labourer shown at serial No.12 in category-IV posts and the job

requirements of this labourer post are stated to be labour/cleaning gang.”

12. The above extracted paragraph though was referred to the impugned order dated 08.07.2013 by the respondent Corporation, but was not answered in the said proceedings, but the case of the petitioner was rather rejected on the aspect of qualification.

13. It is pertinent to note that on 06.09.1989, a letter was addressed by the Assistant Manager (HK) giving recommendation for regularization of petitioner. This letter appears to have been issued in a structured format at the instance of the superiors and the justification for regularization was given at S.No.7 of the said letter and the same is extracted below.

“7. Justification for regularization:

There are 8 Latrines and one bath room in the District Office for which a regular scavenger is essential to clean twice a day as the above bath rooms are being used by nearly 80 staff members. We are paying a consolidated amount of Rs.75/- (Rupees seventy five only) towards cleaning charges for the above bath rooms.”

14. This letter was never referred to in any of the subsequent proceedings by the respondent-Corporation. The convenience

cleaner was conveniently overlooked all through by the Respondent-Corporation.

15. Apart from that, the letter dated 14.07.1995 issued to the District Manager, Nellore speaks of recommendations of the Government of India, Ministry of Social Welfare to regularize Safai Karamcharis engaged on contract/daily rated basis and providing them insurance coverage etc. This letter being a policy directive of the Government of India, the Respondent Corporation was bound to adhere to the same in true spirit. The change in the nomenclature of the job of the petitioner from "Scavenger" to Safai Karamchari appears to be on account of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

16. A fair statement by the Respondent-Corporation as to the number of Safai Karamcharis regularized pursuant to the policy directive of the Government of India after 1995 is not forthcoming in the pleadings or in the impugned proceedings. Further, no reason was assigned as to why the petitioner was not regularized pursuant to the recommendations of the Government of India, Ministry of Social Welfare. In the face of specific instructions of Government of India, it would not be open to the Respondent-Corporation to contend that the regularization of the services of the petitioner is not possible for want of sanctioned posts.

17. In the impugned proceedings, the petitioner was not considered for regularization on two reasons i.e petitioner was

overaged as on 2013 and that petitioner had studied upto 5th class only.

18. As regards age, A specific plea was taken in the writ affidavit at para 9, referring to the Appendix I of Regulations, which states that the age can be relaxed by five years for departmental employees and further relaxable by five years for departmental employees belonging to Scheduled Caste and Scheduled Tribe communities. It is the case of the petitioner that the said regulation enables the Respondent-Corporation to regularize cases akin to the petitioner. This specific plea was not denied in the counter affidavit and therefore, the plea that the petitioner has crossed the age for regularization cannot be sustained. Even otherwise, as the petitioner was admittedly engaged by the Respondent-Corporation from 1986, it is not open to the Respondent-Corporation to deny regularization on the ground of age by taking advantage of their own inaction to regularize the services at the earliest point of time.

19. Coming to the qualifications, it is perplexing as to what educational qualifications are required for the post of Scavenger. Admittedly, petitioner studied upto 5th class and it is not the case of the Respondent-Corporation that petitioner is illiterate and cannot read and write. The post is not a table post requiring to do any paperwork and apart from that, the Respondent-Corporation having extracted work for nearly 40 years, it would not open to urge this ground.

20. The Hon'ble Supreme Court in ***Nihal Singh v. State of Punjab***¹, while considering the plea of regularization of long service of applicants and the defence of the State, opposing regularization for want of sanctioned posts held that the State is bound to regularize the service in view of long service. The defense taken by the State for regularization at paragraph 14 and the answer thereto at paragraph 20, 35 and 36 are extracted below;

"14. Learned counsel for the appellants Shri R.K. Kapoor submitted that the conclusion of the SSP that appellants cannot have any claim against the State of Punjab to seek regularization of their services is clearly wrong in view of the fact that the master and servant relationship exists between the appellants and the State of Punjab. Coming to the conclusion of the High Court that in the absence of regularly constituted cadre or sanctioned posts, regularization of the services of the appellants cannot be guaranteed, Shri Kapoor argued that the authority to create posts vests exclusively with the State. The State cannot extract the work from the persons like the appellants for decades and turn back to tell the court that it cannot regularize the services of such persons in view of the fact that these appointments were not made against any sanctioned posts."

¹ 2013(14) SCC 65

“20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.”

“35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the

priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities."

21. The Judgment of Hon'ble Supreme Court in ***State of Karnataka v. Umadevi***² case was also considered in the above case. It is to be noted that in this case also, no plea of financial burden was urged in the counter affidavit by the Respondent Corporation. The work performed by the petitioner being perennial in nature and *in the facts of this case*, the Respondent-Corporation is bound to regularize the services of the petitioner as held by Hon'ble Supreme Court in ***Mahanadi Coalfields Ltd v. Brajrajnagar Coal Mines Workers Union***³ and provide a certain sense of job security to the petitioner.

22. Therefore, there are no merits in the writ appeal. The order of the learned single Judge is well considered and well reasoned and does not warrant any interference from this Court and the Writ Appeal is dismissed. No order as to costs. As a sequel, interlocutory applications, if any, stand disposed of.

Sd/- E KAMESWARA RAO
DEPUTY REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. One CC to SRI MAHESWARA RAO KUNCHEAM Advocate [OPUC]
2. One CC to SRI G JONATHAN Advocate [OPUC]
3. Three CD Copies

Madhu

HIGH COURT

DATED:10/05/2024

ORDER

WA.No.88 of 2024



**DISMISSING THE WA
WITHOUT COSTS**