

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3720 OF 2006

**The Principal Secretary to Govt. of
Andhra Pradesh & Ors.**

...Appellant(s)

Versus

P. Muttaiah

...Respondent(s)

**With Civil Appeal No.6482 of 2008 @ S.L.P. (C) No.22521 of 2004 and Civil Appeal
No.6484 of 2008 @ S.L.P. (C) No.16586 of 2002**

O R D E R

Civil Appeal No.3720 of 2006:

In response to the notification issued by Commercial Tax Officer, Mahaboobabad, the concerned Employment Exchange sponsored the name of the respondent for the post of Sweeper-cum-Night Watchman. He was selected and appointed with effect from 21.11.1984 on temporary basis. After some time, his service appears to have been terminated and representation made by him for reinstatement and regularization was rejected by District Collector, Warangal vide his order dated 23.11.1996. The respondent challenged that order in O.A. No.1671 of 1997, which was allowed by the Andhra Pradesh Administrative Tribunal [for short “the Tribunal”] with a direction to the non-applicants (appellants herein) to reinstate him and to consider his case for regularization in accordance with G.O. Ms. No.212 dated

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22.4.1994. By an order dated 14.11.1998, the State Government rejected the respondent's claim for regularization. The decision of the Government was successfully challenged in O.A. No.8482 of 1998, which was decided on 21.7.1999. The Tribunal referred to the order passed in O.A. No.1671 of 1997 and declared that the applicant (respondent herein) is entitled to be regularized in service. Accordingly, a direction was issued to the appellants herein to regularize the service of the respondent as Sweeper-cum-Night Watchman in the department against the vacancy against which he was selected or in the alternative in the vacancy which was available in the department. However, instead of complying with the direction given by the Tribunal, the concerned authority again terminated the respondent's service vide order dated 8.2.2000. O.A. No.1648 of 2000 filed by the respondent was allowed by the Tribunal on 20.3.2001 along with VAM No.448 of 2000 and CA No.460 of 2000.

The appellants challenged the last mentioned order of the Tribunal in Writ Petition No.15806 of 2001, which was disposed of by the impugned order. The Division Bench of the High Court directed that the order passed by the Tribunal for regularization of the service of the respondent shall not be acted upon and his case shall be considered strictly in terms of G.O. Ms. No.212 dated 22.4.1994 and other relevant Government orders and circulars in the light of the judgment rendered in Secretary, A.P. Social Welfare Residential Educational Institutional Society vs. P. Venkata Kumari [(2001) 3 ALT 366].

We have heard learned counsel for the parties.

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In our opinion, the High Court could not have, without advertng to the factual matrix of the case and orders dated 9.4.1998 and 21.7.1999 passed by the Tribunal in O.A. Nos.1671 of 1997 and 8482 of 1998 respectively, which, as mentioned above, were not challenged by the appellants, upset the direction given for regularization of the respondent's service. The judgment in P. Venkata Kumari's case (supra) to which reference has been made in the order under challenge has no bearing on the respondent's case because in that case the court had examined the constitutionality of the Andhra Pradesh (Regulation of Appointment to Public Services and Rationalization of Staff Pattern and Pay Structure) (Second Amendment) Act, 1998 and upheld the same and that issue was not involved in the application filed by him before the Tribunal. Therefore, while deciding the writ petition filed against the order of the Tribunal, the Division Bench was not at all justified in relying upon P. Venkata Kumari's case and directing that the Tribunal's order for regularizing the services of respondent shall not be acted upon. Likewise, there was no warrant for directing consideration of the respondent's case in accordance with G.O. Ms. No.212 dated 22.4.1994 and in the light of that judgment ignoring the fact that issue of regularization of his service had been adjudicated by the Tribunal on 9.4.1998 and 21.7.1999 and those orders had become final.

Hence, we direct the State of Andhra Pradesh to carry out the directions given by the Andhra Pradesh Administrative Tribunal in O.A. No.8482 of 1998 on 21st July, 1999, within a period of two months from the date of receipt/production of copy of this order.

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With the aforesaid direction, the civil appeal is disposed of.

No costs.

Civil Appeal No.6482 of 2008 @ S.L.P.(C) No.22521 of 2004: Leave granted.

Delay condoned.

O.A. No.499 of 2000 filed by the respondents for issue of a direction to the appellants herein to regularize their services in accordance with the policy contained in the G.O. Ms. No.212 dated 22.4.1994 was disposed of by the Andhra Pradesh Administrative Tribunal [for short, “Tribunal”], by an order passed on 5th March, 2001. The Tribunal referred to the judgment of Writ Petition No.7175 of 1997 and order dated 23.2.2001 passed in O.A. No.6932 of 1999 and batch and directed the non-applicants (appellants herein) to regularize the services of the applicants (respondents herein) without insisting for existence of clear vacancy. The appellants had taken a specific stand before the Tribunal that the conditions for regularization specified in G.O. Ms. No.212 dated 22.4.1994 are not satisfied on account of non-availability of clear vacancies in the department, but without considering the same the Tribunal allowed the O.A. and directed regularization of the services of the respondents. The writ petition filed by the appellants was disposed of by the High Court on 14th August, 2001 with a direction that the order passed by the Tribunal for regularization of the services of the respondents shall not be acted upon. However, the State was directed to consider the cases of the respondents in terms of G.O. Ms. No.212 dated 22.4.1994 and other relevant Government orders and circulars in the light of the judgment in Secretary, A.P. Social Welfare Residential Educational Institutional Society vs. P. Venkata Kumari [(2001) 3 ALT 366].

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Heard learned counsel for the parties.

Since a categorical stand was taken by the appellants before the Tribunal that no vacancy was available in the department for regularization of the services of the applicants (respondents herein) and the same stand was reiterated before the Hon'ble High Court, the direction contained in the impugned order to consider the cases of the respondents in terms of G.O. Ms. No.212 dated 22.4.1994 cannot be sustained. The G.O. issued by the State Government provides for regularization of services of daily wagers etc. only against clear vacancies and as vacancies are not available in the department, there can be no question of regularizing the services of the respondents.

Accordingly, the appeal is allowed and the order of the High Court directing to consider cases of the respondents in terms of G.O. Ms. No.212 dated 22.4.1994 and other Government orders and circulars and in the light of the judgment in P. Venkata Kumari's case (supra) is set aside. No costs.

Civil Appeal No.6484 of 2008 @ S.L.P.(C) No.16586 of 2002: Leave granted.

Delay condoned.

O.A. No.1130 of 2000 filed by the respondents for issue of a direction to the appellants herein to regularize their services in accordance with the policy contained in the G.O. Ms. No.212 dated 22.4.1994 was disposed of by the Andhra Pradesh Administrative Tribunal [for short, "Tribunal"], by an order passed on 23rd February, 2001. The Tribunal referred to the judgment of Writ Petition No.7175 of 1997 and directed the non-applicants (appellants herein) to regularize the services of the applicants (respondents herein) without

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insisting for existence of clear vacancy. The appellants had taken a specific stand before the Tribunal that the conditions for regularization specified in G.O. Ms. No.212 dated 22.4.1994 are not satisfied on account of non-availability of clear vacancies in the department, but without considering the same the Tribunal allowed the O.A. and directed regularization of the services of the respondents. The writ petition filed by the appellants was disposed of by the High Court on 14th August, 2001 with a direction that the order passed by the Tribunal for regularization of the services of the respondents shall not be acted upon. However, the State was directed to consider the cases of the respondents in terms of G.O. Ms. No.212 dated 22.4.1994 and other relevant Government orders and circulars in the light of the judgment in Secretary, A.P. Social Welfare Residential Educational Institutional Society vs. P. Venkata Kumari [(2001) 3 ALT 366].

Heard learned counsel for the parties.

Since a categorical stand was taken by the appellants before the Tribunal that no vacancy was available in the department for regularization of the services of the applicants (respondents herein) and the same stand was reiterated before the Hon'ble High Court, the direction contained in the impugned order to consider the cases of the respondents in terms of G.O. Ms. No.212 dated 22.4.1994 cannot be sustained. The G.O. issued by the State Government provides for regularization of services of daily wagers etc. only against clear vacancies and as vacancies are not available in the department, there can be no question of regularizing the services of the respondents.

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Accordingly, the appeal is allowed and the order of the High Court directing to consider cases of the respondents in terms of G.O. Ms. No.212 dated 22.4.1994 and other Government orders and circulars and in the light of the judgment in P. Venkata Kumari's case (supra) is set aside.

No costs.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
November 05, 2008.