

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 24076 of 2019****Between:**

K.Saidulu

... Petitioner

And

The Dy.Executive EngineerNSC and others

... Respondents

JUDGMENT PRONOUNCED ON: 21.12.2023**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 24076 of 2019

% 21.12.2023

Between:

K.Saidulu

..... Petitioner

And

\$ The Dy.Executive EngineerNSC and others

... Respondents

< Gist:

> Head Note:

!Counsel for the Petitioner: Mr Shaik Hameed

^ counsel for Respondents: G.P for Irrigation

? Cases Referred:

1. (2009) 12 SCC 40

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 24076 of 2019

ORDER:

Heard the learned counsel for the Petitioner Mr. Shaik Hameed and the learned Government Pleader for Irrigation on behalf of the Respondents.

2. Petitioner approached the Court seeking prayer as under :

“to issue a Writ of Mandamus, to declare the action of the respondents in disengaging the petitioner from the service from the post of NMR (Lascar) vide impugned Proc.Notice.No.DEE.N'Cherla.F10/2019/274EE dated 25.10.2019 as highly illegal, arbitrary and contrary to the Memo.No.WCE/E3/587/Vol.III, dated 21.02.2009 and also contrary to material available on records and consequently to quash or set aside the impugned order dated 25.10.2019 by declaring that the petitioner is entitled to continue in service till 31.12.2028 with all consequential benefits.”

3. Case of the Petitioner as per the averments made in the affidavit filed in support of the Writ Petition is as under :-

a) The Petitioner had been initially appointed as temporary Man Mazdoor on NMR basis from 21.08.1983 to 20.12.1984 at NSC maintenance division under the control of 3rd Respondent. Thereafter the Petitioner and other NMRs were terminated without giving any notice or opportunity. Aggrieved by the same a voluntary organization President namely Sri Narayana Rao filed W.P.No.97/1988 directly under Article 32 of the Constitution of India before the Hon'ble Supreme Court questioning the validity of the termination of the Petitioner and 600 other NMRs by the Respondents and the name of the Petitioner was shown at Sl.No.494 and the writ petition was finally disposed directing the Respondents to take back the Petitioner and 600 other candidates into service and in response to the orders of the Hon'ble Supreme Court, the Government issued Memo dated 27.01.2005 and in pursuance to the memo dated 12.02.2009 issued by the Chief Engineer directing to take back the petitioner and others into service as NMR, the petitioner joined in service on 06.02.2009 on receipt of memo dated 06.02.2010.

b) Later the petitioner was transferred and posted at the office of the 1st respondent vide proceedings dated

25.07.2013. While so the 1st respondent without issuing any prior notice or intimation issued the impugned notice No.DEE:N'Cherla:F10/2019/274EE,dated 25.10.2019 and disengaged the petitioner from daily wage work under a wrong impression that the petitioner had attained age of 60 years by 31.10.2019.

c) It is further the case of the petitioner that as per the Memo dated 21.02.2009. Condition No.6, the petitioner produced age proof certificate dated 18.01.2010 issued by the Civil Surgeon, Area Hospital, Miryalaguda, Nalgonda District wherein it was certified the age of the petitioner as 45 years as on the date of said certificate dated 18.01.2010. Therefore, the petitioner is entitled to continue till 31.01.2028. Aggrieved by the impugned proceedings dated 25.10.2019 discharging the petitioner from service with effect from 01.11.2019, the petitioner approached the Court by filing the present writ petition.

PERUSED THE RECORD :

4. The order impugned dated 25.10.2019 passed by the 1st Respondent reads as under:

“Sri K.Saidulu, S/o Thirupathaiah, NMR Lascar working in section No.III Nareducherla of this Sub-division who is going to be Disengaging from his daily wage work on 31.10.2019 AN on attaining the age of 60 years as per his records vide under reference cited.”

5. The Memo dated 21.02.2009 of the 3rd Respondent vide Memo No.WCE/E3/587/Vol.III, reads as under :

“The Chief Engineer, NS Project, Hill Colony has allotted certain N.M.RS to this Circle who covered in W.P.No.97/88 duly offering the work with pay of minimum wages prescribed under minimum wages act in accordance with orders containing in Govt. 1&CAD Deptt. Memo No (B)/16092/Ser. V-2/2003-15/1&CAD Deptt. Dt.27.01.2003; Govt. Memo No.(By 16092/Ser. V-2/2003-16/1&CAD Deptt., dt.27.01.2005 and Govt. Memo. No. 2554/ Ser.V(3) 2006-06, dt.21.05.2008, after confirming the identity of candidates who were worked in N.S.P. previously with the following conditions vide reference 1" & 2" cited.

- 1) Establishing the genuinity of the candidate who is involved in Supreme Court by his previous work in the department with record proof.
- 2) Ay person after offering the work found to be guilty the concerned should framed a case in the criminal court against in the defaulter.
- 3) They are not be entitled/allotted any Govt. Quarters.

4) They should not give any proceedings as if the giving job. They may be informed to offer the work only as per Court Orders

5) The work should offer to the candidate and pay wages as per minimum wages act in terms of Govt. Memos said above.

6) Physically Fitness certificate and Age proof may be obtained from Civil Surgeon Govt. Hospital and satisfy himself before offering work about fitness and age.

7) Verifying the educational qualification/eligibility of the N.M.RE ie. Work Inspector, Mastry, Drivers, Fitters etc. scrupulously, without any deviations.

As such, the Executive Engineers are requested to inform the NMR workers allotted to their divisions in the Annexure (enclosed) that the work is being offered to them under minimum wages act on daily wages in writing duly taking the acknowledgement after confirm the identity of the N.M.Rs. who were engaged previously in N.S.P. duly following the conditions/instructions of the Chief Engineer's strictly and report to this office with acknowledgements.

The copies of the Chief Engineer, N.S.P. Hill colony memos said above are herewith enclosed for taking further action.

6. Counter affidavit filed by the Respondent No.1 and in particular, reply to paras 6, 7, 8, read as under:

Reply to Para 6 : It is submitted that NMR was engaged for work only on daily wage basis and also submitted that the NMRs engaging and disengaging is a day to day operation of department as per availability of work only, this is a routine procedure in vogue and same was under implementation. Irrespective of the age of 60 years, NMR will be offered work as per requirement and disengaged as and when not required. Therefore question of issuing notices does not arise.

Reply to Para 7 : The Petitioner has offered work as per Memo No.WCE/E3/587/Vol.III/423 M, Dt. 21.02.2009 by the Superintending Engineer, NSLBC O&M Circle, Miryalguda and directed the Executive Engineer to offer work under minimum wages Act. On daily wage basis duly confirming the identity of the candidate who worked in NSP previously and also verifying the educational qualification/eligibility. The candidate have to produce physical fitness certificate as age proof may be obtained from Civil Surgeon Govt. Hospital.

Reply to Para 8 : As per the condition the petitioner has submitted physical fitness certificate issued by Civil Surgeon, Area Hospital, Miryalaguda as age proof, where in his age was 44 years as on the date of issue of certificate. In this context, it is submitted the age certificate submitted by the petitioner at the time of offering work and date of birth furnished in the

W.P.No.97/1988 of Hon'ble Supreme Court, are contradictory. It is clear evidence of suppression of actual age. Therefore he was disengaged from work on 25.01.2014.

Aggrieved by the action of the department the petitioner has filed O.A.No.2204/2014 in Hon'ble A.P. Administrative Tribunal. Hyderabad. The tribunal has given liberty to the department to continue the petitioners duly confirming the actual age of the petitioner. Accordingly department has addressed the Dist. Medical Board, Nalgonda for medical examination for confirmation of their age of Sri K.Saidulu S/o. Thirupataiah along with 6 others. The Dist. Medical Board has referred the above case to the Superintendent, Osmania General Hospital, Hyderabad. After the medical examination the Dist. Co-ordinator of Hospital Services, Nalgonda has forwarded the medical certificates issued by the Regional Medical Board, Osmania General Hospital, Hyderabad. **In the medical certificate of Sri K.Saidulu Thirupataiah his age was confirmed 55 years as on 15.10.2014. As per the age certificate issued by the Medical Board he was re-offered the work and disengaged when he attained the age of 60 years i.e., on 31.10.2019 AN he was deemed to be disengaged without any prior notice. Accordingly he was disengaged. At this point of time also no notice for disengagement**

and reoffering of work: based on age proof were issued to individual, since it is a regular practice.

Reply Para 8 : It is submitted that as per the Chief Engineer's Memo dt. 08.02.2009 and Superintending Engineer's Memo dt. 21.02.2009 clearly indicates that the NMR who offered work has to submit his identity proof, physical fitness certificates, age proof has to be submitted at the time of offering work only. He was submitted physical fitness certificate which was contrary to the age furnished in W.P.No.97/1988. So he was sent to medical board and his age was confirmed as 55 years as on 15.10.2014. Based on this he was disengaged. Submitting the other certificates later date, such as AADHAR, PAN, ESI, SSC certificates as age proof is not taken into account, as per the above Chief Engineer and Superintending Engineer's Memos.

7. Learned counsel appearing on behalf of the petitioner manly puts forth the following submissions.

- a) The respondents herein in clear violation of principles of natural justice discharged the petitioner from service with effect from 01.11.2019 arbitrarily.
- b) The respondents failed to consider the order passed in favour of the petitioner in O.A.No.799 of 2014 which clearly observed that the services of the petitioner should be

continued till 60 years as per certificate produced by the petitioner.

c) The respondents curiously ignored the memo dated 21.02.2009 Condition No.6 which clearly indicates that the candidate has to produce physical fitness certificate and age proof certificate obtained from Civil Surgeon of the Government Hospital and though the petitioner had submitted age proof certificate and fitness certificate issued by the Civil Surgeon, Area Hospital, Miryalaguda, Nalgonda District dated 18.01.2010 wherein it has been clearly certified that age of the petitioner is 45 years as on the date of issuance of certificate i.e. as on 18.01.2010, the same was not considered by respondent No.1. As per the said Memo dated 21.02.2009, the petitioner is entitled to continue till 31.01.2028. But however, unilaterally services of the petitioner had been disengaged without issuing prior notice to the petitioner in clear violation of principles of natural justice. **Learned counsel appearing on behalf of the petitioner on the basis of the aforesaid submissions contended that the writ petition should be allowed as prayed for.**

8. Placing reliance on the averments made in the counter affidavit filed by respondent No.1, learned Government Pleader appearing on behalf of respondent No.1 mainly puts forth the following submissions:

a) Irrespective of the age of 60 years NMR will be offered work as per requirement and disengaged as and when not required. Therefore, the question of issuing notice to the petitioner does not arise.

b) The petitioner has submitted physical fitness certificate issued by the Civil Surgeon, Area Hospital, Miryalaguda, Nalgonda District, wherein his age was 45 years as on the date of issuance of the certificate dated 18.01.2010. But however, the age certificate submitted by the petitioner at the time of offering work initially and the date of birth furnished in W.P.No.97 of 1988 before the Hon'ble Supreme Court are contradictory. Therefore, it is the case of suppression of actual age and hence, the petitioner was disengaged from work on 25.01.2014. In pursuance to the orders passed in O.A.No.2204 of 2014, the Tribunal had given liberty to the department to continue the petitioner duly confirming the actual age of the petitioner. Accordingly, the District Medical

Board, referred the petitioner and six others to the Superintendent, Osmania General Hospital, Hyderabad. The medical certificate confirmed the petitioner age as 55 years as on 15.10.2014 after due examination. As per the age certificate issued by the Medical Board the petitioner was re-offered the work and disengaged when he attained the age of 60 years i.e. 31.10.2019 without any prior notice. It is a regular practice and hence, no notice for disengagement was issued to the petitioner.

c) Learned counsel appearing on behalf of the respondents submits that the petitioner is not entitled for any relief due to contradiction in the age furnished in W.P.No.97 of 1988 before the Supreme Court and the age as per the certificate issued by the Regional Medical Board, Osmania General Hospital, Hyderabad which had confirmed the petitioner's age as 55 years as on 15.10.2014.

DISCUSSION AND CONCLUSION:

9. A bare perusal of the averments made in the counter affidavit filed by the 1st respondent clearly indicates that as per the orders of the Hon'ble Supreme Court in W.P.No.97 of

1988, dated 01.12.1994, the department had provided daily wage employment, and the petitioners in W.P.No.97 of 1988 continued as daily wage worker from 2008 onwards along with others. In the said writ petition the petitioner was at Sl.No.494.

10. A bare perusal of counter affidavit also indicates that admittedly a stand is taken by respondent No.1 that the question of issuing prior notice to the petitioner would not arise since NMRs will be offered work as per requirement and disengaged as and when not required. This Court opines that plea put forth in the counter affidavit filed by the 1st respondent is untenable in view of the fact that in the present case the specific plea of the petitioner is that petitioner should be continued till 31.01.2028 as per Condition No.6 of the Memo dated 21.02.2009 (referred to and extracted above) which clearly stipulates that the candidates should produce the physical fitness certificate and age proof certificate obtained from the Civil Surgeon of the Government Hospital and that the petitioner had submitted the age proof certificate and fitness certificate issued by Civil Surgeon, Area Hospital, Miryalaguda,

Nalgonda District dated 18.01.2010 which clearly certified the age of the petitioner as 44 years as on the date of issuing certificate on 18.01.2010. Therefore, it is the specific case of the petitioner that as per the memo dated 21.02.2009 the petitioner is entitled to be continued till 31.01.2028 and the stand of the 1st respondent is that the petitioner attained age of 60 years on 31.10.2019. Since the very issue involved the dispute pertaining to the age of the petitioner this Court opines that the 1st respondent ought to have put the petitioner on notice and ought to have taken a decision in the matter duly taking into consideration the fact that the services of the petitioner had been continued with effect from the year 2009 uninterruptedly, this Court opines that the impugned proceedings dated 25.10.2019 issued by the 1st respondent is in violation of principles of natural justice in view of the simple fact that the specific case of the petitioner is that the petitioner should be continued in service till 21.02.2028 and the impugned proceedings is totally contrary to Condition No.6 of Memo dated 21.02.2009.

11. The Apex Court in the judgment reported in (2009) 12 SCC 40 in Umanath Pandey & Others vs. State of Uttar Pradesh & Another at paras 10 & 11 observed as under :

Para 10 : The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. **It says that no one should be condemned unheard. Notice is the best limb of this principle.** It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. **Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice.** It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in

1215, the first statutory recognition of this principle be found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vacate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420).

"Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?'"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Para 11 : "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice".

12. This Court opines that the impugned proceedings dated 25.10.2019 vide notice No. DEE:N'cherla:F10 /2009/274EE, is in utter violation of principles of natural justice adversely affecting the interest of the

petitioner. The 1st respondent ought to have issued notice and provided a reasonable opportunity to the petitioner to put forth petitioner's case as to petitioner's date of birth/age to explain and to produce the proof and it is even admitted in the counter affidavit filed by the 1st respondent that no notice of disengagement was issued to the petitioner and it is evident on record that an unilateral conclusion had been arrived at that petitioner indulged in suppression of age.

13. Taking into consideration the facts and circumstances of the case, the writ petition is disposed off directing the 1st respondent to re-consider the impugned decision dated 25.10.2019 and duly consider the request of the petitioner to continue the petitioner in service as NMR (LASCAR) till 31.01.2028 as per condition No.6 of the Memo dated 21.02.2009 (referred to and extracted above) after conducting due enquiry into the matter by giving reasonable opportunity of personal hearing to the petitioner and take appropriate decision in the matter in accordance to law duly

considering the documents to be furnished by the petitioner in support of the petitioner's claim and pass appropriate reasoned orders duly communicating the decision to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 21.12.2023

Note: L.R. copy to be marked
b/o
kvrn