

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

CONTEMPT CASE No.808 OF 2023

in

W.P. No.39928 OF 2017

Between:

D.Uppalaiah and Others

... Petitioner

And

Smt.Shanta Kumari, IAS and Others

... Respondents

JUDGMENT PRONOUNCED ON:30.07.2024

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 : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

CONTEMPT CASE No.808 OF 2023

in

W.P. No.39928 OF 2017

ORDER:

Heard Sri Prabhakar Chikkudu, learned counsel appearing on behalf of the Petitioners and learned Government Pleader for Services-II appearing on behalf of respondents.

2. **The petitioners approached the Court seeking prayer as under:**

"...to punish the respondents herein for the respondents willful violation and deliberate disobedience of the orders, dated 09.12.2022 in W.P.No.39928 of 2017 by here Lordships Hon'ble Justice Smt.Surepalli Nanda and pass such other order or orders..."

3. **PERUSED THE RECORD :**

A. The operative portion of the order dated 09.12.2022

passed in W.P.No.39928 of 2017 reads as under:-

26. The respondents herein cannot deny the relief of regularization to the petitioners as per para 53 of the decision in Umadevi's case, which permits one time exercise of regularization to be done for personal employed on temporary basis/daily wages etc, who have rendered continuous service for more than 10 years. The respondents herein cannot take the services of the petitioners for years together without regularising their services and indulge in such a practice inconsistent with their obligation to function in accordance with the constitution as observed by the Apex Court in Nihal Singh and others v State of Punjab which clearly held that "sanctioned posts do not fall from heaven" and the State has to create them by a conscious choice on the basis of some rational assessment of the need.

27. Taking into consideration the above referred facts and circumstances and in view of the observations of the Apex Court in various judgments referred to and discussed above, the writ petition is allowed duly setting aside the order impugned in Procs No.37/CPR&RE/C2/2015, dated 27.10.2016 and the respondents while continuously engaging the services of the petitioners herein are henceforth directed to consider the case of the petitioners for regularization of their services in accordance to law, in the posts whose work they are discharging now in the light of the various judgments of the Apex Court referred to

and discussed above and pass appropriate orders, within a period of two months from the date of receipt of copy of this order duly communicating the decision to the petitioner. However, there shall be no order as to costs.

B. Counter affidavit filed on behalf of respondent No.3, and in particular, para No.11, reads as under:

11) Therefore, as per the settled preposition of law, the regularization can be made only as per the regularization policy declared by the State /Government and nobody can claim the regularization as a matter of right dehors the regularization policy. **Therefore, in absence of any sanctioned post and considering the fact that the respondents were engaged on piece meal basis only they were not entitled for the benefit of regularization and accordingly speaking orders have been issued.**

In view of the above, it is very humbly submitted that this answering respondent is a responsible Government Employees having highest respect for the orders passed by any Court including the Hon'ble High Court and never violated any orders passed by this Hon'ble High Court.

I humbly submit that, if , this Hon'ble Court still feels that orders of the Hon'ble Court were violated by these

respondents 1 to 4, I tender an unconditional apology for the same.

Therefore, it is prayed that this Hon'ble Court may be pleased to dismiss the above contempt case against the respondent's and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

C. Paragraph No.8 of the reply affidavit filed on behalf of the petitioners in C.C.No.808 of 2023 in W.P.No.39928 of 2017, read as under:

8. I submit that the spirit of the order of this Hon'ble Court dated 09.12.2022 in W.P.No.39928 of 2017 and allowed the Writ Petition by setting aside the earlier rejection of regularization of the petitioner proceedings dated 27.04.2016 and directed the respondents that the petitioners are entitled for regularization of their service in purview of the Nihal Singh and M.L.Kesari Judgments of an Apex Court and the same was to be honored by the contemnors by regularizing the services of the petitioners but the contemnors have split the spirit of the orders of this Hon'ble Court dated 09.12.2022 and non-complied deliberately in disobedience of this Hon'ble Court and issuing an impugned proceedings is amounts to contempt of the Court i.e., this Hon'ble Court may be pleased

to punish the Contemnors for non-compliance of orders of this Hon'ble Court in the interest of justice.

D. The relevant portion of the speaking orders vide proceedings No.338/CPR&RE/C1/Mdl(ZPP)/2018, dated 03.02.2023 passed in compliance to the orders of this Court dated 09.12.2022 passed in W.P.No. 39928 of 2017, reads as under:

"Sri D.Uppalaiah, S/o Sailu Occ: Bore well Mechanic Mahabubabad Mandal, Mahabubabad District & 14 others have filed Writ Petition No.39928 of 2017 before the Hon'ble High Court of Telangana State seeking orders for suspending the Proceedings of the Commissioner, PR&RE vide Proc. No. 37/CPR&RE/C2/2015, Dated: 27.10.2016 issued to all the District Panchayath Officers and Chief Executive Officers for payment of wages to Bore Well Mechanics from 14th Finance G.P fund, under the Supervision of MPDO, whenever the bore well repairs are being taken up by these Pump Mechanics in Gram Panchayats jurisdiction and with a prayer to regularize their services.

In the said W.P.No.39928 of 2017, the Hon'ble High Court has made the following order on Dt 09.12.2022:-

"Taking into consideration the above referred facts and circumstances and in view of the observations of the Apex Court in various judgments referred to and

discussed above, the writ petition is allowed duly setting aside the order impugned in Procgs.No.37/CPR&RE/C2/2015, Dt.27.10.2016 and the respondents while continuously engaging the services of the petitioners herein are henceforth directed to consider the case of the petitioners for regularization of their services in accordance to law, in the posts whose work they are discharging now in the light of the various judgments of the Apex Court referred to and discussed above and pass appropriate orders, within a period of two months from the date of receipt of copy of this order duly communicating the decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed".

In Compliance with, the Hon'ble High Court orders, the request of the petitioners is examined in greater detail with reference to the scheme of regularization in accordance with the Telangana State Policy on the subject of regularization, in accordance with the Rules issued in G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department Dated: 22-04-1994 and G.O.Ms.112 Finance & Planning (PW.PC.III) Department dated: 23-07-1997 and its subsequent amendments.

We have also considered the case of petitioners as per the law laid down by the Apex Courts orders i.e., the Hon'ble Supreme Court in District Collector/ Chairman Vs. M.L.Singh and others, A.Manjula Bashini Vs. AP Women's Coop Finance Corporation Limited and Secretary, State of Karnataka and Others Vs. Umadevi (3) and others.

After examination of the above apex court orders, in accordance with the Telangana State policy on the subject of regularization scheme, it is observed that, the petitioner plea has not covered under the eligibility of regularization criteria and the petitioner was not appointed against any sanctioned post and also that the petitioner's services were engaged on need basis only.

Therefore, the petitioner at Sl.No.1 in W.P.No. 39928 of 2017 Sri D.Uppalaiah, S/o Sailu, Occ: Bore well Mechanic, Mahabubabad Mandal, Mahabubabad District whose services are engaged for bore well repair on need basis is hereby informed that, his request for regularization of his services is examined and rejected.

The Chief Executive Officer, Zilla Praja Parishad, Mahabubabad is requested to serve these orders to the individual under acknowledgement."

4. Learned counsel appearing on behalf of the petitioners mainly submits that it is deliberate violation of the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of

2017 only to deprive the petitioners of their lawful entitlement of regularization of their services in total disrespect and disregard to the law laid down by the Apex Court in various judgments referred to in the order dated 09.12.2022 passed in W.P.No.39928 of 2017 which is in clear violation of the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of 2017.

5. The learned counsel appearing on behalf of the petitioners in support of his submissions places reliance upon the principle laid down in the order dated 09.11.2022 passed under identical circumstances in W.P.No. 173 of 2022 seeking prayer as under:-

"to issue and order or direction more particularly one in the nature of the Writ of Mandamus to declare the rejection order dated 03/09/2021 passed by the Respondent No. 2 not regularising the services of the Petitioners herein on par with the similar class IV employees vide R.O No 6/2/DW/92/03 dated 30/08/2003 orders vide G.O. Ms. No. 212 dated 22/04/1994 Finance and Planning FW PC III Department Government of Andhra Pradesh as illegal arbitrary and unconstitutional violation of Article 14 16 and 21 of the Constitution of India besides the Law declared by the

Supreme Court of India in Secretary State of Karnataka and others v Umadevii Case mandating periodic regular recruitment to sanctioned posts and prays to direct the Respondents herein to regularise the Petitioners herein forthwith on par with the already regularised similar daily wage employees vide G. O. Ms. No. 212 with all consequential monetary benefits including Minimum Time Scale of Pay by implementing the consent order passed in W. P. No. 19225 of 2020 in the interest of justice and pass....."

6. It is observed in the said order dated 09.11.2022 passed in W.P.No. 173 of 2022 as under:-

9. Having regard to the rival contentions and the material on record, this Court finds that admittedly, the petitioners have been working with the respondent organization for nearly 30 years. On the earlier occasions, when the petitioners have approached this Court, this Court was pleased to direct the respondents to consider the case of the petitioners for regularization of their services in terms of the judgment of Hon'ble Supreme Court in the case of Uma Devi (cited supra). **In the case of Uma Devi, the Hon'ble Supreme Court has directed the Union Government, State Governments and their instrumentalities to take steps to regularize, as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under the cover of orders of courts or of tribunals and to**

further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that are required to be filled up in cases where temporary employees or daily wagers are now being employed and that the process must be set in motion within six months from the date of the order.

10. The Hon'ble Supreme Court has referred to the regularization of temporary, contractual, casual, daily wager or adhoc employees appointed/recruited to constitute a scheme of public employment on issuance of directions of Court so far. Therefore, the said judgment would be applicable even to the contractual employees, if they worked for more than the required period.

13. In view of the same, the impugned order rejecting the requests of the petitioners is clearly not sustainable. The respondents are therefore, directed to reconsider the case of the petitioners for regularization and pass orders of regularization of their services with effect from the date of their eligibility with all consequential benefits.

7. The judgment in W.P.No. 173 of 2022, dated 09.11.2022, had been upheld by the Division Bench of this Court vide its

judgment dated 04.09.2023 passed in W.A.No.563 of 2023 whereunder at para No.6, it is observed as under:-

6. This Court, having considered the rival submissions made by the learned counsel for the parties, is of the view that the learned Single Judge was justified in allowing the subject Writ Petition in favour of the unofficial respondents, as admittedly, the appellants have not considered the case of the unofficial respondents in terms of the law laid down by the Honourable Supreme Court in **Umadevi's** case (supra 1), except referring to the judgments of the Honourable Supreme Court and extracting certain paragraphs of the said judgments. The appellants have mechanically rejected the cases of the unofficial respondents with an observation that in view of the settled law, the cases of the unofficial respondents cannot be considered for regularisation of their services. Except making the above observation, merits of the case were not discussed by the appellants. **Since it is an admitted fact that the unofficial respondents were working with the appellants for more than three decades, the services of the unofficial respondents deserve to be regularised in terms of the law laid down by the Honourable Supreme Court in Umadevi's case (supra 1). Therefore, this Court is not inclined to interfere with the impugned order, dated 09.11.2022. The Writ Appeal fails and the same is liable to be dismissed.**

8. It is also pertinent to note that the view of the Division Bench of this Court in its order dated 04.09.2023 passed in W.A.No.563 of 2023 was confirmed by the Apex Court vide its judgment dated 10.11.2023 in SLP No.24844 of 2023 which had been preferred by the Nizam Institute of Medical And Sciences, aggrieved against the order dated 04.09.2023 passed in W.A.No. 563 of 2023 by the High Court of Telangana at Hyderabad.

9. The learned counsel appearing on behalf of the petitioners also places on record the proceedings No. Rc.No.HR6/235/2011/NSCK, dated 01.07.2024 issued by the Nizam Institute of Medical Sciences, Hyderabad in W.P No.173 of 2022 in compliance to the orders passed earlier by this Court which had been confirmed in W.A.No.563 of 2023 vide its judgment dated 04.09.2023 and also the Apex Court vide its order dated 10.11.2023 in similar circumstances and submits that subsequently the petitioners thereunder had been regularized. Learned counsel for the petitioners submits that the petitioners in the present contempt case are entitled for similar relief and

the respondents cannot deny the same to the petitioners on frivolous grounds and the same amounts to deliberate violation of the orders of this Court, dated 09.12.2022 passed in W.P.No 39928 of 2017.

10. It is pertinent to bring on record that this Court under similar circumstances allowed W.P.No. 27602 of 2019 which had been filed seeking prayer as under:-

“.....to issue an order or direction more particularly one in the nature of Writ of Mandamus to declare the impugned notice in Rc.No.C1/1933/2009, dated 06.08.2019 issued by the 2nd respondent wherein rejecting the claim of the petitioners for regularisation of their services though the same was considered in cases of similarly situated persons as illegal, and liable to be set aside and consequently, direct the respondents to regularise the services of the petitioners by duly following law laid down by the Apex Court in case of **Secretary, State of Karnataka and others v Umadevi and others on 10.04.2006 and the law laid down by the High Court in U.V.S.R. Prasad and others v State of Andhra Pradesh and another in W.P.No.27217 of 2017 reported in 2018(2) ALD 282 (DB) with all consequential benefits.**”

11. The relevant portion of the order dated 06.12.2022 passed in W.P.No.27602 of 2019, reads as under:-

17. Taking into consideration, the above referred facts and circumstances and in the light of the observations of the Apex Court in various judgments referred to and discussed above, the writ petition is allowed duly setting aside the order impugned in Rc.No.C1/1993/2009, dated 06.08.2019 issued by the 2nd respondent and the respondents are directed to consider the case of the petitioners for regularization of the services of the petitioners duly taking into consideration the law laid down by the Apex Court in various judgments referred to and extracted above, since the petitioners herein are also entitled for similar treatment as was extended by the respondents herein in favour of 35 NMRs of the 3rd respondent temple whose services had been regularized and in whose favour G.O.Ms.No.76, dated 12.05.2017 was issued by the respondents herein and pass appropriate orders, in accordance to law, within a period of two months from the date of receipt of copy of the order and communicate the decision to the petitioners. However, there shall be no order as to costs.

12. The said order 06.12.2022 passed in W.P.No. 27602 of 2019 was confirmed by Division Bench of this Court, dated 10.10.2023 in W.A.No.937/2023, the relevant portion of the said order is as under:-

8. Learned counsel for appellant's contention is that the Courts cannot not give a direction to regularise the service of the respondents as this issue was already considered by the Hon'ble Supreme Court in *Uma Devi's* case (2 supra). In fact in para 53 of the said judgment, it has directed the employers to frame a scheme as one time measure for regularisation of their service that too in respect of such of those employees who have rendered more than 30 years of service with the appellant. Therefore, such contention of the appellant cannot be accepted and the same is rejected.

13. PERUSED THE RECORD:

DISCUSSION AND CONCLUSION:

The learned counsel appearing on behalf of the petitioners mainly submits that the proceedings No. 338/CPR&RE/C1/Mdl(ZPP)/2018, dated 03.02.2023, issued in compliance to the orders of this Court dated 09.12.2022 passed in W.P.No.39928 of 2017 is not in true spirit of the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of 2017 and the observations of the Apex Court in the various judgments referred to and extracted in

the said order had been totally ignored by the respondents. The respondents mechanically considered the case of the petitioners' and rejected it erroneously simply stating that the petitioners are not covered under the eligibility of regularization criteria since the petitioners were not appointed against any sanctioned post and that petitioners' services were engaged on need basis only.

14. The learned Government Pleader on the other hand submits that the order of this Court dated 09.12.2022 passed in W.P.No.39928 of 2017 had been complied with in true spirit and proceedings dated 03.02.2023 had been issued to the petitioners and hence, contempt needs to be closed

15. This Court opines that the pleas put-forth in the proceedings, dated 03.02.2023 in rejecting petitioners' case that the petitioners had been engaged on need basis only and further, the petitioners were not appointed against sanctioned post was in fact considered by this Court at the stage of admission itself.

16. A bare perusal of the order dated 17.12.2018 passed in I.A.No.01 of 2018 in W.P.No. 39928 of 2017, which had been in fact extracted by this Court earlier at paragraph No.16, in its order dated 09.12.2022 passed in W.P.No. 39928 of 2017 reads as under:-

“Heard the learned counsel for petitioners, learned Government Pleader Administration appearing for learned for General 1st respondent, learned Government Pleader for Services-II appearing for respondent Nos.2 to 8 and Sri G.Narender Reddy, learned Standing Counsel for respondent Nos.9 to 23.

Having regard to the documents filed along with the Writ Petition by the petitioners, it is clear that petitioners have been engaged in the Panchayat Raj Department though for some period, their services were utilized by the Rural Water Supply Department as well and they are being paid as on date from the grants received by the respective Gram Panchayats as per XIV Finance Commission as per proceedings No.A2/4855/2016 (Pts) dt.09-01-2016.

Though in the counter-affidavit of the 3rd respondent, it is stated that petitioners are being paid on piece rate basis, having regard to the certificates filed by petitioners, which shows that petitioners had been engaged on monthly

remuneration and the statement by learned Standing Counsel for respondent Nos.9 to 23 that their remuneration prior to the filing of the Writ Petition was around Rs. 15,000/-, the plea that they were being paid on piece rate basis cannot be accepted.

Respondents 1, 2, 4 to 8 have not filed any counter affidavit.

Though learned Government Pleader for Services-II contends that the principle of equal pay for equal work in State of Punjab and others Vs. Jagjit Singh and others will not apply since the petitioners are not rendering similar duties and responsibilities as are being discharged by regular employees holding same/corresponding posts in the Panchayat Raj Department, **this contention is prima facie without any merit since petitioners have been admittedly engaged for more than 10 years in post of Pump Mechanic on monthly remuneration basis, which admittedly according to the learned Standing Counsel for respondent Nos.9 to 23 is around Rs.15,000/- p.m.**

In this view of the matter, I am of the opinion that petitioners are entitled to be paid by respondents wages on par with minimum of pay scale of regularly engaged Government employees holding such post of Pump Mechanic as per the above decision."

17. The observations of this Court in particular at paragraph Nos.18 and 20 to 27 of the order, dated 09.12.2022 passed in W.P.No.39928 of 2017 and the directions issued thereunder are plainly self evident facts which can be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. This Court on perusal of the same is of the firm opinion that there has been willful and deliberate violation of the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of 2017.

18. The Apex Court in the judgment reported in 2017 vol.5 SCC 506 in Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) and Others Vs. Baranagore Jute Factory PLC. And Others, at para No.23 observed as under:-

"23. As held by this Court in DDA v. Skipper Construction co.(p.) Ltd., and going a step further, the Court has duty to issue appropriate directions for remedying or rectifying the things done in violation of the orders. In that regard the Court may even take restitutive measures at any stage of the proceedings."

19. The respondents have issued the proceedings, dated 03.02.2023 in compliance to the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of 2017, mechanically without application of mind, totally ignoring the law laid down by the Apex Court on the subject issue and rejected petitioners' request for regularization on two specific pleas, that the petitioners had not been appointed against any sanctioned post and the petitioners' services were engaged on need basis only, which had already been considered by this Court in its orders dated 09.12.2022 passed in W.P.No.39928 of 2017 and at the admission stage itself as observed in the interim orders, dated 17.12.2018 passed in I.A.No.01 of 2018 in W.P.No.39928 of 2017 and totally, ignoring the observations of the Apex Court in the various judgments referred to and extracted in the order dated 09.12.2022 passed in W.P.No.39928 of 2017 and without application of mind to the observations from para Nos. 18 to 27 of the order dated 09.12.2022 passed in W.P.No.39928 of 2017, the proceedings dated 03.02.2023 had been issued which amounts to deliberate violation of the orders of this

Court and flouting the orders of this Court 09.12.2022 passed in W.P.No.39928 of 2017.

20. Taking into consideration:-

a) The aforesaid facts and circumstances and the fact as borne on record that the respondents have not preferred a review or a Writ Appeal as on date against the orders dated 09.12.2022 passed in W.P.No.39928 of 2017.

b) Duly considering the observations of the Apex Court at para No.23 in judgment reported in 2017 vol.5 SCC 506 in Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) and Others Vs. Baranagore Jute Factory PLC. And Others. (referred to and extracted above)

c) The observations of the Apex Court in the various judgments referred to and extracted in the order dated 09.12.2022 passed in W.P.No.39928 of 2017.

d) The observations of this Court from para Nos.18 & 20 to 27 of the order dated 09.12.2022 passed in W.P.No.39928 of 2017 and also in the present order.

e) The order dated 09.11.2022 passed in W.P.No.173 of 2022 under identical circumstances which had been upheld vide judgment dated 04.09.2023 passed in W.A.No.563 of 2023.

f) The order dated 06.12.2022 passed in W.P.No.27602 of 2019 which had been confirmed by Division Bench of this Court vide its judgment dated 10.10.2023 passed in W.A.No.937 of 2023.

g) The proceedings No.Rc.No.HR6/235/2011/NSCK, dated 01.07.2024 issued by Nizam Insitute of Medical Sciences, Hyderabad in compliance to the orders dated 09.11.2022 passed in W.P.No.173 of 2022 and in compliance of the judgment dated 04.09.2023 in W.A.No.563 of 2023 confirming the orders dated 09.11.2022 passed in W.P.No.173 of 2022 regularizing the services of the '27' writ petitioners thereunder in W.P.No.173 of 2022, in identical circumstances.

h) The orders of the Apex Court in SLP No.24844 of 2023 dated 10.11.2023 confirming the orders in W.A.No.563 of 2023

The respondents are directed to forthwith re-consider the proceedings Nos. **338/CPR&RE/C1/MdI(ZPP)/2018**, dated 03.02.2023 issued in compliance to the orders of this Court, dated 09.12.2022 passed in W.P.No. 39928 of 2017 and rectify and remedy the said orders and pass appropriate reasoned speaking orders implementing the orders of this Court dated 09.12.2022 passed in W.P.No.39928 of 2017 in true spirit within a period of two (02) weeks from the date of receipt of copy of this order and duly communicate the decision to the petitioners. Though, this Court is convinced that the respondents have deliberately violated the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of 2017 and the respondents are liable to be punished for contempt of Court under the contempt of Courts Act, 1971 yet in view of the fact that this Court believes in pardon , this Court intends to provide another opportunity to the respondents to

rectify and remedy the mistake done in considering the orders of this Court, dated 09.12.2022 passed in W.P.No.39928 of 2017 in true spirit.

21. With these observations, the present Contempt Case is disposed of. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 30.07.2024

Note: L.R. copy to be marked

b/o

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