

(2023) 04 TEL CK 0034
In the Telangana High Court
Case No : Writ Petition No. 12343 Of 2020

G. Devaiah

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21, 226

Citation : (2023) 04 TEL CK 0034

Hon'ble Judges : E. V. Venugopal, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. This Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

"...issue an order or direction more in the nature of Writ of Mandamus declaring that the action of the respondents, in not granting the annual grade increments to the petitioners in the time scale wherein their pay was fixed and to extend the benefit of further pay revision made from time to time and also to pay the arrears as illegal, arbitrary, unjust, contrary to the law laid down by the Hon'ble Apex Court, violative of Articles 14, 16 and 21 of the Constitution of India and consequently direct the respondents to forthwith grant the annual grade increments to the petitioners in the time scale wherein their pay was fixed and to extend the benefit of further pay revision made from time to time and also to pay the arrears with all consequential benefits and pass..."

2. Learned counsel for the petitioner submits that the writ petitioners were appointed as Drivers, Computer Operators, Watchman and Sweeper respectively, on NMR/Daily Wages, N.M.R. on payment of Rs.35/- per day after due process of selection. Since the date of their first appointment, they are working on regular basis by discharging their duties in their respective posts on par with the regular employees without any remarks. As per the Wages Committee recommendations,

their pay was enhanced year to year at Rs.193/- (//)Rs.167/- per day. Thus the petitioners have been working for more than 29 years of service without any break. That the Special Chief Secretary to the then State Government of Andhra Pradesh issued orders in G.O.Rt.No.1475, Panchayat Raj & Rural Development, dated 27.10.2007 according sanction for payment of minimum of time scale of pay with usual allowance i.e., HRA and DA without increment, attachment to the post of Work-Inspector, Grade-I, II and III of work charged establishment of the Department to the NMR working in RWS Circle, Khammam who possess the Technical qualification of Degree, Diploma and Trade Certificate respectively instead of payment of remuneration at SSR Rates to them without any extra financial commitments. That the State Government issued orders, vide G.O.Ms.No.344, Finance & Planning Department, dated 13.11.1989 and G.O.Ms.No.238, dated 23.09.2005 fixing the minimum of time scale of pay, while allowing DA, HRA, CCA to the employees/Daily wage employees/NMRs.

3. In terms of aforesaid various Government Orders issued by then State Government, respondent No.4 issued Proceedings Rc.No.A3/88/2008, dated 05.05.2008 fixing the pay of the petitioners in the time scale of pay with usual allowances i.e., DA, HRA, CCA without any future increments and without any extra financial commitments subject to certain conditions. Accordingly, as per Proceedings Rc.No.A3/88/2008, dated 05.05.2008 issued by respondent No.4 minimum time scale pay as per PRC 2005 of Rs.4370-9775/4370, in respect of petitioner Nos.1, 2, 3, 5 and 6, the time scale of Rs.4925-10845/4825, in respect of petitioner No.4 and the time scale of Rs.3850-8600/3500 in respect of the petitioner Nos.7 and 8 respectively were allowed with effect from May, 2008 onwards till April, 2009.

4. Learned counsel for the petitioners further submits that from May, 2009 onwards the respondents are not paying the minimum time scale of pay to the petitioners without any valid reason or jurisdiction, which is highly illegal, arbitrary, unjust and unsustainable in the eye of law. Aggrieved by the said action, the petitioners earlier filed O.A.No.10349 of 2009, before the Hon'ble Andhra Pradesh Administrative Tribunal, seeking to declare that they are entitled for their salaries in the time scale of pay from May, 2009 onwards by strictly implementing the Proceedings Rc.No.A3/88/2008, dated 05.05.2008 issued by respondent No.4 as approved by the General Body of Zilla Parishad, vide Letter No.B1/384/2008, dated 18.07.2008 with all consequential benefits, wherein the Hon'ble Tribunal was pleased to allow the O.A. Aggrieved by the said order of the Hon'ble Tribunal made in O.A.No.10349 of 2009, dated 21.09.2010, the respondents in the said O.A. filed W.P.No.29727 of 2010, before this Hon'ble Court, wherein this Hon'ble Court was pleased to grant interim order in W.P.M.P.No.37884 of 2010 in W.P.No.29727 of 2010. The petitioners filed a counter affidavit along with Vacate Stay Petition in W.P.No.29727 of 2010, wherein this Hon'ble Court was pleased to vacate the said interim order, vide its orders dated 20.03.2012 in W.V.M.P.No.4331 of 2011 in W.P.M.P.No.37884 of 2010 in W.P.No.29727 of 2010.

5. The similarly placed persons working as Drivers in DRDA, Mahabubnagar, filed O.A.No.8796 of 2013, before the erstwhile Hon'ble Tribunal, seeking to grant the annual grade increments, wherein the Hon'ble Tribunal was pleased to pass orders. Since the respondents in the said O.A were not implementing the orders passed by the Tribunal, the petitioners approached this Hon'ble Court by filing W.P.No.6995 of 2019, seeking to implement the orders of the Hon'ble Tribunal in O.A.No.8796 of 2013, and this Hon'ble Court was pleased to dispose of the said Writ Petition, vide its order dated 10.01.2020, in terms of the orders of the Division Bench of this Hon'ble Court dated 25.10.2018 in W.P.No.30605 of 2018, in the following terms:

"The writ petition is accordingly allowed directing the respondent authorities to give effect to and implement the order dated 27.10.2011 passed by the Tribunal in O.A.No.8364 of 2011. This exercise shall be completed expeditiously and in any event, not later than six weeks from the date of receipt of a copy of this order."

6. Therefore, the petitioners approached this Hon'ble Court by way of the present writ petition to direct the respondents, to forthwith grant the annual grade increments to the petitioners in the time scale wherein their pay was fixed and to extend the benefit of further pay revision made from time to time and also to pay the arrears, pending disposal of the above petition on such terms and conditions.

7. Learned counsel for the petitioner relied on the decision passed by the erstwhile High Court of Andhra Pradesh in Government of Andhra Pradesh and others vs. S. Nageswara Rao and others 2012 (1) ALD 26 (DB), wherein the Court held as follows:

"9. We fail to understand as to how the ratio in P. Subramanyam Reddy would be of any help to the Government in these cases. It is nobody's case that the respondents, who were initially appointed as NMR Workers, did not complete required service before they were admitted to regular scale of pay. There is no dispute that all of them were given regular scale of pay and also conferred the benefit of revised pay scales as and when new scales were implemented in the State of Andhra Pradesh. After giving regular scale of pay and also granting annual grade increments for sometime, various Municipalities and Municipal Corporations stopped releasing increments and giving revised scales of pay, necessitating adjudication of the same by the Andhra Pradesh Administrative Tribunal. The respondents are casual/NMR/temporary Class-IV employees who do similar work and discharge similar functions as any regular Class-IV employees. The principle of equal pay for equal work would bar the State or its agents from denying annual grade increments and revised scale of pay to the respondents. We are, therefore, not impressed with the argument that of grant of revised pay scales to the respondents would contravene the provisions of the A.P. Act 2 of 1994."

8. Learned Government Pleader for Services-I strongly submits that that except petitioner No.4 all other petitioners were appointed by the then District Development Officer on daily wages and their appointments were made on purely temporary basis by giving break of one day service of every month and their appointments were not against any sanctioned cadre strength posts, that their appointments were made by local authority i.e., local body on daily wages by paying the wages from the general funds of local body. The 4th petitioner was not appointed by the local body and he had been deputed from Zilla Akshrasya Samithi vide Note No.ZAS/A/8/1993, dated 04.10.1994 by the District Collector. It is submitted that the Government had issued G.O.Ms.No.344, dated 13.11.1989 after examining the issue of revising the remuneration payable to full time contingent employees who were paid from contingencies and have completed five (05) years of service by that time but could not be converted into last grade service.

9. He further submits that the then CEO of Zilla Parishad without having any competency has issued Proceedings No.A3/88/2008, dated 05.05.2008 granting the minimum pay scale to the petitioners. It is relevant to mention here that the petitioners were appointed by the local body without any cadre strength posts and the remuneration paid to the petitioners is from the general funds of the local body i.e., general fund of ZP where there is no provision for payment of wages. However, there was an audit objection in the payment of minimum pay scale as sanctioned by the then CEO since he has no competency to accord the same and also there is no provision for making payments from the general fund.

10. It is further submitted that however, the petitioners approached the Administrative Tribunal by way of O.A.No.10349/2009 seeking the payment of revised pay scale as sanctioned by the then CEO vide proceedings No.A3/88/2008, dated 05.05.2008 and the OA was allowed and subsequently the writ petition appears to have been filed by the respondents officials vide W.P.No.29727/2010 wherein initially a stay was granted against the orders in the OA and subsequently the vacate stay petition filed by the petitioners was allowed. On the perusal of the orders of both OA and writ petition the question of competency of ZP, CEO and nature of appointment of the petitioners was not brought to the notice of the Tribunal as well as the Hon'ble High Court. However, the orders were implemented under the threat of contempt vide CA.No.1603/2010 in O.A.No.10349/2009 and the petitioners are being paid the payment of minimum time scale vide proceedings No.A3/88/2008, dated 30.07.2010. Moreover, the proceedings No.A3/88/2008, dated 05.05.2008 clearly stipulates that the petitioners are not entitled for any future increments. The order of the above O.A.No.10349/2009 is nothing but to implement the above proceedings dated 05.05.2008 wherein it is clearly mentioned that the petitioners are not entitled for any future increments. The orders in O.A.No.8796/2013 and corresponding W.P.No.30605/2018 and O.A.No.3132/2013 and corresponding W.P.No.26788/2017 were passed under different circumstances. Therefore, orders passed in O.A.No.8796/2013 seeking

increments are not applicable to the petitioners and hence prayed to dismiss the writ petition.

11. It is not in dispute that in W.P.No.26788 of 2017, the Division Bench of the erstwhile Hon'ble High Court of Andhra Pradesh was pleased to allow this writ petition and gave direction to the respondents to revise the minimum time scale of pay to the petitioners while adding the annual grade increments as and when they fell due from time to time. This factum is not in dispute moreover, the petitioners have been rendering their services as full time workers for the last 30 years without any interruption, which factum is also not in dispute.

12. Having regard to the observations made in Government of Andhra Pradesh and others vs. S. Nageswara Rao and others (2012 (1) ALD 26 (DB) Supra) and having regard to the facts and circumstances of the case, this writ petition is allowed in part, directing the respondents to revise the minimum time scale of pay of the petitioners by adding annual grade increments as and when they fell due from time to time.

13. With the above directions, the writ petition is Partly Allowed. No order as to costs. Miscellaneous application, if any pending, shall also stand closed.