

(2023) 04 TEL CK 0039
In the Telangana High Court
Case No : Writ Petition No. 23167 Of 2020

G.Rajamallaiiah Died As Per Lrs

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 19, 226

Citation : (2023) 04 TEL CK 0039

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The present Writ Petition is filed under Article 226 of Constitution of India for the following relief/s:-

"... to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, by declaring the action of the respondents in not regularizing/ absorbing the services of the petitioner in the post of Sweeper in the 6th respondent School on par with similarly placed employees is arbitrary, illegal, irregular, against to the principles of natural justice, equity fair play and unconstitutional and is violative of Articles 14, 16, 19 and 21 of the Constitution of India and direct the respondents herein to regularize the services of the petitioner as Sweeper with effect from the date on which the petitioner have completed 5/10 years service in terms of G.O.Ms.No.212 dated 20.02.1994 read with G.O.Ms.No.112, dated 23.07.1997 by paying the minimum time scales of pay on par with similarly situated persons on par with regular counter parts discharging the same type of duties and functions and to pass such other order or orders ..."

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader appearing for the respondents.

3. It is the case of the petitioner that he was initially appointed as part time

employee on 29.10.1984 in Upper Primary School, Vakole of Koheda Mandal in P.S. Husanabad of Karimnagar District. He completed eleven (11) years of service as part-time Sweeper but till date he has been discharging the duties of a full time Sweeper and being paid meager amount per month. He submits that the respondents are not regularizing his services in terms of G.O.Ms.No.212, dated 20.02.1994 while regularizing the services of other similarly situated persons who were appointed subsequent to the petitioner. Hence, the present Writ Petition.

4. Counter affidavit filed by respondent No.4 stating that the petitioner was appointed by the then Block Development Officer vide proceedings No.E1/183/84, dated 29.10.1984 as a part time Sweeper. The petitioner was under the control of respondent No.6, who is not under the administrative control of this answering respondent. The Government introduced G.O.Ms.No.212, dated 20.04.1994 for regularization of services of daily wage workers and G.O.Ms.No.112 dated 23.07.1997 for regularization of services of part time workers.

5. The services of persons appointed on daily wage basis is still continuing as on 25.11.1993 having completed a continuous minimum period of five (5) years on or before 25.11.1993 and their services shall be regularized in substantive vacancies subject to fulfilment of the conditions of education, rule of reservation, age, limits etc. The services of persons appointed on part time basis, who worked continuously for a minimum period of ten (10) years are continuing as on 25.11.1993 on the date on which the A.P. (Regularization of Appointments to Public Services and Rationalization of Staff Pattern and pay structure) Act, 1994 (Act 2/1994) came into force and shall be regularized by the appointing authorities subject to the fulfilment of conditions of clear vacancy, possessing requisite qualifications, within the age limit as on the date of appointment and following the rule of reservation etc.

6. The petitioner being a part time sweeper is not covered by G.O.Ms.No.212, dated 22.04.1994 for regularization of his services. The case of petitioner also does not fall under G.O.Ms.No.112 dated 23.07.1997 and since the petitioner is appointed on 29.10.1984 and as he does not possess minimum period of ten (10) years of service as on 25.11.1993 on the date on which the Act 2/1994 came into force to consider the services of the petitioner for regularization as stipulated in G.O.Ms.No.112 dated 23.07.1997, those cases of part time sweepers would be considered, who are having minimum 10 years of continuous service as on 25.11.1993 as stipulated in the G.O.Ms.No.112 dated 23.07.1997 subject to complying the conditions therein.

7. Learned counsel for the petitioner relied on the decisions of this Court in "State of Punjab and others Vs. Jagjith Singh and others" in Civil Appeal No.213 of 2013 dated 26.10.2016 and "State of Karnataka and others Vs. Umadevi and others" in Appeal (Civil) No. 3595-3612 of 1999 dated 10.04.2006.

8. Heard learned counsel for the petitioner and learned Government Pleader for Services-II.

9. A perusal of docket proceedings shows that the petitioner died on 22.01.2022 and legal representatives of the petitioner viz., petitioner Nos.2 to 5 are brought on record vide Order dated 14.02.2023 in I.A.No.1 of 2022.

10. In support of his contention, learned counsel for the writ petitioner relied on the decision reported in 2015 (1) Decisions today (SC) (NRC) 243 and "District Collector/Chairperson & others Vs. M.L. Singh & Others 2009 (8) SCC 480", in Civil Appeal No.6318 of 2015 (arising out of SLP (C) No.12432/2014, dated 17.08.2015. He further relied on the judgment passed by the Hon'ble Apex Court in Civil Appeal No.213 of 2013 dated 26.10.2016 and prayed to consider his case for regularization of service as a Sweeper with effect from the date mentioned supra and since the writ petitioner died the legal representatives of the deceased petitioner may be extended all the consequential benefits.

11. It is an admitted fact that writ petitioner served the respondents from 29.10.1984. At this point of time taking plea that the 6th respondent is not competent to appoint the petitioner is inadmissible. In view of the service rendered by the petitioner as a Sweeper whether be it part time or a full time employee the services of the petitioner ought to have been regularised as per G.O.Ms.No.212 dated 20.02.1994. It has to be seen that in pursuance of the said G.O., the writ petitioner had completed 10 years of service as a part time Sweeper from 29.10.1984 but till date discharging the duties as a full time Sweeper. The Hon'ble Apex Court in catena of decisions held that the adhoc employees are entitled to have the minimum time scale of pay.

12. G.O.Ms.No.212, dated 20.02.1994 does not specify on the aspect of regularization of the services of either part time or full time employees and the said G.O. is silent. Therefore, the respondents ought to have regularized the services of the deceased employee in terms of the said G.O. Hence, the petitioner is entitled to consequential benefits.

13. Having regard to the submissions made by learned counsel for the petitioner and the respondents, this Court is of the view that the case of the petitioner ought to have been considered for regularization on par with other similarly placed persons. The services of the petitioner in the post of Sweeper in respondent No.6-School are deemed to have been regularised on par with similarly placed employees in terms of G.O.Ms.No.212 dated 20.02.1994 read with G.O.Ms.No.112 dated 23.07.1997 and entitled for paying minimum time scales of pay on par with counter parts discharging same type of duties and functions since, the petitioner has put in more than five (5) years of service as on 20.02.1994 as per G.O.Ms.No.212 dated 20.02.1994.

14. Since, the legal heirs of the writ petitioner were already brought on record, they shall be entitled for monetary benefits accrued to the petitioner.

15. Accordingly, the respondents are directed to consider the request and pay/ release the entitled benefits to the legal heirs of the deceased petitioner keeping in view the service rendered by him from the year, 1984.

16. With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous Petitions, pending if any, shall stand closed.