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**(2001) 07 AP CK 0035**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 21597 of 1999 and 15337 of 2000

Sri E. Raju and Others

APPELLANT

Vs

The Govt. of A.P. and Others

RESPONDENT

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**Date of Decision :** 04-07-2001

**Acts Referred:**

Constitution of India, 1950 — Article 32

**Citation :** (2001) 07 AP CK 0035

**Hon'ble Judges :** S.R. Nayak, J;S. Ananda Reddy, J

**Bench :** Division Bench

**Advocate :** M. Ratna Reddy, for the Appellant; GP for Finance and Planning, for the Respondent

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## **Judgement**

S.R. Nayak, J.—These two writ petitions are directed against the common Judgment and order dated 9.4.1999 of the A.P. Administrative Tribunal, Hyderabad made in O.A. No. 982 of 1998 and O.A. No.851 of 1999.

2. The said judgment was delivered in a batch of O. As. including the aforementioned two O.As. and O.A. No. 172 of 1998. There is no challenge to the common order by the applicants in O.A. No. 172 of 1998.

3. By the impugned order the learned Tribunal directed the petitioners-applicants to produce necessary documentary proof to satisfy the conditions laid down in G.O. Ms No. 212 dated 22.4.1994.

4. It is further directed by the learned Tribunal that after necessary particulars are produced by the applicants on or before 15.5.1999, the Superintending Engineer, Warangal shall examine the same and submit a report to the Government through the Engineer-in-Chief for taking necessary action thereon, in terms of the Rules for regularization of the eligible candidates. The Tribunal directed for completing the said process on or before 30.6.1999.

5. The background facts leading to the issuance of the aforementioned directions by the Tribunal are briefly as under;

Initially G. Mallaiah, President of Indian National Trade Union Congress (INTUC) and Md. Mahamood Ali, a N.M.R. Worker in Panchayat Raj Department filed W.P. No. 31 of 1994 under Article 32 of the Constitution of India in the Supreme Court seeking regularization of services of the members belonging to the INTUC. When the said writ petition was pending before the Supreme Court, the Government of A.P. itself had issued G.O.M. No.212 dated 22.4.1994 making a provision for regularization of N.M.Rs. That fact was brought to the notice of the Apex Court by the learned counsel for the State. It also appears from the order of the Supreme Court that the learned Counsel for the State made submission before the Supreme Court stating that the services of all those petitioners who fulfill the conditions specified in G.O.Ms. No.212 would be regularized. In view of the said statement made by the learned counsel for the State, the Supreme Court disposed of W.P. No.31 of 1994 and another writ petition by its order dated 2.5.1994. The order reads as under:

"During the pendency of these writ petitions the respondent-State Government has prepared a scheme for regularization and has issued G.O.Ms. No.212 dated 22.4.1994 in that behalf. The learned counsel for the State says that it has been averred in the Counter affidavit that those petitioners of these writ petitions, who are entitled to be regularized under the said G.O. will be given the benefit thereof. In view of this statement and in view of the issuance of the G.O. the learned counsel for the petitioners also states that nothing further survives but they contend that the implementation process must be completed within a reasonable time, say four months from today. The learned counsel for the State however says that some more time would be required for the purpose of completing the regularization process. We think it would be reasonable to grant them six months time to do so. The petitions will stand disposed of accordingly."

6. Pursuant to the orders passed by the Supreme Court, the Government of A.P. issued G.O. Rt. No.1290 dated 11.8.1994, which reads as under:

Government of Andhra Pradesh

Abstract

Supreme Court of India- W.P.No. 31/94 filed by Sri G. Mallaiah and another, President, INTUC, Warangal and NMR respectively - Regularization of NMRs - Orders - Issued.

-----Panchayati  
Raj, Rural Development and Relief (Entt.II) Department.

G.O.Rt. No. 1290 Date: 11.8.1994

Read the following:

1.W.P. (Civil) No. 31 of 1994 filed by Sri G. Mallaiah and another in Supreme Court of India.

2.G.O.Ms. No. 212 Finance & Planning (FW.PC.III) Department dated 22.4.1994.

3. Order of Supreme Court of India dated 2.5.1994 in W.P. No. 31/94.

ORDER:

1. Sri G. Mallaiah, President, INTUC, Warangal and Md. Mahamood Ali, NMR; in Panchayati Raj Department have filed W.P. first read above challenging the validity of the Andhra Pradesh (Regularization of Appointments Public Services and Rationalization of Staff Pattern and Pay Structure) Act 2 of 1994 on behalf of all the daily wage employees of the State Government and local authority to regularize the services of NMRs.

2.The W.Ps. came up for hearing on 2.5.1994. After hearing the counsel for the petitioners and the counsel for respondents, the Hon'ble Supreme Court of India, New Delhi disposed of the above said W.P. in view of the scheme formulated in the G.O. 2nd read above and granted 6 months time for completion of the entire process of regularization. The order of the Supreme Court of India, dated 2.5.1994 is extracted below:

"During the pendency of these writ petitions the respondent-State Government has prepared a scheme for regularization and has issued G.O.Ms. No.212 dated 22.4.1994 in that behalf. The learned counsel for the State says that it has been averred in the Counter affidavit that those petitioners of these writ petitions, who are entitled to be regularized under the said G.O. will be given the benefit thereof. In view of this statement and in view of the issuance of the G.O. the learned counsel for the petitioners also states that nothing further survives but they contend that the implementation process must be completed within a reasonable time, say four months from today. The learned counsel for the State however says that some more time would be required for the purpose of completing the regularization process. We think it would be reasonable to grant them six months time to do so. The petitioners will stand disposed of accordingly."

3.Government after careful examination of the matter in terms of the orders issued in the G.O. 2nd read above and in conformity with the orders of Supreme Court of India, hereby order that the Engineer-in-Chief, Hyderabad shall take immediate steps to regularize the services of the petitioners filed in w.,P.No.31/94 indicated in the Annexure and absorb them in the existing vacancies of last grade service in the Engineering Department of Warangal Division and in respect of others, the Collector, Warangal is requested to absorb them to the extent of existing vacancies of last Grade Service in the various departments, in Warangal District as indicated in para 2(6) poof G.O.Ms. No.212 dated 22.4.1994.

4.The Engineer in Chief Panchayati Raj is also requested to forward the list of NMRs who should not be absorbed in the Panchayati Raj Engineering Department in Warangal to the Collector, Warangal with a request to absorb the NMRs on Last Grade Service employees immediately in the existing vacancies of last grade service available in various departments in Warangal District. The Collector and

District Magistrate is requested to ensure that the NMRs who are sponsored by the Engineer-in-Chief, Panchayati Raj Department are absorbed on Last Grade Servants in the existing vacancies of Last Grade service in various Departments in the District.

5.The Engineer-in-Chief, Panchayat Raj, Hyderabad and Collector, Warangal District shall take immediate necessary action and send compliance report to Government as the Supreme Court of India has given six months time for completion of the entire process.

6.The order issued with the concurrence of Finance and Planning vide their U.O. No.22090/A1/313/PCIIII/94 dated 29.7.1994.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Sd/- G. SUDHIR SECRETARY TO GOVT.

7. The Annexure appended to the said G.O.Rt. No.1290 according to the petitioners included their names also. In pursuance of the above G.O. Rt. No.1290 and the notification issued in the Newspaper dated 10.12.1994 directing all the persons whose names are included in the Annexure to the G.O.Rt. No.1290 to appear before the Superintending Engineer, Panchayati Raj, Warangal within 15 days to prove that they were working as NMRs in the Irrigation Department, only 22 persons responded and appeared before the Superintending Engineer, Panchayati Raj Warangal and out 22 persons, only 21 persons fulfilled the conditions specified in G.O.Ms. No.212 and they produced necessary proof to show that they were working as NMRs in the Department and they are entitled to be absorbed in terms of G.O.Ms. No.212. Accordingly the services of those 21 persons were absorbed in the service.

8. In the meanwhile, it appears that G. Mallaiah, the president of INTUC, Warangal filed Civil Contempt Case No.266 of 1994 before the Supreme Court complaining about alleged violation of the order passed by the Supreme Court in W.P. No. 31 of 1994 dated 2.5.1994.

9. The Supreme Court disposed of that Contempt case by the following order on 7.8.1995.

"By the order which is sought to be enforced through Contempt Proceedings all that this Court had done was to record the statement of the learned counsel for the State Government to the effect that "those petitioners of these writ petitions, who are entitled to be regularized under the said G.O. (reference to G.O.Ms. No. 212 dated 22nd April, 1994), will be given the benefit thereof.". It was on the basis of this Statement that the writ petition was disposed of and six months time was given for implementation. The plain reading of this statement would show that it was never conceded that all the 212 petitioners are entitled to regularization. If it were so, the opinion of the statement would have been different. Our attention was invited to a subsequent order of the Government dated 11.8.1994 wherein after re-producing the relevant part of the statement

the Engineer-in-Chief, Hyderabad was directed to take immediate steps to regularize the services of the petitioners who filed writ petition 31/94 indicated in the annexure and to absorb them in the existing vacancies of last grade service in the Engineering department of Warangal Division and in respect of others, the collector Warangal was expected to absorb to the extent of existing vacancies of last grade service in the various departments in Warangal District. Counsel for the petitioner, therefore, submitted that pursuant to this order 212 workmen to be regularized and absorbed in service. That is not the tenor of the order passed by this Court. This Court had merely acted on the statement made by counsel and that was clearly to the effect that out of the petitioners those who qualified under the relevant G.O. would be considered for regularization. If it was the case to absorb all the 212 the order would have been clear and precise that all the 212 should be absorbed within a certain time. That is not the tenor of the order.

Despite the order of 11.8.1994, referred to earlier in the end the Government has acted according to the tenor of the order and after calling for the basic information the Government has scrutinized the cases and then came to the conclusion that only a few of the 212 were entitled to regularization under the said G.O. If this decision of the Government is incorrect, in any manner, qua each individual workman it would be open to that workman to question that decision in a substantive petition, but there is no question of contempt. We therefore drop the contempt proceedings"

10. According to the respondent authorities, even after necessary verification of the service particulars of the petitioners available with them, they did not find that the petitioners fulfill the terms and conditions specified in G.O.Ms. No. 212 dated 22.4.1994 and that is why they issued public notification calling for particulars and information from the petitioners.

11. The allegation made by the respondents that in pursuance of the paper notification dated 10.12.1994, the petitioners herein did not appear before the Superintending Engineer and did not produce any documents in support of their claim to show that they were working as NMRs in the Irrigation Department, is not denied. The learned Tribunal taking this fact into account thought it appropriate and just to give one more opportunity to the petitioners to place necessary materials and information before the Superintending Engineer, Warangal in support of their claim for regularization in terms of G.O.Ms. No.212 dated 22.4.1994.

12. The only contention of the learned counsel for the petitioners is that in terms of the order of the Supreme Court made in W.P.No.31 of 1994 dated 2.5.1994 and also in terms of G.O.Rt.No. 1290 dated 11.8.1994, no discretion was left with the Superintending Engineer to verify the records and to see whether the petitioners fulfill the terms and conditions specified in G.O.Ms. No.212 for the purpose of regularization of their services. Of course if one goes strictly and literally by the language used in G.O.Rt. No. 1290 dated 11.8.1994, that G. O. Rt. seems to direct the Superintendent Engineer to regularize the services of

those petitioners covered by W.P.No. 31 of 1994 filed before the Supreme Court. The President of the INTUC Warangal complained exactly in that way and filed Contempt case No.266 of 1994 before the Supreme Court. The Supreme Court by its order dated 7.8.1995 was pleased to clarify the tenor and purport of its earlier order dated 2.5.1994 made in W.P.No.31 of 1994 which is extracted above.

13. Even according to the Supreme Court, the tenor of the order or the G.O.Rt. is not to obligate the Superintending Engineer, Irrigation Department to regularize the services of those persons whose names are included in the Annexure attached to G.O.Rt. No.1290 dated 11.8.1994 without any further enquiry or verification of the record, but only required him to absorb those persons who fulfilled the terms and conditions specified in G.O.Ms. No.212 dated 22.4.1994. In that view of the matter and admittedly since the petitioners did not respond to the paper notification dated 10.12.1994, no exception can be taken to the impugned direction issued by the learned A.P. Administrative Tribunal. In fact, the direction of the Tribunal is favourable to the petitioners and the petitioners are given one more opportunity to place material before the Superintending Engineer, Warangal in support of their claim though they may not be entitled to such direction in law.

14. In that view of the matter, we do not find any substantial ground to interfere with the order of the Supreme Court. Accordingly these two writ petitions are dismissed. No costs.

15. The learned counsel for the petitioners prays the Court to grant some reasonable time to the petitioners to produce necessary material and evidence in support of their claim. The petitioners are granted a month's time from today to produce relevant material and documents and information in support of their plea before the Superintending Engineer, Panchayati Raj, Warangal.