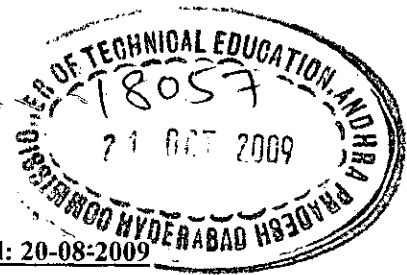


GOVERNMENT OF ANDHRA PRADESH -
FINANCE (PC.III) DEPARTMENT



Letter.No.21515/427/A1/PC.III/2009

Dated: 20-08-2009

From:
The Secretary to Government (R&E)
Finance (PC.III) Department
A.P.Secretariat,
Hyderabad.

Sir,

Sub:- Civil Appeal No. 3750 of 2006 in WA No.374/01 and Batch Cases -
Reg. - Regularisation of the services of NMRs/ daily wage employees
/ Part Time employees - Judgement of Hon'ble.Supreme Court - Reg.

- Ref:-
- 1) D.O.Lr.No. 3864-A/73/PC.III/01, dated 12-02-2001.
 - 2) D.O.Lr.No. 3864-A/73/PC.III/01, dated 28-02-2001.
 - 3) Hon'ble Supreme Court Judgement in Civil Appeal No. 3702/2006 and batch, dated 06-07-2009.

I am to inform you that the Hon'ble Supreme Court of India allowed the limited SLP filed by Government of Andhra Pradesh against the judgement of Hon'ble division bench in WA No. 374/01 and batch cases on the cut off date. The Hon'ble Supreme Court ordered as follows.

"The declaration made by the Division Bench that the ban on regularisation will be effective from 19-8-1998 i.e., the date of which Act No.27 of 1998 came into force and that all persons who have completed 5 years service as on that date would be entitled to be considered for regularisation of service is set aside. It is, however, made clear that the daily wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularised so far, shall be entitled to be considered for regularisation and their services shall be regularised subject to fulfilment of the conditions enumerated in G.O. dated 22-4-1994".

In view of the Judgement of Hon'ble Apex Court (Copy enclosed) you are requested to take necessary immediate action as per G.O.Ms.No.212 Finance (PC.III) Department, dated 22-04-1994 and G.O.(P) 112 Finance (PC.III,) Department, dated 23-07-1997.

Yours faithfully,

SECRETARY TO GOVERNMENT (R&E)

To .
All the Departments of Secretariat.
All the Heads of Departments
All Collectors and District Magistrates

F-11-1
Please put up
immediately
with records
msd
22/10/09

Transfer
to E&E
2/10/2009

Imp.
AD(E)
20/10/09

F-11
21/10/09

The Director of Treasuries and Accounts, Andhra Pradesh, Hyderabad
The Director of Local Fund Audit, Andhra Pradesh, Hyderabad
The Pay and Accounts Officer, Andhra Pradesh, Hyderabad
The Director of Works Accounts
The Accountant General, Andhra Pradesh, Hyderabad
The Registrar, A.P. High Court, Hyderabad (with covering letter)
The Secretary, A.P. Public Service Commission, Hyderabad (with covering letter)
The Managing Director and Vice Chairman, A.P.S.R.T.C. Hyderabad (with covering letter)
The Secretary A.P.S.E.B. Hyderabad (with covering letter)
The Registrar, of All Universities including A.P.A.U and J.N.T.U.
The Registrar Regional Engineering College, Warangal.
All Managing Directors of Public Enterprises/Co-operative Enterprises.
All District Treasury Officers including Sub-Treasury Officers.
All Audit Officers through director of Local Fund Audit, Andhra Pradesh, Hyderabad.
The Pay and Accounts Officer, Projects,
All District Development Officers, Zilla Praja Parishad.
All Municipal Commissioners.
The Commissioner, Municipal Corporation of Hyderabad /Vijayawada/Visakhapatnam.
All Administrators of Urban Development Authorities.
All Secretaries Zilla Grandhalaya Samasthas through the Director of Public Libraries.
All Secretaries to Market Committees through the Director of Marketing
The Managing Director & Vice Chairman, A.P. Housing Board, Hyderabad.
The Executive Officer, Tirumala Tirupathi Devasthanams. Tirupathi.
The Director, Nizam Institute of Medical Sciences, Hyderabad.
The Director, Sri Venkateshwara Institute of Medical Sciences, Tirupathi.
The Secretary, State Council of Higher Education, Hyderabad.
The Secretary, A.P. Residential Educational Institutions Society, Hyderabad.
The Secretary, A.P. Social Welfare Residential Education Institutions Society, Hyderabad.

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All Communications should be addressed to the Registrar, Supreme Court by designation, NOT by name
Telegraphic address :-

"SUPREMECO"

FROM : DEPUTY REGISTRAR

D.No. 2447/et al. 2006
SUPREME COURT OF INDIA
NEW DELHI
DT. 17th July, 2009

NEW DELHI
Secretary to Govt.
W.D.C.W. & D.W. Dept.,
408
SECRETARIAT, HYD-22

TO : 1. The Registrar,
High Court of Judicature,
Andhra Pradesh at Hyderabad.

2. The Principal Secretary,
Govt. of A.P., Women Development Child Welfare and
Disabled Welfare Department,
Secretariat, Hyderabad, A.P.

GI
3/58
29/7/09
W.P.

CIVIL APPEAL NO. 3702 OF 2006 arising out of W.P. 704, 720, 727, 724, 741, 717, 707, 746, 734, 725, 745, 718, 550, 715, 703, 713 of 2001

WITH

CIVIL APPEAL NO. 3685 703 OF 2006 arising out of W.P. No. 1893 of 2002
CIVIL APPEAL NO. 3703 OF 2006 arising out of W.P. No. 20759 of 2001
CIVIL APPEAL NO. 3704 OF 2006 arising out of W.P. No. 26098 of 2001
CIVIL APPEAL NO. 3705 of 2006 arising out of W.P. NO. 20597 of 2001
CIVIL APPEAL NO. 3706 of 2006 arising out of W.P. NO. 18634 of 2001
CIVIL APPEAL NO. 3707 of 2006 arising out of W.P. NO. 29833 of 1998
CIVIL APPEAL NO. 3709 of 2006 arising out of W.P. NO. 27029 of 1997 & W.A. No. 898 of 2001

CIVIL APPEAL NO. 3710 of 2006 arising out of W.P. NO. 24882 of 1999
CIVIL APPEAL NO. 3712 of 2006 arising out of W.P. NO. 17105 of 2001.
CIVIL APPEAL NO. 3713 of 2006 arising out of W.P. NO. 17437 of 2001
CIVIL APPEAL NO. 3714 of 2006 arising out of W.P. NO. 17600 of 2001
CIVIL APPEAL NO. 3715 of 2006 arising out of W.P. NO. 20365 of 2001
CIVIL APPEAL NO. 3716 of 2006 arising out of W.P. NO. 16800 of 2001
CIVIL APPEAL NO. 3717 of 2006 arising out of W.P. NO. 17428 of 2001
CIVIL APPEAL NO. 3718 of 2006 arising out of W.P. NO. 15006 of 2001
CIVIL APPEAL NO. 3721 of 2006 arising out of W.P. NO. 25300 & 26824 of 1998

CIVIL APPEAL NO. 3723 of 2006 arising out of W.P. NO. 21630 of 2001
CIVIL APPEAL NO. 3724 of 2006 arising out of W.P. NO. 17117 of 2001
CIVIL APPEAL NO. 3726 of 2006 arising out of W.P. NO. 15007 of 2001
CIVIL APPEAL NO. 3727 of 2006 arising out of W.P. NO. 12124 of 2001
CIVIL APPEAL NO. 3728 of 2006 arising out of W.P. NO. 15009 of 2001
CIVIL APPEAL NO. 3729 of 2006 arising out of W.P. NO. 11968 of 2001
CIVIL APPEAL NO. 3730 of 2006 arising out of W.P. NO. 17161 of 2001

CIVIL APPEAL NO. 3731 of 2006 arising out of W.P. NO. 12215 of 2001
CIVIL APPEAL NO. 3732 of 2006 arising out of W.P. NO. 22020 of 2001
CIVIL APPEAL NO. 3733 of 2006 arising out of W.P. NO. 6477 of 2000
CIVIL APPEAL NO. 3734 of 2006 arising out of W.P. NO. 14541 of 1999
CIVIL APPEAL NO. 3737 of 2006 arising out of W.P. NO. 16813 of 2001
CIVIL APPEAL NO. 3742 of 2006 arising out of W.P. NO. 21206 of 2001
CIVIL APPEAL NO. 3744 of 2006 arising out of W.P. NO. 12611 of 2001
CIVIL APPEAL NO. 3748 of 2006 arising out of W.A Nos. 366 and 1141 of 2001
CIVIL APPEAL NO. 3749 of 2006 arising out of W.A. 1009 of 2001
CIVIL APPEAL NO. 3750 of 2006 arising out of W.A. Nos. 374, 394, 339, 415, 429, 442, 443, 366, 223 of 2001, W.P. 29833 of 1998, 25665 of 1995, 20104 of 1997, 14426 of 1999, 28425 of 1998, 34878 of 1998, 6140 of 1999, 12541 of 1999 and 20029 of 1999.
CIVIL APPEAL NO. 3751 of 2006 arising out of W.A. NO. 1040 of 2001.
CIVIL APPEAL NO. 3752 of 2006 arising out of W.P. NO. 27133 of 1999.
CIVIL APPEAL NO. 3753 of 2006 arising out of W.P. NO. 1911 of 2000, W.A. No. 1243 of 2001 & 1201 of 2001.
CIVIL APPEAL NO. 3754 of 2006 arising out of W.A. NO. 759 of 2001
CIVIL APPEAL NO. 3755 of 2006 arising out of W.A. No. 58 of 1998.

A. MANJULA BHASHINI & ORS. etc. etc.
-VERSUS-

..APPELLANTS

M.D.,A.P. WOMEN'S COOP. FIN. CORPN.
LTD. & ANR. etc. etc.

.RESPONDENTS

Sir,

In pursuance of Order XIII Rule 6, S.C.R., 1966, I am directed to transmit herewith a certified copy of the Judgment dated 6th July, 2009 in the appeals above-mentioned.

The certified copy of the decree made in the said appeal(s) and Original Records will be sent later on.

Yours faithfully,


DEPUTY REGISTRAR

R. 859/09

326875

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3702 OF 2006

Certified to be true copy
Vijay Aggarwal
Assistant Registrar (Judl.)
.....2009
Supreme Court of India

A. Manjula Bhashini & others

.....Appellant (s)

Versus

The Managing Director, A.P. Women's
Cooperative Finance Corporation Ltd.
and another

.....Respondent (s)

With C.A. Nos.3685 of 2006, 3703 of 2006, 3704 of 2006, 3705 of 2006,
3706 of 2006, 3707 of 2006, 3709 of 2006, 3710 of 2006, 3712 of 2006,
3713 of 2006, 3714 of 2006, 3715 of 2006, 3716 of 2006, 3717 of 2006,
3718 of 2006, 3721 of 2006, 3723 of 2006, 3724 of 2006, 3726 of 2006,
3727 of 2006, 3728 of 2006, 3729 of 2006, 3730 of 2006, 3731 of 2006,
3732 of 2006, 3733 of 2006, 3734 of 2006, 3737 of 2006, 3742 of 2006,
3744 of 2006, 3748 of 2006, 3749 of 2006, 3750 of 2006, 3751 of 2006,
3752 of 2006, 3753 of 2006, 3754 of 2006 and 3755 of 2006.

JUDGMENT

G.S. Singhvi, J.

1. Whether the persons employed on daily wage basis or nominal muster roll or consolidated pay or as contingent worker on full time basis in different departments of the Government of Andhra Pradesh and its

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agencies/instrumentalities are entitled to be regularised in service on completion of 5 years and whether amendments made in the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short 'the 1994 Act') by Amendment Act Nos.3 and 27 of 1998 are ultra vires the provisions of the Constitution are the questions which arise for determination in these appeals, some of which have been filed by the State Government and its agencies/instrumentalities and some have been filed by the employees, who could not convince the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") and/or the High Court to accept their prayer for issue of a mandamus to the concerned authorities to regularise their services.

2. In 1970s, 80s and early 90s, the country witnessed an unusual phenomena in the field of public employment. Lakhs of persons were engaged/employed under the Central and State Governments in violation of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short 'the 1959 Act') and the rules framed under proviso to Article 309 of the Constitution. The officers who were entrusted with the task of making appointments on Class III and Class IV posts misused their power

and employed their favourites or all those who enjoyed political power without considering the claims of other similarly situated persons. For avoiding compliance of the mandate of the equality clause enshrined in the Constitution and other statutory provisions, the empowered authorities resorted to the mechanism of employing the persons of their choice on daily wages or nominal muster roll or contract or part time basis with the hope that on some future date the Government will frame policy for regularisation of such employees. In this manner, nepotism, favoritism and even corruption became hallmark of the appointments and a huge illegal employment market developed in the country, a fact of which cognizance was taken by this Court in **Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi** [(1992) 4 SCC 99].

3. State of Andhra Pradesh was no exception to the aforementioned malady. Thousands of persons were employed in different departments of the Government and agencies/instrumentalities of the State on daily wages or nominal muster roll or consolidated pay or part time basis. In some cases, employment was given despite the fact that sanctioned posts were not available. Even if the posts existed, the concerned authorities neither issued advertisement nor sent requisition to the employment exchange(s) and made

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appointments in complete disregard of Articles 14 and 16 of the Constitution and the relevant statutory provisions including the 1959 Act depriving thousands of unemployed persons of their right to be considered for appointment to public posts/offices.

4. In order to check the menace of irregular appointments, which was creating unwarranted financial burden on the State, and, thereby adversely affecting the welfare schemes and development programmes and also causing dissatisfaction among the members of younger generation who were denied the right of consideration for appointment, the Government of Andhra Pradesh decided to bring a legislation for totally banning appointment on daily wages, regulating appointment on temporary basis and for rationalisation of staff pattern and pay structure. In furtherance of that decision, the Governor of Andhra Pradesh promulgated the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Ordinance, 1993. The same was published in the State Gazette dated 25.11.1993. The Ordinance was replaced by the 1994 Act, which was enforced with effect from 25.11.1993. The State Government's determination to curb irregular appointments and reduce burden on the State exchequer is clearly reflected in the statement of objects

and reasons contained in the bill presented before the legislative assembly, the relevant portions of which are extracted below:

“.....The number of employees has been increasing at an enormous rate. The census of Government employee conducted by the State Government in 1976, 1981 and 1988 and as projected in 1993 shows that the number of employees of the Government, Universities, Institutions receiving Grant-in-Aid and Public Sector Undertakings, Local Bodies has increased from 6.78 lakhs in 1976 to 12.34 lakhs in 1993 which constituted an increase of 82%. Out of this, the employees of the Departments of the State alone increased from 2.85 lakhs to 5.56 lakhs representing an increase of 95%. The Public Sector Undertakings grew at 128% from 1.44 lakhs to 3.28 lakhs. Among the Government employees and Local Body employees, the class IV and other categories constitute about 41%.

The expenditure particulars show that the amount spent on the salaries, allowances and pension of Government employees, Panchayat Raj employees, employees paid out of the Grant-in-Aid, amounts to a figure of Rs.4277 crores in 1993-94 salaries on the due dates. Government considers that it is not fair that people's interest should be neglected and even sacrificed by not taking up schemes just to pay salaries to its employees.

In addition to the salary and pension commitment there is a heavy debt servicing burden on the Government. The debt also has been increasing from year to year. In 1983 the total outstanding debt was Rs.2543 crores. It has now reached Rs.10970 crores during 1993-94. At present, the Government are paying as much as Rs.1012 crores for payment of interest and Rs.330 crores for repayment of principal amount every year. The total amount of non-plan items of expenditure in 1993-94 is amounting to Rs.6222 crores, which cannot be avoided. The Government are not able to complete a number of Irrigation Projects and Power Projects because of lack of funds. For the same reason productive assets like completed irrigation projects and roads are not being properly maintained resulting

in wastage of assets whose replacement will cost several hundreds of crores of rupees. At present, the Government are spending 81% of the debt they receive from the Government of India, Market borrowings and all other categories of loans for repayment; which means only 19% of the total debt is being added to our resources. But it is estimated that from next year onwards the repayment will be more than the debt receipts. If the Government are caught in such a debt trap the amount available to the State Government will be limited to its own tax and non-tax revenues and the devolutions from the Government of India. The devolutions expected from the Government of India is about Rs.1698 crores in 1993-94. Since the expenditure on establishment is already 105% of the own tax and non-tax revenues of the state, it can be seen that between this expenditure and other non-plan expenditure the Government would have exhausted the most of the resources leaving very little for welfare schemes and developmental programmes. Since no Government can allow such total neglect of welfare and developmental activities the employees of the State will not be getting salaries on time and eventually they will not be getting their full salary also.

The irregular appointments are adversely affecting the interest of several thousands of unemployed persons who have registered in the employment exchange and awaiting their turn for orders. It is also adversely affecting the interests of Scheduled Castes, Scheduled Tribes and backward Classes who have reservation in employment since the N.M.R. appointments are not taking care of the reservation for these categories. Government have constituted District Selection Committees and some ad hoc Selection Committees besides the Andhra Pradesh Public Service Commission to take up recruitment in accordance with law in Government Departments. Irregular appointments are depriving these legitimate recruiting bodies from performing their functions. Irregular appointments in excess of sanctioned strength will also result in industrial undertakings becoming unviable and eventually sick. When a unit goes sick, it results in retrenchment and even winding-up, thus, adversely affecting the interests of the existing employees who are recruited against sanctioned strength and through

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authorised process of selection. Similarly unauthorised appointments over and above the sanctioned strength in Government Departments would also increase the number of employees and to that extent militate against the Government looking after the existing employees who have been recruited through proper channel. The Act will, therefore, protect the interests of candidates in Employment Exchanges, reserved categories, the existing employees who were recruited through proper channel and the legitimate functions of the recruiting agencies.

From the above, it can be seen that the financial position of the State arising out of excessive expenditure on staff is so alarming that it cannot be tackled by ordinary administrative actions and instructions. It is, therefore, thought that a time has come when we have to provide for deterrent action for illegal and irregular appointments by enacting a law. It has accordingly been decided to enact a law to achieve the following objects, namely:-

- (a) totally banning such appointments in the institutions covered by legislation;
- (b) imposing stringent penalties for making appointments by public servants on violation of the law;
- (c) to protect public servants from being held for contempt for non-compliance of the orders of Tribunal or High Court and also for abatement of pending cases claiming regularization of services which are already filed before the courts of law by making a suitable provisions therefor; and
- (d) to protect the interests of candidates registered with Employment Exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.

The legislation will prevent further deterioration of finances of the State and at the same time conserve the resources for the welfare and developmental activities.”

5. For the sake of convenient reference, Sections 2(ii), 3, 4, 7 and 9 of the 1994 Act (unamended) are reproduced below:

“2(ii) ‘daily wage employee’ means any person who is employed in any public service on the basis of payment of daily wages and includes a person employed on the basis of nominal muster roll or consolidated pay either, on full-time or part-time or piece rate basis or as a workcharged employee and any other similar category of employees by whatever designation called other than those who are selected and appointed in a sanctioned post in accordance with the relevant rules on a regular basis.

3. Prohibition of daily wage appointments and regulation of temporary appointments.— (1) The appointment of any person in any public service to any post, in any class, category or grade as a daily wage employee is hereby prohibited.

(2) No temporary appointment shall be made in any public service to any post, in any class, category or grade without the prior permission of the competent authority and without the name of the concerned candidate being sponsored by the Employment Exchange.

4. Regulation of recruitment.— No recruitment in any public service to any post in any class, category or grade shall be made except,—

(a) from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Commission where the post is within the purview of the said Commission;

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(b) from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders issued in that behalf; and

(c) from the candidates having the requisite qualification and sponsored by the Employment Exchange in other cases where recruitment otherwise than in accordance with clauses (a) and (b) is permissible.

Explanation: - For the removal of doubts it is hereby declared that nothing in this section shall apply to compassionate appointments made in favour of son/daughter/spouse of any person employed in public service who dies in harness or who retires from service on medical grounds, in accordance with the relevant orders issued from time to time.

7. Bar for regularization of services.- No person who is a daily wage employee and no person who is appointed on a temporary basis under section 3 and is continuing as such at the commencement of this Act shall have or shall be deemed ever to have a right to claim for regularization of services on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reason:

Provided that in the case of Workmen falling within the scope of section 25-F of the Industrial Disputes Act, 1947, one month's wages and such compensation as would be payable under the said section shall be paid in case of termination of services:

Provided further that nothing in this section shall apply to the Workmen governed by Chapter V-B of the Industrial Disputes Act, 1947.

Explanation. - For the removal of doubts it is hereby declared that the termination of services under this section shall not be deemed to be dismissal or removal from service within the meaning of article 311 of the Constitution or of any other relevant law providing for the dismissal or removal of