

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY

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v.

SMT. T. SUMALATHA AND ORS.

AUGUST 11, 2003

[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

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Service Law:

Regularization—Appointment made on consolidated pay—By University at Nodal Centre under a scheme of Central Government—Funding and supervision of the Nodal Centre by Central Government—Claim for regularization—Granted by Single Judge and Division Bench of High Court on the basis of State Government G.O. holding the Nodal Centre to be an agency of the Government—On appeal held: State Government G.O. wrongly applied—The G.O. was not intended to cover the employees engaged in the Nodal Centre which for all practical purposes acts as a wing of Central Government—Hence, regularization not justified—However, direction issued for increase in the consolidated salary.

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Under a scheme known as National Technical Manpower Information System sponsored by Government of India, Nodal Centre was set up in the appellant-University. The scheme contemplated deployment of Postgraduate Engineering students in Nodal Centres during vacation. As the students were not available, respondent Nos. 1 to 4 were recruited at the Nodal Centre in appellant-University on consolidated pay. Respondent No.5 was appointed as Attender-cum-Sweeper on daily wages basis. Later she was placed on consolidated pay. Their appointments were renewed from time to time.

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Respondents filed writ petition before High Court seeking direction to regularize their services and to accord them regular pay scales. High Court allowed the writ petition directing the University to regularise their services if they had completed three years of service and were qualified and the posts were advertised by the University. State Government was also directed to take final decision on the proposal of the University to create additional posts. On review, Single Judge, relying on G.O. M.S.

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- A** No.212 (Finance and Planning) issued by State Government held that by virtue of the G.O. which was applicable to the University employees as well, respondents 1 to 3 and 5 who had completed more than 5 years of service were liable to be regularized. Regarding 4th respondent who had not completed 3 years of service, it directed the University to send proposal to State Government for creation of an additional post. In writ appeal,
- B** Division Bench of High Court affirmed the judgment of Single Judge observing that all the employments in the institute, whether grant comes from the State or Central Government, are employments in the Institute which is an agency of the State Government and thus all Government orders intended to apply to such agency of the State Government have to
- C** be applied to it. Hence the present appeal.

Allowing the appeal, the Court

- D** HELD: 1.1. High Court fell into error in applying GO No.212 dated 22.4.1994 to the case of the writ petitioners. The observations of the Division Bench that the Nodal Centre is an agency of the State Government, is obviously without factual and legal basis. The terms and features of the scheme unmistakably indicates that the University - Centre of excellence chosen by the Ministry of Education, acts for and on behalf of Government of India and the Nodal Centre is nothing but the reflection of Central Government acting through the media of University. The entire
- E** funding is done by the Central Government and the Nodal Centre functions under the overall supervision and guidance of the Lead Centre attached to the Ministry of Education. Even the details of expenditure including the payments to be made to the staff of various categories are spelt out in the scheme as well as in the orders releasing the annual grants.
- F** There is, therefore, an obvious fallacy in the reasoning of the High Court that the 'institute' (Nodal Centre) acts as an agency of the State Government. The State Government does not come into the picture at all. By virtue of the last para of the GO the State Government does not assume the responsibility of absorbing the staff employed in the organizations or establishments with which it has no administrative or financial nexus,
- G** merely because an instrumentality of the State is involved in managing it. No directions should have been issued to the State Government or to the University to regularize the services of respondents 1 to 5, if necessary, by creating additional posts. [407-A-D; 408-B, D]

- H** 1.2. There is nothing on record to show that the concerned

employees were appointed after following due procedure for selection. Apparently, they were picked and chosen by the University authorities to cater to the exigencies of work in the Nodal Centre. Secondly, having regard to the background in which respondents 1 to 4 were drafted to perform the job assigned to them, it is difficult to concede to them the status of regular Government servants. The scheme envisaged the employment to senior Engineering students during vacation periods and for payment of remuneration for the work done by them. As the students were not prepared to take up the work of investigation, the University authorities thought of inducting respondents 1 to 4 to perform the job which was expected to be done by the Post-Graduate students on part-time basis. The appointment of respondents 1 to 4 was thought of only by way of substituting them for the Engineering students who, in the normal course, would have taken up the work pursuant to the scheme. The plea to regularize their services is misconceived having regard to the background and circumstances in which respondents 1 to 4 came to be appointed. As regards the 5th respondent, no post of Attender has been sanctioned under the scheme. However, her salary was being met out of the funds allocated for office expenditure. [408-G, H; 409-A-D]

2.1. Though the plea of regularization in respect of any of the five respondents cannot be countenanced, the respondent-employees should have a fair deal consistent with the guarantee enshrined in Articles 21 and 14 of the Constitution. They should not be made to work on meagre salary for years together. It would be unfair and unreasonable to extract work from the employees who have been associated with the Nodal Centre almost from its inception by paying them remuneration which, by any objective standards, is grossly low. It is therefore imperative that the concerned Ministry of the Union of India should take expeditious steps to increase the salary of Respondents 1 to 4 working in the Nodal Centre. In the absence of details regarding the nature of work done by the said respondents and the equivalence of the job done by them, to the other posts prevailing in the University or the Central Government institutions, the Court is not in a position to give any direction based on the principle of 'equal pay for equal work'. However, it is just and expedient to direct Respondent No. 7 or 8, as the case may be to take an expeditious decision to increase the consolidated salary that is being paid to respondents 1 to 4 to a reasonable level commensurate with the work done by them and keeping in view the minimum salary that is being paid to the personnel doing more or less similar job. [408-D-H; 409-A]

A 2.2. As far as the 5th respondent is concerned, though similar directions cannot be given in view of the fact that the post is not specifically sanctioned under the scheme, the Central Government may consider increasing the quantum of office expenditure suitably so that the University will be able to disburse higher salary to the 5th respondent. [410-A, B]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4094 of 1998.

From the Judgment and Order dated 3.4.97 of the Andhra Pradesh High Court in W.A. No. 302 of 1997.

C V.R. Reddy, R. Venugopal, Mrs. D. Bharathi Reddy, S. Udaya Kumar Sagar, Ms. Bina Madhavan, Prashanth, T.V. Ratnam, Ms. Sushma Suri, Adv. (NP) and E.C. Vidya Sagar for the Appearing parties.

The Judgment of the Court was delivered by

D **P. VENKATARAMA REDDI, J.** Respondents 1 to 4 were appointed as Investigators on a consolidated pay in the Nodal Centre set up in the appellant-University under a scheme known as National Technical Manpower Information System (NTMIS) sponsored by the then Ministry of Education and Culture, Government of India. They are all Graduates. They were appointed on various dates between 1985 and 1991. Initially, their appointment was for 89 days and their services were being extended from time to time on similar terms. The consolidated pay was revised twice and with effect from 7.3.1997 they have been drawing a sum of Rs.2,475 p.m. as lumpsum pay. **E** The 5th respondent was appointed as Attender-cum-Sweeper in the year 1986 initially on daily-wage basis. Later on, she was placed on consolidated pay and her appointment too was being renewed from time to time. It is not in dispute that they were all appointed by the competent authorities of the **F** University and the administrative control rests with the University.

G It is seen from the communication dated 9th November, 1983 from the Union Ministry of Education that a scheme known as 'National Manpower Information System' was evolved by the Government of India. Its objective is "to provide upto date and meaningful manpower information on a continuing basis to enable the concerned authorities to anticipate areas of growth in the field of Science and Technology and consequently plan for technical manpower development on the proper lines". Under that scheme, the NMIS will have a Lead Centre in the Institute of Applied Manpower Research attached to the **H** Ministry of Education and 17 Nodal Centres in the selected higher institutes

of Engineering and Technology. The Lead Centre will be coordinating with the functions of various Nodal Centres and oversee the proper functioning of those Centres. The appellant, JNT University, Hyderabad is one of the institutions selected for the establishment of Nodal Centre. The Nodal Centres would be mainly concerned with the collection of data and the preliminary processing of data so as to make it suitable for further processing in a computer. The Nodal Centre is also expected to undertake analytical work wherever required. An advisory body has been formed for each State so as to provide guidance and support to the Nodal Centres. The Head of the institution of the Nodal Centre, the Director of Technical Education of the State and some other officials are its members. Nodal Centres were authorized to appoint the staff - Project Officer (Reader), P.A., Computer Operator and Research Associate (one post each) for whom the Scales of Pay are specified. It appears that these posts were filled up by drawing the personnel from University on deputation. We are more concerned here with para 5 of the scheme which reads as follows:

“5. Besides, the nodal Centres shall also be entitled to collect the necessary data through appropriate programming by employing students of senior classes i.e., postgraduate level and Ph.D. level during the vacation periods. The data thus collected can be processed by the nodal centres on a continuing basis round the year. Each nodal centre will be entitled to an assistance from senior students amounting to 55 man months in a year. Each student would be paid by the concerned nodal centres at the rate not exceeding Rs. 500 per month. In all each nodal centre would be entitled to incur expenditure not exceeding Rs.27,500 per annum for collection of data by employing students of the senior classes.”

It appears that the Nodal Centre was sanctioned initially for a period of one year and nine months. However, it is being continued. It is not in dispute that the Nodal Centre is financed entirely by the Ministry of Education which releases the grants from time to time. The allocation of funds for various items of expenditure including staff salaries is specifically mentioned in the order releasing recurring grant. The consolidated pay was enhanced by the Government of India on two occasions, while releasing the grants. As the Postgraduate Engineering students referred to in para 5 of the scheme were not available, respondents 1 to 4 were recruited as Investigators on consolidated pay.

- A Inspired by the Judgment of Andhra Pradesh High Court in a writ petition filed by the employees of the University who were appointed temporarily on consolidated pay and working in the self-supporting schemes of the University, Respondents 1 to 5 herein filed Writ Petition under Article 226 of the Constitution in the High Court of A.P. seeking a writ or direction to regularize their services and to accord them regular pay-scales. The High
- B Court allowed the writ petition and gave a direction to the University to regularise the services of the writ petitioners if they had completed three years of service and they are qualified and the posts are advertised by the University. The State Government was also directed to take a final decision on the proposal of the University to create additional posts within the specified
- C time limit. Review petition was filed by the University contending that the Division Bench decision on which the learned Single Judge of the High Court relied upon pertains to University employees working on temporary or ad hoc basis whereas the writ petitioners in the present case are entirely governed by the scheme formulated by the Government of India. In the Review Petition, the Learned Judge focused his attention on GO MS No. 212
- D (Finance & Planning) dated 22.4.1994 issued by the Government of Andhra Pradesh and held that by virtue of the said GO which is applicable to the University employees as well the service of the writ petitioners No. 1 to 3 and 5, who completed more than five years of service on the crucial date mentioned in the GO, was liable to be regularised. As regards the 4th writ
- E petitioner, who did not complete three years of service by 25.11.1993, the learned Judge directed the University to send proposal to the State Government for creation of an additional post and the Government should take a decision within one month from the date of the receipt of proposal. The High Court further observed that after the post is sanctioned, the University shall advertise and fill up the vacancy by appointing petitioner No. 4 if he is otherwise
- F qualified. The Review Petition was disposed of accordingly. It may be stated that the High Court did not accept the contention of the University that the writ petitioners are not employees of the University to whom the benefit of GO MS No. 212 could be extended. Against the order of the learned Single Judge in the Review Petition, the University filed Writ Appeal which was
- G dismissed by the Division Bench on 3.4.1997 affirming the order of the learned Single Judge. The Division Bench observed that "all employments in the institute, whether grant for the post comes from the State Government or from the Central Government, are employments in the institute which is an agency of the Government of the State of Andhra Pradesh and thus all Government orders intended to apply to such agency of the Government of
- H the State have to be applied to it." On appeal by the University, this Court

stayed the operation of the judgment of the High Court.

We are of the view that the High Court fell into error in applying GO No. 212 dated 22.4.1994 to the case of the writ petitioners. The observations of the Division Bench that the Nodal Centre is an agency of the State Government, is obviously without factual and legal basis. The terms and features of the scheme unmistakably indicates that the University-a Centre of excellence chosen by the Ministry of Education, acts for and on behalf of Government of India and the Nodal Centre is nothing but the reflection of Central Government acting through the media of University. The entire funding is done by the Central Government and the Nodal Centre functions under the overall supervision and guidance of the Lead Centre attached to the Ministry of Education. Even the details of expenditure including the payments to be made to the staff of various categories are spelt out in the scheme as well as in the orders releasing the annual grants. There is, therefore, an obvious fallacy in the reasoning of the High Court that the 'institute' (Nodal Centre) acts as an agency of the State Government. The State Government does not come into the picture at all.

In our view, it would be wholly inappropriate to apply GO No. 212 to the temporary staff appointed by the University exclusively for the Nodal Centre set up under the auspices of the Government of India. GO MS No. 212 is not intended to cover the employees such as the writ petitioners who are engaged in the Nodal Centre which for all practical purposes acts as a wing of the Central Government. In one sense the writ petitioners may be regarded as employees of the University as they were appointed by the University and the disciplinary control vests with the University. In another sense, they are proteges of the Central Government. GO 212 has to be understood and applied, having due regard to its tenor and purpose. The GO, no doubt, envisages regularization of the services of the persons appointed on daily wages or consolidated pay who fulfill the conditions laid down therein. But, it is intended to cover the categories of employees working in the State Government departments/institutions or bodies controlled or administered by the State Government and in respect of whom the State Government or such bodies have to bear the financial burden on account of regularization. The last para of GO No. 212 gives the clear indication of its purport and intendment. The said para reads as under:

"All the Departments of Secretariat/Heads of Departments are

A requested to process the cases of absorption/ regularization of services of NMRS/Daily Wage employees etc., in pursuance of the above scheme and obtain the clearance of Govt. in Finance & Planning (PW PC III) Department before orders are issued for such regularization or absorption."

B Can it be said that by virtue of this provision, the State Government assumes the responsibility of absorbing the staff employed in the organizations or establishments with which it has no administrative or financial nexus, merely because an instrumentality of the State is involved in managing it, that too, in a limited sense? The answer could only be in the negative. When
C the State Government or its instrumentalities have not created the posts on their own and do not bear any part of financial burden, the question of getting the clearance from the Finance and Planning department of the Government for the purpose of regularization or absorption does not arise. Viewed from any angle, GO 212 would be wholly out of place for those working in the Nodal Centre which is created and nurtured by the Central
D Government. It is not within the domain of the State Government or even University to regulate the staff pattern or the monetary benefits of the staff working therein, without the approval of Central Government. Therefore, no directions should have been issued to the State Government or to the University to regularize the services of respondents 1 to 5, if necessary, by creating additional posts.

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The next question is whether the Central Government i.e., Respondents 7 & 8, should be directed to take steps to create posts with appropriate pay-scales in the Nodal Centre for the purpose of absorbing respondents 1 to 5 on regular basis, by reason of their longstanding service. It is pointed out by
F the learned counsel for the respondent-employees that the Nodal Centre, though conceived as a temporary scheme, has come to stay for nearly two decades by now and its relevance is not lost in the present day context and the possibility of its disbandment is remote. The learned counsel therefore contends that there is every justification for absorbing the concerned respondents on regular basis in recognition of their long satisfactory service.
G The learned counsel further contends that the *ad hoc* arrangement to employ them on consolidated pay should not go on forever. The contention of the learned counsel cannot be sustained for more than one reason and we find no valid grounds to grant the relief of regularization. There is nothing on record to show that the concerned employees were appointed after following due
H procedure for selection. Apparently, they were picked and chosen by the

University authorities to cater to the exigencies of work in the Nodal Centre. Secondly, having regard to the background in which respondents 1 to 4 were drafted to perform the job assigned to them, it is difficult to concede to them the status of regular Government servants. As seen earlier, the scheme envisaged the employment of senior Engineering students during vacation periods and for payment of remuneration for the work done by them. As the students were not prepared to take up the work of investigation as stated in the counter-affidavit filed in the High Court, the University authorities thought of inducting respondents 1 to 4 to perform the job which was expected to be done by the Post-Graduate students on part-time basis. The appointment of respondents 1 to 4 was thought of only by way of substituting them for the Engineering students who, in the normal course, would have taken up the work pursuant to the scheme. The plea to regularize their services is misconceived having regard to the background and circumstances in which respondents 1 to 4 came to be appointed. As regards the 5th respondent, the position is still worse. No post of Attender has been sanctioned under the scheme. However, as seen from the counter-affidavit filed in the High Court, her salary was being met out of the funds allocated for office expenditure.

Though the plea of regularization in respect of any of the five respondents cannot be countenanced, the respondent-employees should have a fair deal consistent with the guarantee enshrined in Articles 21 and 14 of the Constitution. They should not be made to work on meagre salary for years together. It would be unfair and unreasonable to extract work from the employees who have been associated with the Nodal Centre almost from its inception by paying them remuneration which, by any objective standards, is grossly low. The Central Government itself has rightly realized the need to revise the consolidated salary and accordingly enhanced the grant on that account on two occasions. That revision was made more than six years back. It is high time that another revision is made. It is therefore imperative that the concerned Ministry of the Union of India should take expeditious steps to increase the salary of Investigators viz., Respondents 1 to 4 working in the Nodal Centre in Hyderabad. In the absence of details regarding the nature of work done by the said respondents and the equivalence of the job done by them to the other posts prevailing in the University or the Central Government institutions, we are not in a position to give any direction based on the principle of 'equal pay for equal work'. However, we consider it just and expedient to direct Respondent No.7 or 8, as the case may be, to take an expeditious decision to increase the consolidated salary that is being paid to

- A respondents 1 to 4 to a reasonable level commensurate with the work done by them and keeping in view the minimum salary that is being paid to the personnel doing more or less similar job. As far as the 5th respondent is concerned, though we refrain from giving similar directions in view of the fact that the post is not specifically sanctioned under the scheme, we would like to observe that the Central Government may consider increasing the quantum of office expenditure suitably so that the University will be able to disburse higher salary to the 5th respondent.
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In the result, we set aside the judgment of the High Court and allow the appeal subject however to the directions given and observations made in this judgment. No costs.

K.K.T.

Appeal allowed.