
(1998) 07 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14823 of 1996 and Batch

B.S. Santha Kumari

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 41

Citation : (1998) 6 ALD 26

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. A.K. Jaya Prakash Rao, for the Appellant; Government Pleader, for Education and Mr. V. Venkataramana, for the Respondent

Judgement

1. The writ petition and all the contempt cases revolve round to the issue of regularisation of the services of the petitioner as History Lecturer in DNR College and they can be disposed of by a common order.
2. The proverb goes that one must have either a God-father or Gods-men for success in life. Here is a case of a poor Lecturer running from pillar to post for getting her services regularised as she does not have both. In view of the urgency involved in the matter by order dated 29-04-1997 pronounced the conclusions arrived at after hearing both the parties and observed that a detailed reasoning will be given for the conclusions arrived at by me after reopening of the Courts. I understand that the respondent-management carried the matter in appeal against those orders un-successfully in writ appeal No.614 of 1997. For various reasons final orders could not be pronounced all these months. Now I propose to give reasons in support of my order dated 29-4-1997.
3. From the record available it is seen that the Government directed the private management to appoint the required teaching staff on ad hoc/part time basis in G.O.Ms.No.1645 Education, dated 28-8-1982 as the Government was contemplating constitution of the Andhra Pradesh College Service Commission to recruit the teaching staff required for the Degree Colleges as well as the Junior

Colleges under the management of various authorities. Though Act 13 of 1985 was passed constituting the Andhra Pradesh College Service Commission as the modalities for the functioning of the commission was not yet finalised, the Director of Higher Education in his proceedings in RC No.4666-DC3-3/87, dated 18-7-1988 directed the Principals of Junior/Degree Colleges both under the management of Government and private in the State to make part-time arrangements against sanctioned vacant posts taking the work load into consideration and duly following the procedure laid down in GO Rt No.1645, Education, dated 28-8-1982. Pursuant to the above instructions, the Principal of the 3rd respondent College appointed the petitioner as Lecturer in History on 2-9-1988 during the academic year 1988-89, on payment of Rs.20/- per day. It is also on record that at that point of time the un-healthy practice in existence was that the services of temporary teaching staff used to be discontinued at the end of the academic year and they used to be again appointed after the educational institutions started functioning with full strength after commencement of the next academic year. In that process the services of the petitioner were dis-continued with effect from 31-3-1989 and she was again asked to take up History classes with effect from 22-9-1989, as per the proceedings of the Secretary and Correspondent, dated 22-09-1989.

4. The next orders of the 4th respondent dated 28-11-1990 show that the petitioner was working from July, 1990 itself during the academic year 1990-91. Even as per the petitioner she was not allowed to work during the academic year 1991-92 but again she was asked to take up the classes by the President of the College in his proceedings dated 7-8-1993 for the academic year 1993-94. From the above it is seen that while the management did not allow the petitioner to work during the academic year 1991-92 for the rest of the period from the date of her joining the College there is work load for continuance of her services. As per the guidelines given by the Commissioner-2nd respondent the gaps that were shown in the Service of the petitioner are only artificial in nature.

5. While things stood thus the Government having taken a policy decision to exclude private Colleges from the purview of the Andhra Pradesh College Service Commission issued orders in G.O. Ms. No.302, Education (CEI-2) Department, dated 5-9-1992 for the regularisation of temporary teaching staff working both in Degree and Junior Colleges. The GO is a comprehensive one containing all the necessary guidelines to regularise the teaching staff working on adhoc temporary basis till then. Under Clause 3(1) to get his or her services regularised in a Degree College one has to get 55% in P.G. Degree and should have put in 2-1/2 years or more years of service as Part-time Lecturers and should be continuing in service on the last date of instruction of the academic year 1990-91. Under Sub-Clause II it is seen that one gets 50% to get his services regularised as Junior Lecturer in Junior College. Under Sub-Clause III one must be within the age limit as per the Andhra Pradesh Education Service Rules on the date of his or her first appointment. Under clause 3(111) a Selection Committee was constituted with the members mentioned therein to conduct interviews and forward the selected

candidate to the competent authority for the issuance of regularisation orders. Sub-clause VI deals with the selection procedure. Sub-clause VII deals with the procedure for conducting the test. Sub-Clause VDI deals with reservations Clause 4 deals with the process of application. Clause 5 deals with the issuance of appointment orders to the selected candidates.

6. It is the case of the petitioner that though respondent 1 and 2 regularised the services of some of the temporary teaching staff, they did not follow the procedure prescribed under G.O. Ms.No.302. I need not go into that aspect and it is sufficed to state that there is some force in the contention of the petitioner that under GO Rt.No.731-Education (CE-II) Department, dated 13-4-1993 the Government regularised the services of several temporary Lecturers working in the 4th respondent College in relaxation of the selection procedure, hi fact, the services of one P. V. Rama Raju. Lecturer in Commerce, K.B. Gopal Rao, Lecturer in Politics, Smt. I. Jhansi Lakshmi, Lecturer in Social Work were also regularised by giving a direction to the management to admit these posts held by them to grant-in-aid as and when aided posts arise. Most of the Lecturers regularised under this GO belong to the caste of the persons under whose management this College is functioning. While filing an application for amendment of the relief in the writ petition in para 9 of the affidavit, the petitioner categorically stated that in the year 1998 the services of one Satyavathi, who was appointed as Lecturer in Physics in 1989 and one Venkata Raju, Lecturer in Electronics along with Jhansi Lakshmi were regularised. It is also the case of the petitioner that while Venkata Raju was regularised as Lecturer in Electronics in mi-aided post, Jhansi Lakshmi was regularised even though there is no work load for her regularisation. A look at these proceedings will lead to irresistible conclusion that a special favour has been conferred on these individuals by giving a go-bye to the selection procedure as they belong to the caste to which the office bearers of the 4th respondent College belong. As observed supra, as this poor lady is neither having Godfather nor God's men. Hence she has to approach this Court by filing writ petition No. 17871 of 1993 and since then she is in tills Court for the sin of filing this writ petition seeking regularisation of her services and for consequential benefits. I understand that as there was no threat of removal at that point of time, the petitioner seemed to have not asked for any interim orders. In those circumstances my learned brother Sri Justice Venkata Rami Reddy ordered notice on admission in this writ petition. Immediately after receipt of die notice, the management tried to dispense with the services of the petitioner and she immediately filed WPMP No.22579 of 1993 seeking continuation of her services in the College. His Lordship Sri Justice Radha Krishnarao as he then was by order dated 6-10-1994 directed the respondents to continue the petitioner in service for two months pending further orders on that application. It seems that W.P.M.P. came for extension of the interim orders on 23-6-1994. But the learned Judge refused to extend the interim order by observing that the relief sought for in the main writ petition and the WPMP are one and the same WPMP was dismissed. Aggrieved by that order the petitioner

carried the matter in appeal by filing writ appeal No.628 of 1994. While remitting back the WPMP for reconsideration on merits, the Division Bench consisting of his Lordship Justice Lakshmanrao as he then was and Sri Justice N. Y. Hanumanthappa directed the management to continue the services of the petitioner till orders are passed if she was in service as on 23-6-1994. As the WPMP No.22579 of 1993 is not listed for hearing and as the management was not paying salaries to the petitioner, she was forced to file another WPMP No.25017 of 1994 my brother Justice Parvatharao as he then was by order dated 24-11-1994 directed respondents 3 to 5 i.e., un-official respondents to pay salary to the petitioner from January 1994 to October 1994 within three weeks from that date and continue to pay every month by the first week of the following month. At the same time the learned Judge gave liberty to the respondents to move for vacating the interim order if they are aggrieved. After receipt of the said order the management filed vacate stay petition in WPMP No.2885 of 1994. But the same seemed to have been dismissed for non-prosecution and another WPMP No.3604 of 1995 was filed to set aside the exparte order on the vacate stay petition. My learned brother Justice S.R. Nayak having heard the arguments at length refused to vacate the order of this Court dated 29-11-1994 having noticed the plea of the respondent College that after the termination of the services of the petitioner another man was appointed as Lecturer in History. Infact the learned Judge rejected the plea of the management that the services of the petitioner were terminated by the end of the academic year 1993 by observing that the management cannot be allowed to practice hire and fire policy. Aggrieved by the said order the management filed W.A.No.759 of 1996. During the course of arguments the management produced an order passed by the 2nd respondent in RCNo.3461/PC-I-I of 1994, dated 31-3-1996, whereunder the orders of the Government for regularisation of the services of the petitioner was negatived on the ground that she worked for less than two years and she was not appointed through properly constituted Selection Committee. Taking notice of this fact the Division Bench consisting of the Honourable the Chief Justice Prabha Shankar Mishra as he then was and the Hon"ble Sri Justice Syed Saadatulla Hussaini passed the following order;

"Heard.

Disputed facts are already taken notice of by the learned single Judge in the impugned order and it has to be assumed for the purpose of this appeal that writ petitioner-respondent has continued to work as a teacher in the appellants'school subject to the order of the State Government on her representation for regularisation of her services. Learned Counsel for the appellants has brought to our notice a certain order by the Government of the State refusing to regularise the services of the writ petitioner-respondent. We do not, however, propose to say anything on the same except to clarify for the purposes of meeting the directions issued by the learned single Judge that the writ petitioner-respondent shall be entitled to the benefits of the directions by the learned single Judge subject to the order of the Government of the State as to

the regularisation of her services and consequential termination of service, if any. It shall be open, however, to the writ petitioner-respondent to question the validity of the Government Order, if so advised.

The above, according to the learned Counsel for the parties disposed of the writ petition itself in which the direction sought for was to the Government of the State to regularise the services of the writ petitioner-respondent, since the writ petitioner-respondent shall have to assail the Government order, if so advised, separately.

Accordingly, the appeal and the writ petition are disposed of."

7. Thereafter writ petition No. 14823 of 1996 was filed questioning the orders passed by the 1st respondent in Memo No.2885/CE/ IM/93-9, dated 27-12-1995 which was communicated through the proceedings of the 2nd respondent in R.C.No.346I/PC-I-I of 94, dated 31-1-1996. While admitting the writ petition I passed the following order in W.P.M.P. No.18139 of 1996 on 26-7-1996;

"The respondents shall pay the time scale of pay attached to the post held by the petitioner.

Sri V. Venkataramana takes notice for Rule 4. He submits that the petitioner was terminated from service with effect from 31-1-1996. On the other hand, the learned Counsel for the petitioner submits that the petitioner is still in service. The position maintaining as on today shall be maintained until further orders."

8. Two months thereafter the petitioner filed CC No. 1097 of 1996 to punish the respondents for flouting the orders of this Court dated 26-7-1996 and the same was admitted on 27-7-1996. The contemnors having appeared before the Court reiterated their stand that the services of the petitioner were terminated and hence the question of compliance with the orders of this Court does not arise. In those circumstances I directed the office to post the writ petition along with contempt case for hearing after obtaining orders of the Honourable the Chief Justice vide orders dated 5-11-1996. Both the contempt case and the writ petitions were listed before me for hearing and the matter underwent several adjournments to enable the learned Counsel for the respondents to furnish necessary information in this case. In the meantime the petitioner seemed to have filed CC No.500 of 1996 complaining the violation of the orders of this Court in WPMP No.36074 of 1995 in WP No. 17871 of 1993 on 22-2-96, whereunder my learned brother Justice S.R. Nayak refused to vacate the interim order passed by Sri Justice S. Parvatharao directing the respondents to pay salaries to the petitioner from January 1994 to October 1994 and continue to pay every month by the first week of every month. Having come to know that the above matters are being heard by me my learned brother Justice S.R. Nayak on 29-3-1997 directed that the contempt case also to be posted before me to be heard along with the connected matter, Having heard the matter at length and as the petitioner was out of service and as there was no time left for me to pass a detailed order I passed an interim order on in writ petition No.14823 of 1996. In

that order having extracted the entire factual background of the orders passed by this Court from time to time, I recorded a finding that by virtue of the orders passed by this Court, the petitioner has to be treated as an employee of the institution and the respondents flouted the orders of this Court. Accordingly I directed the management to take back the petitioner into service at once without any further loss of time and entrust her with the work of teaching. I also directed the respondents to pay salary to the petitioner from February 1996 till the date within 4 weeks from the date of receipt of the order and the management was directed to continue to pay salary to the petitioner at the end of every month till final orders are passed in the writ petition and the contempt case. I understand that the management carried the matter in writ appeal and the same was dismissed as withdrawn. Thereafter on 4-9-1979 the matter came up once again before me and the learned Counsel for the petitioner represented that having lost in the appeal also the respondent paid arrears at the rate of Rs.20/- per hour without paying the time scale of pay attached to the post. Once again by order dated 4-9-1979 in the contempt case I directed the respondents to pay the time scale of pay attached to the post of the petitioner from February 1996 as directed in WPMP No. 18139 of 1996 dated 26-7-1996.

9. While the matter stood thus, the Government issued comprehensive orders for regularisation of part time Lecturers and part time Junior Lecturers in G.O.Ms.No.328, Education, dated 15-10-1997 in supersession of G.O.Ms.No.302, Education, dated 23-8-1991. While the above matters await final orders to be passed, the 2nd respondent has taken up the case of the petitioner suo moto for consideration of her case under G.O. Ms.No.328 and ultimately the 2nd respondent in his proceedings in R.C.No.231/PCI-I of 98, dated 2-3-1998 and once again rejected the case of the petitioner in a cyclostyled proforma by observing that

(1)

(2) No sufficient aided work-load for the PTL.

(3) No sanctioned Aided post in the subject.

(4)

(5)

(6) Not put in three academic years as on 30-7-1991 or 5 academic years as on 25-11-1993.

(7) Not in service as on the day of issue of G.O.Ms.No.328 Education dated 15-10-1997.

10. As this order is again not in conformity of the orders of this Court as well as G.O.Ms.No.328, the petitioner filed contempt case No.561 of 98. From the above factual narration it is seen that the writ petition and the above contempt cases are off-shoots of the orders passed by the Government from time to time in

rejecting the case of the petitioner for regularisation of her services.

11. In the light of the pleadings the following issues will arise for consideration:

(1) Whether the petitioner is entitled to get her services regularised under G.O.Ms.No.302 Education, dated 23-8-1991.

(2) In the light of the orders passed by this Court from time to time can the petitioner be said to be out of service as contended by the respondents?

(3) Whether the reasons given by the respondents in rejecting the case of the petitioner under G.O. Ms. No.328, Education, dated 15-10-1997 are valid in law ?

(4) In the peculiar facts and circumstances of the case can this Court direct the respondents to regularise the services of the petitioner without reference to any of the GOs issued by the Government?

Issue No.1: From the narration of facts it is seen that the petitioner worked continuously from 2-9-1988 to 31-3-1991 till the end of the academic year 1991 and admittedly there is a gap for the year 1991-92 as she did not work in the College.

The question now falls for consideration would be whether she is entitled to get her services regularised under G.O.Ms.No.302. It is the case of respondents that she is not entitled to get her services regularised as she did not fulfil the conditions stipulated in the GO. The order passed by the Government which was communicated by the 2nd respondent in RC No.3461/P.C.I-I of 94 dated 31-1-1996 is extracted hereunder:

"Government after careful examination of the request of Smt. B.S. Santha Kumari, Part-time Lecturer, DNR College, Bhimavaram, to regularise her services in the light of the orders of the High Court of Andhra Pradesh hereby rejected the same since the individual worked as Part-time Lecturer on hourly basis at Rs."20/- per hour for less than two years and that she was not appointed through properly constituted Selection Committee"

12. From the above it is seen that the case of the petitioner was rejected by the Government on the grounds that:

(1) She worked as Part-time Lecturer on hourly basis at the rate of Rs.20/- per hour;

(2) She worked for less than two years; and

(3) She was not appointed through properly constituted Selection Committee.

13. As far as grounds Nos. 1 & 3 are concerned, nowhere in the GO it is stated that she should be appointed on regular basis through a process of selection. At this stage, it is useful to refer to the factual background that leads to this Adhoc/ Part-time appointments of the teaching staff in the State of Andhra Pradesh. The Government way back in 1982 gave instructions to all the managements not to

appoint the teaching staff on regular basis as the Government is contemplating a Constitution of the Andhra Pradesh College Service Commission for the recruitment of teaching staff both for Government as well as Private Colleges. The Act was passed in the year 1985 but the same was not implemented for various reasons and ultimately the 2nd respondent in his proceedings dated 18-7-1988 permitted the private managements to make "Part-time arrangements against sanctioned vacant posts by taking work load into consideration" In RC No.1256/PC-2-I-92-I, dated 5-5-1992, the 2nd respondent issued guidelines for making Part-time arrangements. As per the said directions, unless the work load exists more than 10 hours, the management should not resort to Part-time arrangements. On the day when the petitioner was appointed in 1988, the work-load in the College was estimated at 83 hours and there were 3 Full-time Lecturers in History and as per the guidelines each of the Lecturer has to teach minimum 20 hours a week. After deducting 60 hours to be taught by the Regular Lecturers, still there remained 23 teaching hours and there is absolute need for appointment of a Part-time Lecturer. It is also seen from the instructions given by the 1st respondent in G.O. Rt.No.1422, Education, dated 23-10-1987, that the Lecturers appointed-on Part-time basis shall be paid only hourly basis at a remuneration of Rs.20/- per hour. Hence the respondents cannot find fault with the appointment of the petitioner made by the management and the same is strictly in accordance with the guidelines given by the official respondents from time to time. G.O.Ms.No.302 was issued on 23-8-1991 to regularise the services of the candidates who are working on ad hoc basis or Part-time basis. Hence ground Nos. 1 and 3 of the Government order that the petitioner was appointed as Part-time Lecturer on hourly basis and she was not appointed through a properly constituted Selection Committee falls to ground and these two reasons given by the Government in rejecting the case of the petitioner lacks bona fides and not based on any instructions. On the oilier hand, these two reasons runs counter to the instructions given by the Government.

14. Coming to the second reason that the petitioner has not worked for 2-1/2 years, it is not in dispute that she has put in three years of service by the last date of instruction of the academic years as she is working from the academic year 1988-89. But unfortunately, the Secretary started counting days and hours in arriving at these 2-1/2 years. While doing so, the Secretary has forgotten that it is a Vacation Department and rejected the case of the petitioner on the ground that the petitioner has not worked for 925 days. This GO does not throw any light how to compute these 2-1/2 years period. But the latest GO i.e., G.O.Ms.No328, dated 15-10-1997 throws light on this aspect. Under Clause 5 of the said GO, one has to work for three academic years as on 30-7-1991 or 5 academic years as on 25-11-1993 to get his/her services regularised. For computation of this period, the G.O says that" "as 120 days are considered to be reasonable number of working days for the academic years and the PTL/PTJL should not put in 360 working days as on 30-7-1991 or 600 working days as on 25-11-1993. If the same reasoning is applied, the petitioner has worked for more

than 300 days as contemplated under G.O.Ms.No.302." In fact the Service Certificate given by the Principal on 25-10-1990 shows that the petitioner was continuously working from September 1988. From this it is seen that she has worked for more than 2-1/2 years and she is entitled to get her services regularised. Assuming for arguments sake that the artificial breaks said to have been given in the Service Certificate of the petitioner as claimed by the management have to be deducted for the academic year 1988-89 she worked for 212 days from 2-9-1989 to 31-3-1989, for the academic year 1989-90 she worked for 189 days from 22-9-1989 to 31-3-1990 and for the academic year 1990-91 from July 1990 till 31-3-1991 (i.e.) 223 days. But unfortunately the Secretary has rejected the claim of the petitioner by counting hours and days and even then how he arrived at this conclusion, no reasons are forth-coming because the petitioner has worked for more than 22 months by the end of 31-3-1991.

15. The matter can be viewed from another angle also. Though G.O.Ms.No.302 does not throw any light how to compute these 2-1/2 years, the latest G.O.Ms.No.328 which was issued in supersession of the said GO in 1997 throw some light on this aspect. Under Clause 6 of the said GO, one has to put in a service of three academic years as on 30-7-1991 or 5 academic years as on 25-11-1993 as the case may be to get his/her services regularised under this G.O. The computation of the said period is given as hereunder:

"As 120 days are considered to be the number of reasonable working days for an academic year, the PTL/PTJL should have put in 360 working days as on 30-7-1991 or 600 working days as on 25-11-1993. The service put up by PTL/PTJL in any one of the Private aided College with or without breaks may be taken into account.

16. From this it is seen that the Government treated 120 days as equivalent to one academic year and infact one need not work for 120 days in each of the academic years. It is sufficed if one works 360 days for completion of 3 academic years prior" to 3-7-1991 or 600 working days prior to 25-11-1993, while arriving at these working days even if there is a break in service, the number of days one has worked has to be counted to arrive at whether a candidate has worked for the period specified in Clause 5 of the said GO. There is no reason why the same benefit should not be extended to the petitioner as the latest GO is issued in supersession of G.O.Ms.No.302 and it covers the cases of the teachers who were appointed prior to the issuance of G.O.Ms.No.302. If any other view is taken, it offends Article 14 of the Constitution of India and the benefit available under G.O.Ms.No.328 is to be equally applied under G.O.Ms.No.302. That being the legal position, the petitioner has worked for more than 300 days as contemplated in G.O.Ms.No.302. Hence the action of respondent Nos. 1 and 2 in rejecting the claim of the petitioner is illegal, arbitrary and the same is liable to be struck down.

Issue No. 2: From the facts of the case it is seen that though she was appointed

on 2-9-1988 there was a break in her service during the academic year 1991-92 and she was re-appointed by the 4th respondent on 7-8-1993. While working as Part-time Lecturer, she filed writ petition No. 17871 of 1993 seeking regularisation of her services under G.O.Ms.No.302 and for other consequential benefits. After receipt of the notice in the above said writ petition, when the respondents tried to stop her from attending the duties, the petitioner filed WPMP No.22579 of 93 and this Court was pleased to direct the respondents to continue the petitioner for, a period of 2 months. Unfortunately, this Court dismissed that application on 23-6-1994 by taking an erroneous view that the relief sought for in this application and the main writ petition being one and the same, such a relief cannot be granted. On writ appeal No.628 of 94 filed by the petitioner, the order of the learned Judge was reversed and the matter was remitted back to the learned single Judge for fresh disposal after giving notice to all the parties by giving a positive direction that the petitioner should be allowed to continue in service pending final orders to be passed in WPMP No.22579 of 1993. In spite of the orders of the Division Bench, the petitioner was neither taken into service nor her salaries were paid. In those circumstances she filed another WPMP No.25017 of 1994 and the Hon'ble Sri Justice S. Parvatharao as he then was by order dated 24-11-1994 directed the respondents to pay the salary of the petitioner from January 1994 to October 1994 within 3 months and continue to pay every month by the first of the following month. While passing the above order, the learned Judge gave liberty to the management to approach this Court for vacation of the interim order if they are aggrieved. Thereafter, the management filed WPMP No.2885 of 1994 for vacation of the orders of this Court dated 24-11-1994 but it was dismissed for default. Thereafter they filed another WPMP No.36074 of 1995 to set aside the ex parte order and to dispose of the WPMP on merits. My learned brother Justice S.R. Nayak in his order dated 22-2-1996 categorically found fault with the manner in which the management tried to dispense with the services of the petitioner. Adverting to the contention of the respondents, the learned Judge observed that:

"This submission is not acceptable to the Court. The management cannot be permitted to practise hire and fire policy. The respondent College is an aided and recognised educational institution and it is obliged to follow and respect all the postulates flowing from Article 14 of the Constitution. The petitioner has been working since 2-9-1988 as Lecturer in History. The learned Counsel appearing for the teacher also submitted that she has been allotted all through the same periods normally allotted to the full-time employees. The management now has come with a plea that after the petitioner's removal from service another man was appointed as Lecturer in History, This action of the management should be condemned as totally arbitrary, illegal and violative of principles of natural justice. This action clearly tantamount to the management practising hire and fire policy and unfair labour practice and that rule has no place under the constitutional scheme. Therefore, I do not find any ground to modify or vacate the order made by this Court.

17. Thereafter the Lecturer carried the matter in appeal and the Division Bench consisting of the Honourable the Chief Justice Sri Prabha Shankar Mishra as he then was -and the Hon"ble Sri justice Syed Saadatulla Hussaini categorically observed that "it has to be assumed for the purpose of this appeal that writ petitioner - respondent has continued to work as a teacher in the appellants" School subject to the order of the State Government on her representation for regularisation of her services." When the management produced the order dated 31-1-1996, the Division Bench while leaving the issue open to the petitioner to question the validity of the Government order categorically observed that "the petitioner-respondent shall be entitled to the benefits of the directions given by the learned single Judge subject to the orders of the Government of the State". From this it is evident that though there is work load for continuance of her services, the management high-handedly prevented her from discharging the duties. In fact in the affidavit filed in support of the vacate stay petition, they categorically stated that immediately after terminating the services of the petitioner, one Premraju was appointed as a second candidate and when he left the services, another person by name P. T., Bhaskararao was appointed. As my learned brother Justice S.R. Nayak rightly pointed out that the management cannot be permitted to follow the policy of hire and fire and the action of the management in not allowing the petitioner to work during that period is unconscionable and nothing but flouting the orders passed by the Court from time to time, more so, in the light of the action of the management in getting the services of their castcman regularised even without conducting any interview as contemplated in G.O.Ms.No.302 vide orders of the Government in G.O.Rt.No.731, dated 13-4-1993. As pointed out earlier, in this GO eventhough there are no aided posts, the services of some of the Lecturers was regularised by giving a direction that as and when vacancies arise in aided posts, they will be absorbed. In other words, the Government created supernumerary post for continuance of the Lecturers who are to the liking of the management by throning away the petitioner as she does not belong to the castes of the members of the management. Further the action of the respondents can be seen from another angle also. One Gajapathi Raju, Part-time Lecturer in D.N.R. College, Bhimavaram College seemed to have filed Writ Petition No.10271 of 1996 seeking regularisation of his services under G.O. Ms.No.362 Education Department, dated 7-10-1994 which was kept in abeyance and was never implemented to the knowledge of the Court. This Court in WPMP No.10216 of 1996 simply gave a direction to the respondents to consider the representation ofthe petitioner in accordance with G.O. Ms.No.362, Education Department, dated 7-10-1994 within one month from the date of receipt of a copy of this order. Though no specific orders for continuance of the said Lecturer was passed by this Court, his services were not only continued but also regularised. The 4th respondent would have waited till the writ petition or WPMP seeking continuance are disposed of on merits before inducting some other person into office. But as she being a helpless lady, she was thrown out of service and for long 5 years she has to fight the legal battle to get herself reinstated back to the service. In the

normal course I would have punished the Secretary/Correspondent under the provisions of the contempt of Court Act for flouting the orders of this Court one after the other and the personal vendetta against the petitioner. But the learned Counsel for the 4th respondent brought to my notice that the individual is suffering from Cancer and he was admitted to Hospital. Hence, I am inclined to let him off by recording a finding that he has flouted the orders of this Court wilfully, wantonly and only with a view to throw the petitioner out of employment.

Issue No.3: The Government issued comprehensive instructions in supersession of the earlier GOs including G.O.Ms.No.302 and G.O.Ms.No.328. By the time the Government has taken up the case of the petitioner for consideration under the said GO, by my order dated 29-4-1997, I have already held that the petitioner is entitled to get her services regularised under G.O.Ms.No.302 and in fact, the said order has become final on withdrawal of the writ appeal filed by the management. But for the reasons best known to the respondents, they have considered the case of the petitioner under the said GO and once again rejected the case of the petitioner by giving various reasons:

- (1) No sufficient Aided work-load for the PTL.
- (2) No sanction Aided Post in the subject.
- (3) Not put in three academic years as on 30-7-1991 or 5 academic years as on 25-11-93.
- (4) Not in service as on the date of issue of G.O.Ms.No.328 Education, dated 15-10-1997.

18. In other words it is the case of the Government that there is no sufficient work load for continuance of the petitioner. From the material papers filed by the management it is seen that there are five sanctioned posts in History and only three persons are working. The learned Government Pleader vehemently contended that the Court should see whether there is any sufficient work load or not at the time of regularising the services of the petitioner. In para-6 of the additional counter filed by the Government filed on 15-3-1997 it is stated that as per the assessment of the work load by the Commissioner as on 18-8-1994, the work load in the History Department was 69 hours on account of change in curriculum and admission of less number of students. As three Lecturers are working, the petitioner cannot be accommodated. I have no hesitation to reject the contention of the learned Government Pleader. Firstly the situation prevailing during the academic year 1994-95 was given in the counter and nothing was stated about the prevailing position in the College. Secondly, the work load will be a fluctuating one depending upon various circumstances and as seen from the record in this case, there is sufficient work load not only for appointment of the petitioner in the year 1988 but also for continuing her services and in fact her services were continued till the end of the academic year 1993-94. From this it is evident that even after the assessment of the work load by the Commissioner, the services of the petitioner were continued without terminating on the ground

that there is no work load. It is only after the petitioner approached this Court, the management tried to throw her away from the office. Further it is interesting to note that from the information furnished by the management 5 Lecturers are working in History Department in the College and all of them belong to Open Category. From the information furnished it is seen that one K. Pandu Rangaraju was originally appointed as Lecturer in History in SVSS Arts College, Attili. As he was found surplus there, he seemed to have been transferred to Machilipatnam. From there the 2nd respondent in his proceedings in R.C.No.6300/PCI-3 of 90, dated 22-11-1990 transferred Panduranga RAJU from Machilipatnam to the 4th respondent College (DNR College). I have already taken a view in WP No.14823 of 1996 that the teaching staff working in one private College cannot be transferred to another Private College as each of the College constitute a unit for the purpose of appointment, promotion, reversion etc. Hence the action of the Commissioner in bringing Panduranga Raju to the 4th respondent College is not in accordance with law. Likewise, one J.Ranga Rao who working as History Lecturer in the evening courses that were run by the management was transferred to the Day College by the proceedings of the Commissioner in L.Dis No. 1421/PCI-2 of 96, dated 12-10-1996 in which he directed the management to utilise the services of Rangarao in the Day College. Ultimately, Rangarao retired from service on 30-6-1997 on attaining the age of superannuation, if the statement of the Commissioner that there is sufficient work load only to accommodate three lecturers, it is not known how 4 Lecturers were working in History Department as late as in 1996. Be that as it may, from the documents filed by the management it is seen that rule of reservation while making appointments by the Private Managements have to be followed departmentwise. Admittedly, the petitioner belongs to BC Group and she has to be given preference than the Lecturer who was brought on transfer from other College. It is always open to the Commissioner to re-transfer Panduranga Raju to his original College or to some other College where his services are needed and the petitioner has to be appointed. 2) No sanctioned aided post in the subject: In the light of the information furnished by the management that there are 5 aided posts and only 3 Lecturers are working after Ranga Rao's retirement, still there remains two aided posts. Hence that ground falls to ground 3) Not pulling 3 academic years as on 30-7-1991 or 5 academic years as on 25-11-1993:

I have already recorded a finding that by virtue of the orders passed by this Court from time to time, the petitioner is deemed to be in service and infact the management paid salaries for the entire period. If they have not utilised the services of the petitioner, it is to prove their supremacy and create fear psychosis in the teaching staff that if anyone revolts against the management, he will be met with the same fate but not on the ground that there is no work load. Hence the entire period from the date of her first appointment I.e., 2-9-1988 has to be taken into consideration for computing the period specified in G.O.Ms.No.328, if that is done, she has put in many more years than what is required under the GO. Accordingly that ground also fails.

(7) Not in service as on the day of issue of G.OMs.No.328 Education dated 15-10-1997: I do not know on what basis the Commissioner recorded such a finding as by that time I not only directed the respondents to reinstate the petitioner to duty forthwith by order dated 29-4-1997 but the same became final on withdrawing the writ appeal filed by the management at the verge of dismissal. Anyhow, the reasoning given for the above objection is equally applicable to this objection also and the same was also rejected.

Issue No.4: Time and again the Supreme Court repeatedly held that if the services of a temporary employee is continued for longer period i.e. for more than 2 to 3 years, the presumption is that there is need for continuance of the services of such a temporary employee. Further, by continuing the services of the temporary employee for long years which gives hope in the mind of the employee that his services will be regularised. It is suffice to state the Judgment of the Supreme Court in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, .

"Now to the text of Rule 9(a) (i) of the Rules. It empowers the appointing authority to appoint a person temporarily otherwise than in accordance with the rule if (i) it is necessary in public interest and (ii) where an emergency has arisen to fill any particular post which has fallen vacant, immediately. In the present case it is difficult to say that all appointments made after 1st April, 1984 were required to be filled immediately because of an emergency of the type contemplated by the said rule. On the contrary it seems appointments were routinely made in purported exercise of power conferred by this rule. The proviso on which reliance is placed, which we have extracted earlier, merely states that ordinarily such appointments will be of those persons who possess the requisite qualifications for the post. If any person who does not possess the requisite qualifications is appointed under the said clause, he will be liable to be replaced by a qualified person. Clause (iii) of Rule 9 states that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (c) of Rule 9, however, provided for regularisation of service of any person appointed under clause (i) of sub-rule (a) if he had completed continuous service of two years on December, 22, 1973, notwithstanding anything contained in the rules. This is a clear indication that in the past the Government also considered it just and fair to regularise the services of those who had been in continuous service for two years prior to the cut-off date. The spirit underlying this treatment clearly shows that the Government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years prior to the cut-off date. This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with

the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (c). Such an approach alone would be consistent with the constitutional scheme philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earlings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution, Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service."

19. In the light of the above judgment even assuming for arguments sake that the services of the petitioner cannot be regularised under any of the GOs, the petitioner cannot be thrown out of employment after one decade of service put up by her under the orders of the Court because of the peculiar circumstances in which she was placed and she is entitled for a direction from this Court for regularisation of her services.

20. For all the above reasons I hold that the orders passed by the Commissioner dated 31-1-1996 under G.O.Ms.No.302 and orders dated 2-3-1998 in R.C.No.231/PC-I of 98 issued under G.O.Ms.No.328 Education, dated 15-10-1997 are quashed and a consequential direction is given to the respondents to regularise the services of the petitioner from the date on which the first order rejecting the claim of the petitioner was passed by the Government with all consequential benefits including payment of arrears. The respondents are given 8 weeks time to pay the arrears of salary in the time scale of pay due to the petitioner after adjusting the amounts paid till now. The petitioner should be entitled for costs at the rate of Rs.5,000/- in writ petition. In the light of the

orders passed in the writ petition I have no manner of doubt that the respondents have flouted the orders of this Court not once but on many occasions and in the light of serious ailment to which the Secretary" of the College is subjected to, he is being let off with a warning without sentencing him under the provisions of the Contempt of Courts Act. At the same time the petitioner is entitled for costs in all the contempt cases filed by her at the rate of Rs.2,000/- in each of the contempt cases. The contempt cases are accordingly closed.