

(1991) 10 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3045 of 1989

C. Murali Krishna Reddy

APPELLANT

Vs

District Educational Officer and Others

RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 ALT 233

Hon'ble Judges : Iyyapu Panduranga Rao, J

Bench : Single Bench

Advocate : K.G. Krishna Murthy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Iyyapu Panduranga Rao, J.—This writ petition is filed for the issue of a writ of certiorari or other appropriate writ or direction calling for all the records connected with, the proceedings in Rc.No. 151/83/85-2 dated 24-2-1989 issued by the third respondent (hereinafter referred to as the impugned proceedings) and to quash the same to the extent of reducing the basic pay of the petitioner from Rs. 900/- to Rs. 700/- per month, as illegal, improper, arbitrary and violative of the principles of natural justice.

2. Most of the facts which are not in dispute are the following: The post of the Head-Master of Munnalal Sanskrit Patashala, Secunderabad fell vacant and consequently the second respondent-Correspondent of the said institution issued a notification calling for applications from the qualified candidates for the post of Head-Master in the columns of Deccan Chronicle in the month of February, 1984. The petitioner and 3 others applied for the said post and there was an interview on 26-3-1984. The interview committee consisted of the following members:

1. Deputy Educational Officer, Secunderabad.
2. Pandit Sri Rajaram Sastry (Expert).

3. Secretary & Correspondent of Munnalal Sanskrit Pathasala.
4. Managing Committee member of Munnalal Sanskrit Pathasala.
5. Member of Munnalal Patashala.

3. Having conducted the interview, the petitioner was selected for the post of Head-Master in the scale of Rs. 900-40-1300-50-1500, on 30th March, 1984. As per letter No. MSP/83-84/36, the factum of selection of the petitioner as Head-Master of second respondent institution was duly intimated to the District Educational Officer, Hyderabad with effect from 26-3-1984 and requested the District Educational Officer to ratify the said appointment and to release the grant in respect of the Head-Master with immediate effect. Having received the communication referred to above the District Educational Officer, Hyderabad as per his proceedings in Rc.No. 8109/E3/Est/83-84 dated 28-6-1984 ratified the appointment of the petitioner as the Head-Master of R-2 institution with effect from 26-3-1984 as requested. After the petitioner was appointed as Head-Master in the second respondent institution, a service book was opened wherein it was duly mentioned that the petitioner was appointed as the Head-Master of the second respondent institution with effect from 26-3-1984, on the scale of pay of Rs. 900-1500 and the said appointment was duly ratified by the District Educational Officer as per proceedings dt.28-6-1984. Admittedly the petitioner has been discharging his duties as Head-Master to the satisfaction of one and all drawing salary as per the scale above referred to i.e., Rs. 900-40-1300-50-1500. From time to time the District Educational Officer and other authorities have been conducting inspections of the second respondent institution and thus things were moving on smoothly. While so, on 24-2-1989 nearly about four years 11 months after his appointment under the impugned proceedings the Director of Public Instructions while directing the District Educational Officer, Hyderabad district to release the grants towards salary to the staff of the second respondent institution upto February, 1989 with immediate effect pending finalisation of the issue, has further stated as follows:

"He is also requested to allow Grade I Pandit scale only (i.e. 700-1200) to Sri C. Murali Krishna Reddy, who is acting Head-Master instead of Head-Master's scale of Rs. 900-1500 until the issue of scale of pay is finalised."

In view of the above proceedings, reducing his scale of pay from Rs. 900-1500 to 700-1200 and reducing him from the post of Head-Master to Grade I Pandit scale, the petitioner filed the present writ petition.

4. Mr. Krishnamurthy, the learned counsel for the petitioner submits that what was advertised in February, 1984 in the issue of "Deccan Chronicle" was for the post of Head-Master in the scale of Rs. 900-1500, the appointment orders of the petitioner shows that he was appointed as the Head-Master in the scale of Rs. 900-1500, the petitioner's appointment was ratified by the District Educational Officer in the scale referred to above, entries to the same effect were made in the service register of the petitioner maintained by the second respondent and

eversince his appointment from 26-3-1984, the petitioner while working as Head-Master of the second respondent institution has been drawing pay in the scale of Rs. 900-1500, while so, the authorities reverted the petitioner to the Grade I Pandit Scale and as acting Head-Master arbitrarily revised his scale of pay to Rs. 700-1200 from Rs. 900-1500 without assigning any reason, much less without any show cause notice. Mr. Krishna Murthy, the learned counsel for the petitioner submits that the impugned notice is not only opposed to the principles of natural justice but the same is a nullity.

5. Smt. Meena Kumari, the learned counsel appearing for the Government has not disputed the facts that what was advertised by R-2 in the "Deccan Chronicle" in the month of February, 1984 was for the post of Head-Master in the scale of Rs. 900-1500, the petitioner was appointed as Head-Master in the scale of Rs. 900-1500, entries were made in the service register to the same effect and the petitioner has been working as Head-Master of the second respondent Institution and has been drawing salary in the scale of Rs. 900-1500 as Head-Master till the impugned orders. The learned Government Pleader submits that the post of Head-Master is a promotional post, the same cannot be filled in by direct recruitment, in view of the collusion between the petitioner, the second respondent institution and the then District Educational Officer, the petitioner managed to be selected and has been working as Head-Master of the second respondent institution in the scale of pay of Rs. 900-1500, the said fraud came to light in the audit and in the inspection by Regional Joint Director, Hyderabad and in view of that, impugned proceedings were issued. The learned Government Pleader submits that the petitioner has not passed the Accounts test prescribed for Head-Masters and the same was pleaded as an additional ground disabling the petitioner to work as Head-Master and draw salary in the scale of Rs. 900-1500. It is to be seen as to how far the contentions raised by the learned Government Pleader are sustainable.

6. Strong reliance is placed on G.O.Ms. No. 167, Education (B) Department dated 9-3-1984 (Hereinafter referred to as "second G.O." regarding recruitment of Head-Masters which speaks as follows:

"(1) Class: -

(2) Category: 1

(3) Name of the post: Head-Masters.

(4) Scale of pay: 900-1,500

(5) Method of recruitment:

By promotion in the following order of preference from any of the qualified persons in the categories, of:

1. School Asst. Grade-I.

2. School Asst. Grade-II (Special and Ordinary categories).

3. Post-Graduate Assistants (upgraded school Assistants).
4. Language Pandits Grade-I (Special and ordinary categories).
5. Regional Inspector of Physical Education and Physical Director Grade-I.
6. Physical Directors Grade-II.

(6) Qualifications:

1. An academic degree plus B.Ed.,
2. Head-Masters Accounts Test in respect of all managements except the Govt. schools and Panchayat Raj Schools before provincialisation of services."

7. Relying upon this G.O., Smt. Meenakumari, the learned Government Pleader for Education submits that the post of Head-Master is a promotional post and consequently appointment of the petitioner to the post of Head-Master is not valid. The learned Government Pleader further submits that since the petitioner has not passed accounts test for Head-Masters the petitioner is not eligible to be appointed as Head-Master. On the contra, the learned counsel for the petitioner very strongly relies upon G.O.Ms. No. 436, Education (E) Department dated 28-5-1974 (hereinafter referred to as "the first G.O.") which shows that the post of Head-Master is not a promotional post. The said G.O. in so far as Head-Master is concerned, reads as follows:

"Head Master An Oriental title holder in Sanskrit"

Thus in the month of February, 1984 when the second respondent institution made the publication for the appointment of a Head-Master, the first G.O. was holding the field whereunder Head-Master can be recruited directly provided he possesses Oriental title in Sanskrit and admittedly the petitioner possesses the said degree. But it is to be further noted that the second G.O. has come into force with effect from 9-3-1984 i.e., after the advertisement for the post of Head-Master was made and before the appointment of the petitioner. The appointment of the petitioner was made on 26-3-1984. Probably by the date of the appointment of the petitioner i.e., on 26-3-1984, the second respondent and the selection committee which includes the representative of the D.E.O. were not aware of the second G.O. and must be under the impression that the first G.O. was holding the field. I have come to this conclusion in view of the circumstances that the order of appointment of the petitioner was ratified by the District Educational Officer under date 28-6-1984, the petitioner was paid salary as Head-Master in the scale of Rs. 900-1500 for four years eleven months, the service register of the petitioner was counter-signed by the D.E.O. and Deputy Educational Officer representing the D.E.O. participated in the interview committee that selected the petitioner. This only shows that there is no question of any fraud or misrepresentation as submitted by the learned Government Pleader in the matter and it was only a question of mistake on the part of R-2 authorities in appointing the petitioner on 26-3-1984 under the first G.O. which

is no longer in existence and which was superseded by the second G.O. Otherwise the orders of appointment of the petitioner would not have been ratified by the District Educational Officer under date 28-6-1984. At this juncture it is also to be noted that in the service register of the Petitioner which was duly counter-signed by the petitioner, entries were made regarding the appointment of the petitioner as Head-Master and about his scale of pay as Rs. 900-1500. It is not uncommon that by and large G.Os. were printed in the Gazette long time thereafter and they will be communicated to the persons concerned much later. In this case the 2nd G.O. need not be communicated to R-2, enabling R-2 to know about the change in the position regarding appointment of Head-Masters. Though the said G.O. is expected to be communicated to the District Educational Officer, from the fact that the Deputy Educational Officer attended the selection, that the District Educational Officer ratified the appointment and counter-signed the service register of the petitioner also wherein it was mentioned that the petitioner was appointed as Head-Master in a scale of pay of Rs. 900-1500 shows that the District Educational Officer concerned was not aware of the change in the position i.e., passing of the second G.O. It is also to be further noted that Deputy Educational Officer, Secunderabad was one of the members of the committee that selected the petitioner as the Head-Master, probably he is one of the members of the committee constituted for the selection of the Head-Master or must have been deputed by the D.E.O. If he were to know about the second G.O. he would have definitely raised an objection for the appointment of the petitioner as Head-Master, more so, when the said post is only a promotional post which cannot be filled in by direct recruitment. Thus from the entire material on record I am of the clear opinion that this is a clear case where there was neither misrepresentation nor fraud on the part of the petitioner or the second respondent authorities and the only inference that can be drawn under the circumstances is that none of the persons concerned including the Deputy Educational Officer, Secunderabad, the District Educational Officer, Hyderabad and the second respondent were aware of the second G.O.

8. Before proceeding further it is also to be noted that according to the Government, the petitioner is not entitled to hold the post of a Head-Master as he did not pass the accounts test prescribed, for Head-Masters. It is to be seen that if the second G.O. applies, the petitioner has to pass Head-Masters Account test but while under the first G.O. no such qualification is prescribed. What was required for appointment to the post of Head-Master under the first G.O. is holding Oriental title in Sanskrit which the petitioner is admittedly holding.

9. It is in evidence that the petitioner has submitted an application enclosing a D.D. for Rs. 10/- for admission to the Head-Masters Account test to be held on 8-3-1991 and 9-3-1991 and the same was duly forwarded by the D.E.O. Hyderabad. The petitioner was found not eligible to sit for Head-Masters Account test to be held on 8th and 9th March, 1991 and consequently the application of the petitioner was cancelled and the D.D. for Rs. 10/- submitted by the petitioner was returned. Thus when the petitioner wanted to appear for account test for

Head-Masters, he was not permitted to do so, on the ground that he was not eligible to sit for the examination. It is to be seen that the petitioner holds a Oriental title in Sanskrit i.e., Sahitya Siromani examination and passed Siksha Sastry examination conducted by Kendriya Sanskrit Vidya Peeth, Tirupathi which is recognised as equivalent to B.Ed., as stated in G.O. Ms. No. 1613 Education Department dated 28-6-1966. Thus the petitioner's endeavours to sit for the account test examination was thwarted by the authorities stating that he. was not eligible to sit for the said examination as he has not possessed the qualification as mentioned in the second G.O.

10. If the petitioner's appointment is governed by the first G.O., the petitioner need not pass the accounts test, while under the second G.O. the petitioner has to pass the Head-Masters accounts test.

11. Mr. Krishna Murthy, the learned counsel for the petitioner submits that the impugned order only shows that the petition is permitted to draw his salary in the scale of Rs. 700-1200 instead of Rs. 900-1500, in the said order no reason was given as to why the petitioner who was till then drawing salary in the scale of Rs. 900-1500 was not permitted to do so. Elaborating his submission Mr. Krishna Murthy submits that under the impugned order, the petitioner was not permitted to draw in the scale of Rs. 900-1500 because he did not possess the qualifications as mentioned in the second G.O. He further submits that when the said reasons are not given in the impugned order, the same cannot be supplemented by a subsequent order, or in any subsequent proceeding. To substantiate this contention Mr. Krishna Murthy relies upon a decision reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it is observed as follows:

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be adjudged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

12. Relying upon this decision it is submitted by the learned counsel for the petitioner that the impugned order does not give any reason for not permitting the petitioner to draw salary in the scale of 900-1500, the same cannot be supplemented by mentioning the said facts in the affidavit filed in the vacate stay application. It is true that for the first time, the Government has come up with this case only in the affidavit filed for the vacate stay petition.

13. Mr. Krishna Murthy, the learned counsel for the petitioner further submits that the petitioner was appointed-as Head-Master by direct recruitment, reverting the petitioner to the post of Grade I Pandit is not permitted in any event and to substantiate the same reliance is placed on Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra, wherein it is observed that a direct recruitee to

a post cannot be reverted to a lower post and it is only a promotee who can be reverted from the promotion post to lower post from which he was promoted. Mr. Krishna Murthy the learned counsel for the petitioner placed reliance on C.C. Padmanabhan and Others Vs. Director of Public Instructions and Others, to show that reversion from the post of A.E.O. where he worked for more than six years continuously to the post of H.S.A. which carries a lesser grade compared to A.E.O. is bad by virtue of Article 14 of the Constitution of India.

14. Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, is a case where daily rated workers working in the Delhi State Mineral Development Corporation filed writs for the issue of writs of mandamus to regularise their services in the respective units and to pay them equal wages with initial basic pay, D.A., etc., admissible allowances at par with regularly appointed employees of the respondent Corporation performing the same or similar duties. It was found that some of the writ petitioners were not having requisite primary qualification for appointment to the post regarding which they are seeking for regularisation. Adverting to the said aspect Justice K. Ramaswamy speaking for the Bench observed as follows:

"The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications."

15. Strong reliance is placed on this decision to show that the Supreme Court was pleased to observe that where the candidates were not having the requisite minimum qualification, their services were directed to be regularised but this is a case where the petitioner possessed the requisite qualification as per the advertisement made in the month of February, 1984, he was duly selected by the Committee appointed in that behalf which included the Education Department, he drew his salary in the said scale for nearly five years and it is too much to say at this stage that the said post is not a post to be filled up by direct recruitment In the above decision the Supreme Court has specifically ruled out that even in a case where the writ petitioners therein were not having the prescribed minimum educational qualification for the posts for which they seek regularisation of their services, on the ground that they worked between 1983-86 but in this case the petitioner was appointed in accordance with the notification published for the Head-Master's Post by the duly constituted committee. It is not the case of the Government that the Committee that selected the petitioner was not competent

to do so and in view of these circumstances, I find that this is a case where the petitioner shall be permitted to continue as Head-Master of the second respondent institution while drawing salary in the scale of 900-1500, as he was drawing prior to the impugned order.

16. Coming to the Accounts Test prescribed for Head-Master post, it is to be noted that the petitioner need not possess the said qualification as per the first CO. though the second G.O. shows that the petitioner should possess the said qualification and the petitioner was not permitted to sit for the said test and the sum of Rs. 10/- sent by way of D.D. was returned to him. As could be seen from the service register of the petitioner the petitioner's date of birth is 15-10-1951 and I find that justice require that the petitioner be permitted to appear for the account test prescribed for the Head-Master within three years from today, failing which he will not be eligible for further increments.

17. Accordingly the writ petition is allowed. No costs. Advocate's fee Rs. 250/-.