
(1997) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18845 of 1996

C. Usha Rani

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 17-06-1997

Acts Referred:

Citation : (1997) 3 ALT 737

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : D.V. Sitharama Murthy, for V. Jogayya Sarma, for the Appellant; G.P. for Respondent No. 1, M.V.S. Suresh Kumar and M.V. Durga Prasad, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—The petitioner is seeking regularisation of her service as Lecturer in Commerce with the 3rd respondent-College on the basis of her qualifications, teaching experience and reservation for women.

2. It appears that the 3rd respondent-College issued an advertisement in a daily news-paper on 29-7-1996 inviting applications for three posts of Lecturers in Commerce. The petitioner applied for the same on the expectation that her services will be regularised. But she did not receive an interview call and on approaching the Principal of the College, she was informed that the instructions contained in G.O.Ms. No. 12, Education, dated 10-1-1992 were followed for the purpose of interviewing the candidates. However, according to the petitioner, the action of the 1st and 2nd respondents in instructing the 3rd respondent-College to follow the instructions contained in G.O.Ms. No. 12, Education, dated 10-1-1992 without considering the other relevant G.Os., such as, G.O.Ms. No. 302, Education, dated 23-8-1991, G.O.Ms. No. 212, F & P, dated 22-4-1994; and G.O.Ms. No. 362, Education, dated 7-10-1994, was illegal, arbitrary and without jurisdiction.

3. The petitioner secured Post Graduate Degree in Commerce with 54.5% marks from Nagarjuna University and according to her 54.5% marks were treated as equivalent to 55% marks and, therefore, she possessed the requisite qualification not only for Lecturer's post in private aided college but also in a Government College. In August, 1984, she was appointed as part-time Lecturer in Sri Padmavathi Mahila Kalasala, Hyderabad, where she worked upto 15-12-1988. She proceeded on maternity leave thereafter and reported back for duty on 31-3-1989. But the management of Sri Padmavathi Mahila Kalasala refused to take her back into service which adversely affected her right according to the petitioner. The petitioner sought employment in D.V.N. Degree College, L.B. Nagar, R.R. District. She was appointed as full time Lecturer in that college on a consolidated salary of Rs. 1,400/- per month with effect from 26-8-1991. Further, according to the petitioner, she had to seek employment in Lalitha Degree College for Women, where she worked from 3-8-1992 to 12-2-1993 and thereafter she was appointed as part-time Lecturer in Commerce in the respondent No. 3-College and she continued to hold the said post.

4. The petitioner concedes that after Amendment Act 25 of 1990, the jurisdiction to appoint teaching staff in respective colleges was once again vested with the private college managements by constituting a selection committee for that purpose. Her grievance in the present writ petition is that though she was working as a Lecturer in commerce in the 3rd respondent-College since 13-9-1993 and she was one of the senior most candidates, her services were not regularised. She also claims that she is eligible for reservation under women category and on that ground also her services should have been regularised by this time.

5. The 1st and 2nd respondents by filing their counter affidavit pointed out that the petitioner was taking classes for B.Com., unaided Sections in the 3rd respondent-College and that the Government did not have any liability with regard to the staff working in the unaided Sections. It was for the management to utilise or not the services of such staff and pay from their own funds. It is further pointed out in the counter affidavit that in the year 1990 all the managements were directed not to make fresh part-time appointments but to utilise the services of the retired persons already working in the near-by colleges on remuneration. It is further pointed out by them that orders for regularisation of part-time lecturers working in private colleges were issued by G.O.Ms. No. 302, dated 23-8-1991, prescribing certain conditions i.e., those who had passed Post Graduate degree with 55% marks or above and had put in service for 21/2 years or more as part-time lecturer and were continued in service as on the last date of instruction of academic year 1990-91 were eligible for the post of lecturer in private degree colleges. The petitioner, however, had secured 54.5% and she did not possess the experience of 2 1/2 years of service in the same college as on the last date of instruction of the academic year 1990-91 and, therefore, she was not covered under G.O.Ms. No. 302 dated 23-8-1991.

6. It is further pointed out in the counter affidavit filed on behalf of the 1st and 2nd respondents that the procedure for selection of lecturer/junior lecturer in private colleges and junior colleges was prescribed, according to which, the managements were required to notify the vacancies to the Employment Exchange (Provisional and Executive Officers) indicating the 20 roster point, inviting applications from the eligible candidates. The managements were also required to obtain prior permission of the Commissioner of Collegiate Education to fill up the aided vacant posts in the department of English, Hindi, Telugu, Sanskrit and Commerce.

7. It is further pointed by them that the management of the 3rd respondent-College conducted interview for selection of Lecturers and as per the interim directions of this High Court, the petitioner was permitted to attend the interview though she was not qualified to hold the post. The petitioner, it is emphasised, was the only candidate having least percentage of marks among the candidates who attended for interview in the faculty of Commerce for selection to the post of lecturer.

8. The 3rd respondent in its counter-affidavit while asserting their stand that the petitioner was not entitled for regularisation of service, reiterated the stand that the petitioner had secured 54.5% of marks in her Post Graduate Degree in Commerce as against the requirement of Minimum 55% marks for eligibility for appointment as a Lecturer and that the question of treating 54.5% of marks equivalent to 55% marks did not arise.

9. The 3rd respondent-College also pleaded ignorance regarding the petitioner's claim of having worked in various colleges prior to her joining the 3rd respondent-College and it was evident from her affidavit itself that she was not in service on the last date of instruction of the academic year 1990-91 which corresponds to 31-3-1991. The averments made in the petitioner's affidavit disclosed that from 31-3-1989 to 20-8-1991 she was not in service as a lecturer in any of the colleges and, therefore, the question of applicability of the later part of G.O.Ms. No. 302 dated 28-3-1991 also did not arise. It is also pointed out by the 3rd respondent that the college in which the petitioner claimed to have worked viz., Sri Padmavathi Mahila Kalasala, from August 1984 to December 1988 was not an aided institution during that period nor was D.V.M. Degree College for Women an aided college and that her employment with D.V.M. Degree College from 26-8-1991 was irrelevant for consideration in view of the directions issued by G.O.Ms. No. 302 dated 23-8-1991.

10. It is further pointed out by the 3rd respondent that it was constrained to issue an advertisement in the news-paper for filling up the posts of Lecturers in Commerce in three vacancies belonging to S.T., B.C., (D Group) and open category respectively pursuant to the proceedings issued by the 2nd respondent dated 28-4-1996, in which it was clearly stated that the selection 15 of a candidate for the said three vacancies was to be conducted in accordance with the procedure prescribed in G.O.Ms. No. 12 dated 10-1-1992. The qualification

as prescribed in the said G.O.Ms. No. 12 was also 55% of the marks in the Post Graduate Degree. It was also stipulated by the said G.O., that candidates in the ratio 1:5 out of the eligible candidates in order of merit should be called for interview before the selection committee. Pursuant to the advertisement issued by the 3rd respondent, a total of 16 candidates made applications. Out of these candidates, keeping in view the fact that only one post was available in "OC category, five candidates were called for interview in order of merit, giving due weightage under various heads as laid down in G.O.Ms. No. 12. Out of five candidates, weightage marks awarded to the last candidate were 33.5%. This candidate, according to the 3rd respondent, has secured 73% in her P.G. degree examination. The rest of the candidates also had better merit than the 5th candidate. The selection for three vacancies in Commerce Department were to take place on 11-9-1996. But on 10-9-1996, the petitioner produced a telegram referring to the orders passed by this High Court directing, the 3rd respondent to include the petitioner also in the interview whereupon the petitioner was also interviewed along with the other five candidates. It is further submitted in the counter affidavit by the 3rd respondent that the selection committee selected the best candidates out of the six candidates on the basis of merit and performance and the results were kept in abeyance as per the orders of this High Court.

11. By an additional counter affidavit filed by the 3rd respondent, it is pointed out that out of five part-time lecturers in the department of Commerce working in the 3rd respondent-College, four were women. In the interviews conducted on 11-9-1996 pursuant to the G.O.Ms. No. 12 dated 10-1-1992, two of the women candidates working as part-time lecturers were also interviewed since they were qualified to attend the interview as per the said G.O. The 4th respondent was another part-time lecturer/candidate who was also interviewed. It is further submitted on behalf of the 3rd respondent that the petitioner was not entitled to the benefit of G.O.Ms. No. 221 dated 20-6-1995 in view of the fact that the said G.O., was not applicable to private aided institutions. It was confined only to part-time lecturers working in Government Degree Colleges/Junior Colleges.

12. It becomes abundantly clear from the contentions raised by respondents 1 to 3 that the petitioner was not qualified for regularisation in service with the 3rd respondent-College mainly on account of the fact that she did not possess the minimum requisite marks in the Post Graduate Degree Examination. True indeed the shortfall in marks is microscopic in nature, but so long as the power to relax or to ignore such microscopic shortfall in marks is not conferred upon the Commissioner of Collegiate Education or the managements of the private colleges, it is not in order for the authorities to suo motu exercise the discretion of relaxing such difference. Even if the power of relaxation was so conferred, in the instant case, as revealed from the affidavit filed on behalf of the 3rd respondent on 21-9-1996 that, out of five candidates interviewed by the Selection Committee, the candidate to whom 33.5% was awarded as the weightage marks had secured 73% in her Post Graduate Degree Examination and the rest of the four candidates had better merit than the fifth candidate. This

factual situation itself comes in the way of the petitioner apart from other requirements of G.O.Ms. No. 302 dated 23-8-1991. It also becomes 20 clear that the requirement of putting in a minimum of 2 1/2 years service or more as part-time lecturer in the same college as on the last date of instruction of the academic year 1990-91 is not satisfied by the petitioner and, therefore, the petitioner is not covered under the purview of G.O.Ms. No. 302, dated 23-8-1991.

13. In a recent decision in the case of State of Haryana v. Surender Kumar and Ors. 1997 (3) SC 406 the Supreme Court has to deal with a situation in which the respondents, who came to be appointed as daily wagers on contract basis to the post of Clerk, filed Writ Petition in the High Court for regularisation. The High Court directed payment of wages on the principle of "equal pay for equal work" and also regularisation of their services. However, the Supreme Court referred to its earlier decision in State of Haryana and others Vs. Piara Singh and others etc. etc., wherein it had laid down the guidelines for appointment by recruitment and if need be by regularisation of class IV employees, and observed that as a consequence thereof, any appointment made to the service shall be in accordance with the statutory rules and also the guidelines laid down thereunder.

14. In the case before this Court, the provisions of G.O.Ms. No. 302 dated 23-8-1991 issued by the Government of Andhra Pradesh, if not treated as the 40 statutory rules; atleast in the form of guidelines clearly lay down the eligibility for Lecturers of Degree Colleges in Clause 1 of the order made in the said G.O. The validity and legality of this order has not been challenged and, therefore, the directions issued by the said order cannot be circumvented. Under the given circumstances, therefore, if any direction is given by this Court to regularise the services of the writ petitioner, it would be in contravention of the decision of the Supreme Court cited above.

15. The fact that no such direction for regularisation could be issued by the Court also becomes evident from the decision of the Supreme Court in Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, . Paragraph 11 of the said ruling which is relevant for our purpose is reproduced below:-

"11.....In Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, this Court has deprecated the practice of by-passing of the Public Service Commission which would open a back door for illegal recruitment without limit. The decision given by the High Court that the respondent Medical Officers should be regularised with effect from 1-4-1986 cannot, therefore, be upheld. The only direction that can be given in the matter of regularisation is that the respondent Medical Officers should be considered by a duly constituted Selection Committee as per the Rules for the purpose of regular appointment on the post of Medical Officer and the appellant -Corporation should constitute a Selection Committee for that purpose."

16. The question whether the Government in exercise of its powers issue

different rules applicable to the Lecturers working in Government Colleges and in aided and other Private Colleges for promotion of Junior Lecturer to the post of Lecturer fell for consideration of this High Court in the case of T. Rangaswamy v. T.T.D. Executive Officer 1996 (2) An.W.R.382 and it was held that there should not be two different standards and that this was discriminatory and not based on any rational or reasonable classification. In the case before this Court, the learned Counsel, for the petitioner pointed out that as stated under explanation to Paragraph 23 of G.O.Ms. No. 221 dated 20-6-1995 120 days were stipulated to be reasonable number of working days for an academic year, the part-time lecturer should have put in 360 days as on 30-7-1991 or 600 working days by 25-11-1993 with or without break as the case may be. It was contended on behalf of the respondents that G.O.Ms. No. 221 dated 20-6-1995 was confined only to the part-time lecturers working in the Government Degree Colleges/ Junior Colleges; the part-time Lecturers working in private aided institutions were not covered by the same. If the ratio of the above decision of the High Court is applied to the facts of the case, it would mean that the provision made in G.O.Ms. No. 302 dated 23-8-1991 is incompatible or inconsistent with the above explanation as contained in G.O.Ms. No. 221 dated 20-6-1995 and, therefore, a situation of discriminatory treatment having been meted out to the petitioner may arise. However, in the case before this Court, the legality and validity of the G.O.Ms. No. 302 dated 23-8-1991, as being inconsistent with the above said provision as contained in G.O.Ms. No. 221 dated 20-6-1995, has not been challenged and the same has not been sought to be set-aside. For arguments" sake though I have my own reservations even if the requirement of length of service as part-time lecturer is brushed aside, the other requirements of being eligible for lecturer continue to remain unsatisfied and, therefore, the petitioner cannot claim any preferential treatment over other candidates who have been rated higher in merit.

17. Considering all the above facts and circumstances, I hold that the writ petitioner has failed to make out any case for regularisation. Hence, the Writ Petition is dismissed. No costs.