
(2005) 02 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12693 of 2004

Director of Intermediate Education

APPELLANT

Vs

T. Satyam Naidu and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 ALD 124

Hon'ble Judges : P.S. Narayana, J;G. Bikshapathy, J

Bench : Division Bench

Judgement

P.S. Narayana, J.—Heard Sri Satyanarayana Prasad, the learned Senior Counsel, the learned Government Pleader for Services-I and also Sri P.S. Rajasekhar, Counsel representing Respondents 1 to 3 in the present Writ Petition, applicants in O.A. No. 4001/96.

2. Respondents 1 to 3 herein/applicants in O.A. No. 4001/96 filed the said O.A. on the file of A.P. Administrative Tribunal, hereinafter in short referred to as "Tribunal" for the purpose of convenience, to call for records relating to proceedings Memo No. 1609/HE.2/93-5 dated 17-6-1996 of the 1st respondent in the O.A. and to quash the same and direct the Respondents in the O.A. to revise the pay scales of the applicants therein in accordance with 1986 and 1993 Revised Pay Scales and also to direct the Respondents to continue the applicants as Attenders and pay Rs. 1375-2525. The matter was disposed of by the Tribunal holding that the impugned Memo dated 17-6-1996 cannot be sustained and the applicants' pay have to be fixed as per regularization done earlier as Attenders and notional benefits be given up to the date of filing the O.A. and monetary benefits thereafter and the said exercise to be completed within three months from 15-4-2003, the date of the order in the said O.A. The said order of the Tribunal was assailed by the present writ petitioner, Director of Intermediate Education, Andhra Pradesh, Nampally, Hyderabad.

3. Sri Satyanarayana Prasad, the learned Senior Counsel representing the writ

petitioner had taken this Court through the relevant G.Os. and also the proceedings and had submitted that despite the specific directions that these appointments should not be made, the Principal made these irregular appointments and, the Principal is not competent to appoint contrary to the directions issued by the writ petitioner and hence the Respondents 1 to 3 continue to be contingent employees only and are not entitled to the benefits which had been given by the Tribunal. The learned Counsel also stressed on the proceedings where it was stated that no further appointments to be made, which had been duly communicated not only to the subject Institution but to the other Institutions as well. The learned Senior Counsel also pointed out that inasmuch as these appointments are irregular appointments, the Respondents 1 to 3 may have to be continued as contingent staff only and hence they are not entitled to the benefits which had been awarded by the Tribunal in this regard. The learned Counsel also placed relevant records before this Court.

4. The learned Government Pleader for Services-I also had contended that specific directions had been issued by the writ petitioner in this regard and inasmuch as appointments are contrary to the directions issued by the writ petitioner, these appointees continue to be the contingent staff only and cannot be equated with the regular staff.

5. On the contrary, Sri Rajasekhar, Counsel representing Respondents 1 to 3/ applicants in O.A. would submit that normally in service jurisprudence after a long lapse of time such appointments will not be disturbed. The learned Counsel also pointed out that for no fault of Respondents 1 to 3/applicants in O.A. they cannot be penalized. Their names were sponsored by the Employment Exchange and regular appointments were made and hence it cannot be said that they were not regularly appointed. The Counsel also laid stress on the sanction of six posts by Government and would contend that merely because the writ petitioner issued certain instructions or directions not to fill up certain posts, it cannot be said that the Principal was not competent to make such appointments since the Principal was otherwise competent to do so in view of the Government sanction. The learned Counsel also had taken this Court through the findings recorded by the Tribunal and would contend that these findings being well considered findings, need not be disturbed by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

6. Heard the Counsel.

7. Respondents 1 to 3 herein/applicants in O.A. No. 4001/96 were appointed by the Principal, Government Junior College, Kurupam, Vizianagaram District as Attenders on 21-9-1984. It is stated that during the relevant period there was a ban on appointment of regular Attenders. The State Government issued G.O. Ms. No. 307 dated 6-6-1984 under which the State Government decided to convert the full-time contingent posts of Watchmen, Sweepers, Scavengers, Gardeners and Watermen into Class IV posts and further directed to absorb those working in these posts continuously for a period of ten years or more as Class IV Staff. It

is stated that the State Government further directed that from the date of issuance of the said G.O. no further appointment of full-time contingent employees in any department of Government or Local Bodies and Panchayat Raj Institutions shall be made and the said G.O. was made applicable to the aided Colleges also. As the appointment of Respondents 1 to 3/applicants in O.A. as Attenders is contrary to the said G.O., the Regional Joint Director directed reversion of Respondents 1 to 3 as part-time contingent staff and the Principal, Government Junior College issued proceedings dated 20-4-1987 reverting Respondents 1 to 3 as part-time contingent staff. It is stated that Respondents 1 to 3/applicants in O.A. filed R.P. No. 2786/87 before the Tribunal challenging the said reversion and the said R.P. was disposed of on 28-1-1993 inter alia with a direction that the Respondents 1 to 3/applicants in O.A. shall make a representation to the Director of Higher Education within a period of one week from the date of receipt of the orders of the Tribunal and with a further direction to the Secretary, Higher Education, on receipt of the representation, to dispose of the same as per rules with a further period of three months and the Respondents 1 to 3/applicants in O.A. to continue as Attenders till the matter is disposed of by the Secretary to Government. The matter had been considered and the State Government issued the Memo dated 17-6-1996 rejecting the request of Respondents 1 to 3 for appointments as Attenders and the stand of the Government is that they should be deemed to be working as part-time contingent staff only pursuant to earlier orders of reversion and cannot be deemed to be working as Attenders. The said order was impugned by way of O.A. No. 4001/96 and the Tribunal by order dated 24-7-1996 granted interim order suspending the Memo and on application to vacate the interim order the Tribunal by order dated 15-4-2003 disposed of the main O.A. itself with the directions already referred to supra. Aggrieved by the same, the present Writ Petition is filed by the writ petitioner.

8. The Tribunal referred to G.O. Ms. No. 792, Education (V) Department, dated 13-9-1982. Under this G.O., the State Government granted permission for opening of the Government Junior College in question in which Respondents 1 to 3 were appointed. Specific stand was taken that even assuming that six posts of Attenders had been sanctioned, these appointments were made subsequent to the ban orders. It is further averred that in G.O. Ms. No. 792, Education (V) Department, dated 13-9-1982 communicated in Director's proceedings Rc.No. 5945/IC4-2/B2, dated 14-9-1982, the Government permitted the opening of certain new Government Junior Colleges and Government Junior College, Kurupam is one of the new Government Junior College in which six posts of Attenders were sanctioned to the college. The Director of Higher Education, A.P., Hyderabad was pleased to issue very clear and specific instructions in proceedings Rc.6752/IC4-2/82, dated 15-12-1982 to all the Principals of new Government Junior Colleges to fill up only three posts of Attenders and not to fill up the remaining three posts of Attenders since the system of appointing full-time contingent employees was discontinued with effect from 1-4-1981 and only

part-time employees could be appointed against full-time posts. It was further stated that in Director's proceedings Rc.1676/IC4-3/1986, dated 21-3-1986, the Director of Higher Education had issued permission orders to the effect to fill up the following category of posts by appointing contingent employees on a consolidated pay @ Rs. 75/- per month, until the full-time posts of Attenders are filled up (1) Night Watchman (2) Gardener-cum-Watchman (3) Sweeper-cum-Scavenger. However, the Principal, Government Junior College, Kurupam in his letter dated 6-10-1986 had brought to the notice of the Regional Joint Director of Higher Education that his predecessor viz., V. Appala Swamy had irregularly appointed the following persons under proceedings Rc.No. 5A34/B/84, dated 14-9-1984 (who were sponsored by the Employment Exchange) as Attenders temporarily in the scale of Rs. 290-5-345-10-425 and therefore sought orders of the competent authority for ratifying such appointments of Attenders so made by his predecessor Principal.

It is further stated that while scrutinizing the Principal's remarks, it is observed by the Regional Joint Director, Higher Education, Rajahmundry that he issued a show-cause notice to the Respondents 1 to 3 on 28-7-1986 to show as to why they should not be treated to have been converted as part-time employees on a consolidated pay of Rs. 75/- per month and as to why the difference in pay from the dates of their joining should not be recovered from them. The above appointments by the former Principal are held irregular which were made in violation of Director's orders and the Principal, Government Junior College, Kurupam had given directions to convert the said employees as part-time employees in Regional Joint Director's proceedings Rc.No. 7058/B4/1986, dated 26-3-1987 since the Principal even after his observation of the grave irregularity had not taken any action to convert them as part-timers. Since the system of appointment of full-time contingent employees had been discontinued by the Government with effect from 1-4-1981, as a matter of policy, as all the contingent posts are being converted into regular Attender Posts, the question of appointing full-time contingent employees does not arise after 1-4-1981. It is also further stated that in view of the directions of Regional Director of Higher Education on 26-3-1987, Respondents 1 to 3 had been given conversion orders as part-time employees with effect from 20-4-1987 in proceedings Rc.No. Spl/B3, dated 20-4-1987 of the Principal, Government Junior College, Kurupam. Therefore the orders giving conversion as part-time employees on a consolidated pay of Rs. 75/- per month from 20-4-1987 are quite in accordance with the instructions of Director of Higher Education and as such they cannot be given full salary from 20-4-1987 onwards as contended by them. Further specific stand had been taken that the order of Principal, Government Junior College, Kurupam bearing No. Spl.B3 dated 20-4-1987 is in order. The notices as given by the Principal, Government Junior College, Kurupam in proceedings Rc.No. Spl.B3/86 dated 28-7-1986 are in order and hence Respondents 1 to 3 cannot be treated as regular Attenders but only as contingent staff.

9. Respondents 1 to 3 filed a counter-affidavit in detail denying the allegations

and narrating the historical background of the litigation. Their specific stand is that they got registered with local Employment Exchange and they were sponsored by the Employment Exchange for appointment to the posts of Attenders and they were called for interview held on 12-9-1984 and after being successful they were appointed by the 6th respondent and the 6th respondent also issued orders dated 25-9-1985 regularising their services. On a careful scrutiny of the allegations made in the counter-affidavit, the stand of the Respondents 1 to 3 appears to be that inasmuch as the Competent Authority had made appointments to the posts sanctioned by the Government only, the mere fact that certain directions had been issued by the writ petitioner, would not alter the situation and even otherwise the Government alone is the Competent Authority and the directions issued by any other subordinate authority of the Government would be totally inconsequential. Several other details relating to the appointments, G.O. Ms. No. 792, dated 14-9-1982, G.O. Rt. No. 101, dated 31-1-1996, G.O. Ms. No. 212, dated 22-4-1996, G.O. Ms. No. 317, dated 6-6-1984, and G.O. Ms. No. 193 also had been referred to and the details relating to prior proceedings and the prior orders also had been specified in detail in the counter-affidavit.

10. As pointed out by the learned Counsel representing the Respondents 1 to 3/ applicants in O.A., it may be an unfortunate case where the 6th respondent, Principal, Government Junior College, Kurupam, Vizianagaram, had made these appointments way back in the year 1984 and this appears to be a long drawn litigation - Respondents 1 to 3 contending that they are regular Attenders and on the contrary the writ petitioner taking a stand that they continue to be only contingent staff. Be that as it may, several of the facts are not in controversy. The Tribunal ultimately while issuing certain directions observed at Para-5 as hereunder :

"As could be seen from the averments made in the O.A. and counter, it is clear that Government issued G.O. Ms. No. 792, dated 13-9-1982 in which 6 posts of Attenders along with other posts have been sanctioned by granting usual pay and allowances. Accordingly, the then Principal of the College asked the Employment Exchange to sponsor candidates to fill up the posts and accordingly the applicants were appointed after being sponsored and after their selection. If at all the posts should not be filled up, again it is the Government which has to issue orders and not by any authority subordinate to Government. It is also seen that while filling up other posts which were sanctioned in the same G.O. Ms. No. 792 dated 13.9.1982, no such ban orders were imposed. But by virtue of some powers, objection seems to have been taken to fill up the 3 posts of Attenders which were filled up by the applicants and when conversion of these posts into Part-time Contingent posts was made, this Tribunal stayed the same. But the applicants were not granted revision of pay scales. So, the so-called order was issued in 1996 after the recruitment is over. It is also seen that earlier the applicants filed R.P.2786/87 and the Tribunal initially granted interim relief by suspending the proceedings dated 20-4-1987 converting the services of the

applicants as part-time employees. Ultimately the said case was disposed of by directing the applicants to make a representation and when the applicants made representation, the same was rejected nearly after 3 years by the impugned Memo. The impugned Memo ignores the fact that the posts sanctioned in G.O. Ms. No. 792 dated 13-9-1982 are not termed either as full-time contingent or part-time posts. So, the interpretation sought to be given in the impugned Memo cannot be accepted, as it goes against the very spirit of G.O. Ms. No. 792, dated 13-9-1982."

11. The main ground on which the Tribunal was guided away appears to be that inasmuch as the Government issued G.O. Ms. No. 792 dated 13-9-1982 in which six posts of Attenders along with other posts had been sanctioned by granting usual pay and allowances, the Principal can make such appointments and if at all orders are to be issued not to fill up the posts, no authority subordinate to Government can issue the same. In the proceedings of the Director of Higher Education dated 15-12-1982 in Rc.6752/IC4-2/82, in Zone-I, Item No. 5, Government Junior College, Kurupam, is shown and in the said proceedings it is specified as hereunder :

"The Principals of the above Government Jr. Colleges are informed that the Government have sanctioned six posts of Attenders to each Junior College. Out of six posts three posts of Attenders should be allotted for the jobs relating to (1) Night Watchman, (2) Gardener-cum-Watchman (3) Sweeper-cum-Scavenger in the Junior Colleges. Detailed instructions with regard to appointment, qualifications for recruiting the personnel to these three posts of Attenders, will be issued shortly.

Therefore the Principals concerned are requested not to fill up three posts of Attenders in the Junior Colleges until further orders.

The receipt of these proceedings may be acknowledged".

No doubt certain submissions were made relating to communication or non-communication of this order to the concerned Principals, but it is pertinent to note that the 6th respondent had not filed any counter-affidavit in this regard and in the light of the material produced before this Court, this Court is satisfied that the same had been communicated to the concerned Principals at the relevant point of time. The Director of Higher Education, Andhra Pradesh, Hyderabad in proceedings Rc.No. 1676/IC4-3/06 dated 21-3-1986 had specified :

"The under-mentioned Principals of Government Junior Colleges who have been asked not to fill up the posts of three Attenders in the Director's Proceedings 2nd read above are hereby permitted to appoint the following part-time contingent employees (1) Night Watchman, (2) Gardener-cum-Watchman and (3) Sweeper-cum-Scavenger on a consolidated pay of Rs. 75/- per month to each by meeting the expenditure from the budget provision of the vacant posts of Attenders until the full-time posts of Attenders are filled up".

From the proceedings referred to supra, namely, Rc.No. 6752/IC4-2/82 dated 15-12-1982 and Rc.No. 1676/IC4-3/06, dated 21-3-1986 of the Director of Higher Education, Andhra Pradesh, Hyderabad, it is clear that specific directions had been issued not to fill up these three posts of regular Attenders. The stand taken by the Respondents 1 to 3 is that their names had been sponsored by Employment Exchange and they had undergone the process of selection and hence it should be taken that regular selection had been made for the posts of Attenders. The finding recorded by the Tribunal that in the light of the fact that six posts had been sanctioned by G.O. Ms. No. 792, the same cannot be in any way altered by any subordinate authority, the writ petitioner, cannot be sustained since directions are specific and clear and there cannot be any doubt or controversy that contrary to the directions specified supra, the 6th respondent made the appointments and these appointments can fall only under contingent staff and cannot be said to be regular appointments. It is no doubt true that Respondents 1 to 3 have been discharging their duties for sufficiently a long time. It may be true that some excess payments also might have been made to Respondents 1 to 3. In G.O. Ms. No. 38, Finance and Planning (Fin.Wing - P.R.C. VI) Department, dated 1-2-1980, at Para 3(i) it was specified :

"All full-time contingent posts, which were originally created under specific Government Orders and have been in existence for a period of 10 years or more and are required to be retained on a permanent basis, be converted into regular Government posts in the last grade service in the pay scale of Rs. 290-5-345-10-425 with immediate effect".

It is true that appointments made long back normally are not to be disturbed by Courts. However, where irregularities or illegalities are brought to the notice of the Courts in relation to recruitment, appointment, qualifications and the reasons akin thereto, Rules, Regulations, Circulars governing the field etc., the same cannot be ignored on the ground that such appointments after some lapse of time cannot be disturbed. In the present case, the 6th respondent/Principal, as already referred to supra had not filed any counter-affidavit. However, from the material available on record, it appears that irregularity had been well rectified and consequent thereupon, Respondents 1 to 3 began agitating the matter. The appointments of Respondents 1 to 3 are to be judged in consonance with the directions of the Government and also the writ petitioner as well and inasmuch as the appointments were made only as contingent staff and in the light of the directions referred to supra, except by virtue of G.O. Ms. No. 38, it cannot be said that they cease to be contingent staff. The directions issued by the writ petitioner cannot be ignored, the writ petitioner being the head of the wing, on the ground that the Government alone would be competent to alter the sanctioned strength. In the light of the same, Respondents 1 to 3 are to be treated as regular Attenders after a period of ten years. The date of appointment being 21-9-1984, it is needless to say from 1994 onwards by virtue of the benefit conferred by Para-3(i) of G.O. Ms. No. 38, dated 1-2-1980, Respondents 1 to 3 are to be treated as regular Attenders after the expiry of the period of ten years

from the date of their appointment. It is needless to say that prior thereto, they are to be treated as contingent staff only. Inasmuch as Respondents 1 to 3 have been discharging their duties for sufficiently a long time, it would be just to direct not to effect any recoveries of the excess amounts if any already paid during the said period of ten years commencing from the date of their appointment in 1984 up to the lapse of ten years. It is also made clear that subsequent thereto, Respondents 1 to 3 are entitled to be treated as regular Attenders and also are entitled to all the benefits flowing therefrom from the aforesaid date in pursuance of G.O. Ms. No. 38 specified above. Thus, the impugned order of the Tribunal is hereby modified to the extent referred to supra.

12. Accordingly the writ petition is partly allowed to the extent indicated above. No order as to costs.