

(2001) 11 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 781 of 2000 and 143 and 147 of 2001

D.N.R. College

APPELLANT

Vs

S. Hymavathy and Others

RESPONDENT

Date of Decision : 06-11-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2002) 2 ALD 12 Supp

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Vedula Venkata Ramana, for the Appellant; M.V. Rajaram, for the Respondent

Judgement

S.B. Sinha, C.J.—These writ appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. Questioning the judgment and order dated 10-3-2000 passed by a learned single Judge of this Court in Writ Petition No. 18195 of 1999, Writ Appeal No. 781 of 2000 has been filed by the first respondent in the writ petition and the Writ Appeals 143 and 147 of 2001 are preferred with the leave of this Court by the Attenders and Class-IV employees in aided posts and also unaided posts of third respondent-College.

FACTS:

2. The writ petitioner/respondent No. 1 was appointed as an Attender in the Stores Department of appellant-college on 31-10-1975 and she was posted to work in the office of appellant-college from 1976 to 25-4-1983, whereafter she was posted in the Stores Department and worked as such from 1983 to 1993. From 1-10-1993 writ petitioner/respondent No.1 has been working as Record Assistant. On 8-2-1993 the appellant-college regularised the services of some of the non-teaching staffs. Writ petitioner/respondent No. 2 was appointed as Attender in the Stores Department on 30-10-1975 and on 1-10-1993 he was posted as Record Assistant to work in the appellant-college. The writ petitioners

earlier filed Writ Petition No. 5766 of 1996 before this Court to regularise their services on par with their juniors by declaring that the college stores also comes under the management of appellant-college. The said writ petition was disposed of on 4-2-1998 by a learned single Judge holding that the writ petitioners should be treated as if they were appointed by the College for the purpose of administration of the College and the writ petitioners were directed to be absorbed into grant-in-aid posts in the existing vacancies. The said order of the learned single Judge was modified in Writ Appeal No. 257 of 1998 by reason of an order dated 20-3-1998. The third respondent, thereafter, passed the order negating the claim of the writ petitioners for admission into grant-in-aid posts of Record Assistants on the ground that they were working in the book stores, which was a business organisation registered with the Sales Tax Department, and they were paid out of the profits derived from the sale of books in the Stores.

3. During the pendency of the writ petition being W.P. No. 18195 of 1999, the appellant-college had issued proceedings regularising non-teaching staff, who were junior to the writ petitioners and the learned single Judge on perusal of the proceedings issued by the In-charge Principal of the College found that the staff working in the college were being transferred from one department to another and held that as long as the Book Stores forms an integral part of the college; merely because the petitioners are paid salary from out of the profits, it cannot be said that they have nothing to do with the affairs of the College and also held that payment of sales tax by the management does not change the character of the Stores being part of the College in view of the fact that the college itself utilised the profits from the sale of books for the benefit of the students of the college. Ultimately, the learned Single Judge holding that the impugned order was the result of the non-application of mind to the facts of the case and vitiated by illegalities, set aside the same directing the respondents to treat the petitioners as members of the unaided non-teaching staff of the appellant-college and to absorb them into grant-in-aid posts as per their turn in the seniority, if necessary by reviewing the orders of absorption given to their juniors who are admitted to the grant-in-aid posts from time to time.

4. As the writ petitioners filed Contempt Case No. 939 of 2000 for violating the order of the learned single Judge, on 30-7-2000, the third respondent herein issued proceedings admitting the writ petitioners to grant-in-aid with effect from 8-2-1993. Upon the recommendations dated 17-10-2000 of the fourth respondent herein, the Government issued orders in G.O. Rt. No. 49, dated 16-1-2001 ratifying the action of third respondent. On 5-2-2001 this Court granted order of status quo to be maintained in view of which grant-in-aid salaries were stopped by the management of appellant-college. A representation was made by the learned counsel for the appellant that the management has been paying salaries and a Contempt Case, being C.C. No. 1027 of 2001 was filed there against for making wrong statement. But, the Contempt Case was closed with an observation to file an affidavit stating the reasons as to how such statement was made by the appellant-college.

SUBMISSIONS:

5. Mr. Vedula Venkata Ramana, learned counsel appearing on behalf of the appellant-college inter alia would submit that the learned single Judge exceeded his jurisdiction by entering into the merit of the matter as regards nature of appointment of the writ petitioners, as also inter-se-seniority. He would urge that a serious error has been made by the learned single Judge in proceeding on the basis that the Division Bench upheld the direction issued in the earlier writ petition. He would further submit that the learned single Judge took into consideration various materials which were not placed before the Regional Joint Director-3rd respondent herein. Fixation of seniority in absence of the affected persons could not also be done, Mr. Venkata Ramana would contend.

6. Mr. Raja Ram, the learned counsel appearing on behalf of respondents 1 and 2 (writ petitioners in W.P. No. 18195 of 1999) on the other hand would submit that from the records produced by the appellant-college it was evident that the book-store was a part of the institution itself and the persons working in the book-store and the institution were being transferred interchangeably. The learned counsel would contend that after the decision of the learned single Judge the State has already directed that the writ petitioners-respondents be admitted to the aided post with effect from 8-2-1993.

FINDINGS:

7. The High Court in exercise of its power of judicial review, as is well known, is concerned only with the illegality, irrationality or procedural impropriety committed by the statutory authority in its decision making process. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India is not concerned with the merit of the matter. While considering as to whether a case has been made out for issuance of a Writ of Certiorari or not, an error apparent on the face of the record must be found out. In the event of certain important materials having not been placed before the statutory authority, the Court can issue a Writ of Mandamus directing the concerned authority to consider the same and pass an appropriate order afresh. Only in some exceptional cases the court itself can take the same into consideration.

8. However, having regard to the fact situation obtaining in the present case, it is not necessary for this Court to delve deep into the matter inasmuch as it appears that pursuant to or in furtherance of the judgment passed by the learned single Judge, the Regional Joint Director of Collegiate Education has passed an order on 30-7-2000 wherein it has been held that Mr. G.V. Satyanarayana Raju and D.A.V. Narasimha Raju (appellants 1 and 2 in W.A. No. 143 of 2001) were appointed on 9-6-1977 and 20-11-1978 respectively whereas the respondents 1 and 2 (writ petitioners in W.P. No. 18195 of 1999) i.e., S. Hymavathy and M. Chalapathy Rao were appointed in the book-stores on 31-10-1975 and 4-11-1975 respectively.

9. It is not in dispute that the writ petitioners started working in the institution on sympathetic consideration with effect from 01-10-1993. It appears to us from

the materials available on records that although writ petitioners were appointed in the year 1975 they never raised any claim that they should also be posted instead and in place of those, who, even if be assumed were junior to the writ petitioners, having been posted much earlier, could not have been dispossessed therefrom.

10. So far as the appellants in the other appeals are concerned, they were posted in the grant-in-aid post in the post of Attenders with effect from 08-2-1993. From the order dated 30-7-2000 it appears that recommendations had been made that the writ petitioners should also be admitted to grant-in-aid posts as Attenders with effect from 08-2-1993. The aforementioned recommendations had been sent to the Commissioner and Director of Collegiate Education, Andhra Pradesh, Hyderabad for approval of their appointments as Attenders with effect from 08-2-1993, admitting them to grant-in-aid. Pursuant whereunto, the State issued a Government Order marked as G.O.Rt.No.49, Higher Education (CE.II.1) Department, dated 16-01-2001, the relevant provisions whereof are:

Accordingly, the Regional Joint Director has issued orders vide his Proceedings No.1712-B1/98, dt. 30-07-2000 admitting the petitioners into Grant-in-aid as Attenders with effect from 8-2-1993 (the date on which their Juniors were admitted to Grant-in-aid) in the existing aided vacancies of two (2) Attenders.

11. It is not in dispute that the aforementioned Government Order has already been acted upon.

12. In the aforementioned situation, the only issue, which survives for consideration, is the inter-se-seniority by and between the writ petitioners and the appellants 1 and 2 in W.A. No. 143 of 2001.

13. The writ petitioners a writ petition, which was marked as W.P. No. 5766 of 1996, seeking a declaration that the action of the College authorities in not absorbing them into aided posts even after 20 years of service is illegal and the same is violative of Articles 14, 16 and 21 of the Constitution of India and consequently prayed for a direction to admit the posts held by the writ petitioners to grant-in-aid from an appropriate date with all the benefits such as scale of pay, seniority, promotion etc. Therein, it was observed:

... The only obstacle which appears to be created by the Management of the College is that they were appointed in the Stores, which does not belong to the College and therefore, they are not being treated on par with the employees of the College. This contention holds no water as their appointments were made by the College authorities. Probably they are shifted to various Sections in the College. Stores Section also forms part of the College. Therefore, they should be treated as if they are appointed by the College for the purpose of administration of the College.

14. An appeal was carried from that order, which was marked as W.A. No. 257 of

1998, wherein the order passed by the learned single Judge was modified directing:

Upon hearing the submissions made on behalf of the parties, the Writ Appeal is disposed of at the stage of admission with a direction that the case of the writ petitioners, respondents 1 and 2 herein, for absorption in the grant-in-aid posts of Record Assistants be considered by the Regional Joint Director of Higher Education, Rajahmundry, East Godavari District - respondent No.3 herein, within a period of six weeks from the date of communication of this Order. While considering the matter, due regard, however, be had to the factum of service tenure of the writ petitioners in the College itself.

15. Pursuant to or in furtherance of the said direction, the order impugned in the writ petition i.e., proceedings vide Rc.No.1712-B1/98 dated 27-5-1998 of the Regional Joint Director of Higher Education, dated 27-5-1999 negating the claim of the writ petitioners for admission into grant-in-aid posts, has been passed. Feeling aggrieved, the writ petitioners filed an application under the Contempt of Courts Act, which was registered as C.C. No. 1214 of 1998. Having regard to the expressions used in the judgment of the Division Bench dated 10-3-2001 passed in W.A. No. 257 of 1998 to the effect that "due regard, however, be had to the factum of service tenure of the writ petitioners in the College itself" a Division Bench of this Court refused to initiate a proceeding under the said Act holding:

... We do find some justification in the submission of the learned Government Pleader. As noted above, the provisions of the Contempt of Courts Act, 1971 can take effect only in the clearest cases and in the event of there being any doubt, question of issuance of a Rule even would not arise. In our view, sufficient doubt has been raised in the matter by the learned Government Pleader and in that view of the matter, this application fails and is dismissed. No order as to costs.

16. In the aforementioned situation, in our opinion, the learned single Judge, in the impugned order under appeals, has committed a manifest error in holding that the decision of a learned single Judge of this Court in W.P. No. 5766 of 1996 has been affirmed in appeal. The 3rd respondent, in our opinion, was therefore justified in applying his mind afresh for the purpose of arriving at a finding of fact as to whether the writ petitioners started working in the College with effect from 1-10-1993 or not. In other words, he, having regard to the materials placed before him, was entitled to consider as to whether the period during which the writ petitioners had worked in the book-store should be counted for seniority or not. Although the learned single Judge directed the 3rd respondent to consider the matters afresh and upon giving an opportunity of hearing to the affected persons, there may not be any doubt whatsoever that the decision taken by the 3rd respondent was, however, subject to the result of the appeal.

17. The State has not preferred any appeal. The appellant-College herein can raise legitimate grievance about the findings arrived at by the learned single

Judge, despite the subsequent events. But, keeping in view the fact that the order dated 30-7-2000 passed by the 3rd respondent had been acted upon by all concerned, we are of the opinion that it would be unjust to unsettle the settled position. Equally unjust, in our opinion, it would be, to deny the seniority to the appellants in W.A. No. 143 of 2001 particularly in view of the fact that they had been enjoying the said position since 8-2-1993 and the writ petitioners have filed the writ petition for the first time only in the year 1996. At the instance of the writ petitioners, therefore, after such a long time the clock cannot be put up so as to deprive all those who were admitted prior to 01-10-1993, and their services with respect to seniority will be affected. We, therefore, are of the opinion, having regard to the fact that G.O.Rt. No. 49 dated 16-01-2001 is silent in this regard, that interest of justice would be subserved if those who were admitted to the grant-in-aid posts on or before 8-2-1993 are not disturbed from their positions and they be ranked senior to the writ petitioners for all intent and purpose.

18. We may place on record that the writ petitioners have accepted the Government Order passed by the State, although their prayer in the writ petition is that their seniority should be counted from 30-10-1975 and they be admitted to grant-in-aid posts. Taking the said factor into consideration, now the writ petitioners have not raised any grievance as regards the order passed by the State by reason of issuing G.O. Rt. No. 49 dated 16-01-2001 we issue the aforementioned direction.

19. The writ appeals are disposed of with the aforementioned observations. No order as to costs.