

**(2006) 07 AP CK 0094**

**In the Andhra Pradesh High Court**

**Case No : WA No's. 125, 126, 127 and 165 of 2006**

Dr. A.V.S.S. Prasad

APPELLANT

Vs

Director National Institute of Technology and Others

RESPONDENT

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**Date of Decision : 10-07-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 16(1), 226, 51

**Citation :** (2006) 5 ALD 814 : (2006) 5 ALT 732

**Hon'ble Judges :** G.S. Singhvi, C.J.;G.V. Seethapathy, J

**Bench :** Division Bench

**Advocate :** P.V. Krishnaiah, for the Appellant; Nooty Rama Mohan Rao, for Respondent Nos. 1 to 4 and A. Rajasekhar Reddy, Assistant Solicitor General of India, (NP), for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

G.S. Singhvi, C.J.—These appeals are directed against order dated 2-12-2005 passed by the learned Single Judge in Writ Petition Nos. 9077, 9076, 12021 and 9086 of 2004 whereby he rejected the appellants' prayer for issue of a direction to the respondents to regularise their services on the posts of Lecturers, but ordained continuance of their ad hoc appointments till the availability of regularly selected candidates.

2. For the sake of convenience, we have taken the facts from the pleadings of Writ Petition No. 9077 of 2004 and Writ Appeal No. 125 of 2005.

3. In furtherance of the policy formulated by the Government of India to maintain uniform standards of education in the field of Engineering and Technology, Regional Engineering Colleges were established in various parts of the country. One of the 17 Regional Engineering Colleges established in the first phase was at Warangal in the State of Andhra Pradesh. The Regional Engineering Colleges were meant to provide quality education, but, with the passage of time, local factors started adversely affecting the admission process, which, in turn,

affected the standard of education. In 1999, the Ministry of Human Resource Development, Government of India got conducted a study for improving the standard of education in Regional Engineering Colleges and in 2002, it decided to manage the affairs of all Engineering Colleges by itself. This measure was intended to ensure that the Regional Engineering Colleges will not be confined to serving the interests of local areas, but would acquire a national character. One of the steps taken in that direction was to change the nomenclature of the Regional Engineering Colleges as National Institutes of Technology. In the meanwhile, the Ministry of Human Resource Development directed that regular recruitment to various teaching posts may be deferred till the framing of recruitment rules. At the same time, it was decided that for catering the workload, the respective colleges may make ad hoc appointments, In furtherance of that decision, the Principal of Regional Engineering College, Warangal issued notice dated 21-11-2000 inviting applications for appointment of Lecturer in Chemistry on ad hoc basis. The appellant was among the persons who applied for recruitment as ad hoc Lecturer in Chemistry. He was interviewed by the Selection Committee headed by the Principal of the Regional Engineering College. On being recommended by the Selection Committee, he was appointed vide order dated 17-1-2001, the relevant portions of which are reproduced below:

Office of the Principal, Regional Engineering College, Warangal - 506 004 (A.P.)

No. C3/II/E-470/2001/7286

Sub:Estt.-Appointment of Ad hoc Lecturer - Orders issued \*\*\*

Sri A. V.S. Prasad is appointed temporarily as ad hoc Lecturer in the Dept. of Chemistry of the College on contract basis for one year on a consolidated salary of Rs. 9,000/- per month under the following conditions:

- i. The appointment is purely temporary and liable to be terminated at any time without notice and without assigning any reason.
- ii. He is not entitled to draw any allowances.
- ii He should handle B.Tec. (FDH) classes of minimum 6 periods/week besides regular UG/PG class work.
- iv. He will not be paid any salary during the Vacation Period.
- v. He will be paid Rs. 10,000/- p.m., after getting his Ph.D.
- vi. The contract appointment of one year is renewable after his satisfactory completion of one year service.
- vii. No TA is admissible to him for joining duty.
- viii. He should submit his Original Certificates in the Establishment Section before joining duty for verification.

He should acknowledge receipt of this order indicating his acceptance of the offer

and should report for duty to the Principal, REC, Warangal thro" the Head of the Dept. of Chemistry as early as possible but not later than 25-1-2001, failing which this offer will be deemed to have been cancelled.

4. The tenure of the appellant's appointment was extended on year to year basis till the issue of notice dated 7-5-2004 by Director, National Institute of Technology, Warangal intimating him that his service will stand terminated with effect from 14-5-2004.

5. The appellant challenged the threatened termination of his service by asserting that the action taken by the Director is arbitrary and violative of Articles 14 and 16 of the Constitution. He pleaded that the work for which he had been appointed was still available and the post held by him had not been abolished, but the Director of the Institute arbitrarily issued notice for termination of his service. He also prayed for issue of a direction to the respondents to regularise his service by claiming that he had been appointed against vacant post after following the procedure prescribed for regular appointment.

6. In the counter filed on behalf of respondent Nos. 1 to 4, it was pleaded that the writ petitioner (appellant herein) had been appointed on purely ad hoc basis and, as such, he does not have the right to seek regularization of service. It was further pleaded that the ad hoc service of the appellant was terminated because the same was no longer required.

7. The other appellants filed Writ Petition Nos. 9076, 12021 and 9086 of 2004 with pleadings and prayers similar to those contained in Writ Petition No. 9077 of 2004. In their counters, respondent Nos. 1 to 4 reiterated their stand that the writ petitioners (appellants herein) do not have the right to continue in service or seek regularisation of their appointment.

8. On a consideration of the pleadings of the parties and arguments of their Advocates, the learned Single Judge rejected the appellants' prayer for issue of a direction to the respondents to regularise their services, but declared that they shall be allowed to continue in service till the availability of regularly selected candidates.

9. Shri P.V. Krishnaiah argued that the order under challenge is liable to be set aside because the learned Single Judge committed a serious error by refusing to order regularization of the appellants' services despite the fact that they were recruited after following the procedure prescribed for regular selection. Shri Krishnaiah emphasised that the appointments of the appellants were preceded by advertisement of the posts and assessment of the comparative merit of the candidates who appeared before the Selection Committee and argued that appointment made after following such procedure has to be treated as regular. Learned Counsel then submitted that the learned Single Judge should have lifted the veil of adhocism and declared that the appellants have been regularly appointed and they are entitled to be treated as substantive in the services of

respondent No. 1 Shri Krishnaiah lastly argued that even if the Court comes to the conclusion that the appellants are not entitled to be treated as regularly recruited, the Court should direct the respondents to regularise their services because as on today, they have completed more than 5 years unblemished service. In support of this argument, learned Counsel relied on the observations contained in the judgment of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

10. Shri Nuty Ram Mohan Rao, learned Counsel for respondent Nos. 1 to 4 supported the order of the learned Single Judge and argued that the appellants can neither be treated as regularly appointed nor they can seek a direction for regularization of service because the notices issued by Principal, Regional Engineering College, Warangal were meant for ad hoc appointments and the orders of appointment also contained a clear stipulation that the appellants were being appointment on ad hoc basis. Learned Counsel then argued that after having accepted appointment as ad hoc Lecturers, the appellants cannot turn around and seek a declaration which would tantamount to changing the nature and tenor of their appointments.

11. We have thoughtfully considered the respective arguments. Though it may appear repetitive, we consider it necessary to mention that the Principal of Regional Engineering College, Warangal had invited applications for appointment of Lecturers on ad hoc basis and not on regular basis. The Selection Committee too recommended appointment of the appellants as ad hoc Lecturers on a consolidated salary for a fixed tenure and accordingly the Principal of the College issued orders appointing them as ad hoc Lecturers in different subjects on contract basis for a period of one year on a consolidated salary of Rs. 9,000/- per month. The appellants are well educated and qualified persons. Therefore, it can be presumed that they must have submitted applications after going through the contents of the notices issued by the Principal inviting applications for appointment of ad hoc Lecturers. It can also be presumed that the appellants must have joined service after going through the terms and conditions of appointment as ad hoc Lecturers with a fixed tenure of one year. In this backdrop, it is impossible to find any legitimacy in their claim to be treated as regularly appointed on the posts of Lecturers or for issue of a direction to the respondents to regularise their services. It is well-known that whenever an advertisement is issued for appointment on a public post on a d hoc basis, large number of meritorious candidates do not apply because of uncertainty about the tenure of appointment and security of service. This naturally reduces the zone of eligibility to those who do not fall in the category of most meritorious candidates. As a consequence, the recruiting agency/Selection Committee is left with no option but to select from among the mediocres. Those ultimately selected and appointed do not represent the best talent available in the field. Therefore, acceptance by the Courts of the prayer made by such ad hoc appointees for issue of a direction to the appointing authority to regularise their services would not only encourage adhocism in public employment, but would be greatly detrimental

to larger public interest and deprive more meritorious candidates of their right to be considered for selection at the time of regular recruitment. A judicial fiat of this nature would also violate the doctrine of equality in the matter of employment enshrined in Article 16(1) of the Constitution, which declares that, "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State", and the philosophy underlying Article 51(j) of the Constitution, which casts duty on every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

12. In the premise aforesaid, we hold that the appellants can neither be treated to have been regularly appointed nor they can seek a direction for regularisation of their services. In *Secretary, State of Karnataka v. Uma Devi* (supra), the Constitution Bench of the Supreme Court referred to a large number of judicial precedents, over-ruled some of the judgments in which directions were given for regularization of daily wagers, casuals and ad hoc appointees, and laid down several propositions, some of which are extracted below:

(1) Persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the Constitutional Scheme. While directing that appointments temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

(2) It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some

employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the Constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the Court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

(3) When the Court is approached for relief by way of a writ, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear Constitutional Scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

(4) Orders for absorption, regularization or permanent continuance of such employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time that the Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of thing and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

(5) The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the

Constitutional Scheme. Merely because an employee had continued under cover of an order of the Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the Constitutional and statutory mandates.

(6) The State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and appointments to non-available posts should no be taken note of regularization. The Supreme Court is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the costs of many waiting to compete. It is not the role of the Courts to ignore, encourage or approve appointments made or engagements given outside the Constitutional Scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the Constitutional Scheme of appointment.

13. On the basis of the above discussion, we hold that the learned Single Judge did not commit any error by refusing to direct the respondents to regularise the services of the appellants and the appeals are liable to be dismissed. Ordered accordingly. The parties are left to bear their own costs.