

(2012) 01 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No : 15468 of 1999

Dr. G. Mohan Rao, Blind

APPELLANT

Vs

The Executive Officer, Tirumala, Thirupathi Devasthanam,
Tirupathi-517501 and Govt. of A.P.

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Citation : (2012) 5 ALT 788

Hon'ble Judges : K.S. Appa Rao, J

Bench : Single Bench

Advocate : P. Bhaskara Mohan, for the Appellant; A.K. Jayaprakash Rao, (SC for TTD), Counsel for the Respondent No. 1 and G.P For Revenue (Endowments), Counsel for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

K.S.Appa Rao

1. This writ petition is filed seeking writ of Mandamus declaring the inaction of the respondents in regularizing the services of the petitioner as Principal in Sri Venkateswara College of Music and Dance, Tirupati, as unjust, illegal and contrary to the principles of natural justice and consequently to direct the respondents to regularize the services of the petitioner as Principal and pay him all the emoluments w.e.f. 31-12-1997. It is the case of the petitioner that he was appointed on 12-03-1970 as a Tutor in vocal in Sri Venkateswara College of Music and Dance, Tirupati run by Tirumala Tirupathi Devasthanams. He is totally blind by birth. He was selected on merit and was entrusted to teach vocal graduation classes. He has completed Masters Degree from S.V. University during 1966-68 and he was awarded Doctorate in Music by Delhi University in 1979. It is further alleged that he is the senior most and highly qualified Lecturer among the 23 teaching staff members in the college. The college has got three categories of teaching staff i.e., 1) Assistant Lecturers; 2) Lecturers; and 3) Principal. In the initial stage, he held the post of Assistant Lecturer and

subsequently, promoted as Lecturer w.e.f. 25-07-1980. Till 1966, visiting scholars of eminence from outside were appointed as Principal of the college, but from 1996 onwards the senior most Lecturers were used to be kept as in-charge Principal of the college till the year 1972. Later, one Nedunuri Krishna Murthy was appointed as Principal on deputation from State Government service w.e.f. 14-03-1972. In the year 1976, one D. Pasupathi, the senior most Lecturer of the college, was appointed as in-charge Principal till February, 1977 and w.e.f. February, 1977 his appointment was regularized as Principal and he continued in that post till February, 1987 i.e., the date of his superannuation. During the year 1987/92, again senior most Lecturers were kept as in-charge Principal of the College.

It is the further case of the petitioner that he has taken charge as in-charge Principal w.e.f. 31-12-1997, being the senior most Lecturer of the college, and he has given several representations for regularization of his services as Principal, but the same was not considered and one Sri K. Seshadri, Principal of the Government Music and Dance College, Kurnool, was appointed as a regular Principal of the college on deputation. Thus the petitioner pleads that injustice was done to him by not regularizing his services as Principal. Hence, he filed the writ petition seeking the reliefs as stated above.

2. During the pendency of the writ petition, after the appointment of Sri Seshadri as a regular Principal on deputation, the petitioner filed W.P.M.P. No. 19877 of 1999 to permit him to amend the prayer in the writ petition, and as per the order of this Court dated 11-08-1999, the amendment was made.

3. The first respondent-Executive Officer, Tirumala Tirupati Devasthanams filed counter affidavit, inter alia, contending that the post of Principal is a selection post. The post of Principal in other degree colleges of TTD i.e., S.V. Arts College, S.G.S. Arts College, S.P.W. College, Tirupati and S.V. College for Music and Dance, are not identical. They are governed by the Rules framed by the College Service Commission after the approval of D.P.C. in terms of G.O.Ms.No. 158, Education Department, dated 10-06-1987 and G.O.Ms.No. 12, dated 22-01-1992. But separate Rules issued in G.O.Rt.No. 101, Revenue (Endowments-III) Department, dated 20-01-1992 are applicable for the teaching posts in S.V. College for Music and Dance, Tirupati. Hence, the Rules governing the recruitment of teaching staff in other colleges vis-?-vis S.V. Colleges of Music are not identical and therefore, they cannot be applied in the instant case.

It is further alleged that while making stop-gap arrangements as in-charge for the post of Principal, the senior most Lecturer of the college is being given preference, as administration of the college is the prime issue before them. Accordingly, a notification was issued in the year 1995 calling for applications from all the eligible in-service candidates for the post of Principal in the said college. Later the management decided to select an eminent scholar from outside having reputation in music on contractual basis. A search Committee was constituted by the Executive Officer, TTD and it informed that suitable name will

be sent in due course. In the meanwhile, arrangements are made tentatively on 01-01-1998 to place one of the staff members as in-charge Principal in order to run the college administration smoothly, until regular selections are made. It is further averred that the scheme of appointment, the mode of selection and the modalities to be followed by the management in recruiting the Principal on contractual basis, reveals that a preference being given to talent of unique nature and recognition of excellence beyond the normal capacity. As such the post of Principal being a selection one, importance shall be given only to the merit than seniority. It is further averred that the Search Committee appointed in this regard, through G.O.Rt.No. 230, dated 14-07-1999, appointed one Sri K. Seshadri as Principal on deputation from Government Sarada Sangeeta Kalasala, Kurnool, for a period of two years to discharge duties as Principal in S.V. College of Music and Dance, Tirupati. Acting upon the said Government Orders, posting orders were issued by the Executive Officer on 20-07-1999. At the same time, the said Seshadri was relieved from his previous posting at Kurnool through the proceedings issued by the Directorate Department of Culture on 21-07-1999, and joined as Principal in S.V. College of Music and Dance on 22-07-1999 by submitting joining report, which was accepted by the Executive Officer, and a Circular was also issued to that effect intimating the same to all the Heads of the Department of TTDs. The management has every right to fill up the post either by direct recruitment or by transfer or by appointment on contract basis invoking the provisions of the method of recruitment in view of the nature of post where merit plays an important role and seniority comes into picture where the merit is irrelevant. Therefore, the respondents sought for dismissal of the writ petition.

4. Learned counsel appearing for the petitioner mainly urged that the petitioner is efficient and eminent in music and dance and he is a meritorious candidate promoted as Lecturer from Assistant Lecturer without blemish in his career and worked as in-charge Principal of the first respondent's college from 31-12-1997 to 21-01-1999, during which there were no complaints against him and he successfully discharged the duty as in-charge Principal inspite of his handicap of blindness. He further urged that the first respondent, for the reasons best known to them, has not promoted the petitioner as Principal though he is fully qualified in all respects, which is against the Rules, and he supported his arguments while drawing the attention of this Court to the Rules regarding the qualifications for appointment of Teaching Staff in Affiliated Colleges of Sri Venkateswara University, Tirupati, wherein the qualifications of Principal are as follows:

Arts, Science and Commerce Colleges (Pass Courses) (A) Principal:

1. The Principal of a college should ordinarily have the following essential qualifications:

(i) A first or second class Degree of M.A/M.Sc/M.Com/B.A. (Hons)/B.Sc (Hons)/B.Com (Hons) of this University or a degree recognized by this University as equivalent thereto. A doctorate degree or scholarly publications would be an additional qualification.

(ii) At least 10 years experience as a Professor or Lecturer or Asst. Lecturer in a recognized college or colleges.

(iii) About 5 years experience as Head of the Department in the subject or language in which the candidate is qualified in a recognized first grade Arts and Science College or Colleges.

Note:- Service as a tutor or demonstrator or part-time Lecturer shall not be taken into account for the purpose of reckoning the period of experience as Lecturer.

2. When the Principalship of a college falls vacant, ordinarily, the next senior-most Lecturer and head of a department should be promoted to fill in the vacancy. If, for any valid reason, this is not practicable, the post should be advertised, specifying the qualifications prescribed above and choice made, following the usual procedure of interview and the claims of the senior Lecturers and Head of Departments already working in the college should also be taken into consideration.

While placing reliance on the above Rules, the learned counsel strenuously argued that the petitioner possessed all the aforesaid qualifications and despite of the same, the first respondent did not consider the same and failed to promote him as Principal. - The learned counsel further argued that the appointment of Sri Seshadri is behind the back of the petitioner only in order to deprive the petitioner from getting the chance of promotion as Principal, which is contrary to the Rules of TTD, and that the said incumbent Sri Seshadri abruptly took charge as Principal without serving the appointment orders and the petitioner, having learnt about the said proceedings, filed W.P.M.P. for amendment of the prayer and therefore, the writ petition is maintainable though the said Seshadri is not impleaded as party in the writ petition.

The learned counsel further argued that the post of Principal is not a selection post in view of the proceedings of TTD dated 27-05-1989, wherein it is clearly noted as follows:

..... consequent on the issue of the service rules in G.O.Ms.No. 1350, Rev.Endt.III, Department dated 2-8-1978 the S.V. College of Music and Dance, TTD, Tirupati, the rules applicable to Government colleges are not applicable to Aided College. Rules relating to method of recruitment, qualification, pay and allowances etc., applicable to S.V. University, Tirupati, are only applicable to the teaching staff of S.V. College for Music and Dance, Tirupati according to the rule 6 of the above said rules.

In view of the position explained above, the scheme relating to automatic advance of 10 years and 15 years issued in G.O.Ms.No. 415 GA(CA-II) Dept. dated 31-8-1987 applicable to Government Music Colleges, does not apply to the teaching staff in S.V. College for Music and Dance, Tirupati, unless such scheme is adopted by the University, Tirupati.

5. The learned counsel appearing for the first respondent argued that the writ petition is not maintainable for not impleading the Seshadri as a party to the writ petition and that the appointment of in-charge Principal is only discretionary on the part of the management as the said post being a selected one and there is no legal or vested right to the petitioner to claim monetary benefits for not appointing him as Principal and he draws the attention of the Court to the averments made in the counter affidavit.

6. Now the point for consideration is whether the inaction of the respondent in considering the eligibility of the petitioner and regularizing his service as Principal is justified or not?

7. Admittedly, the petitioner is totally blind by birth and he was selected on merit as a Tutor to teach vocal classes in S.V. College of Music and Dance, Tirupati. He obtained Masters Degree in 1966-68 and Doctorate Degree in Music in 1979. It is an admitted fact that no memo was issued to him during the entire service. He was given promotion from time to time after he joined as Assistant Lecturer, and he was placed as in-charge Principal of the said college when the post of Principal fall vacant, and worked as such for a period of two years.

8. A perusal of the affidavit filed by the petitioner shows that on earlier occasion, the first respondent placed senior most Lecturers as in-charge Principal and on some occasions, outsiders of the college were also brought by deputation as Principal. The affidavit averments reflect that only on one occasion, the senior most Lecturer D. Pasupathi was appointed as Principal and thereafter no senior most Lecturer was promoted as Principal of the said college. There are series of appointments while filling up the post of Principal earlier as seen from the affidavit filed by the petitioner itself. Admittedly the claim of promotion by the individual should be as a matter of right. On a cursory reading of the Rule position relied on by the learned counsel for the petitioner, it is clearly reiterated that when the Principalship of a college falls vacant, ordinarily, the next senior most Lecturer and Head of a Department should be promoted to fill in the vacancy, and if, for any valid reason, this is not practicable, the post should be advertised specifying the qualifications prescribed and choice made, following the usual procedure of interview; and the claims of the senior Lecturers and Head of Departments already working in the college should also be taken into consideration. Therefore, while interpreting the above said provision, nowhere it is mandated that only senior most Lecturer shall be appointed as Principal of the college. Thus the provision further clarifies that if, for any valid reason, the senior most Lecturer is not available, the post should be advertised specifying the qualifications etc. for which the claims of senior most Lecturers and Head of Departments already working in the college should also be taken into consideration.

9. The counter affidavit filed by the first respondent also clearly reads that earlier after the contract tenure of Sri Nukala China Satyanarayana, one Sri R. Krishna Murthy, senior most Lecturer, was kept as in-charge Principal of the college and

that the scheme of appointment, the mode of selection and the modalities to be followed by the management in recruiting the Principal on contractual basis, reveals that a preference being given to the talent of unique nature and recognition of excellence beyond the normal capacity, and as such, the post of Principal, being a selection one, importance shall be given only to the merit than seniority. In the counter affidavit, it is further stated that the petitioner was never appointed as Principal either on promotion or on direct recruitment, and hence, the question of regularization of his service in the cadre of Principal is ridiculous and against the conventional service jargon. The petitioner was only kept as in-charge Principal of the college to meet the administrative exigencies till regular selections are made.

10. On an overall reading of the entire counter affidavit, it came to light that it is the prerogative of the management to select an eminent scholar to teach music in the first respondent's college. There are also precedents appointing outsiders as Principal on deputation basis. In the same way, Sri Seshadri was also appointed as Principal on deputation as per the Government Orders. However, the petitioner did not challenge the appointment of Sri Seshadri as Principal, but simply stated in his petition that on coming to know about the appointment of Sri Seshadri as Principal, he approached the authorities and placed his grievance for not considering him for Principalship.

11. In any view of the matter, the claim of the petitioner for regularization of his services as Principal, in my view, cannot be said to be a matter of right, and it is beyond the purview of the Rules framed by the first respondent. There is a procedure contemplated in the first respondent's institution for appointment of Principal and other staff members. The institution must follow its Rules. The petitioner nowhere in the writ petition questioned the validity of the appointment of Sri Seshadri as Principal of the institution where the petitioner was working as on the date of filing the writ petition. Admittedly the petitioner retired from service on 31-03-2000. Further in-charge arrangements for the post of Principal were made by giving priority to the senior most Lecturer considering the length of service. A notification was issued inviting applications from all the eligible in-service candidates and later the management decided to select the Principal adopting clause "C" in the Rules governing the post by selecting an eminent scholar with repute from outside having fame in music on contractual basis. A Search Committee appointed in this regard has selected the said Seshadri on 04-05-1999 through G.O.Rt.No. 230, dated 14-07-1999 and appointed him as Principal on deputation from Government Sarada Sangeeta Kalasala, Kurnool, for a period of two years to discharge duties as Principal of the institution. Acting upon the said Government Orders, posting orders were issued by the Executive Officer to the second respondent on 20-07-1999, and at the same time, the incumbent was relieved from his previous posting at Kurnool through proceedings issued by the Directorate Department of Culture on 21-07-1999, and accordingly, he joined on 22-07-1999 as Principal in the first respondent's institution. Hence, the appointment of Sri Seshadri was made by the Government

deputing his services as Principal of the first respondent's institution.

12. Therefore, in the totality of the circumstances, viewed from any angle, I see no illegality or irregularity in the procedure followed by the respondents in appointing Sri K. Seshadri as Principal of the S.V. College of Music and Dance, Tirupati run by the Tirumala Tirupati Devasthanams and there are no grounds to grant the relief as prayed for by the petitioner for his appointment as Principal as a matter of right. Accordingly, the writ petition is dismissed. No costs.