

(2009) 11 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27295 and 31292 of 1998, 11626 of 2000 and 13510, 13514, 14855 and 17259 of 2001

Dr. K. Surender Reddy, B. Venkateswarlu and K. Rajender
Reddy and Others

APPELLANT

Vs

The Regional Joint Director of Collegiate (Higher) Education
and Others

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 — Section 7
Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) (Amendment) Act, 1998 — Section 7
Constitution of India, 1950 — Article 226

Citation : (2010) 1 ALT 700 : (2009) 4 APLJ 331

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiah, J;R. Subhash Reddy, J

Bench : Full Bench

Advocate : Ch. Jagannadha Rao, for the Appellant; G.P., for Respondent Nos. 1 to 4 in W.P. No. 27295 of 1998, in W.P. No. 11626 of 2000, for Respondent Nos. 2 to 4 in W.P. No. 13510 of 2001, for Respondent Nos. 2 and 3 in W.P. Nos. 31292 of 1998 and 13514 of 2001 and for Respondent No. 2 in W.P. Nos. 14855 and 17259 of 2001, Y. Rama Rao, in W.P. No. 27295 of 1998 and A. Ravinder, in W.P. Nos. 31292 of 1998 and 13510, 13514, 14855 and 17259 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Since these writ petitions arise out of similar facts and involve similar question of law, we dispose of these writ petitions by this common order.

2. The petitioners in these writ petitions are the part-time lecturers/junior lecturers working in the private aided colleges. The petitioners invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by way of a Writ of Mandamus seeking regularization of their services in their respective posts without reference to the cut off date as stipulated in

G.O.Ms. No. 328, Education (CE:III) Department dated 15.10.1997 and to extend all consequential benefits for which they are entitled to and also direct the respondents not to fill up even the back log vacancies reserved for Scheduled Castes and Scheduled Tribes, pursuant to the notifications issued. The petitioners also seek to declare the Paragraphs-9(5) and 13 of G.O.Ms. No. 328, Education (CE:III) Department dated 15.10.1997 in so far as fixing the cut off date for counting their eligibility for regularization of their services, as illegal and arbitrary.

3. The Government, in supersession of various earlier orders, approved the scheme for regularization of services of part-time lecturers/part-time junior lecturers working in private aided decree/junior colleges including oriental colleges and junior colleges with vocational courses in the State subject to the conditions/norms and notified the said scheme in G.O.Ms. No. 328, Education (CE:III) Department dated 15.10.1997. Sub-para (5) of Para-9 of the said G.O. lays down that only those who have put in service of three academic years as on 30.07.1991 or five academic years as on 25.11.1993, as the case may be, and also continuing in service as on the date of issue of the said G.O. are eligible for regularization. As 120 days are considered to be reasonable number of working days for academic year, the part-time lecturers/part-time junior lecturers should have put in 360 working days as on 30.07.1991 or 600 days as on 25.11.1993. Paragraph-10 of the said scheme in G.O.Ms. No. 328, Education (CE:III) Department dated 15.10.1997 says that the date of regularization shall take effect from the date of issue of such orders of regularization by the concerned authorities. The scheme was intended as one time scheme and after expiry of six months the said G.O. will stand automatically annulled.

4. The petitioners contend that the cut off date imposed in Paragraph-9(5) and the period mentioned at Paragraph-13 of the said G.O. is illegal and arbitrary and it has no nexus to the object sought to be achieved. The object, according to the petitioners, is to regularize their services who were working in the aided posts. It is further contended that the issue relating to the regularization of the employees working on daily wages/ad hoc basis in various Governmental Departments, Corporations, Universities, Government undertakings and other bodies, established by the Government and receiving funds from the State Government either fully or partly for its maintenance or any other educational institutions receiving aid from the Government under the scheme formulated by the Government in G.O.Ms. No. 212, dated 22.04.1994 came up for consideration before the Supreme Court of India in the case of Dist. Collector/Chairman and Others Vs. M.L. Singh and Others and the Supreme Court directed the State Government and others to regularize the services of the employees who have completed five years of service without insisting for the cut off date, and the said judgment is applicable even in respect of the scheme framed by the Government in G.O.Ms. No. 328, Education (CE:III) Department dated 15.10.1997.

5. It is the case of the Government that the A.P. (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994

(Act 2/94), which was amended by Acts 3 and 27/98 with reference to the fixation of the cut off date was upheld in the case of Secretary, A.P. Social Welfare Residential Educational Institutions Society, Hyd. and others Vs. P. Venkata Kumari, . The part-time lecturers challenged the condition imposed in G.O.Ms. No. 221 dated 20.06.1995 with reference to the required service of three academic years as on 30.07.1991 and five academic years as on 25.11.1993 in O.A.6199/1996 and batch before the Andhra Pradesh Administrative Tribunal, Hyderabad (hereinafter referred to as "the Tribunal") and the Tribunal allowed the O.A.6199/1996 and batch dated 03.07.1998, directing the respondents therein to consider the case of all eligible part-time lecturers who have completed 360 working days in three academic years or 600 working days in five academic years by 31.03.1998 i.e. the date on which the scheme came to an end for regularization of their services.

6. The Government challenged the said decision of the Tribunal in W.P.3475/1999 and batch. The same Division Bench which has disposed of the matters in Secretary, A.P. Social Welfare Residential Educational Institutions Society v. P. Venkata Kumari (2 supra) allowed the said writ petitions and set aside the order of the Tribunal. The Division Bench took the view that the Tribunal committed an error in altering the cut off date. In view of the conflict between the decision rendered by the same Division Bench in W.P.3475/1999 and batch and Secretary, A.P. Social Welfare Residential Educational Institutions Society v. P. Venkata Kumari (2 supra), another Division Bench of this Court {to which I was a party (VE, J)} was of the opinion that the matter is required to be adjudicated by a Full Bench. In view of the MIT orders passed by the Supreme Court in District Collector/Chairman v. M.L. Singh (1 supra) the questions that were referred for consideration by the Full Bench are whether the orders of the Supreme Court would operate as binding precedent, and whether the interpretation of G.O.Ms. No. 212, dated 22.04.1994 placed by the Supreme Court with regard to cut off date would at all be applicable in interpreting G.O.Ms. No. 328 dated 15.10.1997. In the meanwhile, the decision of Division Bench in Secretary, A.P. Social Welfare Residential Educational Institutions Society v. P. Venkata Kumari (2 supra) was questioned before the Supreme Court in C.A.3702/2006.

7. When the matters were posted before the Full Bench earlier, the Full Bench passed an order on 10.07.2002 directing to continue the services of the petitioners on the same terms and conditions and their continuance will be subject to the result of the writ petitions and the writ petitioners will not claim any equities for their continuance of service under Court orders, and any recruitment process in the concerned colleges will go on, subject to the result of the writ petitions, and accordingly, the batch of the writ petitions were adjourned and directed to be listed after disposal of the cases pending before the Hon"ble Supreme Court of India.

The Supreme Court disposed of the cases vide judgment dated 06.07.2009 in the case of A. Manjula Bhashini v. MD, A.P. Women's Co-operative Finance

Corporation Ltd. 2009 (5) ALD 58 (SC) and upheld the constitutional validity of Act 2/1994, as amended by Acts 3 and 27 of 1998, giving statutory validity to G.O.Ms. No. 212, dated 22.04.1994 with reference to the cut off date requiring the minimum qualifying stipulated service as on 25.11.1993 and to the extent of affirming cut off date as above, reversed the ratio of Secretary, A.P. Social Welfare Residential Educational Institutions Society v. P. Venkata Kumari (2 supra) case. As the Full Bench was awaiting the aforesaid judgment of the Supreme Court, these matters are listed before the Full Bench for hearing and disposal.

All the petitioners herein are the part-time lecturers/part-time junior lecturers and none of them are having the required service of three academic years-as on 30.07.1991 and five academic years as on 25.11.1993 as fixed in G.O.Ms. No. 221 dated 20.06.1995 and G.O.Ms. No. 328, dated 15.10.1997 and therefore, they contend that minimum period of required service as on the cut off date is illegal and arbitrary for regularization of their services.

8. Act No. 2 of 1994 called Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staffing Pattern and Pay Structure) Act, 1994 came into force with effect from 25.11.1993. As per the aforesaid Act, the appointments of the part-time, daily-wage, part-time workers, full-time workers are all prohibited. However, the Government issued G.O.Ms. No. 212, Finance & Planning (Fin) Department, dated 22.04.1994 formulating a scheme that the services of such persons, who have worked continuously for a period of five years and are continuing as on 25.11.1993 be regularized by the Appointing Authorities, subject to fulfillment of the following conditions:

- 1) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularized.
- 2) They should be within the age limit as on the date of appointment as NMR/ Daily wage employee.
- 3) The rule of reservation wherever applicable will be followed and back-log will be set off against future vacancies.
- 4) Sponsoring of candidates from Employment Exchange is relaxed.
- 5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.
- 6) In the case of Work-charged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Work-charged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of Work-charged Establishment will have to be terminated, they shall be adjusted in the other departments, District Officers provided there are clear vacancies of Last Grade Service.

The concerned departments are requested to process the cases of absorption, regularization of services of N.M.Rs., daily-wage employees, etcetera, in pursuance of the aforesaid scheme, after obtaining clearance from the Finance and Planning Department.

9. Thereafter, insofar as the part-time daily-wage workers are concerned, Government issued orders in G.O.(P) No. 112, Finance and Planning Department, dated 23.07.1997, for regularization of the persons, who had worked continuously as part-time lecturers for a minimum period of ten years and are continuing as on 25.11.1993, the date on which Act No. 2 of 1994 came into force, be regularized by the Appointing Authorities, subject to fulfillment of the following conditions:

- 1) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission or as the case may be, the District Selection Committee.
- 2) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his or her services have to be regularized.
- 3) The person should be within the age limit as on the date of appointment as part-time employee.
- 4) The Rule of Reservation wherever applicable will be followed and back-log will be set off against future vacancies.
- 5) The sponsoring of candidate from Employment Exchange is relaxed.
- 6) If there are two candidates, one part-time and the second one a full-time employee (Daily Wage Employee) of any category or name and there exists only one vacancy, the senior most between the two in terms of continuous service already rendered prior to 25.11.1993 treating two years of part-time service as one year of full-time service, relative seniority will be calculated and regularization will be suggested for the senior among the two accordingly.
- 7) The regularization of services of full-time employee already made in terms of G.O.Ms. No. 212, Finance and Planning (FW.PC.III) Department, dated 22.04.1994 will not be reopened for giving effect to the present order.

All the concerned departments were directed to process the cases of absorption or regularization of the services of the part-time employees pursuant to the aforesaid scheme, after obtaining clearance from the Finance and Planning Department.

10. In *A. Manjula Bhashini v. Managing Director, A.P. Women's Co-operative Finance Corporation Limited* (3 supra) the Supreme Court considered the earlier judgment of the Supreme Court in *District Collector/Chairman v. M.L. Singh* (1 supra) and the scope of the amendment was explained, holding that only such

persons who have completed five years of continuous service on or before 25.11.1993 alone are entitled to be considered for regularization. However, in order to remove the ambiguity and imperfectness in the language in G.O.Ms. No. 212, dated 22.04.1994, and make the policy of regularization an integral part of 1994 Act, the Legislature has enacted Amendment Act Nos. 3 and 27 of 1998. The purpose of making the policy of regularization a part of 1994 Act was not to dilute the main object of 1994 Act i.e. to curb the menace of irregular appointments and also to ensure that appointments are made against the sanctioned posts only from among the candidates selected by the designated recruiting agencies, and to harmonize the same with the prohibition contained in Section 7 against the regularization of daily-wage and temporary employees.

11. The preface of Act 27 of 1998 clearly shows that the policy contained in G.O. dated 22.04.1994 was intended to be one time measure for regularization of the persons employed on daily-wage or nominal muster roll or consolidated pay who completed five years continuous service on or before 25.11.1993, i.e. the date of enforcement of the Act 1994 and it was not a continuing scheme for regularization of all daily-wage employees as and when they were to complete five years of service. The language of first proviso to Section 7, of which the policy of regularization was engrafted in the 1994 Act, shows that the amendments were made with the sole object of removing the ambiguity in Act 2 of 1994 and in the policy contained in G.O.Ms. No. 212, dated 22.04.1994 and the same were not intended to nullify or override the judgment in District Collector v. M.L. Singh (1 supra). The language of the policy contained in CO., dated 22.04.1994 was similar to the one contained in the newly inserted proviso to Section 7 and there was no ambiguity in it and the Courts would not have interpreted the same in a manner which would entitle all persons employed on daily wages before 25.11.1993 to claim regularization irrespective of the date of completion of five years service. The Supreme Court also considered various judgments and held that the proposition of law laid down in those cases cannot be relied upon for entertaining claim of daily wage employees for regularization irrespective of the fact that they may not have completed five years of service on or before 25.11.1993. Accordingly, their Lordships have upheld the amendments made to Act 1994 by Amendment Act Nos. 3 and 27 of 1998 and further held that the said amendments do not have any effect of nullifying or overriding the judgment in District Collector v. M.L. Singh (1 supra). The policy of regularization contained in first proviso to Section 7 of Act No. 27 of 1998 is one time measure intended to benefit only those daily wage employees, who completed five years continuous service on or before 25.11.1993 and consequently the employees who completed 5 years service after 25.11.1993 cannot claim regularization. The operative portion of the judgment in the case of A. Manjula Bhashini v. Managing Director, A.P. Women's Co-operative Finance Corporation Limited (3 supra) is extracted hereunder:

42. The question which remains to be considered is whether the Division Bench was justified in holding that all daily wage employees who completed 5 years

service on the date of enforcement of Act No. 27 of 1998 i.e. 19.08.1998 would be entitled to be considered for regularization of their services. A reading of paragraphs 54, 67, 68 and 72 of the impugned judgment shows that even though the Division Bench did not find the cut off date i.e. 25.11.1993 specified in first proviso to Section 7 for determining the eligibility of daily wage employees for regularization to be arbitrary, irrational or discriminatory, yet it changed the said date from 25.11.1993 to 19.08.1998 solely on the premise that Act No. 27 of 1998 was enforced with effect from that date. In our view, once the Division Bench negated the challenge to the validity of Act Nos. 3 of 1998 and 27 of 1998, there was no warrant for altering the date of eligibility specified in first proviso to Section 7 of the 1994 Act and thereby extend the zone of eligibility of daily wage employees who could be considered for regularization. As a corollary, we hold that the declaration made by the Division Bench that all persons who completed 5 years service as on the date of coming into force of Act No. 27 of 1998 would be entitled to be considered for regularization of their services is legally unsustainable and is liable to be set aside.

43. In the result, the appeals filed by the employees (C.A. Nos. 3702, 3703, 3704, 3705, 3706, 3707, 3709, 3710, 3721, 3733, 3734, 3737, 3742, 3744, 3748, 3749 and 3751 of 2006) are dismissed and those filed by the State Government and agencies/instrumentalities of the State (C.A. Nos. 3685, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3723, 3724, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3750, 3752, 3753, 3754 and 3755 of 2006) are allowed. The declaration made by the Division Bench that the ban on regularization will be effective from 19.08.1998 i.e. the date on which Act No. 27 of 1998 came into force and that all persons who have completed 5 years of service as on that date would be entitled to be considered for regularization of service is set aside. It is, however, made clear that the daily wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularized so far, shall be entitled to be considered for regularization and their services shall be regularized subject to fulfillment of the conditions enumerated in CO., dated 22.04.1994. With a view to obviate further litigation on this issue, we direct the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularization of the services of eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or High Court or this Court. Since some of the appeals decided by this order relate to part time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O.(P) No. 112 dated 23.07.1997.

12. In so far as part-time lecturers working in the Government college/private aided degree/private aided junior colleges are concerned, for regularization of their services, Government formulated similar scheme in the same lines as per the G.O.Ms. No. 212 with reference to the cut off date on 25.11.1993 in G.O.Ms.

No. 328, dated 15.10.1997, as one time measure. When these matters were posted before the Division Bench, the Division Bench referred the batch of Writ Petitions to the Full Bench and the Full Bench after passing certain interim orders, adjourned the matters awaiting the orders of the Supreme Court. Now that the Hon''ble Supreme Court of India resolved all the issues vide decision in A. Manjula Bhashini v. Managing Director, A. P. Women's Co-operative Finance Corporation Limited (3 supra). We are of the opinion that all these cases are squarely covered by the Judgment of the Supreme Court, which has upheld the cut off date for regularization of the various types of part-time, full-time lecturers, N.M.Rs., daily-wage workers etc., whoever have worked and who have been continuously working with the minimum required period of service as on 25.11.1993.

13. We, therefore, hold that the cut off date i.e. 25.11.1993 requiring to have minimum period of service as on 25.11.1993 is also applicable in G.O.Ms. No. 328 dated 15.10.1997 and unless and until the petitioners fulfil the minimum period of required service as on 25.11.1993, as stipulated in the G.O.Ms. No. 328 dated 15.10.1997, they are not entitled for regularization of their services.

14. Following the principles laid down by the Hon''ble Supreme Court in A. Manjula Bhashini v. MD, A.P. Women's Co-operative Finance Corporation Ltd. (3 supra), we are of the opinion that the cut off date, as fixed in the aforesaid G.O. is legal and valid.

15. In view of the above, the petitioners are not entitled for any relief, as sought for." These Writ Petitions are accordingly dismissed. No order as to costs.