
(2002) 04 AP CK 0072
In the Andhra Pradesh High Court
Case No : WA No. 408 of 1999

Government of A.P. and Another	Vs	APPELLANT
N. Garudeshwara Reddy and Others		RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2002) 3 ALD 81 : (2002) 3 ALT 651 : (2002) 3 ALT 561

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : Government Pleader for Higher Education, for the Appellant; C.V. Mohan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This writ appeal by the Government of Andhra Pradesh represented by Secretary to Government, Education Department and the Commissioner of Collegiate Education, Hyderabad, is directed against the order of the learned single Judge dated 28-12-1996 made in WP No. 21613 of 1996. The respondents 1 to 19 herein are the writ petitioners. They filed the writ petition for the following relief:

".....the High Court will be pleased to issue an appropriate writ, order or direction declaring the inaction on the part of the respondents in not fixing our salary by giving notional increments, by treating the entire service rendered by the petitioners from the dates of petitioner respective appointments as part time Lecturers regular service in terms of the judgment of this Hon"ble Court made in WA No. 642 of 1988 dated 8-3-1991 as arbitrary, illegal and violative of the Fundamental Rights guaranteed to us under Articles 14 and 21 of the Constitution of India and issue a consequential direction to the respondents to refix our salary and granting to petitioners notional increments by calculating the service rendered by petitioners from petitioner respective dates of appointment as part time Lecturers and other consequential benefits to which we are entitled

to pursuant to such refixation and pay scales and career advancement scheme."

The facts, in brief, germane to the decision-making be noted and they are as follows: The writ petitioners have been appointed on part-time basis as Lecturers in the respondent No. 20- college on different dates. Since their services were not regularized, as the college was not admitted to grant-in-aid, they approached this Court by filing WP No. 3304 of 1986 which was dismissed. Aggrieved by the said order, they preferred WA No. 642 of 1988. The said writ appeal was allowed by a Division Bench of this Court directing the appellants herein to release grant-in-aid to the posts in the respondent-college with effect from 1-3-1991. Accordingly G.O. Rt No. 351, dated 4-3-1992 was issued. The writ petitioners are aggrieved to the extent that notional increments and fixation of their pay has not been done. However, they state that their service for the purpose of seniority and pension has been reckoned by the Government.

2. Opposing the writ petition, on behalf of appellants 1 and 2, it was contended that no specific direction was given by the Division Bench in the order in WA No. 642 of 1988 dated 8-3-1991 and as per the policy of the Government, when the college is admitted to the grant-in-aid, irrespective of the length of the service of the teaching staff, they have to commence with the initial basic pay in the respective scale with effect from 1-3-1991.

3. The learned single Judge, after referring to the operative portion of the order of the Division Bench in WA No. 642 of 1988 dated 8-3-1991, has opined that the writ petitioners are not entitled for arrears for past period. The learned single Judge, however, opined that from that observation it couldn't not be said that the writ petitioners are not entitled for fixation of pay. So opining, the learned single Judge, by the order under appeal, disposed of the writ petition with a direction to the appellants herein that the pay of the writ petitioners should be fixed notionally from the date of their entry into service till 1-3-1991 and thereafter they are entitled to actual monetary benefit in their respective scales attached to the post. Hence this appeal by the State and its authorities.

4. The short question that falls for consideration and decision is whether the judgment of the Division Bench in WA No. 642 of 1988 dated 8-3-1991 entitles the writ petitioners to count their service rendered anterior to 1-3-1991 while fixing their salary or wage consequent upon G.O. Rt. No. 351 dated 4-3-1992 or not?

5. The operative portion of the order of the Division Bench dated 8-3-1991 in WA No. 642 of 1988 reads as follows:

".....Having regard to the lapse of time, we are not inclined to direct payment of arrears of salary for the past period. A direction shall, therefore, issue to the respondents to treat the petitioners other than petitioners 2, 10, 13, 16, 17 and 18 as having been appointed as Lecturers on a regular basis and pay them salaries and other allowances admissible to regularly appointed Lecturers with effect from 1-3-1991. The 1st respondent shall release the necessary grant-in-

aid, as the posts occupied by them are undoubtedly aided. It is also made clear that the entire service rendered by them shall be counted for purposes of seniority and pension only."

The only sentence in the operative portion of the order, which falls for consideration, is the following:

"It is also made clear that the entire service rendered by them shall be counted for purpose of seniority and pension only"

The clear intendment and the purport of the above direction is that the respective service put in by each of the writ petitioners anterior to 1-3-1991 should be counted by the appellant-authorities for the purpose of seniority and pension only. In other words, the service rendered by them anterior to 1-3-1991 is required to be ignored totally for any other purpose than seniority and pension. Taking into account the service rendered by them anterior to 1-3-1991 for the purpose of pension would not arise, because pension is a post retirement event and that question arises only after the employees retires. According to Mr. C. V. Mohari Reddy, learned Counsel appearing for the writ petitioners-employees, the concept of seniority would include the entitlement to insist that the service put in by the writ petitioners anterior to 1-3-1992 should also be taken into account for the purpose of fixation of wage of each of writ petitioners as on 1-3-1991. This hypothesis is not at all acceptable to us. If that was the intendment of the Court, there was no difficulty for the Division Bench to direct the appellant-authorities to fix the wages of each of the writ petitioners as on 1-3-1991 in pursuance of G.O.Rt.No. 352 dated 4-3-1992 after taking into account the past service rendered by each one of them anterior to 1-3-1991. Since the Division Bench, quite consciously and deliberately, did not direct the appellants to do so, it is not permissible for this Court to read something into the order which is not at all there, particularly if it is read in the way the learned single Judge has read, which involve financial implication and burdening the exchequer. Such an interpretation would never be adopted.

6. The concept of "seniority" has a definite connotation in service law. Generally speaking, "seniority" is placement of an official or employee in a cadre having relative length of service. Seniority, as such, is not a concrete legal right. Seniority would assume into a capsule of right only when a seniority list is operated, it is nobody's case that in fixing the seniority, thereby meaning, that in placing the writ petitioners in respective seniority lists of the cadre, some of their juniors were placed above them. Therefore, the grievance of the writ petitioners vis-a-vis seniority is totally absent in the pleading or in the argument. Though seniority is put forth as the offence to assail the action of the appellant-authorities, what actually the petitioners seek, in the garb of seniority, is nothing but pecuniary benefits insisting that the services rendered by them anterior to 1-3-1991 should also be counted, and on that basis their wages/salary should be fixed in the pay scale concerned as on 1-3-1991. As already pointed out supra, we are unable to find any such entitlement from the judgment of the Division

Bench of this Court in WA No. 642 of 1988 dated 8-3-1991.

7. In the result and for the foregoing reasons we allow the writ appeal and set aside the order of the learned single Judge and dismiss the writ petition. However we make it very clear that consequent on the retirement of the writ petitioner, while fixing their pension, it is trite, the appellant-authorities shall take into account the entire length of service put in by each one of the petitioners, including the service rendered by them anterior to 1-3-1991. No costs.