

(1997) 08 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12649 of 1997

G.V. Narasimham

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 30-08-1997

Acts Referred:

Andhra Pradesh College Service Commission Act, 1985 — Section 1(2)

Citation : (1998) 1 ALD 164 : (1997) 5 ALT 653

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : Mr. M. Ravindra Nath Reddy, for the Appellant; Government Pleader for Higher Education and Mr. M.P. Chandra Mouli, for the Respondent

Judgement

1. This writ petition is directed against the order of the Government dated 2-6-1997 providing for absorption of the Principals of the private aided oriental colleges.

2. The petitioner was working as a lecturer in the Veda and Sanskrit College, Moolapet, Nellore-3rd respondent herein. On 1-7-1990, the post of the Principal in that institution became vacant. The petitioner, who was senior most lecturer in that college, was put in-charge of that post on 26-6-1990. By G.O.Ms.No.158 dated 10-6-1987 the rules for selection of the persons for appointment to the posts of teachers etc., to be filled up by the A.P.Collegeate Services was promulgated. That notification provided that the post of Principals of Oriental Colleges was to be filled up by transfer among the qualified, eligible and suitable lecturers of that college who was having the essential qualifications. In respect of the private aided colleges, G.O.Ms.No.233 Education dated 20-10-1993 was issued recognising that as each college is a separate unit and the seniority is limited to the college only, even the lecturers in English and History subjects working in such private oriental colleges were eligible for promotion to the post of Principal along with the lecturers of Sanskrit based on the combined seniority of the lecturers working in that particular post of aided college, treating the

college as a single unit. The petitioner expected that his college being treated as a single unit and he being the senior most, he will be made permanent in the post of the Principal, in which he was acting. However, on 1-11-1994, another oriental college namely, S.T.R.N.S.S.Kalasala, Ongole, Prakasam District, was closed because of fall in student strength and the Government passed a G.O.Rt.No.481 directing that the staff working in the closed institution are to be absorbed in other oriental colleges having enough work load. Accordingly, on 10-3-1995, the 4th respondent, who was the Principal of that closed college, was transferred to the 3rd respondent college and appointed as a Principal. The petitioner filed W.P.No.5397/ 1995 questioning that appointment. The contention was that since the post of the Principal in the college was to be filled up treating the staff of that college alone as a single unit the Principal of the closed college cannot be taken as eligible for filling that post. By a judgment of this Court dated 27-6-1996 in Writ Appeal No.499/1996 this contention was accepted and it was held that as long as the G.O.Ms.No.233 dated 20-4-1993 was in existence, filling up of a post of the Principal of a private oriental college with an outsider was invalid and accordingly, the order of the Government dated 10-3-1995 appointing the 4th respondent as Principal was quashed. Thereafter, the Government passed the impugned order G.O.Ms.No. 134 dated 2-6-1997 providing for filling up of the vacancy of a Principal by transfer from other oriental colleges including the surplus Principals of closed uneconomical oriental colleges. Consequently, the 1st respondent issued a memo dated 3-6-1997 appointing the 4th respondent as a Principal of the 3rd respondent college.

3. This petition challenges this action of the Government. The learned Counsel for the petitioner submitted that when the vacancy arose in 1990 in view of then rules, the petitioner had acquired the right to be considered for appointment of Principal which cannot be taken away by the impugned order. It was submitted that any amendment of the rules regarding the recruitment can only be prospective and cannot be applied retrospectively to affect vested rights of the petitioner. Thirdly, it was submitted that since the impugned order affected the rights of the petitioner, passing of that order without an opportunity to the petitioner made it void. Lastly, it was submitted that the impugned order was passed mala fide only for the purpose of accommodating the 4th respondent in spite of the decision of this Court striking down a similar action.

4. The learned Government Pleader submitted that the earlier rules in G.O. Ms. No.158 dated 10-6-1987 had lapsed because they had been promulgated only for the purpose of recruitment through the A.P.College Service Commission and had lapsed with the abolition of that commission. He argued that the subsequent order dated 20-10-1993 was itself later to the occurrence of the vacancy and did not amount to any rule but only a convention. According to the learned Government Pleader, the petitioner did not acquire any right and he was neither entitled to an opportunity nor was there any embargo on the Government from framing rules relating to the filling up of vacancy. He pointed out that for other colleges even under the G.O.Ms.No. 158, dated 10-6-1987, the seniority among

the lecturers of all the colleges in the State was a criteria and the Government had only extended the same criteria to the private aided oriental colleges as there was a particular need to accommodate the staff of colleges which were required to be closed due to fall in student strength. It was also argued that there was nothing mala fide in the action because a technical flaw, which was pointed out by the Court, has been rectified.

5. I have considered the submissions of both the sides and I have gone through the impugned order and the relevant orders of the Government as well as the judgment of this Court. The petitioner can have a case for quashing G.O.Ms.No.134 only if he can establish that an accrued right has been done away by that impugned order. This basic foundation for the petitioner's case has not been established. G.O.Ms.No.158 dated 10-6-1987 laid down the rules for filling up the post of Principal in oriental colleges. Those rules were not confined to the recruitment to one particular college but actually referred to the qualified and eligible lecturers of all colleges be it degree college or oriental college or colleges of education. It is only by a clarification by G.O.Ms.No.233 dated 20-10-1993 that the Government stated that due to reorganisation of the oriental colleges, lecturers in Sanskrit alone are eligible for the promotion of Principal of the oriental colleges and this led to a representation by others which was considered and the order was issued to enable the lecturers of English and History also to be considered for appointment as a Principal. It is, in that context, it was stated that each college is a separate unit and the post of Principal is filled up by the lecturers working in that college. This G.O. states that necessary amendment to A.P. Education Service rules will be issued separately. The learned Government Pleader points out that the said Section 1(2)(a) of A.P.College Service Commission Act, 1985 has been omitted by Act 25 of 1990 and consequently those rules do not apply to private colleges but this fact does not appear to have been placed before the Bench of this Court and on the footing that the said G.O. continues to operate, the Bench of this Court said that unless it is modified the promotion to the post of the Principal in the oriental college has to be confined to the lecturers of that college. To quote the words of this Court :

"The Circular only stated that the staff of the closed college would be adjusted wherever there is work load. Such a provision by itself does not supersede G.O.Ms.No.233, dated 20-10-1993, though it cannot be doubted that if the Government so wants, they can either modify or cancel G.O.Ms.No.233 dated 20-10-1993. But since that has not been done we must hold G.O.Ms.No.233 dated 20-10-1993 to be operative on its own force and regulating the mode of filling up of the post of Principal in private aided oriental college. Consequently, respondent No.4 could not have been transferred as Principal to respondent No.3-College. Consequently the order of transfer in proceedings Rc.No.270/ PC-II-4/94 dated 10-3-1995 is quashed."

6. By the impugned order, the Government specifically amended the said G.O.Ms.No.233 Education dated 20-10-1993 and stated that the private aided

oriental colleges in the State shall be taken or treated as a single unit for the purpose of appointment, transfer, seniority, promotion and adjustment of surplus teaching and non-teaching staff including the Principals of Private Aided Oriental Colleges. Consequently, the Government has modified the system to provide for the exigency which the Courts have pointed out did not exist earlier.

7. The contention of the learned Counsel for the petitioner that this modification affects the vested rights of the petitioner can be accepted only if the petitioner can establish that some right had vested. As noted earlier, the service rules on which the petitioner depends have been repealed and the convention of taking the college as a unit itself can be recognised only after the vacancy arose. Therefore, there is nothing to show that in 1990 when the vacancy arose the petitioner had a right to be appointed as a Principal, as the senior most lecturer. He had only the right to be considered for promotion. It is well settled that it is open to the Government to change the rules and introduce a new principle which may affect the right for future promotion (see *Wing Commander J. Kumar Vs. Union of India (UOI) and Others*, where the change affects only the chances of promotion because when the criteria for promotion is changed, the Court cannot interfere with it unless it is perverse or mala fide or for reasons extraneous to administrative exigencies, (see *V.T. Khanzode and Others Vs. Reserve Bank of India and Another*, . The learned Counsel for the petitioner relied on the following judgments for the proposition that the Government cannot by an administrative order operating retrospectively take away the vested right of the petitioner. *Uday Pratap Singh and Others Vs. State of Bihar and Others*, , *T.R. Kapur and Others Vs. State of Haryana and Others*, , *R.S. Ajara and Others Vs. State of Gujarat and Others*, , *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, and *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, . In all these cases, it was found that the petitioners therein had already been promoted, and therefore, their vested rights could not be taken away by retrospective amendment of the rules regarding their eligibility. The learned Counsel for the petitioner submitted relying on a decision of this Court in the case of *I.B. Rajendra Prasad Vs. The Director of Tribal Welfare and Others*, that when a state of affairs existing for a number of years it should not be allowed to be suddenly upset, and hence, the legitimate expectation of the petitioner for being promoted as the senior most lecturer of that college, cannot be upset by allowing the other people to compete for the post long after the date on which the vacancy arose. But that decision itself states that in appropriate cases rights accrued under the earlier law can be unsettled if the justice of the situation so demanded. No doubt, in the present case, if the vacancy which arose in 1990 had been filled up then and there, the petitioner would not have to face any competition from the 4th respondent. Unfortunately, due to lapse of time and the post lying vacant, the subsequent events such as, closure of uneconomical oriental colleges and the need to absorb the staff of those colleges demanded the attention of the Government. In that situation, considering the equities of retaining the Principal of a closed college in that post as against regularising a

lecturer who is officiating in the post of Principal, the Government has thought it fit to amend the rules so as to absorb the former without detriment to their existing status. As between the petitioner and the 4th respondent it cannot be gainsaid that the 4th respondent had acquired the status of the regular Principal while the petitioner was only officiating, and hence, it cannot be said that the preference given to the 4th respondent was arbitrary.

8. In this connection, we may recall the decision of the Supreme Court in *Sreedam Chandra Ghose v. State of Assam* 1997 SCC (L&S) 332 that an officiating employee does not acquire any right to the post and when a regular Head Master comes by transfer he has to yield his place.

9. The last contention that remains for consideration is whether there was anything mala fide in the impugned order. It was pointed out by the learned Counsel for the petitioner that after the Court struck down the earlier appointment of the 4th respondent as the Principal, he was transferred to Matrusri Oriental College, Jillellamudi and accommodated there but subsequently after the impugned order, he been transferred back to the 3rd respondent-college indicating that the entire proceeding has been motivated for favouring the 4th respondent, and hence, it was mala fide. He relied on the decision of the Supreme Court in *Union of India and Others Vs. C.K. Dharagupta and Others*, . In that case, the Central Administrative Tribunal had granted relief on the basis of the earlier rules and subsequently the rule was amended. The Supreme Court observed that the rule making authority cannot exercise the powers retrospectively so as to nullify the binding decision of the Tribunal, the promotions made upto that date which happened to be only one in that case was retained and it was clarified that the amended rule would apply to the promotions made thereafter. This case can be distinguished on several grounds. In the present case, no regular promotion had taken place. The earlier judgment of this Court did not uphold any vested right of the petitioner but only stated that the 4th respondent could not be considered for being absorbed as a Principal of the 3rd respondent-college in view of the existing G.O. treating each college as a separate unit. This Court itself specifically stated that until G.O. is amended, that position will prevail indicating that if the G.O. is amended, the situation will change. The impugned G.O., in my opinion, actually gives effect to the order of this Court and cannot be regarded as going contrary to the order of this Court or nullify any decision of this Court. The question of mala fides cannot arise where the amendment has been made for meeting the specific administrative exigency. The impugned G.O. points out that the Government had to provide for absorption of staff of the colleges closed due to fall in student strength. There cannot be anything mala fide in the order of the Government specifically made to meet such an administrative exigency. It may be that it has affected the chances of promotion of the petitioner but no vested right having accrued to the petitioner, there is no infirmity in the impugned order. For the same reason namely, that no vested right has accrued to the petitioner, the question of an opportunity of being heard before issuing the impugned G.O. does not arise.

10. The petitioner has also questioned the order dated 13-6-1997 transferring and posting the 4th respondent as the Principal of the 3rd respondent-college against the aided vacant post of Principal. All the contentions raised against G.O.Ms.No. 134 were also pressed into service against this order but for the same reasons I am unable to accept any of them. However, the real grievance of the petitioner is that having allowed him, as the senior most lecturer in that college, to officiate in the post of the Principal cversince the vacancy arose in 1990, he was replaced in 1997 by the 4th respondent by transferring him to that post. As I have noted earlier, the petitioner had only a right to be considered for promotion to the post of Principal. That right has been frustrated by the post being filled up by transfer, hi other words, because of the transfer of the 4th respondent, the vacancy in the post of the Principal in the 3rd respondent-college has vanished, and therefore, the petitioner"s hope of being regularised in the post in which he was officiating since 1990 have been dashed- The responses of the Government is that, though unfortunate, subsequent events have brought about a fortuitious circumstance which could not be helped.

11. But, I am not convinced that the Government could not be made accountable for this or that the petitioner can have no remedy against that circumstance. The closure of uneconomical oriental colleges came in November 1994 whereas the vacancy in the post of Principal in the 3rd respondent-college has been existing since September 1990. No one has focussed the attention on the question of this inordinate delay, for, if the vacancy had been filled up in 1990 itself, the opportunity to the Government to fill up that post by transfer of the 4th respondent, thereby depriving the petitioner of the chance of promotion, could not have arisen.

12. To my mind, this is not an isolated phenomenon. It is a notorious fact that many public organisations are headless and even judicial posts such as, Chief Justice of a High Court are not filled up in time even though such vacancies can be clearly anticipated.

13. We may recall the observations of the Supreme Court in Supreme Court Advocates-on-Record Association and another Vs. Union of India, "Due consideration of every legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness and therefore, that is also a norm to be observed by the Chief Justice of India in recommending appointments to the Supreme Court". It was further observed that the process of appointment must be initiated well in time to ensure its completion at feast one month prior to the date of an anticipated vacancy; and the appointment should be duly announced soon thereafter, to avoid any speculation or uncertainty. This schedule should be followed strictly and invariably in the appointment of the Chief Justices of the High Courts and the Chief Justice of India to avoid the institution being rendered headless for any significance period. In the case of appointment of the Chief Justice of a High Court to the Supreme Court, the appointment of the successor Chief Justice in that High Court should be made ordinarily within one month of

the vacancy. Thus, the doctrine of legitimate expectation extends to the right to be considered for promotion without undue delay and non-arbitrariness has received the judicial imprint of the requirement of prompt filling up of the vacancy.

14. By the deliberate? delay in filling up such posts, the legitimate expectation of a person for promotion to the higher post is being defeated by the simple expedient of relying on some subsequent event as a fortuitous circumstance on the ground that it affects only the chance of promotion which cannot be considered as an accrued right. I have put a question mark after "deliberately" as I am conscious of the protest of the learned Government Pleader that there is no proof of it. Yet the glaring fact is the inordinate delay in filling up a vacancy which is certainly wilful neglect. This quote from *In Re City Equitable Fire Insurance Co., Ltd.* (1925) Ch 407 is quite apt: ""But if that act or omission amounts to a breach of his duty, and therefore to negligence, is the person guilty of wilful negligence? In my opinion that question must be answered in the negative unless he knows that he is committing and intends to commit a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of duty."" The answer in the present case has to be in the affirmative because even though there may not be proof of the authorities taking a positive decision not to fill up the vacancy, there was certainly a conscious carelessness as to whether or not they should fill up the vacancy promptly. This is certainly wilful neglect of duty and cannot be passed off as administrative exigencies. Such an unconscionable delay is certainly oppressive and calls for condemnation.

15. Can it be said that the consequential loss of opportunity for promotion is only a fortuitous circumstance when it has been contrived by inordinate delay? I am inclined to the view that the acceptance of the doctrine of legitimate expectation, which means fair play in administrative action, includes a right to expect that such action will be taken with reasonable diligence. If the delay is unconscionable and cannot be explained by any legitimate excuse, it will have to be inferred that the unstated intention behind the delay is only the mala fide objective of defeating the chances of the promotion of the person affected, in my opinion, therefore, even though the impugned G.O. and the impugned order appointing the 4th respondent may be legally valid, the denial of the chances of promotion to the petitioner by the inordinate delay of seven years in filling up that post leads to such an adverse inference against the authorities concerned.

16. Though I do not wish to set aside the appointment of the 4th respondent, I do feel that the petitioner should be suitably compensated. I, therefore, direct the 1st respondent, by creating, if necessary, a supernumerary post, to maintain the status of the petitioner as a Principal within six months of the occurrence of the vacancy, namely, from 1-4-1991 and grant him all consequential benefits including the terminal benefits on that basis. Appropriate orders in this regard shall be passed before 30th September, 1997.

17. In the circumstances, the writ petition is allowed with costs Rs.3,000/-.