
(2008) 07 AP CK 0108
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 249 of 2006

J. Kanaka Durga	Vs	APPELLANT
S.C. Womens Degree College and Others		RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2009) 1 ALD 733 : (2009) 2 ALT 412

Hon'ble Judges : Anil R. Dave, C.J;R. Subhash Reddy, J

Bench : Division Bench

Advocate : J. Kanaka Durga, Party in Person, for the Appellant; K. Srinivasa Murthy, for Respondent Nos. 1 and 4, G.P., for Higher Education for Respondent Nos. 2 and 3, B. Nilini Kumar, Respondent No. 5 and Deepak Bhattacharjee, Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—This writ appeal, under clause 15 of the Letters Patent, is filed aggrieved by the order of the learned single Judge dated 03-01-2006, passed in W.P. No. 31821 of 1998.

2. Facts, which led to filing of the writ appeal, in brief, are as hereunder:

The writ petitioner, who is the appellant in this appeal, has filed the aforesaid writ petition seeking Writ of Mandamus to declare the selection of the fifth respondent as Principal of S.C. Women's Degree College, Kothagudem, as illegal, with further directions to review the selections to the post of Principal. However, the learned single Judge, by the impugned order, upheld the selection of the fifth respondent.

3. The appellant is a lecturer in the first respondent college, which was established by the fourth respondent, Singareni Collieries Company Limited, Kothagudem, by obtaining permission as required under the provisions of the Andhra Pradesh Education Act, 1982. The appellant was appointed as a lecturer in the year 1975 and the fifth respondent, was also working as a lecturer in the

same college. There was a dispute as regards seniority in the cadre of lecturers and the same was the subject matter of W.P. No. 10771 of 1995 and pursuant to the judgment of this Court in the said writ petition, appellant was assigned seniority at SI. No. 3 amongst the lecturers of the first respondent college. On 18-11-1997, selections were made to the post of Principal. The selection committee which was constituted for making selections to the post of Principal had considered the case of the appellant as well as the fifth respondent and one another, however appointed the fifth respondent as Principal. In the writ petition, before the learned single Judge, it was the case of the appellant that she was meritorious than the other two candidates in view of her possessing Ph.D. degree, and as such, the selection committee ought to have selected her for appointment to the post Principal. It was also the case of the appellant that though the fifth respondent was not qualified to hold the post of Principal, having failed to secure requisite percentage of marks, i.e. 55%, the selection committee had selected her for the post of Principal, erroneously. The appellant, in support of her case, placed reliance on the orders issued by the Government in G.O. Ms. No. 127, Education dated 07-06-1993 and also G.O. Ms. No. 158, Education (U.E.), dated 10-06-1987. It was the case of the respondents that fifth respondent was working as in-charge Principal on full additional charge and selections to fill up the post of Principal in the first respondent college were made by considering the case of the petitioner as well as the fifth respondent and such selections were in accordance with the orders issued by the Government. With reference to the applicability of the orders issued by the Government in G.O. Ms. No. 158 dated 10-06-1987, it was the case of the respondents that such orders were followed by A. P. Collegiate Service Commission while recruitments even for private colleges were under the purview of the Commission; however, the Government by Act 22 of 1990 excluded recruitment of staff of private colleges from the ambit of the Commission. It is stated that procedures, vide G.O. Ms. No. 119,12 and 127 and Government Memo No. 84/CEIII-1/95, were notified to regulate the recruitments of teaching and non-teaching staff. It was the case of the first respondent-Management that Departmental Promotion Committee followed the orders issued by the Government and selected the fifth respondent, who was the senior-most lecturer in the college, as Principal. It was also the case of the respondents that the Government issued orders in G.O.Ms. No. 131 dated 29-05-1990, exempting the lecturers who were appointed prior to 01-04-1976 from acquiring requisite qualifications and therefore they denied the allegation of the appellant that fifth respondent was not possessing requisite qualifications. The learned single Judge, on appreciation of the rival contentions, upheld the selection of the fifth respondent as Principal, while recording a finding that the orders issued by the Government had ceased to apply to private colleges in view of Act 22 of 1990.

4. Heard the appellant, who appeared as party-in-person, Sri K. Srinivasa Murthy for respondents 1 and 4, learned Government Pleader for respondents 2 and 3, Sri B. Nalin Kumar for the fifth respondent and Sri Deepak Bhattacharjee for the

sixth respondent.

5. At the outset, it is submitted by learned Counsel for respondents that fifth respondent has already retired from service on attaining the age of superannuation and therefore the cause, which was the subject of the writ petition and in this writ appeal, would not survive for adjudication on merits.

6. Though the said submission of the learned Counsel for respondents is not disputed by the appellant, however, she invited adjudication on merits with regard to selection of the fifth respondent. Even before this court, the argument advanced by the appellant is that she is more meritorious and possesses better qualifications than that of the fifth respondent and therefore the selection committee ought to have selected her instead of the fifth respondent. With reference to the orders issued by the Government in G.O. Ms. No. 131 dated 29-05-1990, it is submitted by the appellant that fifth respondent was not eligible for exemption of qualifications as much as she was not drawing lecturer's scale on the date of appointment.

7. It is not in dispute that, in the cadre of lecturers, fifth respondent was the senior-most lecturer and was also working as a Principal on ad hoc basis. The only ground on which the appellant claims priority over the fifth respondent is on the basis of the order issued by the Government in G.O. Ms. No. 158 dated 10-06-1987. No doubt, Ph.D. qualification is a preferential qualification for appointment to the post of Principal of a Degree College, as per the said Government Order, but, in view of Act 22 of 1990, recruitments of staff of private colleges were excluded from the ambit of the A.P. Collegiate Service Commission. As the first respondent college is a private aided institution, the appellant cannot seek any priority over the fifth respondent for appointment to the post of Principal. Even otherwise, in view of the orders issued in G.O. Ms. No. 131 dated 29-05-1990, the lecturers who were appointed prior to 01-04-1976 were exempted from acquiring requisite qualifications and therefore it is not open to the appellant to plead that fifth respondent does not possess requisite qualifications and that she was not drawing lecturer's scale, so as to deprive the benefit of exemption granted in the aforesaid orders.

8. From a perusal of the orders issued by the Government in G.O.Ms. No. 131, it is clear that all those lecturers who were appointed prior to 01-04-1976 are exempted from acquiring requisite qualifications irrespective of their scale of pay. So, scale of pay was not the criterion for extending the benefit of exemption and exemption was granted for all the lecturers working in degree colleges. Inasmuch as it is not dispute that fifth respondent was appointed as lecturer in the first respondent college and she was also senior to the appellant, the submission of the appellant that fifth respondent was not entitled for the said exemption cannot be accepted. It is also not the case of the appellant that the selection committee was either biased or acted arbitrarily in selecting the fifth respondent. Merely because the appellant possesses higher qualification than that of the fifth respondent, that by itself is no ground to claim priority over the fifth respondent

more so when the selection committee applied various orders issued by the Government, which are relevant for the purpose of selecting candidates for the post of Principal in private aided colleges.

9. For the foregoing reasons, we are in agreement with the view taken by the learned single Judge.

The writ appeal is devoid of merit and is accordingly dismissed. There shall be no order as to costs.