

(1995) 06 AP CK 0021

In the Andhra Pradesh High Court

Case No : Contempt Case No. 323 of 1994

J. Krishna Murthy and Others

APPELLANT

Vs

D.R. Garg, Managing Director, A.P. Scheduled Castes Co-op.
Finance Corporation Ltd. and Others

RESPONDENT

Date of Decision : 13-06-1995

Acts Referred:

Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 — Section 3, 7, 9
Contempt of Courts Act, 1971 — Section 10, 11, 12

Citation : (1995) 2 ALD 543 : (1995) 2 ALT 734

Hon'ble Judges : S. Dasaradha Rama Reddy, J

Bench : Single Bench

Advocate : G.V. Shivaji, for the Appellant; G. Chandraiah, for the Respondent

Judgement

S. Dasaradha Rama Reddy, J.—The petitioners 1 to 4 have been working on payment of consolidated wages while petitioners 5 and 6 have been working on daily wage basis in the Scheduled Castes Service Co-operative Society Limited, Nalgonda District, (briefly referred to as "the Society") from various dates in various posts as follows:

Name	Designation	Date from	Emoluments	which working	Rs.
J. Krishna Murthy	Steno-	25-9-1986	1,250 p.m.	1st petitioner	Typist
N. Hariprasad	Typist	18-9-1987	1,250 p.m.	2nd petitioner	M. Balabrahmachary
Section-	1-4-1987	1,250 p.m.	3rd Petitioner	writer	M. Kashaiah
-do-	10-10-1985	1,250 p.m.	4th Petitioner	G.Shyam Sunder	-do-
1-1-1990	34/-per day	5th Petitioner	K. Brahma Chary	-do-	1-4-1990
34/-per day	6th Petitioner				

The 1st petitioner is a graduate and passed Shorthand (Eng.) Lower Grade. The 2nd petitioner passed Intermediate and Higher Grade in English typewriting while petitioners 3 to 6 passed S.S.C., Intermediate, B.Sc, and B.Com., respectively. As they were not absorbed in regular service, they filed W.P. No. 11453 of 1992. A learned single Judge of this Court, following the judgment in W.A. No. 723 of

1989 dated 20-2-1991, allowed the writ petition on 20-7-1993 and directed the Society to regularise the services of the petitioners in their respective posts in which they are working or any other equivalent post and pay the regular time scale of pay attached to the said post with effect from 9-9-1992, which is date of filing of the writ petition, within a period of three months from the date of receipt of a copy of the order. The order was received by the Society on 12-8-1993 and as it was not implemented by the Society for nearly 8 months, inspite of reminders from them, the petitioners filed this contempt case seeking to punish the respondents. The fourth respondent, who is the present Collector of Nalgonda District, was added as a party by Court Order dated 30-1-1995. The contempt case was admitted on 23-8-1994.

2. The Executive Director of the Society filed counter on 1-8-1994 stating that the service of first petitioner has been regularised pursuant to the order of this Court in W.P. No. 11453 of 1992 and that services of petitioners 2 to 4 could not be regularised as they do not possess degree which is the minimum qualification required with effect from 12-1-1990 as per the circular of Managing Director of the A.P. Scheduled Caste Co-operative Finance Corporation Limited (for short "the Corporation"). It is also stated that third petitioner cannot be absorbed in the post of Record Assistant as this post is to be filled up by promotion from the cadre of Attender/Night watchman and another attender has already made representation to promote him as Record Assistant. It is also stated that he was not sponsored by Employment Exchange. Regarding fourth petitioner, the Society's stand is that he is not a graduate and also that he was not sponsored by Employment Exchange. As far as fifth and sixth petitioners are concerned the Society admits that they are qualified but they could not be absorbed as they are juniors to the other four petitioners and also for the reason that there are no sanctioned posts in the Society to accommodate them. It is also stated in the counter that the Society has examined the case of the petitioners to absorb them in the light of G.O.Ms. No. 212, F & P (PW.P.C. III) Department dated 22-4-1994, that as the petitioners have not put in five years of service as on 25-11-1993 and are also not qualified, they are not entitled to benefit of G.O.Ms. No. 212. It is also stated that a detailed proposal had already been submitted to the Managing Director of the Corporation for further examination and accordingly there is no violation of the orders of this Court. The Society has also pleaded financial difficulties. As far as the first petitioner is concerned, the Society has implemented the order, that too on 7-9-1994 after the contempt case has been filed and nine months after the due date fixed by this Court. No explanation is, however, offered in the counter for the delay. Though G. Narendranath filed counter in the Registry on 12-9-1994, it does not bear the date when it was sworn to and the last page was not attested. Office ought not to have received this counter which is no counter in the eye of law. Hence, this counter is ignored. It is deplorable that Collector should file such a counter casually without even putting the date on which it is sworn. Then two additional counters are filed - one by the Managing Director of the Corporation, first respondent, on 16-8-1994 and

another on 20-2-1995 by the second respondent. The Managing Director says that the case of the petitioners has been considered in the light of G.O.Ms. No. 212 dated 22-4-1994 and that as petitioners 2 to 4 are not graduates, their case will be sent to Government recommending for regularisation against the sanctioned posts. As regards petitioners 5 and 6, it is stated that as they have not put in five years of service and as there are no sanctioned posts, their cases will be examined separately and that the respondents have not disobeyed the orders of this Court.

3. The petitioners have filed reply affidavit on 8-8-1994 stating that Act 2 of 1994 (for short "the Act") which came into force on 25-11-1993 is not relevant since the respondents ought to have implemented the order of this Court by 12-11-1993, long before the commencement of the Act, that circular dated 12-1-1990 prescribing minimum qualification as graduation does not apply to the petitioners as they have been appointed long prior to that date and when they were appointed, minimum qualification required was only Intermediate. It is also contended that the Society has sought for three more posts of Junior Assistants and one post of Junior Asst./Typist and the contention of the respondents that there are no sanctioned posts is false and intended to mislead the Court. Regarding financial position of the Society, the petitioners state in their reply affidavit that there are surplus funds in the Society and in support of the same, they filed a statement showing the funds as maintained in various accounts in various banks.

4. The third respondent has filed additional counter on 20-2-1995 stating that the respondents were under the bona fide impression that the provisions of the Act 2 of 1994 imposing embargo on the regularisation of temporary employees will apply to the facts of the case and hence the order of this Court could not be implemented and there is no intention to disobey the orders of this Court. He further says that the delay is not intentional or negligent.

5. The short point for consideration in this contempt case is whether a categorical direction of this Court directing the Society to regularise the services of the petitioners with effect from the date of filing of writ petition in the posts in which they are working or in any equivalent posts, has been implemented by the Society or not. The various contentions in the counters and additional counters refer to merits of the case. The respondents ought to have obeyed the order and regularised the services of the petitioners by 12-11-1993 i.e., three months from the date of a receipt of the order. The objections that the petitioners are not qualified, were not sponsored by the Employment Exchange and that there are no sanctioned posts were raised in the writ petition and were rejected and if the respondents are aggrieved by it, it was open to them to file writ appeal. The Society cannot rely on Act 2 of 1994 which came into force from 25-11-1993 or G.O.Ms. No. 212 dated 22-4-1994 which are subsequent events. It is also significant to note that Act 2 of 1994 has not retrospectively validated any order of termination of a temporary employee. On the other hand, Sections 7 and 9 of

the Act read as follows:

"7. Bar for regularisation of services:- No person who is a daily wage employee and no person who is appointed on a temporary basis u/s 3 and is continuing as such at the time of commencement of this Act shall have or shall be deemed ever to have a right to claim for regularisation of services on any ground whatsoever and the services of such person shall be liable to be terminated at anytime without any notice and without assigning any reasons:

....."

"9. Abatement of claims:- Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority, the claims for regular appointment of all daily wage employees and persons appointed on a temporary basis, shall stand abated and accordingly,-

(a) no suit or other proceeding shall be instituted, maintained or continued in any Court, Tribunal or other authority by the daily wage or temporary appointees against the Government or any person or authority whatsoever for the regularisation of the services;

(b) no Court shall enforce any decree or order directing the regularisation of the services of such persons; and

(c) all proceedings pending in any Court or Tribunal claiming the regularisation of services shall abate."

Section 7, as commented by a Division Bench of this Court consisting of A. Lakshmana Rao, J. (as he then was) and S. Parvatha Rao, J. in W.A. No. 678/93 and Batch, dated 18-10-1994, is not happily worded. Interpreting Section 7 of the Act, the Division Bench held that it applies to persons appointed on temporary basis u/s 3 of the Act and to persons who are continuing as temporary employees at the commencement of the Act. Consequently, Section 9 also applies to such persons only. Section 9 cannot be construed to mean that any judgment of this Court or for that matter any Court which has become final and where directions were given regarding regularisation of services of employees who are not covered by Section 7, need not be followed. It is well settled that validating provisions can be made by Legislature nullifying judgments of this Court provided the substantive law is amended with retrospective effect curing the defect pointed out by the Courts and any law made validating the provisions, without amending the substantive law, with retrospective effect will amount to usurping the judicial power. The retrospective effect given in Section 7 applies only to persons continuing as temporary employees as on the date of commencement of the Act. The petitioners would not have been continuing as temporary employees on 25-11-1993 by virtue of order of this Court in W.P. No. 11453 of 1992 and as such are not affected either by Section 7 or Section 9 of the Act. Accordingly, directions given by this Court in W.P. No. 11453 of 1992, which have become final, ought to have been implemented by the respondents

without reference to Act 2 of 1994.

6. Thus, the petitioners are entitled to be absorbed in the posts in which they are holding with effect from the date of filing of the writ petition. However ,as the respondents have stated in the second additional counter that they were under the bona fide impression that they could rely on Act 2 of 1994. I give them benefit of doubt and discharge them from contempt proceedings. The respondents are directed to regularise the service of petitioners 2 to 6 as directed by this Court on 20-7-1993 and pay the arrears of emoluments due to them within four weeks from today. Respondents are warned that failure to do so will be viewed seriously by this Court. I hope the respondent-officials will act promptly and will not compel this Court to punish them for contempt of Court.

7. With the above directions, the contempt case is closed. No costs.