

(2016) 11 AP CK 0051
In the Andhra Pradesh High Court
Case No : Writ Appeal No.872 of 2016

K. Bala Prasad

APPELLANT

Vs

Mahatma Gandhi Institute of Technology

RESPONDENT

Date of Decision : 09-11-2016

Acts Referred:

Citation : (2017) 2 ALT 207

Hon'ble Judges : V. Ramasubramanian and G. Shyam Prasad, JJ.

Bench : Division Bench

Advocate : Mt. K. Lakshmi Narasimha, Counsel, for the Appellant; Mr. M. Ravindranath Reddy, Counsel, for the Respondent No. 1; V. Ramchander Goud, SC for JNTU, for the Respondent No. 2; G.P. for Education (TG), for the Respondent No. 3; Mr. K. Ramakanth Reddy, Couns

Final Decision : Disposed Off

Judgement

V. Rama Subramanian, J.—Aggrieved by the dismissal of his writ petition challenging the termination of his services, the appellant is before us.

2. Heard Dr. K. Lakshmi Narasimha, learned counsel for the appellant, Mr. V. Ramchander Goud, learned counsel appearing for the second respondent University and Mr. K. Ramakanth Reddy, learned counsel appearing for the fourth respondent.

3. The appellant, who holds a first class Degree in Engineering, was appointed as Assistant Professor in the first respondent college on 15.02.2008, when All India Council for Technical Education Regulations of 2005 were in vogue, permitting the appointment of Graduates in Engineering as Assistant Professors.

4. But, with effect from 05.03.2010, the amended Regulations of 2010 came into force. In the meantime, the recommendations of the Sixth Pay Commission were followed by the University Grants Commission and those recommendations were also accepted by the State. The revised UGC Scales of pay were granted to the appellant, subject to the condition that he should acquire the qualification of M.

Tech within five years, as per the 2010 Regulations of AICTE. Since he did not acquire a pass in M. Tech, his services were terminated forcing him to go before a learned Single Judge.

5. The learned Single Judge found that since the appellant was already put on notice of the impending termination of his services, if he did not acquire a Post Graduate Degree, he could not make out any grievance. Aggrieved by the said order, the appellant is before us.

6. The contentions of Dr. K. Lakshmi Narasimha, learned counsel for the appellant are three-fold, namely, a) that the amended Regulations of 2010 cannot have any retrospective application b) that insofar as the recommendations of the Pay Commission are concerned, the failure of a candidate to acquire a Post Graduate Degree can at the most result only in cancelling higher scales of pay as per PRC and c) that the college after having informed the appellant that his pay scale would be reduced in the event of his failure to acquire a Post Graduate Degree cannot go back and seek to terminate his very appointment.

7. We have considered the above submissions. It is true that the amended Regulations of 2010 cannot be applied retrospectively so as to affect the service conditions of existing employees. Therefore, on the previous occasion, when the Writ Appeal came up for hearing, we directed Mr. Ramakanth Reddy, learned Standing Counsel for AICTE to get clarification from AICTE on the questions now arising for consideration. In response, AICTE has submitted its opinion in the form of a question and answer which is extracted as follows:

Sr. No.

Information sought

Information available

1.

Whether lecturers appointed (as per the selection norms of the university) in accordance with the 2005 regulations of AICTE with B. Tech. 1st class qualification can be terminated for not having M. Tech as per 2010 regulations of AICTE

As per the Gazette Notification of AICTE dated March 13, 2010, these regulations shall come into force with effect from the date of their publication in Official Gazette. Also the above notification doesn't speak about termination for not having M. Tech. qualification for those who are already in service.

2.

What is the implication or effect if a lecturer appointed as per 2005 regulations of AICTE with B. Tech. 1st class qualification does not obtain M. Tech. as 2010 regulations of AICTE.

In academics, quality of teaching is strongly linked with qualification of teachers. Therefore, in absence of higher qualification, the quality of teaching of the incumbent amongst other qualified peer group will be doubtful and, career advancement of incumbent will also be severely affected.

8. In other words, AICTE, even while maintaining that the amended Regulations cannot actually affect the employees already in service, has also taken a stand that the standards of education cannot be allowed to be diluted. In other words, the response of AICTE is lukewarm, leaving it open to the Court to take a decision whether to dilute or not the standards of education.

9. It is a matter of fact that the standards of Engineering Education in the country are falling at a rapid pace. In a study conducted by an NGO, it was found that only 7% of the candidates or the students who come out successfully out of engineering colleges, have employment potential. Therefore, the Court cannot be a party to the dilution of standards.

10. There is no dispute about the fact that despite his appointment in 2008, the appellant was served with Office Order, dated 06.10.2010, which reads as follows:

"You have been appointed as Asst. Professor on regular basis in the Dept. of ECE, MGIT, with B.Tech qualifications. As per the new guidelines of the AICTE, the prescribed minimum required qualification for the post of Asst. Professor is M. Tech with first class in the concerned subject for appointment as Asst. Professor.

In view of the above, you may please take notice that the New Scales of Pay approved by the 23rd Managing Committee as applicable are continued to be extended to you subject to the condition that you should acquire M. Tech qualification within next five years from 01.09.2010, failing which your services shall be terminated."

11. On 11.07.2015, another letter was served on the appellant by the management of the first respondent college. This reads as follows:

"You have been appointed as Assistant Professor on Regular basis in the Department of Electronics and Communication Engineering, MGIT. While implementing PRC 2006, the said Revised Pay Scales were extended to you subject to the condition that you should acquire the requisite qualification of M. Tech. within the period of five years from 01.09.2010, failing which your services shall be terminated, vide office orders 3rd cited. Even though a period of more than four years 11 months of your conditional appointment was already expired, you have not informed the College administration about your progress of work of acquiring M. Tech Degree till date.

The five years period stipulated would be expired by 31.08.2015.

Hence, you are requested to produce relevant certificate in support of acquiring the requisite qualification within 10 days from the date of receipt of this notice, failing which your pay will be reverted back and fixed at 8,550/- in the scale of

Pay of Rs.8,000-275-13,500/- of the Assistant Professor in V PRC w.e.f. 01.09.2015 without any notional increments for the period from 01.09.2010 to 31.08.2015, as resolved by the Governing Body Meeting of MGIT dated 13.06.2015."

12. The appellant was subsequently served with another order, dated 26.08.2015, the operative portion of which reads as follows:

"As Mr. K. Bala Prasad did not furnish any documentary evidence that he acquired the qualification of M. Tech., within the stipulated period of five years which expires on 31.08.2015 and thus failed to fulfil the condition laid down in the Order 2nd cited, his continuance in the post of Assistant Professor is against the norms of UGC/AICTE, provisions of G.O.Ms.No.14, Higher Education (UE-II) dated 20.2.2010 and Service Rules of Mahatma Gandhi Institute of Technology (MGIT). The Managing Committee of Mahatma Gandhi Institute of Technology in the meeting held on 13.06.2015 after considering his representation and all the facts and circumstances, has proposed to reduce his pay and fix it in the V PRC Scales. The above proposed action of the Management was informed to Mr. K. Bala Swamy vide notice 5th cited above and his explanation was called for. Mr. K. Bala Swamy vide his explanation 6th cited above has informed that he did not acquire the requisite qualification of M. Tech. degree till date in spite of granting 5 years time.

In view of the above, the Management has decided as follows:

1) As Mr. K. Bala Prasad did not furnish any documentary evidence that he has acquired the qualification of M.Tech. Degree, within the stipulated period of five years, he is not qualified to continue as Assistant Professor. Hence, he will be paid V PRC scale with effect from 01.09.2015 and accordingly his pay is fixed at Rs.8,550/- in the scale of Pay of Rs.8,000- 275-13,500/- of the Assistant Professor in V PRC with effect from 01.09.2015 without any notional increments for the period from 01.09.2010 to 31.08.2015.

2) Extended time for one more year from 31.08.2015 i.e., upto 31.08.2016 to get M. Tech. Degree. If he doesn't get the required qualification before 31.08.2016, his services will be terminated from 31.08.2016.

3) These orders shall come into force with effect from 01.09.2015."

13. Though Dr. K. Lakshmi Narasimha, learned counsel for the appellant contended that the management of the college was frequently shifting its stand, by virtue of the aforesaid orders, the underlying fact is that the appellant was put on notice of his impending termination in 2010 itself. After having accepted the terms and conditions subject to which pay revision was granted, it is not open to the appellant to claim that services once hired, cannot be fired thereafter on the basis of a subsequent event.

14. The contention that the failure to acquire a Post Graduate Degree can result in only one consequence, namely, that of maintaining the old scale of pay, cannot

be accepted. The very object of providing time to an individual to qualify is to ensure that the system is brought in tune with the amended Regulations. If services of persons appointed under the 2005 Regulations were straight away sought to be terminated, then there can be possibly a valid objection on the ground that the Regulations are sought to be given retrospective effect. But, when a period of six years has been granted, failure of the appellant to complete the Post Graduate course cannot be accepted.

15. One grievance of the appellant is that the University suspended part time PG courses in Technical Education for a period of three years and that therefore, he could not complete. But, in response, it is submitted that about 14 candidates have completed. Therefore, equitable considerations cannot have a play in the matter of maintenance of standards of education.

16. Though the learned counsel for the first respondent raised the issue of maintainability of the very Writ Petition, we do not think that the issue is res integra any longer in view of the fact that the Supreme Court in Dr. Janet Jaya Paul v. SRM College {SLP(C) No.11208 of 2015, dated 15.12.2015} held that even private educational institutions are amenable to the writ jurisdiction of this Court. Therefore, the objection regarding maintainability is rejected.

17. Hence, the order of the learned Single Judge does not call for any interference. Therefore, the Writ Appeal is dismissed. Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.