
(2002) 10 AP CK 0068
In the Andhra Pradesh High Court
Case No : WA No's. 411 and 793 of 2002

K. Nirmala Devi

APPELLANT

Vs

V. Vijaya Lakshmi and Others

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 6 ALD 539

Hon'ble Judges : S.R. Nayak, J; Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : D.V. Sitharam Moorthy, in WA No. 411 of 2002 and V.V. Prabhakar Rao, in WA No. 793 of 2002, for the Appellant; K. Subrahmanya Reddy, for Anasuya, in WA Nos. 411 and 793 of 2002, V.V. Prabhakar Rao, in WA No. 411 of 2002 and Government Pleader for School Education, for Respondent Nos. 3 and 4 in WA No. 411 of 2002 and for Respondent Nos. 2 and 3 in WA No. 793 of 2002, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The question that arises for our consideration and decision in these writ appeals is whether the appointment of Smt. K. Nirmala Devi, appellant in W.A. No. 411 of 2002 to the post of Headmistress in English Medium High School managed by the D.N.R. College Association, Bhimavaram, West Godavari District is in accordance with law or is liable to be set aside. The above question arises in the following factual background:

2. Smt. K. Nirmala Devi was appointed as B.Ed., Assistant in the 2nd respondent-school on 10-6-1988 and while working as such, she passed Accounts Test Parts I and II in the years 1990 and 1991 respectively. The 1st respondent herein, viz., Smt. Vijaya Lakshmi was initially appointed as Second Grade Assistant with effect from 15-6-1981 and subsequently she was promoted as B.Ed., Assistant on regular basis in primary section of the school with effect from 23-6-1987. Subsequently, she was transferred to the English Medium High School as B.Ed.,

Assistant. The 1st respondent applied for Examination in Accounts Test Part II on 10-3-1995 and the Test was conducted on 11-6-1995, results of which were declared on 25-10-1995 and she was declared to have passed Accounts Test Part II examination.

3. In the meanwhile, the then incumbent of the post of Headmistress tendered her resignation to the post vide her letter dated 1-3-1995 and the resignation was accepted by the management of the school on 9-4-1995. The management of the school sent up a proposal to the District Educational Officer on 12-6-1995 proposing to appoint the appellant to the post of Headmistress and after obtaining necessary permission from the District Educational Officer, the appellant was appointed as Headmistress with effect from 5-7-1995. Being aggrieved by the said action of the management, the 1st respondent herein preferred W.P. No. 29071 of 1995 praying for the following relief:

".... The High Court will be pleased to quash the impugned order dated 5-7-1995 of the Correspondent, English Medium High School, D.N.R. College Association, Bhimavaram, 1st respondent herein, declaring it as unconstitutional being arbitrary, capricious and illegal as it is violative of statutory rules and unjust being colourable by nepotism, besides flouting the principles of natural justice, denying opportunity to the petitioner to explain her stand being the senior-most B.Ed., Assistant. This Hon"ble Court may be pleased to issue a writ especially in the nature of mandamus or any other writ, order or direction for the promotion of the petitioner as Headmistress of the English Medium High School, D.N.R. College Association, Bhimavaram, West Godavari District, reverting Smt. K. Nirmala Devi, the 4th respondent herein, with effect from 1.3.1995 when the vacancy arose or from 5-7-1995 when her junior was promoted whose appointment to the said post is illegal."

Initially the learned single Judge, after hearing the writ petition on merit, dismissed it by order dated 8-7-1998. Being aggrieved by the said order of the learned single Judge, the 1st respondent preferred Writ Appeal No. 1307 of 1998. A Division Bench of this Court, by its order dated 19-12-2000, allowed the writ appeal and directed rehearing of the writ petition on merit by the learned single Judge. Accordingly, the writ petition was reheard by the learned single Judge and it was allowed by the impugned order dated 8-3-2002. By the impugned order, the learned single Judge allowed the writ petition and set aside the order of the management of the school dated 5-7-1995 appointing the appellant as Headmistress. The learned single Judge has also declared that the writ petitioner, Smt. Vijayalakshmi, the 1st respondent herein, is senior to the appellant. The learned single Judge has also issued consequential direction to the Management of the School to consider the case of the writ petitioner for promotion as Headmistress of the English Medium High School. What weighed with the learned single Judge to allow the writ petition, as reflected in the judgment, is the following:

"In the present case the Account Test was held on 11-6-1995 and the results

were announced on 25-10-1995 and in terms of the rules the passing of the examination relates back to the last date of examination i.e., 11-6-1995. The selection was held on 5-7-1995. In other words, as on the date of selection the petitioner has already appeared for the Account Test Part II examination and the results were not declared. Announcement of the results is not within the control of the petitioner and therefore it has to be held that passing of the test relates back to the date of last examination held i.e., 11-6-1995 and as on the date of promotion on 5-7-1995 the petitioner is deemed to have fully qualified to hold the post of Headmistress."

4. Hence these two writ appeals W.A. No. 411 of 2002 is by the 4th respondent in the writ petition whereas W.A. No. 793 of 2002 is by the management of the School. Since both the writ petitions are directed against the same order of the learned single judge and involve common questions to be decided, they were clubbed and heard together and they are being disposed of by this common order.

5. We have heard Sri D.V. Sitharama Murthy, learned Counsel for the appellant in W.A. No. 411 of 2002, Sri V.V. Prabhakar Rao, learned Standing Counsel for the appellant in W.A. No. 793 of 2002 and Sri K. Subrahmanya Reddy, learned Senior Counsel for the 1st respondent - writ petitioner.

6. Sri D.V. Sitharama Murthy, contended that that the contention of the writ petitioner that the appellant had not completed seven years as on the date of selection i.e., 4-7-1995 by the Departmental Promotion Committee (DPC), is untenable, because by that date the appellant had completed seven years of service as B.Ed., Assistant (School Assistant). Sri D.V. Sitharama Murthy contended that when the Departmental Promotion Committee met on 4-7-1995 to consider the candidature of the appellant, the 1st respondent Smt. Vijaya Lakshmi did not pass Accounts Test Part II as required in terms of the guidelines incorporated in the Memo No. 15018/G1/79, Education, dated 8-5-1979 and therefore consideration of her candidature for appointment to the post of Headmistress did not arise and the 1st respondent passed the Accounts Test Part II only on 25-10-1995. Sri D.V. Sitharama Murthy also contended that the learned single Judge has seriously erred in law in holding that the result of the 1st respondent in the Accounts Test Part II declared on 25-10-1995 relates back to the date of the examination i.e., 11-6-1995. The recruitment rules do not support such conclusion. In fact the writ petitioner did not plead in the writ affidavit filed in support of the writ petition that the qualification for passing of the test relates back to the last date of examination. Sri D.V. Sitharama Murthy further contended that the learned single Judge has erred in law in applying F.R.26(a) to the facts of this case because, in F.R.26(a), the benefit of qualification accruing on the day following the last date of the examination or test which was passed is only for the purpose of fixation of increments. Sri. D.V. Sitharama Murthy also contended that that the writ petitioner never informed the management of the school till 20-11-1995 that she passed the Accounts Test Part II and that she kept quite even after the selection of the appellant to the post of

Headmistress and chose to question the appointment of the appellant only in December, 1995 after her result was declared. The learned Counsel would submit that the writ petitioner thus accepted and acquiesced to the selection of the appointment and therefore she is not entitled to question the same.

7. Sri V.V. Prabhakar Rao, learned Standing Counsel for the appellant in W.A. No. 793 of 2002 adopted the argument of Sri D.V. Sitharama Murthy.

8. Sri K. Subrahmanya Reddy, learned senior Counsel appearing for the 1st respondent - writ petitioner, Smt. Vijaya Lakshmi, contended that the vacancy in the post of Headmistress arose on 1-3-1995 when the then incumbent of the post of Headmistress tendered her resignation; the said resignation of the previous incumbent was accepted by the management of the school on 9-4-1995. According to the learned senior Counsel, since as on 1-3-1995 or 9-4-1995, only the writ petitioner was qualified to be considered for appointment to the post of Headmistress, because, as on those dates, she alone had completed seven years of qualifying service in the feeder cadre of School Assistant and admittedly the appellant did not complete seven years service in the feeder cadre as on those dates. In that view of the matter, the learned Senior Counsel would contend that the management of the school ought to have considered the candidature of the writ petitioner and appointed her to the post of Headmistress. Sri Subrahmanya Reddy contended that the management of the school in order to favour the appellant sought relaxation from the prescription of seven years qualifying service in the feeder cadre in terms of G.O. Ms. No. 167, dated 9-3-1984 in the case of the appellant and appointed her to the post of Headmistress with effect from 5-7-1995. Sri Subrahmanya Reddy further contended that by the time the appellant was appointed as Headmistress with effect from 5-7-1995, the management of the school was quite aware that the writ petitioner had appeared for the Accounts Test Part II on 11-6-1995 and in that view of the matter, the management of the school in all fairness ought to have awaited for the result of the writ petitioner. Alternatively, Sri Subrahmanya Reddy contended that though the result of the writ petitioner in Accounts Test Part II was declared only on 25-10-1995, it should relate back to the date of examination and since examination was conducted on 11-6-1995, it should be regarded that the writ petitioner passed the Accounts Test Part II on 11-6-1995 itself and not on 25-10-1995 and if that is so, as on 5-10-1995 between the writ petitioner and the appellant herein, the writ petitioner being the senior in the feeder cadre of School Assistant, in terms of guidelines, the writ petitioner should have been appointed to the post of Headmistress and not the appellant.

9. Although these are the contentions raised and argued before the Court, we do not find any necessity to deal with all those contentions. Suffice it to state that the vacancy in the post of Headmistress arose on 9-4-1995 when the management of the school accepted the resignation of the then incumbent of the post. No employee serving in the feeder cadre, in the absence of statutory rules or administrative rules providing otherwise, can claim, as a matter of right or

course, that he/she should be appointed to the post in the vacancy caused on account of resignation or retirement of the previous incumbent of the post. It is trite, no employee has vested right for promotion unless the law provides for the same. It is not that immediately after the vacancy arose on 9-4-1995 and before the appellant completed seven years of qualifying service in the feeder cadre, the management appointed the appellant as Headmistress. It is stated in the counter-affidavit filed by the District Educational Officer, that the proposal to appoint the appellant as Headmistress was sent up by the Correspondent of the school on 12.6.1995. Should it be noticed that as on that date, the appellant had completed seven years of qualifying service in the feeder cadre of School Assistant. It is also admitted position that the appellant had passed Accounts Test Part I and II in the years 1990 and 1991 respectively. The resultant position is that the writ petitioner, as on the date when the vacancy arose or the date on which the management made the proposal to the DEO to appoint the appellant as Headmistress or the date on which the appellant was appointed as the Headmistress, did not qualify herself to be considered for appointment to the post of Headmistress, because, admittedly, by those dates she did not pass the Accounts Test Part-II. The result of the writ petitioner in Accounts Test Part-II was declared only on 25.10.1995 long after the appellant was considered and appointed to the post of Headmistress.

10. The contention of Sri K. Subhmhanya Reddy, that in the instant case, the prescribed qualifications for the post of Headmistress should be reckoned with reference to the date on which the vacancy arose is not acceptable to us. Of course, in support of the above contention, the learned senior Counsel placed reliance on the judgments of the Supreme Court in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, , *P. Ganeshwar v. State of A.P.*, 1988 Supp. SCC 740, *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, . In our considered opinion, the ratio of the above Judgments of the Supreme Court have no bearing in the decision-making in the present case. What fell for consideration before the Supreme Court in the above cases was whether the rules holding the field when the employment notification was issued or the rules as amended subsequent to the issuance of employment notification should be made applicable for recruitment. The Supreme Court has held that only those rules holding the field when the applications were called for appointment to the post should govern the recruitment and not the amended rules. That ratio is of no aid to support the claim of the writ petitioner.

11. The Government of Andhra Pradesh in its Memo No. I5018/G1/79, Education, dated 8.5.1979 directed that that B.Ed., Assistants working in schools under private managements should pass Accounts test prescribed in order to be eligible for promotion as Headmistresses. Therefore, by reason of the above, a B.Ed., Assistant acquires eligibility to be considered for appointment to the post of Headmistress only on passing of the Accounts Test both Part I and Part II. It is needless to state that mere appearance at the Accounts Test would not make the candidate eligible for being considered for appointment to the post of

Headmistress. It cannot be gainsaid that the essential qualifications for appointment to the post of Headmistress are - (i) Seven years service as a School Assistant and (ii) Pass in Accounts Test Papers I and II. It is fairly well settled proposition of law that candidate seeking appointment/promotion to a post should possess the qualification as on the date of selection, unless it is otherwise directed or prescribed. Therefore, it is not open to the writ petitioner to contend that by the date of selection and appointment of the appellant to the post of Headmistress, she had appeared for the Accounts Test Part II and only on that count she was also eligible for being considered for appointment to the post of Headmistress. It cannot be said that mere appearance at an examination on a particular date would amount to passing the examination as on that date. What is required is on the date of selection, the candidate should possess the prescribed qualifications. If a candidate does not possess the prescribed qualifications on the date of selection, but acquires subsequently, that would not invalidate the appointments of the eligible candidates already made. If such a contention is accepted, it would result in absurdity and create chaos in the field of public employment.

12. In U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, , the Uttar Pradesh Public Service Commission issued an Advertisement No. A-1/E-2/88-89 inviting applications for appearing at a competitive examination called "the U.P. Nyayik Seva (Munsif) Examination, 1988" for selection of candidates for appointment to the said post. The total number of vacancies available at that date was 50. The qualification for appearing at the examination was that the candidate must possess on the last date fixed for receipt of applications a degree of Bachelor of Laws of a University established by law in Uttar Pradesh or any other University of India recognised for this purpose by the Governor which entitles him to practice in Courts of law or be an Advocate, Vakil or Pleader on the roll of or be entitled to practice in the High Court of Judicature at Allahabad or Courts Subordinate thereto, etc. It was further required that the application shall be accompanied by an attested copy of High School and Intermediate Certificates, Bachelor Degree and Law Degree Examination Certificates and mark sheets of each examination. The last date for receipt of the applications was stated in para 2 of the advertisement to be August 20, 1988. The respondent therein had appeared at the law degree examination, the result whereof had not been declared till August 20, 1988. It was an undisputed fact that she had applied in pursuance of the advertisement even though she had not passed the law degree examination till August 20, 1988. In her application, she had mentioned that she had appeared for the Law degree examination and was awaiting for the result. Subsequently, she successfully cleared the Law degree examination, the result whereof was declared sometime in October 1988. In the above fact situation, the question that arose for decision by the Apex Court was whether the Allahabad High Court was justified and acted legally in directing the Public Service Commission to interview the respondent held on 15th and 16th July, 1991 and further directing to declare her result and to forward her name to

the government for appointment basing its opinion on the judgment of the Supreme Court in Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, The Supreme Court having explained and distinguished the judgment in Ashok Kumar Sharma's case (supra) held that since the result of the respondent was declared in October, 1998, obviously, she did not possess the prescribed qualification as on the cutoff date i.e., 20th August, 1988 for the post. The Supreme Court held that since the result of the respondent was not declared till the last date of submitting the application forms, she could not be held eligible for submitting the application for the job. So opining the Apex Court allowed the appeal preferred by the UPPSC and others.

13. In Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions when applications were called for on 20.4.1968 for recruitment as Physical Training Instructors by the Subordinate Selection Board, the appellant therein had applied for the said post but on that date she had no qualification. In the meanwhile, the Board was abolished in September, 1968 and the Selection Committee had considered those applications. The appellant therein was selected and appointed on 4.1.1971. It was the case of the appellant therein that as on that date she had acquired the qualification and she joined the post on 28.1.1971. The higher officers noted the illegality in the selection of the appellant and the Deputy Director by his proceedings dated 30.11.1972 directed the termination of the ad hoc appointment of the appellant. Then she challenged the termination in the writ petition. The learned single Judge considered that the date of interview would be the relevant date for considering the qualifications since as on that date she acquired the qualification, the direction to terminate the appellant was held to be illegal. On appeal, the Division Bench reconsidered the matter and held that the last date of receipt of the applications, namely, 20.4.1968 being the relevant date to receive the applications, would be the relevant date to consider whether the appellant had requisite qualifications for consideration and appointment. Admittedly as on that date since the appellant had no qualification, "the selection and appointment made of her was held to be illegal. Accordingly, the appeal was allowed.

14. When the said judgment of the Division Bench of the High Court of Punjab and Haryana was assailed before the Apex Court, it was contended for the appellant that since the appellant had been appointed by the duly constituted Departmental Selection Committee and as on the date of interview since the appellant had the qualification, her selection and appointment cannot be said to be illegal. The Supreme Court while rejecting that contention in para (2) held :

"It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates who possessed of all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules. Since the appellant had not possessed the Physical Training Instructor qualifications as on that date, her illegal consideration by the Board and recommendation for appointment and the

appointment made in furtherance thereof are illegal. Therefore, we cannot accept the contention of the learned Counsel in that behalf."

15. In *Ghan Shyam Nagar v. State of Rajasthan* 1999 (7) SLR 592, the respondents therein had issued advertisement for the posts of Teacher Grade III and the last date for submitting the applications had been on 26.6.1998. Petitioner therein applied for the said post and submitted the application but his candidature was not considered on the ground that he did not possess the requisite qualification on the last date of submitting the applications. In that factual background, the point that fell for consideration before Rajasthan High Court was whether a person, who acquires the requisite eligibility after the last date of submission of the application forms, but prior to the date of interview can claim himself to be eligible for the post. The Rajasthan High Court placing reliance on the judgment of the Supreme Court in *U.P. Public Service Commission v. Alpna* (supra) and *Harpal Kaur Chahal v. Director, Punjab Industries* (supra) held that the petitioner therein was not entitled to be considered for appointment to the post of Teacher Grade III. The Rajasthan High Court held that simply because the petitioner therein acquired the requisite eligibility after the last date of submission of the application forms, but prior to the date of interview, that fact itself would not make him eligible to be considered for appointment to the post of Teacher Grade III. We are in respectful agreement with that opinion of the Rajasthan High Court.

16. In *State of West Bengal Vs. Gourangalal Chatterjee*, , the Supreme Court held that the candidate selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/ notification for the purpose and that the qualification acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination.

17. In *Saguna Chadha v. Punjab University* 1997 (2) SLR 810 the respondent-Punjab University had issued an advertisement in the Daily Tribune of February 13, 1995, inviting applications for various posts including one for Lecturer in Mass Communication. The last date for submission of the applications was March 10, 1995. Apart from other qualifications with which we are not concerned, the candidate applying for the post of Lecturer in Mass Communication was required to have M.Phil/Ph.D degree and those who did not have that degree, were required to have qualified the National Education Test (in short N.E.T.) conducted by the University Grants Commission (in short U.G.C.). The petitioner did not have M.Phil/Ph.D. degree. He had appeared in the N.E.T. conducted by the U.G.C. in December, 1994, but her result had not been declared by March 10, 1995, the last date for submission of the application. Her result was declared only on July 7, 1995 and the same was communicated to the University on July 13, 1995. The date for interviews was fixed as September 14, 1995, but the petitioner was not called for interview, precisely on the ground that she did not have one of the requisite qualifications till the last date for submission of the

application. This led the petitioner to file the writ petition. In that fact situation, the point that fell for determination before the Division Bench of the Punjab and Haryana High Court was that in the absence of a fixed date in the advertisement or rules or regulations, what should be the date for seeing the eligibility of the candidates who may apply for a particular post. The Punjab and Haryana High Court placing reliance on the judgment of the Apex Court in *Mrs. Rekha Chaturvedi v. University of Rajasthan* (supra) dismissed the writ petition and held that since the petitioner was not qualified as on the last date for making the applications and since qualifications acquired after such date could not be taken into consideration as that could be arbitrary and result in discrimination, the petitioner was not entitled to be considered for appointment.

18. What emerges from the discussion of the case law is that the candidate selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose and that the qualifications acquired by the candidates after the said date should not be taken into consideration as that would be arbitrary and result in discrimination violating mandates of Article 14 postulates. If this ratio is applied to the facts of this case, the writ petitioner was not at all qualified to be considered for appointment to the post of Headmistress inasmuch as she did not pass Accounts Test Part II by the relevant date, whereas the appellant did possess all prescribed qualifications not only as on 5.7.1995 but also on the date of the proposal viz., 12.6.1995 and she was the only eligible candidate to be considered for appointment to the post of Headmistress at that point of time. Therefore, no exception can be taken to the non-consideration of the candidature of the writ petitioner for appointment to the post of Headmistress when the candidature of the appellant was considered by the Departmental Promotion Committee on 4.7.1995 and appointed as Headmistress with effect from 5.7.1995.

19. We do not think that the learned Judge is right in applying the provisions of F.R.26(a) to hold that though the result of the petitioner in Accounts Test Part II was declared on 25.10.1995, it relates back to 11.6.1995. The relevant provisions of F.R.26(a) reads as follows :

"(1) If a probationer is confirmed at the end of a period of a probation exceeding twelve months, he is entitled to claim retrospectively the increment which, but for his probation, he would have received in the ordinary course.

(2) In case where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he has passed. In cases where the examination or test can be passed in instalments, the title to the right, benefits or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed.

Note :--The right conferred by passing the examination is the right to draw an increment from the day following the last day of the examination, provided that the person concerned is otherwise eligible for the increment."

Under F.R.26(a), the benefit of qualification accruing on the day following the last day of examination or test which was passed is only for the purpose of fixation of increment and it has no application facts of this case. Be that as it may, in the light of the direct binding precedents of the Supreme Court referred to above, it cannot be held that on 4-7-1995 when the Departmental promotion Committee met and selected the appellant for the post of Headmistress, the writ petitioner was also qualified to be considered for appointment to the said post.

20. In conclusion, we cannot sustain the order of the learned single Judge. In the result, writ appeals are allowed, the order of the learned single Judge is set aside and the writ petition is dismissed with no order as to costs.