
(1997) 04 AP CK 0085

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6812 of 1990

K. Seetha Lakshmi

APPELLANT

Vs

Andhra University, Visakhapatnam and others

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Citation : (1998) 5 ALD 4

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. G.V.R.S. Varaprasad, for the Appellant; Mr. T.S. Harnath, SC for A.U. and Mr. N. Ram Mohan Rao, for the Respondent

Judgement

1. This Writ Petition is filed to declare the selection process initiated for the appointment to the post of Reader in Hindi in Andhra University as illegal and arbitrary and for a consequential direction to re-advertise the post by ignoring the interviews held on 5-7-1989.

2. The facts leading to the case are that the petitioner was working as Lecturer in Hindi in Andhra University. While so, a notification was issued on 25-10-1988 inviting applications in the prescribed form for various posts. We are concerned in the writ petition with the posts earmarked in the Department of Hindi wherein applications were called for filling up of post of one Professor, one Reader and three Lecturers. In response to the said advertisement for Reader's post, the petitioner and other eligible lecturers including Respondent No.4 made applications. The petitioner having come to know that Respondent No.4 was shown at Sl.No.1 in the Select Panel and the petitioner at Sl.No.2, this Writ Petition is filed assailing the selection process itself on various grounds.

3. It is submitted that the petitioner possessed higher qualifications than Respondent No.4. The Selection Committee was not constituted as per the statutory rule. It is also submitted that the selection process was aimed at benefiting a "B.C." category candidate as respondent No.3 belonged to "B.C"

category.

4. Counter was filed on behalf of the University. It is the case of the University that the Selection Committee considered the respective qualifications and the research papers submitted by the candidates and gave final recommendations. It is also the case of the University that the Selection Committee was constituted in accordance with the statutory provision. A communication was sent to the University Grants Commission for nominating a representative. Even though a representative was nominated, he did not attend the selection process. It is also the case of the University that it has followed the rule of reservation in making the appointments and no favours were made to any candidate of a particular community. It was further stated that reservations to the teaching posts were made group-wise and the Department of Hindi falls under Group-I. The reservations are followed by the University as per the guide-lines issued by the Government in G.O.Ms.No.995, Education (C) Department, dated 16-12-1982 and that there is no specific mention in the G.O. that the posts are to be earmarked to various reserved categories, and in the absence of a definite procedure evolved for the purpose, any attempt to earmark the posts to reserved categories particularly, to the scheduled castes and scheduled tribes would go against their interest, as, in some faculties, the candidates belonging to those categories may not be available and reserving the posts in such Departments would be detrimental to the interest of these communities and defeats the very purpose.

5. An additional counter affidavit was also filed wherein it was stated that the Department of Hindi was being treated as one unit and the members of teaching staff were used to be accommodated and shown in the vacant and available posts from time to time. It is also the case that one Dr. S.Sesharatnam filed a Writ Petition No. 10075 of 1989 challenging the appointment so far as the post of Professor in Hindi was concerned and this Court granted stay of the appointment. On account of the stay granted, the question of filling up of the consequential vacancy of Reader and the further consequential vacancy of Lecturer did not arise. The petitioner filed additional grounds stating that Respondent No.4 belongs to B.C., category and he was appointed in S.C., Roster point which is illegal. There were scheduled caste candidates available to fill up the said roster. Therefore, on this ground also appointment of Respondent No.4 is illegal and contrary to law.

6. The 4th respondent now comes up with additional affidavit that the post of Reader which was sought to be filled up was not an anticipated vacancy, but there was a regular vacancy available as on the date of notification. The learned Counsel referred to certain documents. I am not inclined to go into this aspect as the notification itself stated that the post was an anticipated post and it is for the University administration to regulate its policy regarding filling up of posts.

7. I also need not go into these details as to whether the selection process was in accordance with the statutory provisions and whether the petitioner possessed

higher qualifications than Respondent No.4. Normally, it is not within the jurisdiction of this Court to interfere with the selections made by the Academic Bodies unless there is any arbitrary or mala fide action. However, for the purpose of this case, it has to be seen that the Reader post was required to be filled up consequent on the appointment of the post of Professor from among the Readers. As the appointment to the post of Professor was challenged and that writ petition was finally allowed, no appointment to the post of Professor could take place. Therefore, as a consequence, appointment to the post of Reader also could not take place from among the Lecturers as the post of Reader was anticipated post consequent upon filling up the post of Professor.

8. The learned Standing Counsel for the respondent University Sri T.S.Haranath has filed the Minutes of the Meeting of the Selection Committee and also the Resolution dated 9-5-1990. From the Minutes of the Selection Committee Meeting. It is seen that respondent No.4 was placed at Sl.No.1 and the petitioner was placed at Sl.No.2. But the most important question that falls for consideration is whether respondent No.4, who belongs to B.C., category can be placed in S.C., in Roster point in Arts group. The resolution dated 9-5-1990 clearly shows that respondent No.4 was shown in S.C. Roster point at Sl.No.52, and further even though he belongs to B.C. he was shown as O.C. This is sufficient to set aside the appointment of respondent No.4. Undisputably the constitutional reservation made for S.C., candidates and the roster system introduced for the purpose cannot be violated. By showing the petitioner in S.C., Roster point, the candidate belonging to the Scheduled Caste has been deprived. It would not be open for the University to make such an arrangement. Therefore, on this ground alone, without going into the merits of the case, the action of the respondents in appointing respondent No.4 and showing him in S.C., Roster point is wholly illegal and contrary to the Rule of Reservation. But, the issue now arises is whether the appointment of respondent No.4 who has been working as Reader can be terminated. The learned Standing Counsel for the respondent University fairly concedes that showing respondent No.4 in S.C. roster point itself is illegal and vitiates the appointment, but the fact remains that he has been working as Reader for the last several years and if the appointment is set aside, it will cause serious prejudice to the service career of respondent No.4. I am afraid, I cannot accept this contention. When once the appointment is held to be in contravention of the rule of reservation, it is liable to be set aside and any inconvenience to the selected candidate cannot override the Constitutional mandate. Moreover the 4th respondent was appointed as Reader subject to final result in the Writ Petition. Accordingly, the appointment of respondent No.4 as Reader is set aside. I am informed by the learned Standing Counsel for the University that the Post of Professor has also not been filled up after the selection to the said post was set aside by this Court. On the other hand, the learned Counsel for the 4th respondent submits that now there are clear vacancies in the post of Reader and the 4th respondent can be continued without interruption. I do not express any opinion on this issue and it is for the University authorities to consider in

accordance with the rules. Therefore, there shall be a direction to the respondents to re-advertise the posts and make selections to the post of Professor and consequential anticipated post of Reader in Hindi within a period of three months from the date of receipt of a copy of this order. Respondent No.4 shall be allowed to function as Reader till fresh selections are made.

9. The Writ Petition is allowed. No costs.