
(1999) 11 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 18846 of 1996 and 9394 of 1997

Kadiyala Bala Gangadhar Joshi

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Citation : (2000) 1 ALD 320 : (2000) 1 AnWR 193

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. V. Jogayya Sarma, Mr. D.V. Seetharam Murthy and Mr. V.V. Anil Kumar, for the Appellant; Mr. M.V. Suresh Kumar, for the Respondent

Judgement

1. By order dated 26-12-1997, by setting aside the proceedings of the 2nd respondent in Proceedings Re No. 4431 /PCI1/96, dated 3-6-1997, I allowed the WP No. 18846 of 1996, filed by Sri K. Bala Gangadhar Joshi, who is working as Junior Lecturer in English (for short Junior Lecturer) in the 3rd respondent College, and directed it to appoint the petitioner as lecturer in English in the Degree College without insisting for 55% of marks in the Post Graduate level, as per G.O. Ms. No.32, Edn. (J) Department, dated 19-1-1984. Aggrieved by this order one Sri V. Murali Krishna (for short the "lecturer"), working as lecturer in English in an un aided post in the Degree College filed Writ Appeal No.225 of 1998 with the leave of the Court and a Division Bench of this Court by its order dated 10-3-1998 remanded the matter for fresh disposal along with Writ Petition No.9394 of 1997, filed by the said appellant, who is also claiming the same post.

2. Both the Counsel addressed arguments in extenso and having heard them the following order is passed.

The facts of this case are not in serious dispute. The junior lecturer was originally appointed in Y.V.C.R.C.S.P. Junior College, Karatnchedu, Prakasam District on regular basis on 17-8-1977. Thereafter he came to 3rd respondent-Sarada Junior College on deputation as junior lecturer in English under the proceedings of the

Director of Higher Education in 1985. After some time at his instance, the management sought for permanent absorption of the petitioner as junior lecturer in the college. But, the same was negatived by his proceedings dated 17-6-1989 on the sole ground that it involves transfer of the junior lecturer from one zone to another. Questioning the said proceedings, the petitioner filed Writ Petition No.12336 of 1989 and by orders in WP MP No.16333 of 1989, dated 6-9-1989, the order of the Director of Higher Education was suspended.

3. Coming to the petitioner in Writ Petition No.9394 of 1997, that is the lecturer in English, he was appointed in Degree College as part time lecturer in August, 1989 and subsequently, he was selected and appointed as lecturer in English in an unaided post following a selection as per G.O. Ms. No.12, Edn., (CEI-2) Dept, dated 10-1-1992 and he is working in that capacity.

4. While things stood thus, a vacancy in an aided post of lecturer in English in Degree College has arisen in the month of June, 1994 and the junior lecturer as well as the petitioner herein are now claiming that post in these two writ petitions. The Government issued rules for recruitment of teaching staff in private educational institutions in G.O. Ms. No.12, dated 10-1-1992. This GO was amended by issuance of G.O. Ms. No. 127, Education, and dated 7-6-1993. As per the amendment, where the management is running the junior college as well as the degree college, the first three out of four vacancies that will arise in each of the departments in Degree College will be filled up by transfer from junior lecturer, while the fourth vacancy has to be filled in by direct recruitment. It is also not in serious dispute that this being the third vacancy, it has to be filled up with a junior lecturer by transfer. Junior lecturer tiled Writ Petition No. 18846 of 1996, seeking a direction to consider his case for appointment as lecturer in English in Degree College in terms of G.O. Ms. No.127, Education, dated 7-6-1993 under an apprehension that his case may not be considered for appointment as he did not secure 55% of marks at P.G. level and this Court by order dated 10-9-1996 in WP MP No.23274 of 1996 directed the authorities concerned to consider the case of the junior lecturer for appointment as lecturer in English in terms of G.O. Ms. No.127, dated 7-6-1993. The respondent having considered the proposal of the management by his L.Dis.No.4002/PGB/1/90, dated 27-11-1996, directed the management to fill up the aided post of lecturer in English in the Degree College by promoting the junior lecturer working under the same management, duly following the rules in force. The lecturer also filed another Writ Petition No.27289 of 1996, seeking a direction to consider his case for appointment to aided post of lecturer in English along with other candidates in the college, apprehending that his case may not be considered as the post being third has to go to the junior lecturer and this Court seemed to have given an order and disposed of the writ petition at the admission stage itself by directing the management to consider the case of the petitioner along with other candidates the appointment by order dated 20-12-1996, without knowing the proceedings of the Commissioner, that the post has to be filled in with a junior lecturer in terms of the G.O. Ms. No.127, dated 7-6-1993. Ultimately, the

Selection Commission constituted for making selection met on 22-12-1996 and while the official respondents rejected the claim of the junior lecturer on the ground that he did not possess the required 55 % of marks in the P.G. level and he was not absorbed in the 3rd respondent college on permanent basis and he is working only on deputation and selected the lecturer for appointment to the post, recommended the case of the lecturer for appointment. The Chairman of the Selection Committee and the Correspondent of the College expressed his dissent in so many terms that the post has to be filled in only by transfer from junior lecturer and the Junior lecturer assailed the orders of the 2nd respondent dated 17-6-1989 rejecting his absorption could only be considered for this post. The 2nd respondent rejected the case of the junior lecturer for appointment in the light of the interim orders given by this Court on 10-9-1996 only on the ground that he did not possess 55% of marks at the P.G. level by his proceedings dated 30-1-1997. Having received the rejection order, the junior lecturer filed WP MP Nos.6976, 6977 and 6978 of 1997 seeking amendment of the prayer as well as suspension of the proceedings of the Commissioner and to direct the respondent to promote him without insisting for 55% marks at the P.G. level, respectively. I need not advert to all the events that have taken place thereafter, except stating that ultimately, the writ petition was finally heard by me and it was allowed by order dated 26-12-1997 by holding that the 2nd respondent is not justified in insisting for 55% marks at P.G. level in the light of the G.O. Ms. No.32, dated 19-1-1984, wherein it was categorically stated that the cases of the Junior lecturers can also be considered for promotion subject to the condition that they improve their qualification within three years from the date of their appointment. To complete the narration of facts, Writ Petition No.12336 of 1989 filed by the junior lecturer questioning the orders of the 2nd respondent refusing permission to absorb him in the 3rd respondent college on regular basis was disposed of by order dated 18-1-1997 by directing the official respondents to consider the matter in the light of the events that were mentioned in the order. Having reconsidered the matter, the Government issued orders on 20-2-1997 permitting the management to absorb the junior lecturer from the date of his first appointment in the college i.e., 16-9-1985.

5. In the mean time, as the Commissioner did not take any action on the proposals forwarded by the Selection Committee to absorb him in aided vacancy, the lecturer filed Writ Petition No.9394 of 1997 on 28-4-1997 and this Court in WP MP No.1 1481 of 1997, gave a direction to the 2nd respondent to consider his case and pass appropriate orders in the matter. Pursuant to this order, the 2nd respondent having considered the request of the lecturer rejected the same by his Proceedings Re No.127/PCI-i/97 dated 4-6-1997, stating that the vacancy of lecturer in English in the Degree College being third vacancy, it has to be filled in only with a junior lecturer by transfer and the case of the petitioner will be considered in the fourth vacancy. Having received the said order, the lecturer filed WP MP No.21727 of 1997, seeking amendment of the prayer on 31-9-1997.

6. From the above factual background it has to be seen whether the aided

vacancy of lecturer in English in Degree College has to be filled up with the junior lecturer or lecturer, who is working in the unaided post.

7. It is not in dispute that the vacancy that has arisen happened to be the third vacancy in the cycle of four vacancies; it has to be filled up by transfer from among the qualified junior lecturers as per G.O. Ms. No.127, dated 7-6-1993. But, the objection raised by the Selection Committee as well as the lecturer in this writ petition is that the junior lecturer is working in Sarada Junior College only on deputation and he being not a permanent employee of the junior college, he cannot claim the post, but after the selection process is over, the 2nd respondent while considering the claim of the junior lecturer for transfer pursuant to the interim orders of this Court in WP MP No.23224 of 1996 in Writ Petition No.18846 of 1996, dated 10-9-1996, rejected the case of the junior lecturer only on the ground that he did not possess 55% marks at P.G. level, as required under the rules. With regard to absorption of the junior lecturer in Sarada Junior College, the management at the request of the junior lecturer submitted proposals to the Government in the year 1989 expressing their willingness to absorb the junior lecturer in Sarada Junior College on permanent basis and that proposal was recommended by the Commissioner. The Government rejected the same by its order dated 17-6-1989 solely on the ground that absorption involves transfer of junior lecturer from one zone to another. Questioning the said proceedings, the junior lecturer filed Writ Petition No.12336 of 1989 and this Court by order dated 6-9-1989 directed stay of further proceedings pursuant to the orders of the Government dated 17-6-1989.

8. Admittedly, six-point formula is applicable only to the employees of State Government, but not to the Governmental organisations, leave apart private colleges. In fact, the Government issued Memo No.1302/CE.II-1/93-4, dated 14-10-1993 to that effect. This Court finally allowed the writ petition by order dated 18-1-1997 taking into consideration the above memo as well as other proceedings issued by the Government in similar circumstances and directed the Government to consider the proposal afresh by making the legal position clear. Having received the judgment, the Commissioner in his Proceedings Re No.212/JC 5-2/97, dated 20-2-1997, issued orders absorbing the junior lecturer as junior lecturer in the existing vacancy with effect from 16-9-1985, the date on which the junior lecturer joined Sarada Junior College on deputation as junior lecturer. When once the Government issued orders absorbing the junior lecturer with retrospective effect, his absorption dates back to the date of his joining in the college. But, Sri Sita Ram Counsel appearing for the lecturer strenuously contended that on the day when the Selection Committee met, there is no order absorbing the junior lecturer in the junior college on permanent basis, but I have no hesitation to reject the contention for the simple reason that even assuming without admitting that the junior lecturer is not a permanent employee of the 3rd respondent college on the date of selection, the very order passed by the Government rejecting his absorption way back in the year 1989 is the subject matter of a writ petition pending on the file of this Court on that date, which was

ultimately allowed. As long as the dispute with regard to absorption is pending in this Court, any decision taken by either the management or by the Selection Committee, is subject to the result of the writ petition. In fact, though the Selection Committee recommended the case of the lecturer for absorption pursuant to the interviews held on 22-12-1996, the official respondent did not approve the same. In fact, when he filed Writ Petition No.9394 of 1997, directing the Commissioner to accord approval for his absorption in the aided post in English and interim direction was given by this Court in WP MP No. 11481 of 1997, dated 1-5-1997, the Commissioner rejected the case of the lecturer for absorption by his proceedings No.127/PCM/97, dated 4-6-1997 stating in so many terms that as the vacancy being third in the cycle of four vacancies, the case of the petitioner cannot be considered in that vacancy and his case will be considered only in the fourth vacancy. It is also to be kept in mind that when permission was sought for by the management to fill up the post, the Commissioner in his proceedings L.Dis No.4204/PCE-I/96, dated 27-11-1996, gave permission to the management to fill up the vacancy with the eligible junior lecturer working in an aided post under the same management duly following the rules in force. Likewise, the junior lecturer apprehending that his case may not be considered by the respondents on the ground of non-absorption and on the ground that he did not secure 55% marks at P.G. level, filed Writ Petition No.18846 of 1996 and this Court by order dated 10-9-1996 in WP MP No.23274 of 1996, directed the authorities concerned to consider the case of the petitioner for promotion to the post of lecturer in accordance with paragraph No.4 of G.O. Ms. No.127, dated 7-6-1993, pending further orders. In other words, this Court having taken note of the fact that the petitioner was not absorbed on regular basis directed the authorities concerned to consider his case for the same in the light of G.O. Ms. No.127, dated 7-6-1993. Likewise, it should be kept in mind that the lecturer perhaps having come to know of the proceedings of the Commissioner dated 27-11-1996, wherein the management was directed to fill up the vacancy with a junior lecturer working in an aided post under the same management, approached this Court by filing Writ Petition No.9394 of 1997 and obtained orders on 1-5-1997 in WP MP No. 11481 of 1997, to consider his case for the post of lecturer and pass appropriate orders. This direction of this Court has to be interpreted, that if the lecturer is found eligible for absorption to the post his case has to be considered, but unfortunately, the Selection Committee ignored the proceedings of the Director, dated 27-11-1996 as well as the orders of this Court dated 10-9-1996, and has taken a decision that the junior lecturer is not eligible for promotion to the post on the ground that he is not a permanent employee of the college. Even assuming for a moment, the members of the Selection Committee are right in taking that decision, they exceeded their powers in recommending the case of the lecturer for absorption as the post cannot be filled up with anyone except by transfer of a junior lecturer. In fact, the Chairman of the Selection Committee/ Correspondent of the College expressed his dissent in very crystal clear terms on the view taken by the official members of the Committee. Taking all these circumstances into consideration,

the Commissioner did not give much credence to the objection raised by the Selection Committee with regard to the status of the junior lecturer in the college and rejected his case mainly on the ground that he did not possess 55% marks at P.G. level. Likewise, the Commissioner rightly rejected the case of the lecturer for absorption by his Proceedings dated 4-6-1997.

9. Sri Sita Ram, questions the correctness of the order by contending that as per the G.O. Ms. No. 127, dated 7-6-1993, if no eligible junior lecturer is available for recruitment by transfer, the post has to be filled in by direct recruitment. Once again, even if the contention of Mr. Sita Ram is accepted, any orders passed by the authorities concerned absorbing the lecturer working in an unaided post, while the issue of absorption of the junior lecturer is pending consideration by this Court, the same is hit by the principle of *lis pendens* and once the junior lecturer succeeds in his claim for absorption, any appointment that would have been made pursuant to the recommendation of the Selection Committee has to be set at naught. In fact, the lecturer did not assail the orders of absorption of the petitioner issued by the Commissioner dated 20-2-1997, pursuant to the orders of this Court dated 18-1-1997. Hence, even if the contention of the lecturer that the junior lecturer is not a permanent employee of the 3rd respondent college at the time of selection, is given credence, any orders given to him would be till the disposal of the Writ Petition No. 12336 of 1989, filed by the junior lecturer questioning the orders of the Government in rejecting the proposal for absorption. In this case, as no appointment was given to the lecturer by the time the junior lecturer was given absorption and as such he cannot have any claim over the post.

10. The issue can be viewed from another angle also. Had this Court not directed the respondents to consider the case of the lecturer along with others for appointment in the aided vacancy of the lecturer Writ Petition No.27289 of 1996, dated 20-12-1996, he would have been called for the interview as the Selection Committee is expected to constitute for the purpose, has to consider the claims of only junior lecturers, but not a lecturer working in an unaided vacancy. As the post is specifically reserved for junior lecturer under G.O. Ms. No. 127, dated 7-6-1993, the Selection Committee is expected to consider the direction of this Court in its true spirit and in accordance with the rules. When once the lecturer working in an unaided vacancy is not eligible for absorption as per G.O. Ms. No.127, dated 7-6-1993, the question of recommending the case of the lecturer for absorption by the Selection Committee does not arise and the Selection Committee exceeded its power in recommending the case of the lecturer for absorption. But, the Commissioner having considered the case of the lecturer in the light of the interim orders of this Court in WP MP No. 11481 of 1997, dated 1-5-1997, rightly rejected the claim of the lecturer for absorption. I do not find any illegality or irregularity in the order of the Commissioner dated 4-6-1997 in not acceding to the request of the lecturer for absorption.

11. The other ground raised against filling up of the vacancy by transfer from

among the junior lecturers is that the junior lecturer did not secure 55% marks at P.O. level. This objection was taken by the Selection Committee as well as the Commissioner without knowing the existence of G.O. Ms. No.32, dated 19-1-1984, wherein the Government has taken a decision to appoint a junior lecturer who secured 50% marks at P.G. level, by transfer as a lecturer in Degree College under the same management subject to the condition that he shall improve his marks to 55% within three years of his appointment. In fact, placing reliance on this G.O. [allowed Writ Petition No. 18846 of 1996, filed by the junior lecturer and gave a direction to the respondents to consider the case of the junior lecturer for appointment in the aided vacancy of lecturer in Degree College.

12. The Counsel for the junior lecturer, during the course of arguments, brought to my notice that the Government having considered the orders passed by me in the above writ petition reiterated its stand by issuing G.O. Ms. No.605 Education (CE-II) Dept, dated 23-12-1998. Hence, this objection also falls to ground.

13. In the light of the foregoing discussion a writ of mandamus is issued directing the respondents to consider the case of Sri K. Bala Gangadhar Joshi. working as junior lecturer, the petitioner in Writ Petition No.18846 of 1996 for appointment in the aided vacancy of lecturer in the Degree College by transfer and the Writ Petition No.9394 of 1997 filed by Sri V. Murali Krishna, working as lecturer in an unaided vacancy, seeking absorption in the vacancy that is sought to be filled in by a junior lecturer is rejected and accordingly, the writ petition is dismissed. But, in the circumstances, there will be no order as to costs.