

(2000) 06 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7523 of 1997

L. Parthasarathi

APPELLANT

Vs

University of Hyderabad and others

RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:

Citation : (2000) 6 ALD 545

Hon'ble Judges : N. Venkata Ramana, J

Bench : Single Bench

Advocate : Mr. K. Ramakrishna Reddy, for the Appellant; Mr. V. Raja Gopal Reddy, Mr. K.N. Jwala and Mr. C.V. Nagarjuna Reddy, for the Respondent

Judgement

1. The case of the petitioner is that, the University of Hyderabad is running a school from KG to SSC in its campus for the children of its employees. Petitioner was appointed, by the respondents by order dated 17-10-1994, as Sanskrit cum Telugu teacher in the school on temporary/ part-time basis on a consolidated salary of Rs. 1000/- per month, in a vacancy that arose due to resignation of one K. Srinivasasastry. Petitioner claims that at the time of his initial appointment he was having the qualification of B.A., B.Ed in Oriental Language and subsequently he acquired M.A. degree and so he is fully qualified to hold the post on regular basis. According to him, he is working from 9.30 am to 3.45 p.m by taking 6 to 7 teaching sessions daily on par with the other regularly appointed teachers. Ever since 1994, the petitioner is being continued on temporary basis with artificial breaks during vacations. He submits that he is working in the respondent-school with the hope that his services will be regularised. He claims that he is entitled to regular pay scale and other benefits on par with other regularly appointed teachers. He filed this writ petition on 10-4-1997, stating that his appointment was upto 29-4-1997, apprehending termination of his services. He, therefore, seeks a writ of mandamus to declare the action of the respondents in not regularising his services as Trained Graduate Teacher and also the action of the respondents in terminating his services periodically and before vacations every

year as illegal and arbitrary and for a consequential direction to the respondents to regularise his services with effect from 17-10-1994.

2. On 23-4-1997, while admitting the writ petition, this Court in WPMP 9115 of 1997, issued interim directions to the respondents to continue the petitioner as Trained Graduate Teacher (Sanskrit cum Telugu Teacher) by paying him salary, allowances and other benefits on par with the regularly appointed teachers.

3. The respondents now filed WVMP No. 1177 of 2000 along with their counter seeking to vacate the interim order granted by this Court on 23-4-1997.

4. The case of the respondents, as could be seen from the counter, is that on K. Srinivasasastry, the regularly appointed Sanskrit-cum-Telugu Teacher went on extraordinary leave from 7-10-1994 to 6-10-1995. Then the petitioner approached the 3rd respondent-Principal of the school with his application dated 15-10-1994 for appointment as a teacher in that vacancy. As Srinivasasastry left the school in the middle of the academic year and as filling up the post of regular basis will take considerable time, the Principal suggested to the 2nd respondent-Chairman of the School Managing Committee to appoint the petitioner on temporary basis with a consolidated salary of Rs. 1000/- per month for a period not exceeding six months or until the post is filled up as per the school bye-laws, whichever is earlier. The 2nd respondent accepted the said recommendation of the Principal and appointed the petitioner purely on temporary basis on 17-10-1994. As the leave period of the regular incumbent spread-over to the next academic year 1995-96 also, the petitioner was given a fresh appointment order at the beginning of the academic year 1995-96, i.e., on 20-6-1995, on the same terms and conditions as imposed in his initial appointment order and making it clear that the petitioner cannot claim any right or weightage for regular appointment/service in the school. The petitioner was also requested to convey his willingness to the above terms, to which he agreed and joined duty. The regular teacher Srinivasasastry resigned his post on 11-12-1995. Due to administrative reasons, the post could not be filled up on regular basis, and the petitioner has been continued under successive appointment orders dated 22-12-1995 and 18-6-1996 purely on temporary basis and with other conditions and the petitioner accepted those conditions on each and very occasion. On 3-1-1997, the petitioner was given another appointment order of the period upto 29-4-1997 purely on temporary basis, as the academic year was coming to an end and the respondents were contemplating to fill the vacancy on regular basis. Having accepted the appointment and joined duty as per order dated 3-1-1997, petitioner refused to receive the relieving order dated 29-4-1997 and filed this writ petition. The petitioner was not appointed on regular basis, as per bye-law No.24 of the "University of Hyderabad Campus School Bye-laws", pursuant to any advertisement/notification calling for applications and the claim of the petitioner that he was appointed on regular basis is not correct. The respondents finally stated that the case of the petitioner would also be considered along with other eligible candidates, if the post is notified and regularly filled up.

5. In his reply-affidavit the petitioner, disputing the stand taken by the respondents in their counter that he approached the school authorities on his own for appointment, contended that the respondents issued a notice inviting applications for the post of Sanskrit-cum-Telugu Teacher when Srinivasasastry resigned his post. Petitioner's case is that he applied in response to the said notice and after conducting interview and demonstration session for class-VII, he was appointed as Sanskrit-cum-Telugu Teacher on 17-10-1994, and that he is being continued for the last seven years as temporary teacher with artificial breaks during vacations. He claims that the respondents are paying him salary and allowances on par with regularly appointed teachers in the school; and that even though the school issued notification calling for applications for various teaching posts, the post in which he is working is not notified. He contends that since he is fully qualified to hold the post and working for the last seven years as such, he is entitled to seek regularization of his services in the respondent-school.

6. Heard the Counsel for the petitioner and the Standing Counsel for the University. Both of them requested to dispose of the writ petition itself.

7. The contention of the petitioner's Counsel is that the petitioner was appointed as a teacher after interview and demonstration test before the Principal; and the Chairman of the School Managing Committee has also approved his appointment; there is a provision under bye-law No.23 of the school bye-laws to make appointment of teachers in the school; the petitioner is working in a clear and regular vacancy for the last seven years; petitioner also possesses the requisite qualifications of B.A., B.Ed and subsequently he passed M.A. also; there is no allegation that his performance is not good; in fact, there is an advertisement issued by the respondent on 17-6-1997 for several teaching posts, but the respondents have not advertised the post in which the petitioner is working; because the respondents promised the petitioner that his services will be regularised, the petitioner has not applied for employment elsewhere, hoping that his services will be regularised; the petitioner has legitimately expected regularisation as he had worked for a long length of period; as per the interim direction of this Court dated 23-4-1997 the petitioner is being paid salary on par with regularly appointed teachers; the University has not filed any petition to vacate the interim order; therefore, the petitioner is entitled to regularisation.

8. According to the Counsel for the petitioner, for seeking regularisation of services, a person has to fulfil three conditions -- viz., (1) there must be a clear vacancy; (2) the candidate must be qualified, and (3) his initial entry into service must be a bona fide one i.e., his appointment must be made by the competent authority. He vehemently contended that since the petitioner fulfils the, above conditions, he is entitled for regularisation of his services. In support of his contentions, Counsel for petitioner relied on the decisions-

Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, ;

Karnataka State Private College Stop-Gap Lecturers Association Vs. State of

Karnataka and Others, ;

Ashwani Kumar and Others Vs. State of Bihar and Others, ; and

Baseruddin M. Madari v. State of Karnataka .

9. Counsel for respondents firstly contended that the petitioner is only a temporary teacher and he has no right to claim regularisation. For this purpose, he invited the attention of this Court to the condition in the appointment order dated 17-10-1994 -- "for a period of not exceeding six months or until this post is filled up according to school bye-laws, whichever is earlier" -- and also relied on the second appointment order dated 20-6-1995, which made it clear that -- "the above appointment does not entitle you to claim for any weightage for a regular appointment/service in the school". He contends that in all subsequent appointment orders also it is made clear that the petitioner is not entitled to claim regularisation and, therefore, the petitioner's appointment is only temporary and for a limited period and that the petitioner was cautioned that his appointment is not going to be given any weightage or preference in future appointment by virtue of his temporary appointment.

10. This contention of the learned Counsel for the respondents is fallacious. The mere fact that the petitioner has been issued periodic orders of appointment, each of them specifying a temporary tenure, they cannot, in law, have the effect of subverting the constitutional right of the petitioner to regularisation of his services. The petitioner's entitlement to regularisation is the legal consequence of his uninterrupted service pursuant to a due process of selection. He has served as such for over six years. He is thus entitled for regularisation, notwithstanding the periodic label of temporary appointment issued by the respondents.

11. The second contention of the Counsel for the respondent is that the selection of the petitioner is not in accordance with the bye-laws of the school. Simply for the purpose of assessing the capacity of the petitioner and to test his performance, the committee might have asked the petitioner to demonstrate his talent. That does not mean that his selection is on regular basis. Under bye-law No.24 of the school bye-laws, the recommendation of the selection committee must be approved by the School Managing Committee and there is no approval of the appointment of the petitioner by the competent authority and so the petitioner cannot seek any relief from this Court contrary to the bye-laws. In support of his contentions, he relied on the decision of the Apex Court in *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, .

12. Coming to the broad principles laid down in the judgments cited at the Bar, in *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, , the principle laid down, inter alia, by the Apex Court is that the services of persons who continued for a long period as temporary employees have to be regularised, if they possess the requisite qualifications. In *Karnataka State Private College*

Stop-Gap Lecturers Association Vs. State of Karnataka and Others, and in Baseruddin M. Madari v. State of Karnataka , the Apex Court deprecated the practice of continuing teachers on ad hoc and temporary basis with breaks and directed payment of salary to those temporary teachers on par with the regularly appointed teachers. In Ashwani Kumar and Others Vs. State of Bihar and Others, , the Apex Court observed that the question of regularisation of services of persons who continued to work on ad hoc or daily wages basis with or without artificial breaks, in permanent vacancies can be considered provided, their initial entry into the service is free from any flaw and not through backdoor methods.

13. Coming to the decision in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , relied on by Sri Nagarjuna Reddy, learned Standing Counsel for the respondent-University, the Apex Court ruled therein that persons who are appointed on contract or ad hoc basis, and who are continued from time to time, have no right to continue in the posts and claim regularisation of their services, especially in the absence of any rule providing for such regularisation. Deriving support from the ratio in Pushpa Shrivastava's case (supra), Sri Nagarjuna Reddy, vehemently contended that the petitioner is a purely a temporary teacher and cannot claim regularisation.

14. It is true, in Pushpa Shrivastava 's case (supra), the Apex Court considered its earlier decision in Jacob's case (supra). But, their Lordships only distinguished Jacob's case, on facts, and did not overrule/nullify the ratio of the said decision. A reading of the two judgments would disclose that the facts of the cases are not identical. In Pushpa Shrivastava's case, the learned Judges, after quoting Para 6 of the judgment in Jacob's case, observed that the said case (Jacob's case) was concerned with interpretation of Rule 9(a) (i) of Kerala State and Subordinate Service Rules, 1958, and stated that in the case before them (i.e., Pushpa Shrivastava's case) no such rule was there. This is clear from the observations of the Apex Court 1992 (4) SCC 38) "in the instant case, there is no such rule. The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end".

15. The facts and circumstances in Pushpa Shrivastava's case (supra) are entirely different from that of the case on hand. In that case, the petitioner was appointed as Research Executive on consolidated pay on contract basis for 3 months, specifically mentioning in her appointment order that it was purely ad hoc and liable to be terminable without any notice. At the same time it was subsequently extended for another period of 6 months and later for 3 months. By efflux of time, the appointment came to an end on 21-3-1990. However she was continued thereafter also for some time. On 13-7-1990 she submitted her resignation and that was accepted on 31-7-1990. On 25-8-1990 she made another representation to continue her in service for some more time. She was again appointed making it clear that her appointment is ad hoc and terminable without notice. On January 3, 1991 a committee of the Institute went into the

question of abolition of redundant posts and it seems the committee expressed that the posts which the petitioner-therein was holding had become redundant and recommended its abolition. So her appointment came to an end in February, 1991. In that background, the Supreme Court observed: (at para 20):

"To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post."

16. Adverting to the decision in Jacob's case (supra), the Apex Court said that in Jacob's case there is a specific rule, viz., Rule 9(a) (i) of Kerala State and Subordinate Service Rules, which provides for regularization of services of any person appointed under clause (i) of sub-rule (a) of Rule 9 of the said Rules if he had completed continuous service of two years on a particular date. In Pushpa Shrivastava's case, there is no such rule and her appointment was made purely on ad hoc, temporary and on contract basis for a limited period. So it was held by the Apex Court that she cannot claim any relief. However, their Lordships finally invoked a sympathetic consideration and directed continuance of her services till the end of that particular calendar year on the same terms and conditions earlier imposed.

17. In that case, apart from the reasoning given by the learned Judges, at paragraph 14 it is made clear that the Institute of Management came to the conclusion to abolish the posts, and because of the financial constraints the committee recommended to abolish the posts. Hence, the posts became redundant, including the post occupied by the employee therein.

18. In the present case, the post of teacher in which the petitioner is working is not abolished nor held to be redundant by the respondents. It is not even the case of the respondents that they intend to abolish the said post due to financial constraints. So, there is every need for continuing the post of Sanskrit-cum-Telugu Teacher. The petitioner is, admittedly, working for the last seven years as a teacher in the respondents-school even though there are some artificial breaks. He is working continuously on par with the regularly appointed teachers and by taking 6 to 7 classes a day. Apart from that, to a specific question posed by this Court to the learned Counsel to the respondent, whether there are any complaints against the petitioner or whether the petitioner is not having capacity to teach, it is categorically stated by the Counsel for respondent that there are no such complaints against the petitioner. That means, the petitioner is satisfactorily working in the said post.

19. It may be noted that in the reply affidavit the petitioner rebutted the averments in the counter affidavit of the respondents by saying that he applied as per the notice issued by the respondent for the post of teacher. A test was conducted and a teaching demonstration was taken for Class VIII. After satisfying with the performance of the petitioner in the test and demonstration only, the petitioner was appointed. Petitioner also possesses the requisite

educational qualifications and he even acquired M.A., degree qualification subsequently. In fact, in Para 7 of the counter, inter alia, it is stated - "At the most, the petitioner is also entitled to apply for the post of Sanskrit Telugu Primary School Teacher as and when the vacancy is notified and his claims will be duly considered in such an event. The respondents are contemplating to issue notification for this purpose".

20. On 17-6-1997, respondents advertised certain posts of teachers in the school. By that time, Srinivasasastry resigned (i.e., on 11-12-1995). In spite of the same, the respondents have not advertised the post in which he is working. This also shows that the respondents thought of regularising the services of the petitioner. The respondents paid full salary to the petitioner on par with regularly appointed teachers by virtue of interim orders of this Court. After working for seven long years, normally, the petitioner expects legitimately that he will get regular post and at this distance of time the respondents cannot deny regularisation of services to the petitioner.

21. From the averments in Para 7 of the counter in this case and from the fact that the petitioner is being continued for the last seven years with artificial breaks during vacations and from the fact that the respondents have not notified the post even though the said notification is much subsequent to the acceptance of resignation of Srinivasasastry, it is clear that the respondents are inclined to regularise the services of the petitioner. Normally it is not proper for this Court to give directions to act against the bye-laws, rules or regulations to any authority and particularly in the matter of regularisation of appointments. But, in this particular case, the conduct of the respondents shows that they intended to regularise the services of the petitioner and that is why they continued him for seven long years and they did not notify the vacancy, even though the petitioner was initially appointed on temporary basis for a limited period and by extending his services from time to time.

22. In the result, the writ petition is allowed. A direction shall issue to the respondents to consider the case of the petitioner for regularisation of his services, in the light of the observations made above, in the post in which he is working and to pay him all attendant benefits within three months from the date of receipt of a copy of this order. No costs.