

(1992) 03 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13936 of 1990

M. Ananda Mohan

APPELLANT

Vs

Correspondent, V.T. Junior College and Others

RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 ALT 117

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : P. Balakrishna Murthy, N. Janaki Ram Rao and K. Srinivas, for the Appellant; C.S.K.V. Ramana Murthy, for Respondent No. 1, Govt. Pleader for Education for Respondent No. 2, N. Rama Mohana Rao and Pratapa Narayan Sanghi, for the Respondent

Judgement

D.J. Jagannadha Raju, J.—This writ petition is filed by a person who is holding full additional charge of the post of Junior College Principal. He seeks the relief of a writ of mandamus to direct the respondents 1 and 2 to continue the petitioner as Principal of the V.T. Junior College, Rajahmundry and to pass such other or further orders as are deemed fit and proper. The first respondent in this writ petition is the Correspondent of the V.T. Junior College, Rajahmundry. The second respondent is the Secretary, A.P. College Service Commission, and the third respondent is Sri V. Sitarama Rao in whose favour an order has been issued by respondents 1 and 2 appointing him as the regular Principal of the Junior College.

2. The facts leading to the filing of the present writ petition are briefly as follows:

The petitioner obtained M.Sc., degree in Chemistry from Vikram University in 1970. He obtained 53.8% marks in the final year examination and if the marks of the first and second years are combined, he obtained 49% average on the aggregate. He was awarded M.Sc. degree with second class. On 7-8-1971, he was appointed as junior lecturer. On 7-8-1978 he was appointed as Grade-I junior lecturer. When his appointment was referred to Board of Intermediate

Education for approval, the Board held that he does not have the requisite qualification of 50% and above on average for first and second years put together. The Board directed him to improve his qualifications and granted him time. The petitioner then filed Writ Petition - W.P.No. 2305 of 1978. The said writ petition was allowed and it was held that the Board of Intermediate Education's Circular dated 1-6-1972, which prescribed 50% marks average on the aggregate for the first and second years clubbed together is not applicable to the petitioner's appointment which took place long prior to the Circular. It was held that the Circular dated 1-6-1972 has only prospective operation and it does not have retrospective operation. Subsequently his appointment was approved, but in view of the objections taken by the Board of Intermediate Education and the Director of Higher Education, he was not given the scale applicable to Second Class Post-graduate Qualified Junior Lecturers. Then he filed another writ petition - W.P.No. 153 of 1981, and that writ petition was allowed on 22-10-1982 and the court directed that the scale applicable to Second Class Post-graduate Junior Lecturers is applicable to him and he should be granted that scale.

3. The post of the Principal of this Junior College fell vacant on 30-8-1986 as Dr. S. Venkateswara Rao, the then Principal, expired. Sri. N. Seshagiri, Grade-I Junior Lecturer in Mathematics, was kept in full additional charge of the post of Principal. While holding the full additional charge of the post of Principal, he gave a representation on 2-12-1987 declining to continue as the Principal. Then the present petitioner, the next senior most Junior Lecturer Grade-I was kept in full additional charge of the post and he assumed charge on 12-12-1987. Later the Managing Committee, by resolution dated 9-1-1988, resolved to appoint the petitioner as regular Principal, pending approval of the Secretary, Board of Intermediate Education and Director of Higher Education and sent proposals to the above authorities. The authorities informed the management by letter dated 22-4-1988 that the petitioner's appointment cannot be approved as it is made subsequent to G.O.No. 527 Edn. (J) dated 10-12-1984 under which the vacancy has to be filled up through the Andhra Pradesh College Service Commission. The authorities also held that the post of Principal is deemed to be vacant from 30th August, 1986, and that the authorities should approach the College Service Commission for making a regular appointment of the Principal. After correspondence passed between the College Service Commission and the management, on 8-2-1989, the Secretary of A.P. College Service Commission called for the seniority list of all the staff members with relevant particulars for making the appointment. The relevant data was sent and by letter dated 11-9-1990, the College Service Commission approved the name of the third respondent for appointment to the post of Principal by recruitment by transfer and requested the correspondent of the college to issue orders of appointment immediately directing the Principal to join within four weeks from the date of the appointment orders and that the appointment takes effect from the date the new incumbent joins duty. This letter was received on 19-9-1990 and by order dated 25-9-1990, Rule 3 was appointed as principal and the petitioner was directed to

hand over charge to the third respondent. When the management issued the proceedings on 25-5-1990, the present writ petition was filed on 24th September, 1990 along with W.P.M.P.17930 of 1990. There is some controversy as to whether the third respondent assumed charge as Principal before this court issued the interim directions on 4th October, 1990. It is unnecessary at this stage to go into that controversy for deciding this writ petition. The subsequent records indicate that the petitioner refused to hand over charge relying upon the interim orders passed by this court and that he continues to be holding the post of the Principal.

4. The petitioner claims that he is validly appointed as a Principal by reason of the resolution dated 9-1-1988 of the Managing Committee and that he is a regular principal from 9-1-1988. He claims that he is fully qualified to hold the post of Principal of the Junior College and hence he is entitled to the relief of writ of mandamus.

5. This writ petition is resisted by Rule 1 on the ground that his appointment as Principal is subject to approval of the Secretary, Board of Intermediate Education and Director of Higher Education and as his appointment is not approved and as the College Service Commission selected the third respondent for appointment in accordance with the rules applicable to the post of Principal of a Junior College, the petitioner is not entitled for the relief. It is contended on behalf of Rule 1, the management, that Rule 3, who is qualified to hold the post and who has been directed to be appointed as Principal by the College Service Commission, is entitled to occupy the post and the petitioner, as per the college records, is only holding full additional charge and the salary statements show that he is only drawing salary as Grade-I Junior Lecturer in Chemistry and the post of principal is vacant from 30-8-1986.

6. The second respondent, A.P. College Service Commission, resists the writ petition on the ground that the petitioner does not satisfy the qualifications prescribed for the post of Principal of the Junior College. According to G.O.Ms.No. 158 Edn., dated 10-6-1987, a Principal should be first or second class degree holder with not less than 50% in the Master's degree. After the constitution of the College Service Commission, the appointment has to be made by a process of selection by the College Service Commission. The management is not entitled to make the appointment. The petitioner who has got only 49% marks in the Master's degree is not eligible for the post. The orders in the two writ petitions which are relied upon by the petitioner only relate to his appointment and continuance as Junior Lecturer. Approval given is limited to the post of Junior Lecturer and not to the higher post. The petitioner is only a Junior Lecturer who has been placed in full additional charge of the Principal and that does not entitle him to hold the post of Principal. He is fully aware of the fact that he has been given only full additional charge of the post till the regular Principal is appointed by the College Service Commission. Hence the petitioner is not entitled to the relief and he is not entitled to continue as Principal.

7. The third respondent claims that he actually took charge of the post by giving a joining report as per the orders dated 25-9-1990, but the petitioner refused to hand over charge and a controversy ensued and subsequently, status quo was directed to be maintained as per the orders of the High Court and the management reported to the High Court and the other authorities that the petitioner did not hand over charge in gross violation of the orders and that he is deemed to hold the post on 4-10-1990. The third respondent contends that the petitioner is not entitled to be appointed as principal of the Junior College because he has only 49% average marks and he does not have the prescribed qualifications as per the existing rules. He is fully qualified to hold the post of the Principal. The College Service Commission, after examining the claims of all eligible candidates, has duly approved his appointment and directed the management to appoint him as Principal while refusing to approve the appointment of the petitioner. Hence the writ petition should be dismissed.

8. One important fact that will have to be borne in mind in deciding this writ petition is the change of rules and the change of authorities who are entitled to make the appointment and approve the appointment of Principal. The judgments in W.P.2305 of 1978 and Writ Petition No. 153 of 1981 of this High Court relate to the appointment of the petitioner as Junior Lecturer. But for the orders of the High Court in Writ Petition No. 2305 of 1978, the petitioner is not even eligible to hold the post of a Junior Lecturer. On the ground that the circular dated 1-6-1972 issued by the Board of Intermediate Education is only prospective in operation and it does not have retrospective operation so as to effect the appointment of the petitioner on 7-8-1971, the petitioner acquired the right to continue as Junior Lecturer. It should also be remembered that the Board of Intermediate Education granted time to improve his qualifications up to 1980. The petitioner did not bother to improve his qualifications and try to acquire more than 50% marks average in the aggregate. By virtue of the court orders, he continued as Junior Lecturer and the approval was given for it as per the directions of the court. By virtue of the court's judgment in W.P.No. 153 of 1981, he got the benefit of higher scale of pay. The post of Principal fell vacant on 30-8-1986 and Sri N. Seshagiri, who was put in full additional charge of the post, declined to continue further as principal by his letter dated 2-12-1987. By the time, the petitioner was put in full additional charge of the post of Principal, the statutory position and the rule position regarding the post of Principal has undergone a tremendous change. The appointment can be made only in strict accordance with the rules that were prevailing at the time of the vacancy arising on 12-12-1987 by which date Sri N. Seshagiri refused to continue to hold full additional charge. The Managing Committee had no right to make a regular appointment. The Managing Committee was only entitled to make full additional charge arrangements. A perusal of the documents clearly indicates that the petitioner was kept in full additional charge of the post as per a resolution of the Managing Committee. Resolution of the Managing Committee dated 9-1-1988 clearly indicates that the petitioner is promoted as regular Principal of the V.T.

Junior College, Rajahmundry, from 9-1-1988, pending approval of the Director of Higher Education and the Board of Intermediate Education of Andhra Pradesh. This order of the management is illegal because the Managing Committee had no power to make the appointment and as the petitioner is not a candidate selected by the College Service Commission. When proposals were sent for approval, the Board of Intermediate Education promptly raised the objection by letter dated 22-4-1988. It was clearly pointed out in the objections that as his appointment was made after the issue of G.O.No. 527 dated 10-12-1984, the Management should approach the A.P. College Service Commission which is the competent authority for approval of the appointment by promotion. The A.P. College Service Commission Act, 1985 (Act No. 13 of 1985) came into force from the first day of October, 1985, as per G.O.Ms.No. 431 Education (U.E.), dated 27th September, 1985. The College Service Commission was constituted under G.O.Ms.No. 218, Education (U.E.), dated 13th May, 1986. In exercise of the powers u/s 19 of the Act, the College Service Commission framed rules known as "The A.P. College Service Commission (Selection of Persons for appointment to the posts of teachers) Rules, 1987, and they were published in G.O.Ms.No. 158, Education (U.E.), dated 10-6-1987 and the Gazette publication was made on 16-6-1987. Thus it is clear that before the present petitioner was put in full additional charge of the post of the Principal, the statutory position has totally altered. In these statutory rules, Item No. 13 relates to Principals of Junior Colleges. The qualifications prescribed are: "A first or second class Post-Graduate degree of M.A., M.Sc., M.Com., B.A.(Hons.), B.Sc., (Hons.), B.Com. (Hons.), with not less than 50% of marks of a University in India established or incorporated by or under a Central Act or a Provincial Act or a State Act or institutions recognised by the University Grants Commission." Experience prescribed is five years as Junior Lecturer. The mode of recruitment is recruitment by transfer from among the qualified eligible and suitable Junior Lecturers of the Junior Colleges and in the absence of such lecturers by direct recruitment.

9. It is an admitted fact that the petitioner does not satisfy the academic qualifications prescribed for the post of the Principal of the Junior College as he obtained only 49% in the aggregate though he secured 53.8% in the second year M.Sc., examination. In the affidavit filed in this writ petition itself, he categorically admitted that he passed M.Sc., in Chemistry in Second Class in 1970 from Vikram University by getting 49% in aggregate (both previous and final). Prima facie, he does not have the academic qualification to hold the post. In fact, earlier he managed to continue as Junior Lecturer by reason of the orders in the writ petitions filed by him and by reason of the fact that his appointment was anterior to the Circular issued by the Board of Intermediate Education on 1-6-1972. That was also a statutory circular issued u/s 19 of the A.P. Intermediate Education Act, 1917. It should also be remembered that after 1-6-1972, a person with the qualifications of the petitioner is not even entitled to be appointed as a Junior Lecturer. In such circumstances, it would be preposterous to contend that he is entitled to be appointed as Principal in 1988

especially when the statutory position and the rule position is completely altered.

10. Sri P. Balakrishna Murthy, appearing for the petitioner, contends that the court will have to interpret the rules as they exist and according to him, in 1974 rules, known as Ad hoc Rules, there was a specific explanation which clearly indicated that a person shall not be deemed to be in possession of a Second Class Post-Graduate Degree if at the qualifying examination he did not obtain 50 per cent of the aggregate marks. These words, "50 per cent of the aggregate marks" are not there in the rules framed by the Board of Intermediate Education in Circular No. 11/1978-79 issued on 25-11-1978. According to him, there is a marked deviation in the language, and as the explanation is omitted, the rule only mentions first or second class at the Master's degree is the necessary qualification. Hence the principle of taking the 50% average on the aggregate is given up in 1978. Referring to the rules framed under G.O.158 dated 10-6-1987, he claims that the qualifications prescribed are first or second class post-graduate degree with not less than 50% of marks. It does not specifically mention that it should be 50% of the aggregate of the two years. It should be remembered that prior to 1971, post-graduate degrees were awarded on the basis of the percentage of the marks secured at the final year examination. The universities followed what is called "the non-clubbing system". Subsequently, the clubbing system was introduced and class was awarded in the postgraduate degrees on the basis of the average marks on the basis of the aggregate of the two years or what is popularly called "the clubbing system". When the rules in the universities have changed and when the present rules were framed in 1987 and the previous rules were framed in 1978, it necessarily follows that the rules were worded so as to be in conformity with the prevalent practice. There is no necessity for specifically putting an explanation or a clause to the effect that 50% marks should be on the basis of the aggregate. Mr. Balakrishna Murthy contends that it is not the duty of the court to add words and it has only to interpret the rules as it stands. He relies upon *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, which lays down that, "When express powers have been given to the Board under the terms of these sections, it would not be legitimate to have resort to general or implied powers..... No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill the gaps or omissions in the provisions of an Act". He also relies upon a passage in *Craies on Statute Law* at page 107. That passage reads as follows:

"Sometimes, if the meaning of an enactment is not plain, light may be thrown upon it by assuming that certain words have been designedly omitted."

11. I am afraid, these two passages cannot come to the rescue of the petitioner in this case for the following reasons:

In 1972 itself, the rules have made it clear that a person is not eligible to be appointed as a Junior Lecturer unless he has 50% of the marks in the aggregate.

In the rules framed under the College Service Commission Act also, for the post of Junior Lecturers, the qualifications specifically mentions under Item No. 14 that he should be a holder of a first or second class post-graduate degree in the concerned subject with not less than 50% marks. If the petitioner, who was not eligible to be appointed as a Junior Lecturer after 1972 and who is allowed to continue only by virtue of the judgment of the High Court in his favour, one fails to understand how he can claim that he is eligible to be appointed to the higher post when he lacks the qualifications even for the lower post.

12. The respondents rely upon B. Venkata Reddy and Others Vs. State of Andhra Pradesh and Others, . In that decision, the Supreme Court had to deal with the Ad hoc Rules of 1974, governing Junior Lecturers and also the question of the qualifications for the higher post of Principal of the Junior Colleges. In paragraph 35, the court observed as follows:

"Prescribing a first or second class Post-Graduate Degree for the head of an educational institution has the direct nexus with the object of excellence sought to be achieved and it cannot be said to be discriminatory. Therefore we do not think that Rule 6 of the Ad hoc Rules, 1974 is liable to be struck down as being discriminatory and illegal."

Rule 6 of the 1974 Rules popularly known as Ad hoc Rules for the posts of Principals in the Junior Colleges in the State stipulated that no person shall be eligible for appointment to this class, namely, post of Principal of Junior College, unless he holds a first or second class post-graduate degree of M.A., M.Sc., M.Com., B.A. (Hons.), or B.Com., (Hons.) of a University of India. The explanation in that rule provided that a person shall not be deemed to be in possession of second class post-graduate degree if, at the qualifying examination, he did not obtain 50% of the aggregate marks. When prescribed higher qualification for the higher post of the Principal is valid, I am unable to understand how the petitioner who obtained only 49% average in the aggregate and who failed to improve his qualification though he was given an opportunity earlier by the authorities can claim that he is entitled to be appointed as Principal under the existing Rules.

13. A perusal of the record reveals that in this case, though the third respondent gave a joining report in accordance with the orders issued by the management after the College Service Commission's approval, the present petitioner bluntly refused to hand over charge and Rule 3 had to complain to the management. Interim directions were actually granted on 4th October 1990. The petitioner high handedly refused to hand over charge and claimed that he is continuing to hold the post and sought protection under the umbrella of the order dated 4th October, 1990, which, in my honest opinion, has become infructuous. The strange thing is that when W.V.M.P. was filed to vacate the interim orders, this court on 12th October, 1990, passed order which reads as follows:

"It is represented by the learned counsel for the respondent that from 26th

September, 1990, the third respondent is working. But court granted interim direction on 4-10-1990.

Status quo obtaining as on 4-10-1990 shall continue."

As there was a lot of controversy and as the petitioner bluntly refused to hand over charge taking cover of the interim orders of this court, the Correspondent of the college issued lengthy proceedings dated 16-10-1990, wherein he expressed his helplessness and indicated that on 4-10-1990, the existing principal M. Ananda Mohan was continuing as Principal and he has not handed over the charge to the newly appointed Principal V. Sitharama Rao and as the High Court of Andhra Pradesh directed to continue status quo as on 4-10-1990, he has no other option than to continue the existing Principal Sri M. Ananda Mohan until further orders of the Hon"ble High Court. The conduct of the petitioner in not handing over the charge when there were no interim orders of the High Court is most improper.

14. The petitioner is seeking the extraordinary relief of writ of mandamus. The orders of the management issued on 9-1-1988 are illegal ab initio because by that time, the statutory position has changed and the College Service Commission alone was entitled to approve the appointment and direct the management to issue the appointment order. The rule position has changed and the petitioner does not satisfy the higher qualifications prescribed for the post of a Principal of a Junior College. Simply because he was allowed to continue as a Junior Lecturer on the basis of the earlier judgments of the High Court, he cannot claim that that exemption or privilege which he enjoyed by reason of the High Court order would enure to his benefit for the higher post. In my considered opinion, the petitioner is not eligible for the promotion as Principal of the Junior College. The College Service Commission rightly approved the appointment of Rule 3 and the management, in accordance with the College Service Commission's directives, properly appointed Rule 3 as the Principal.

15. The Writ Petition is dismissed with costs. Advocate's fee is fixed at Rs. 500/-.