
(1999) 09 AP CK 0016
In the Andhra Pradesh High Court
Case No : WA No. 1423 of 1999

M. Bucha Reddy	Vs	APPELLANT
V. Bhagyamma and others		RESPONDENT

Date of Decision : 13-09-1999

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2(12), 89

Citation : (1999) 6 ALD 581 : (1999) 6 ALT 66

Hon'ble Judges : M.S. Liberhan, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. C.V. Mohan Reddy, for the Appellant; Mr. T. Pulla Rao and Government Pleader for School Education, for the Respondent

Judgement

V.V.S. Rao, J

1. This writ appeal is filed by the unsuccessful 6th respondent. The parties are referred to by their rank in the impugned judgment.
2. The controversy arises from the following facts which are taken from the necessary documents and the judgment of the learned single Judge: The petitioner was working as Head Mistress of the 5th respondent School. She was initially appointed to the post of Secondary Grade Teacher (SGT) on 1-7-1982 and the said post has been admitted to grant-in-aid w.e.f. 1-1-1982 and the said post has been admitted to grant-in-aid w.e.f. 1-1-1984. She was promoted as School Assistant with effect from 1-1-1985 in unaided post. In the mean while, the Government of Andhra Pradesh-1st respondent issued orders in G.O. Ms. No.326, Education, dated 17-10-1989 sanctioning grant-in-aid to the post of School Assistant w.e.f. 1-11-1989. This order does not say whether the post of School Assistant in Mathematics or the post of School Assistant in Science that was admitted to grant-in-aid. An inference can, however, be drawn that as there was only one post of School Assistant available at the relevant point of time and as the petitioner was holding the post of School Assistant, the 5th respondent passed orders absorbing the petitioner in the aided post of School Assistant and

later she was promoted to the post of Head Mistress w.e.f. 1-4-1992 in the post admitted to aid in G.O. Rt No.354, Education, dated 5-3-1992.

3. The 2nd respondent, acting on some complaints that the 5th respondent has committed certain irregularities in the matter of appointments and absorptions as well as promotions, ordered an enquiry into the matter by the Joint Director (Vocational Education) in his proceedings dated 9-12-1995. After enquiry, the said enquiry officer submitted his report noticing some lapses on the part of the 5th respondent. Based on this enquiry report, the 2nd respondent issued proceedings in Re No.2859/ DI-3/95-1 dated 27-10-1997 and while mentioning the detailed instructions therein, the 3rd respondent-Regional Joint Director of School Education, Kachiguda was directed to revise the orders of promotion issued in favour of the petitioner promoting her from SGT post to School Assistant and from School Assistant to Head Mistress. In the proceedings dated 27-10-1997, the 2nd respondent while accepting the findings of the enquiry officer in his report dated 19-8-1997 with regard to the alleged irregular promotion of the petitioner stated as follows:

"It is evident from the report of the enquiry officer that the management has appointed/absorbed/promoted Smt. V. Bhagyamma from unaided post to aided post and orders given from SGBT to School Assistant and School Assistant to Headmistress are irregular. Therefore, he is requested to revise the orders of Smt. V. Bhagyamma from SGBT to School Assistant and from School Assistant to Headmistress as per Rules.

Further, Smt. Bhagyamma has accepted promotion as School Assistant from 1-1-1985 but claimed salary against the post of SGBT from 1-3-1984 to February, 1992, that amount has to be remitted back either from the management or from the individual concerned. Hence, District Educational Officer, Mahabubnagar may be requested to get the verification of the amounts sanctioned towards grant-in-aid post of SGBT in which Smt. Bhagyamma worked from 1-1-1985 to 3-4-1992 and necessary instructions be given to the Management to remit the amounts to Government within 15 days."

From a reading of the order of the 2nd respondent, it is clear that the Director of School Education has specifically come to the conclusion that the promotion of the petitioner is irregular and directed the 3rd respondent to pass formal orders.

4. Be that as it may, the petitioner after receiving the show-cause notice from the Regional Joint Director (RJD) filed a writ petition before this Court in \\VP No.1446 of 1998 and this Court by order dated 15-12-1998 directed the petitioner to submit her explanation to the RJD. On filing the explanation by the petitioner, the RJD issued proceedings on 20-3-1999 in Proceedings Re. No.6753/ AI/B2/95. Being a subordinate to the 2nd respondent, the 3rd respondent, without any further appreciation of the contentions of the petitioner, passed order to the effect that the 6th respondent is senior to the petitioner and. therefore, 5th respondent was directed to issue orders promoting the 6th

respondent as Head Master of the School duly revelling the petitioner to the post of School Assistant. The 3rd respondent also refers to the proceedings of the Enquiry Officer appointed by the 2nd respondent as well as the orders of the 2nd respondent dated 27-10-1997. Aggrieved by the order of the 3rd respondent dated 20-3-1999, the petitioner filed a writ petition before this Court being WP No.7826 of 1999. The same was disposed of at the stage of admission giving opportunity to the petitioner to avail the right of appeal under the A.P. Education Act, 1982 ("the Act" for brevity). After the disposal of WP No.7826 of 1999 by this Court, the petitioner approached the 2nd respondent and filed appeal on 26-4-1999 and also requested for personal hearing. After hearing the petitioner, the 2nd respondent framed the following issues for consideration:

- "1. Whether the post of the School Assistant (unaided) was in existence on 1-1-1985?
2. Whether the petitioner had the requisite qualifications and Minimum years of service as on 1-1-1985 in order to be considered for promotion as School Assistant (un-aided)?
3. Whether it is a fact that the petitioner continued to draw the salary of SGT in an aided post even after she was promoted as School Assistant (unaided) w.e.f. 1-1-1985?
4. Whether the appointment of Sri Bucha Rcdy in the post of Un-aided School Assistant in Maths w.e.f. 23-10-1986 is valid?"
5. After referring to the circumstance that the petitioner has not challenged the appointment of the 6th respondent on 23-10-1986 to the unaided post of School Assistant and the alleged admission of the petitioner that she was appointed as SGT on 1-3-1984 and without any discussion on the questions of fact, the 2nd respondent reiterated the conclusions which he reached in his earlier proceedings dated 27-10-1997 while accepting the enquiry report dated 26-8-1997 (in the proceedings dated 27-10-1997 the enquiry report is shown to bear the date as 19-8-1997) and continued the orders of the 3rd respondent dated 20-3-1999 in proceedings Re No.2859/ D1-3/95 dated 3-9-1999. Aggrieved by the said orders, the petitioner has filed the Writ Petition No.19240 of 1999.
6. The learned single Judge by order dated 20-9-1999 allowed the writ petition holding that as the post in which the petitioner was working was admitting to grant-in-aid w.e.f. 21-3-1992 whereas the post in which the 6th respondent was working was admitted to grant-in-aid only on 1-4-1992 and that since as per the resolution of the Management dated 21-3-1992 the petitioner is working as Head Mistress, she is senior to 6(h respondent. Further, the learned single Judge held that when the petitioner has challenged the proceedings of the District Educational Officer dated 3-2-1990 in WP No.1499 of 1990, the same was dismissed on the strength of submission made on behalf of the 6th respondent herein and another namely, Sri K. Jayamohana Rao, to the effect that the matter between the petitioner and those two persons was settled out of Court and hence

the learned single Judge came to the conclusion that after such a long time when the things are settled, it is not open to the 2nd respondent to pass the impugned order dated 20-3-1999.

7. Challenging the order of the learned single Judge, the 6th respondent has filed the present appeal.

8. The learned Counsel for the appellant submits that the order of the learned single Judge is tainted with illegality and error on the face of it. According to the learned Counsel, as the appellant was appointed directly as School Assistant on 23-10-1986, he is senior to the petitioner, therefore, the appellant alone is entitled to be promoted as the Head Master of the School. It is further submitted that there is no illegality in the orders passed by the 2nd respondent.

9. We have considered the matter after going through the necessary documents with the assistance of the learned Counsel. The learned single Judge rightly came to the conclusion that when the petitioner is working as Head Mistress right from 1-4-1992, it was not proper for the 2nd respondent to exercise the appellate power to unsettle the settled things. We also affirm the view of the learned single Judge that the 6th respondent (appellant) having got the matter settled out of the Court in Writ Petition No. 1499 of 1990 filed by the petitioner, cannot get any benefit over and above the legitimate interest of the petitioner. In this context, it may be noticed that in one aided post of School Assistant in science, the petitioner was regularised and in the other aided post in Mathematics, the appellant was regularised which leads to the inference that both the posts were admitted to grant-in-aid simultaneously and therefore when the petitioner approached this Court on earlier occasion in WP No.1499 of 1990, with a view to see that the second aided post of School Assistant is given to him, the 6th respondent thought it fit to settle the matter out of Court and accordingly submission was made before this Court resulting in dismissal of WP No.1499 of 1990. Therefore, we are of the view that the order under challenge is justified and there is no error warranting any interference by us.

10. In our view, even on other grounds also, the order of the 2nd respondent dated 20-3-1999 is unsustainable. u/s 2(12) of the Act read with the Rules issued in G.O. Ms No.I Education Department, dated 1-1-1994, known as A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, the competent authority is the Joint Director of School Education. The competent authority has got power to grant permission, recognition and regulate the administration of the schools. This power includes approving the actions of the management of the private educational institutions in posting a teacher to an added post. Section 89 of the Act provides for an appeal against any order passed by an authority to the Director and Commissioner of School Education. As narrated above, in this case, the 2nd respondent being the appellate authority u/s 89(a) of the Act, himself initiated the inquiry and came to the conclusions which have serious consequences and repercussions with regard to the petitioner, and then directed

the competent authority i.e. 3rd respondent herein to pass orders. Thereafter, in our view, everything was a formality devoid of fairness and divorced from principles of natural justice. Further, against the order of the 3rd respondent dated 20-3-1999, the 2nd respondent who had earlier ordered the 3rd respondent to pass orders, himself passed the appellate order, that is to say, virtually, the 2nd respondent became the appellate authority against his own order. This, in our view, grossly violates the principles of natural justice, both at the stage of the original authority as well as the appellate authority. Therefore, the order dated 3-9-1999 is Honest and void,

11. The learned single Judge in his discretion came to the conclusion that it would be unjust to revert the petitioner after a long lapse of time especially when the teachers who are fighting for the post of Head Master reported before this Court in earlier proceedings that they settled the matter out of Court. To our mind, interfering with the settled position after a lapse of ten years is against the well established principles of equity and justice. There are number of cases where this Court as well as the Hon"ble Supreme upheld the appointments which could be illegal or did not interfere with the selections and appointments already given effect to.

12. In Ashok Kumar Yadav and Others Vs. State of Haryana and Others, , the Supreme Court while holding that allocation of 33.3 per cent of marks for viva voce test as arbitrary, however, did not interfere with the appointments made and instead directed the Haryana Public Service Commission to give on more chance to the aggrieved candidates. In State of U.P. Vs. Rafiquddin and Others, , the Apex Court declined to quash the appointments made by the UPPSC to the cadre of District Munsifs though a finding was recorded that the recruitment was contrary to the Rules. Likewise, in Miss Shainda Hasan Vs. State of Uttar Pradesh and others, , though the age relaxation given to a principal of a college was held to be illegal, the Hon"ble Supreme Court, still declined to strike down the appointment, but, however, directed the Vice-Chancel lor of the Lucknow University to grant necessary approval for the appointment of the appellant therein as the Principle of the Girls College, Lucknow. In all these cases, the fact that the respective parties were working in the post for considerable time weighed with the Hon"ble Supreme Court in not interfering with the appointments.

13. In the facts and circumstances of this case, we find that there is no error in the order of the learned single Judge warranting interference by us. Accordingly, we dismiss the appeal, but without any order as to costs.