
(2014) 11 AP CK 0131

In the Andhra Pradesh High Court

Case No : W.A. Nos. 269, 270 and 271 of 2006 and WAMP Nos. 2041 of 2006 and 726 of 2007

Mizbana and Others

APPELLANT

Vs

V. Vijaya Lakshmi and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2015) 3 ALD 70

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : N. Subba Rao, Advocates for the Appellant; M. Srinivasa Rao, Advocates for the Respondent

Judgement

L.N. Reddy, J.—These three appeals arise out of a common order, dated 09.03.2005, passed by the learned Single Judge of this Court in W.P. No.18424 of 2003 and batch. The appellants figured as respondents therein.

2. For the sake of convenience, the parties are referred to as arrayed in W.P. No.18424 of 2003 and the petitioners in other two writ petitions are referred to as petitioner Nos. 2 and 3.

3. Respondent No. 5 is a private educational institution, admitted to grant-in-aid. Petitioner No. 1 was appointed against an unaided vacancy on 28.06.1990, petitioner No. 2 on 26.06.1989 and petitioner No. 3 on 20.07.1994. Respondent No. 6 i.e. Smt. Mizbana was appointed as Teacher against unaided vacancy on 24.06.1991 and respondent No. 7, by name Ch. Renuka Devi, on 08.07.1991.

4. Fairly large number of posts of Secondary Grade Teachers that were admitted to grant-in-aid fell vacant over the period. However, the absorption of the existing qualified teachers did not take place on account of lack of clarity in the process. A Division Bench of this Court dealt with the matter in detail in K.C. High School, Korthareddypalem, Guntur and others v. Government of A.P., Secretariat, Saifabad, Hyderabad 1997(6) ALD 331 (DB). After dealing with the

matter in detail, their Lordships stipulated a detailed procedure for absorption of the Teachers in private educational institutions against aided vacancies. One of the conditions was that wherever a Teacher is found to be eligible to be absorbed, it shall be with effect from 01.04.1997.

5. Respondent Nos. 6 and 7 were absorbed against aided vacancies with effect from 01.04.1997, in terms of the judgment of this Court and orders were issued by the Government in compliance with that. However, the writ petitioners were not considered. Therefore, they approached this Court through separate writ petitions. In compliance with the directions issued therein, petitioner No. 1 was absorbed against aided vacancy on 01.07.1997 and the other two petitioners with effect from 16.12.1997. This had its impact on the seniority among the Teachers working against the aided vacancies. Therefore, they filed the present set of writ petitions with a prayer to declare the action of the respondents in assigning the date of absorption to respondents 6 and 7 ahead of them. One of the contentions advanced was that in the unaided vacancies, their appointment was earlier in point of time, to that of respondent Nos. 6 and 7; and once the absorption is in terms of the judgment of this Court, invariably, the seniority must be guided by the date of appointment against the unaided vacancies.

6. The writ petitions were opposed by the Officials of the Government as well as the unofficial respondents i.e. respondent Nos. 6 and 7. The learned Single Judge of this Court allowed the writ petitions and held that the petitioners shall be treated as seniors to respondent Nos. 6 and 7 in the aided posts. Hence, these three appeals.

7. Heard Sri N. Subba Rao, learned counsel for the appellants-respondent Nos. 6 and 7, learned Government Pleader for School Education and Sri M. Srinivasa Rao, learned counsel for the writ petitioners.

8. The writ petitioners as well as contesting respondents have been appointed as Teachers in the same educational institution. Invariably, their appointments were only against the un-aided vacancies. It has already been mentioned that the absorption of unaided teachers against the aided vacancies became the subject matter of extensive litigation and ultimately, a scheme was framed by this Court through its judgment in K.G. High School's case. Obviously, to give objectivity and clarity to the entire matter, their Lordships directed that the absorption shall be with effect from 01.04.1997. It, obviously, means that the absorption can be only against those vacancies which are available by that time. In accordance with the same, the writ petitioners as well as respondent Nos. 6 and 7 were considered. However, the concerned authority cleared the case of respondent Nos. 6 and 7 alone for absorption and accordingly, they were absorbed with effect from 01.04.1997. The petitioners, who were left over in the process, approached this Court. It was held that non-consideration of the cases was contrary to law and appropriate directions were issued. It was on the basis of that, the writ petitioners were absorbed against aided vacancies. However, different dates were given to them. While petitioner No. 1 was absorbed with

effect from 1.07.1997, petitioner Nos. 2 and 3 were absorbed with effect from 16.12.1997.

9. One of the contentions advanced by Sri N. Sibba Rao, learned counsel for the appellants-respondent Nos. 6 and 7 is that the writ petitioners did not challenge the orders of absorption and it is not open to them to dispute the effective dates of regularization subsequently. We find it difficult to accept that contention. The grievance of the writ petitioners was mostly about their non-absorption and once that was done with effect from a date, which does not accord with the judgment of this Court in K.G. High School's, they had to canvass their rights; and that is what they did through the present set of writ petitions. Neither the institution nor the authorities of the Government, much less respondent Nos. 6 and 7, are able to justify the effective dates from which petitioner Nos. 1 to 3 were absorbed against the aided vacancies. It was not even mentioned that the dates signify the arising of vacancies. In fact, the orders of regularization themselves indicate that the vacancies were existing since 1994 or 1995, as the case may be.

10. Once it is not disputed that the vacancies against which the writ petitioners were existing much prior to 01.04.1997, there was absolutely no basis to give any date, other than 01.04.1997 to the writ petitioners. Once that is done, the seniority of the teachers absorbed against the aided vacancies, on the same day would be governed by the date of their appointment in the unaided vacancies. The result of adjudication undertaken in the writ petitions is only that.

11. We make it clear that the seniority of the writ petitioners on the one hand and respondent Nos. 6 and 7 on the other shall be based upon the date of their initial appointment against the unaided vacancies.

12. We dispose of the writ appeals with the above observation. There shall be no order as to costs.

13. The miscellaneous petitions filed in these writ appeals shall also stand disposed of.