

(1999) 12 AP CK 0016
In the Andhra Pradesh High Court
Case No : WA No. 1828 of 1999

M.N. Bhangay	Vs	APPELLANT
Jawaharlal Nehru Technological University, Hyd. and others		RESPONDENT

Date of Decision : 28-12-1999

Acts Referred:

Jawaharlal Nehru Technological University Act, 1972 — Section 23, 24, 3

Citation : (2000) 3 ALD 588 : (2000) 2 ALT 461

Hon'ble Judges : M.S. Liberhan, C.J;R. Ramanujam, J

Bench : Division Bench

Advocate : Mr. J. Sudheer, for the Appellant; Mr. C. Kodanda Ram, for the Respondent

Judgement

R. Ramanujam, J.—This writ appeal is against the order of a learned single Judge of this Court disposing WPNo.14169 of 1992 with certain directions.

2. Not satisfied with the directions given by the learned single Judge, the writ petitioner filed the present appeal.

3. The appellant, who is working as a Grade I Art Teacher in the Jawaharlal Nehru Technological University, 1st respondent herein, filed the writ petition claiming the following three reliefs:

(1) direction to the respondents to promote him as a Lecturer in Commercial Art Department;

(2) direction to the respondents to extend the benefit of G.O. Ms. No.117, Finance and Planning (F.W.PRC.1) Department, dated 25-5-1981 to the teaching staff of the 1st respondent-University, including him; and

(3) direction to the respondents to implement the scales of Music Colleges to them as per letter dated 17-4-1980 of the Registrar of the 1st respondent-University.

4. The learned single Judge, on a consideration of the facts and circumstances of

the case and the rival contentions advanced on behalf of both the parties, passed the order now under appeal. The learned single Judge declined to grant any relief regarding the promotion of the appellant-petitioner. On relief No.2, the learned single Judge issued a direction to the State Government (the 3rd respondent in the writ petition) to take an appropriate decision on the proposals sent by the 1st respondent-University in its letter No.8704/C4/77-84 dated 30-1-1984 regarding extension of benefit of G.O. Ms.No. 117, dated 25-5-1981 to the teaching staff of the 1st respondent-University, including the petitioner, within six months from the date of receipt of a copy of the order. So far as the 3rd relief is concerned, i.e., direction to grant the scales of Music Colleges as per the letter dated 17-4-1980 of the 1st respondent-University, the learned single Judge did not issue any direction even though a reference was made to the relief sought for and the stand of the 1st respondent-University in its counter.

5. Counsel for the appellant, Sri J. Sudheer, vehemently contended that the learned single Judge has erred in not granting a direction similar to the direction issued on relief No.2 even though the 1st respondent-University in its counter has clearly admitted that it has sent proposals to the Government for extension of the pay scales.

6. We see considerable force in this contention.

7. Dealing with this aspect of the case, the 1st respondent-University has categorically stated in its counter at Paragraph 8 as under: -

"Para 8. I state that the University has sent the proposals to the Government for extension of the scales of pay to the I and II Grade Art Teachers working in the University on par with the pay scales applicable to the teachers working in Government Music and Dance Colleges in the Department of Technical Education. The orders of the Government are awaited."

8. In view of the aforementioned categorical statement of the 1st respondent-University, even though we are inclined to direct the State Government to consider the proposal of the 1st respondent-University for extension of pay scales to the I and II Grade Art Teachers working in the University on a par with the pay scales applicable to the Teachers working in the Government Music and Dance Colleges in the Department of Technical Education, we are not able to do so as the appellant himself deleted the State Government from the array of respondents stating that "Rule 3 is a proforma party. Hence, not necessary". However, we hope that the State Government will decide the issue expeditiously.

9. The learned Counsel for the appellant nextly contended that the learned single Judge has erred in not granting him the relief of promotion to the post of Lecturer in Commercial Art Department. His contention is that clause 12(1) of Statute 14, framed by the Governor of Andhra Pradesh in exercise of his powers under subsection (1) of Section 24 of the Jawaharlal Nehru Technological University Act, 1972 (Act No. 16 of 1972), hereinafter referred to as "the Act", insofar as it denies promotional avenues, is unconstitutional, illegal and void and

is, therefore, liable to be struck down. In support of this contention, he relied upon the decisions of the Supreme Court in AIR 1988 1033 (SC) , and Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, .

10. The 1st respondent-University was established u/s 3 of the Act. The Government of Andhra Pradesh is empowered u/s 23 read with subsection (1) of Section 24 of the Act to make and notify the Statutes, which are called First Statutes, inter alia, regarding the classification, the method of appointment and determination of the terms and conditions of Teachers and other staff of the University. In exercise of that power, the Governor of Andhra Pradesh made and notified First Statutes. Statute 14 deals with the services of the University, clause (1) of the said Statute classified the services under the University into:

(a) Academic Services - consisting of the categories of Directors, Principals, Professors, Associate Professors, Assistant Professors, lecturers etc.

(b) Administrative Services - consisting of the categories of Registrar, Financial Adviser-cum-Chief Accounts Officer, Deputy Registrar, Assistant Registrar, Audit Officer etc.

(c) Ministerial Services - consisting of the categories of Officer Managers and superintendents, Upper Division Clerks, Lower Division Clerks, Typists etc.

(d) Subordinate Services (Technical) -consisting of the categories of Workshop Supervisors, Instructors, Foreman etc.

Clause 12 deals with the method and manner of appointment to several services referred to above. Sub-clause (1) of clause 12, which deals with the method and manner of appointment for the Academic and Administrative Services, is as under:-

"Clause 12(1). All appointments in the Academic and Administrative Services of the University shall be made by open competition by an advertisement and selection, where at all the in-service personnel who possess the qualifications prescribed shall also be permitted to appear for selection".

It is this sub-clause that is challenged in the writ petition.

11. From a plain reading of the aforesaid provision it is clear that the method of appointment to Academic and Administrative Services is only by direct recruitment and no promotional channel is provided unlike for the other services. The contention of the petitioner is that not providing channels of promotion to the academic and administrative services is arbitrary, unconstitutional and hence void.

12. It is now fairly well settled that, subject to the constitutional mandates, the power to frame service conditions, including the method and manner of appointment, is in the exclusive domain of the employer and Courts have no say in the matter. In this case such a power is exclusively vested in the Government of Andhra Pradesh by virtue of Sections 23 and 24 of the Act. The Government in

its wisdom thought it fit that the posts under Academic and Administrative Services of the 1st respondent-University, which stand apart from the other services, should be filled in by the method of direct recruitment alone unlike the other services where promotional avenues are provided. While doing so, they have not transgressed any of the constitutional mandates or limitations.

13. In that view of the matter, we can neither struck down sub-clause (1) of clause 12 nor issue a direction directing the respondents to promote the petitioner to the post of Lecturer. At the same time, we cannot lose sight of the observations made by the Supreme Court regarding the need for providing promotional channels in a category or class of posts.

14. In Raghunath Prasad Singh "s case (supra) the Supreme Court observed thus:

"Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly."

In Council of Scientific and Industrial Research and another"s case (supra) the Supreme Court again observed (at Para 9 of the report) thus:

".... He was, however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant"s management. It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See. Principles of Personnel Management by Flipo Edwin B4th Ed. P.246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low moral, and ineffectual performance, among both non-managerial employees and their supervisors." (See. Personnel Management by Dr. Udai Pareek P.277). There cannot be any modem management much less any career planning, manpower development, management development etc., which is not related to a system of promotions. (See: Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap.12,P.128)."

15. We have noticed from clause (1) of Statute 14, referred to above, that the Academic and Administrative Services comprise of not only top posts but also several middle rung posts. In our considered opinion, denial of promotions even to those middle order posts will certainly lead to stagnation and frustration, which in turn affects the efficiency in the services. This should be avoided in the

interest of the 1st respondent-University.

16. We sincerely hope that the State Government will take appropriate measures for providing promotional channels in the light of the aforementioned observations, in the best interest of the 1st respondent-University.

17. With the above observations, this writ appeal is dismissed, but without costs.

18. Let a copy of this order be communicated to the Secretary, Technical Education Department, Government of Andhra Pradesh.