
(1997) 07 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20626 of 1996

M.S. Vijayalaxmi

APPELLANT

Vs

Correspondent, Surabhi Balavihar High School and Others

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1988 — Rule 15(4), 15(7), 7

Citation : (1997) 5 ALT 105

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : D. Linga Rao, for the Appellant; S. Suryaprakash Rao and Government Pleader for School Education for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—The petitioner, M.S. Vijaya Laxmi, W/o A. Shankar Rao, was appointed as S.G.B. Teacher in Surabhi Bala Vihar High School, Gandhinagar, Hyderabad (Respondent No. 1) on 9-6-1988. From August 1989, she proceeded on medical leave and rejoined respondent No. 1-School in the same capacity in June, 1991. Her leave was sanctioned by the Management of the Respondent No. 1-School.

2. On 19-3-1994, the State Government issued G.O.Ms.No. 87 Education admitting six posts of S.G.B. Teachers in the 1st respondent-School with effect from 1-4-1993. Subsequent to admission of the posts to grant-in-aid, the 1st respondent submitted a proposal to the 2nd respondent (District Educational Officer, Hyderabad) on 16-12-1994 for approving the appointments including the appointment of the petitioner. The 2nd respondent however, approved only 10 appointments and rejected the cases of five teachers including the petitioner on 29-3-1995. The petitioner claims that she was fully eligible and qualified to be absorbed in the grant-in-aid post, but, in spite of the same her appointment was

rejected.

3. It appears that by G.O.Ms.No. 524 Education dated 20-12-1988 it was laid down that the competent authority should not take more than three months from the date of receipt of the proposals for the approval of the appointments made by the Management, failing which the appointments made had to be treated as ratified, except in cases where the candidates were otherwise ineligible for appointment. In the instant case, according to the petitioner, the 1st respondent sent the proposal on 16-12-1994. At some places this date is shown as 19-4-1994. However, no written orders were received from the 2nd respondent within three months from 16-12-1994, which attracted the deeming provision as stated above. According to the petitioner, having regard to the fact that she was otherwise fully eligible and qualified for the post, her appointment to grant-in-aid post should have been treated as "deemed to have been approved". The petitioner made a detailed representation to the 2nd respondent on 15-5-1995 in this regard. The Government issued Memo. No. 1089/PS.1/95-1 Education, dated 1-6-1996 requesting the Director of School Education to send his report in the matter urgently. However, the 1st respondent (School Management) issued a notification in the news papers on 22-9-1996 inviting applications for filling up four posts of S.G.B. Teachers and one post of P.E. Teacher. According to the petitioner, since she had been continuing in service from 9-6-1988 onwards, the question of filling up of posts by issuing notification did not arise.

4. The 1st respondent in its counter-affidavit did not dispute that the petitioner was appointed as S.G.B. Teacher in the 1st respondent-School on 9-6-1988 after the posts were advertised and the candidates were interviewed by the members of the Committee of the 1st respondent-School. G.O.Ms.No. 524 Education (Rules) dated 20-12-1988 had not come into force by that date. The post held by the petitioner was not admitted to grant-in-aid. The fact that the petitioner proceeded on leave on medical grounds and rejoined the duty on 12-6-1991 is also not disputed. It is also not disputed that the Government admitted five posts of teachers in the 1st respondent-School to grant-in-aid in G.O.Ms.No. 87 dated 19-3-1994 and that the names of the teachers working with the 1st respondent-school on that date were forwarded to the 2nd respondent for approval. A reminder was also issued to the Department by the School Management on 17-10-1994. Certain clarifications were sought by the Department which were also forwarded on 16-12-1994 and thereafter the competent authority communicated its decision on 29-3-1995. Ten out of fifteen posts were approved by the competent authority; but the appointment of four SGB teachers and one P.E. Teacher was not approved by the Department including the appointment of the petitioner. A direction was issued by the Department that these posts be filled up as per Rules and, therefore, the School Management had to issue notification for these posts to be filled up as per rules and for that purpose five posts were notified on 28-9-1996. Some of the teachers whose appointments were not approved by the Department including the petitioner herein submitted representations to the Government to permit them to continue by relaxation of

rules.

5. It is further contended by the 1st respondent in the counter affidavit that since the appointment of the petitioner as SGB teacher was not approved by the competent authority, the post held by her was also notified for filling up as per rules. The respondent had to follow roster system in filling up four posts and, therefore, applications were called for appointment for two posts in "OC" category and two posts in reserved category. The petitioner belonged to "OC" category. Applications were received in response to the notification, but in view of the orders of status quo granted by High Court, further procedure could not be followed. The applicants, according to the 1st respondent, were pressing for following the procedure of selection. Some of the teachers whose appointments were not approved also submitted applications for appointment to the post.

6. The learned Counsel for the petitioner made elaborate submissions and pointed out that appointment of the teachers who were similarly placed and working in the 1st respondent-School were approved, but in the case of the petitioner, the respondents adopted a different yardstick in spite of the fact that the petitioner was fully eligible and qualified and the post in which she was working was admitted to grant-in-aid. He further submitted that the respondents were not approving the petitioner's appointment on untenable ground that her appointment was not made in accordance with the rules issued in G.O.Ms.No. 524 Education dated 20-12-1988 even though she was appointed on 9-6-1988. However, according to the learned Counsel for the petitioner, this controversy has already been adjudicated upon by this Court in W.P.No. 5822/94 on 27-3-1995; and therefore it was incumbent upon the respondents to absorb the petitioner in regular service and to grant her regular payment of salary.

7. The learned counsel for the petitioner referred to and relied upon a decision of Division Bench of this High Court in the case of District Educational Officer, Ongole v. B.V. Ramana, 1996 (1) An.W.R. 262 = 1996 (1) ALD 370 (D.B.). In Paragraph 3 of this decision, the Division Bench took a firm stand that failure on the part of the competent authority to communicate the decision within a specified period of three months gave rise to an enforceable right to the 1st respondent to claim that his appointment has been ratified. The said Paragraph 3 is extracted below:--

"3. What needs to be noticed prominently in this case is when the management of the school addressed a letter to the District Educational Officer requesting for approval to the appointment of the first respondent as teacher on 17-2-1993, the order declining approval was passed by the District Educational Officer on 17-3-1994, after more than a year. G.O.Ms.No. 524, Education, dated 20-12-1988, mandates by Paragraph 15(4), that the competent authority shall not take more than three months from the date of the proposals for the approval of appointments, failing which the appointment shall be treated as ratified except in cases where the candidates were found otherwise ineligible. This is not a case where the candidate was found otherwise ineligible. Therefore, the failure on the

part of the competent authority to communicate his decision within the specified period of three months, had given rise to an enforceable right to the first respondent to claim that his appointment has been ratified."

The 1st respondent in the case before the Division Bench was appointed as a Secondary Grade Teacher by an order dated 17-9-1992 on temporary basis by St. Paul's Educational Development Committee. When a regular vacancy arose, the 2nd respondent addressed a letter to the Employment Exchange requesting to sponsor the eligible candidates. After waiting for five months, as there was no response from the Employment Exchange, the management advertised in news papers inviting applications and the Selection Committee, after considering the relative merits of the applicants, on 17-2-1993 recommended the appointment of the 1st respondent and accordingly sent a letter of request to the District Educational Officer on 19-2-1993 requesting him to accord approval, the District Educational Officer by order dated 17-3-1994 declined to accord approval on the ground that the candidate was not sponsored by the Employment Exchange. Assailing the action of the District Educational Officer, W.P.No. 5820 of 1994 was filed by the 1st respondent and the same was allowed by a learned single Judge and being aggrieved by that, an appeal was filed which was being dealt with by the Division Bench in the above case.

8. In the case before this Court, however, it prima facie appears that certain illegalities and irregularities have been committed, which deprived the petitioner from taking advantage of the ratio laid down by this High Court in the above referred decision, which shall be discussed later.

9. In a subsequent case between Regional Joint Director of School Education v. G.G. Moses, 1997 (1) An.W.R. 416 = 1996 (3) ALD 638 another Division Bench of this High Court made the following observations as regards the necessity of inviting names from Employment Exchange. The relevant Paragraph No. 4 from the said judgment is extracted hereunder:-

"4. Main contention against the claim of the petitioner, however, is that the procedure that the names should first be called for and unless the Employment Exchange fails to respond no other procedure is adopted. In the instant case, there is some claim on behalf of the petitioner-respondent that demand was made upon the Employment Exchange by the Management of the School, but the same was not fulfilled. There is a strong contention on behalf of the appellant that the very proof of the fact that there was a demand upon the Employment Exchange to furnish the names is not genuine. Learned single Judge, however, has considered that the mistake in the procedure, if any is not relevant at all because, admittedly the Joint Director of School Education i.e., the Competent Authority has not acted within the stipulated statutory time limit. We do not see any ground only because there are some procedural lapses to hold otherwise. A procedural lapse in the process of selection, unless it is such that it goes to the root, cannot be equated with a condition of eligibility. There is no merit in the appeal."

10. From the above facts and the rulings cited before the Court, it would prima facie appear that there could be no slur on the right of the petitioner to be absorbed in the regular cadre on the strength of the deeming provision as contained Rule 15(4)(a) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1988 (G.O.Ms.No. 524 Education (Rules), dated 20-12-1988 (for short the "said Rules"). The concerned Rule is extracted below:-

"The Competent Authority shall not take more than three months from the date of receipt of the proposals, for the approval of the appointments made by the managements, failure of which the appointments made shall be treated as ratified, except when the candidates are otherwise ineligible for the appointment".

This Court cannot lose sight of the fact that in response to G.O.Ms.No. 87 Education dated 19-3-1994, the 1st respondent sent names of all the teachers working by that date to the 2nd respondent for approval of their appointments and also issued a reminder on 17-10-1994. The clarifications sought by the Department were also furnished on 16-12-1994, but the Competent Authority communicated its decision., which produced adverse effect on the petitioner's right to be absorbed in the regular cadre, only on 29-3-1995, which apparently attracted the deeming provision as contained in Rule 15(4)(a) of G.O.Ms.No. 524 extracted above.

11. It is, however, pointed out by the learned Government Pleader, as stated in the counter affidavit sworn on 21-6-1997 by the District Educational Officer, Hyderabad District, that the Government issued orders in G.O.Ms.No. 87 dated 9-3-1994 admitting certain Unaided Private Schools to grant-in-aid. In accordance with the said G.O., 15 posts in the 1st respondent-School were admitted to grant-in-aid and out of 15 posts, 6 posts were of SGBT Teachers. After the posts were admitted to grant-in-aid, proposals were submitted for the first time by the 1st respondent-school on 19-4-1994. The 2nd respondent approved the absorption of 10 posts to grant-in-aid in Proc. No. Rc.No. 31281/D5/94 dated 29-3-1995. The learned Government Pleader further submitted that the appointment of the petitioner in Unaided post was never approved by the Department and the 1st respondent-school did not seek the approval of the said appointment. After the commencement of the Rules made in G.O.Ms.No. 524, dated 20-12-1988 the 1st respondent-school had to obtain approval of all the appointments made within three months from the date of commencement of the said Rules. The relevant Rule was Sub-rule 7 of Rule 15 which reads as under:

"15(7) (a) The educational agencies of the existing schools shall send the list of qualified candidates whom they have appointed to the competent authority in the prescribed form (Form IV) within a period of three months from the date of issue of those rules, for approval of appointment, if not already got approved.

(b) In case any of the educational agencies fail to get the appointments already made approved by the competent authority within the stipulated period, all such

posts (held by qualified or unqualified candidates) shall be treated as vacant and the educational agency shall take action for filling up the post, by following the procedure prescribed under Sub-rule (2)."

The 1st respondent did not submit the proposal earlier to 1994 for approval of the appointments made by them and the post in which the petitioner was working had to be treated as vacant vide Clause (b) of Sub-rule (7) of Rule 15 quoted above.

12. The learned Government Pleader further submitted that the 2nd respondent rejected the cases of five teachers on the ground that the teachers were appointed subsequent to the coming into force of the Rules made in G.O.Ms.No. 524 dated 20-12-1988. He further submitted that in the proposals/submitted by the 1st respondent-school, it was mentioned that the petitioner was appointed on 12-6-1991 and, therefore, the case of the petitioner was rejected.

13. It is also pointed out by the learned Government Pleader that the petitioner's contention that the 1st respondent had sent proposals as early as on 16-12-1994 and the proposals could be deemed to have been approved in the event of no written orders of the 2nd respondent within the period of three months from 16-12-1994 as well as the petitioner's further contention that her appointment to grant-in-aid post was deemed to have been approved for the above reasons, was devoid of merits in view of the provisions of Cause (a) of Sub-rule (4) of Rule 15 quoted above. The said provision, according to the learned Government Pleader was applicable in respect of the appointment of teachers by the School and in the instant case, the proposal was for absorption of teacher to grant-in-aid post and not that of appointment and, therefore, the petitioner was not justified in relying on Clause (a) of Sub-rule (4) of Rule 15 to plead that the appointment was deemed to have been approved.

14. This distinction between "appointment" and "absorption" has to be clearly borne in mind. Certain provisions of law as well as facts pointed out on behalf of the Respondents Nos. 2 and 3 in this regard do call for a close scrutiny. According to these respondents, the petitioner was appointed on 12-6-1991 and not on 9-6-1988 as contended by the petitioner as well as supported by the 1st respondent. The 2nd respondent has produced Xerox copy of a letter dated 19-4-1994 addressed to him by the 1st respondent-school along with the particulars of staff admitted to grant-in-aid from unaided to aided posts in the prescribed proforma for approval of the posts which were sanctioned to the school vide G.O.Ms.No. 81 dated 19-3-1994. The name of the petitioner first appears on 2nd page of the statement at Sl.No. 7(c) where her date of appointment is shown as 9-6-1988, but under the remarks in the last column, it is stated that "she left the service on 7-7-1989". The petitioner's name again appears on the 3rd page of the statement on the top of the list and against her name, her date of appointment is shown as 12-6-1991. There is no denial to these particulars either by the petitioner herself or by the 1st respondent-School. However, an attempt was made to satisfy the Court that the petitioner was all

the time under the employment of the Respondent No. 1 - School and for this purpose, it was pointed out from the statement relating to the Employees' Provident Fund Scheme and the Employees' Family Pension Scheme in respect of the years 1988-89 that the petitioner's name was listed at Sl. No. II as the subscriber of the said schemes. In respect of the statement for the year 1989-90 also, the petitioner's name is shown at Sl. No. II as the subscriber of the said schemes and, therefore, both according to the petitioner and the 1st respondent, she continued to be in the employment of the school in 1988-89 and 1989-90. This claim, however, stands repudiated by the representation made by the petitioner in May, 1995 addressed to the 2nd respondent in which she has clearly stated as follows:-

"I submit that the School has been admitted to Grant-in-Aid Committee, as a matter of fact, found that I was working in the post of SGBT which was recommended to be admitted to Grant-in-Aid and I am fully qualified to hold the post. However, on account of the break in service, my earlier service is not taken into account. I respectfully submit that I am entitled to be regularised in service since I was initially appointed on 12-6-1988. For two years I was on medical leave and other leave eligible as per rules. Thereafter, I resumed duty and this cannot be treated as fresh appointment. I therefore humbly request you to consider my case for regularisation since I was appointed prior to come into force of G.O.Ms.No. 526.&"

It becomes abundantly clear from the above admissions made by the petitioner herself that she had no misgiving in her mind that there was a break in service on account of which her earlier service was not taken into account and that she claimed that she was entitled to be regularised in service as she was initially appointed on 12-6-1988. There could, therefore be no doubt the fact that the date on which the petitioner could be treated as in continuous service was 12-6-1991 and not her initial date of joining i.e., 12-6-1988. Break in service can be condoned and could be treated as continuous service only if a specific order in that regard is passed by a competent authority and not otherwise. In that view of the matter, therefore, under Sub-rule (6) of Rule 15 of the said Rules it was necessary that the 1st respondent should have sent the list of candidates selected by the Staff Selection Committee including the petitioner to the competent authority for approval of appointments in the prescribed form (Form IV) within one month from the date of conducting the interview by the Staff Selection Committee. It is further provided that private schools qualify for grant-in-aid, if any, by the Government, only when the appointments made are approved by the Competent Authority and/or to only those posts which are held by the qualified approved candidates. In Sub-clause (b) of Clause (6) of Rule 16 of the said Rules, it is provided that the appointments of teaching and non-teaching staff when made with the candidates recruited by the authorised recruiting agency like Teachers' Service Commission (but not the Staff Selection Committee) do not require approval by the competent authority. In the instant case, however, it has not been shown by the petitioner or the 1st respondent

that the recruitment was made by an agency like Teachers' Service Commission. But it is evident from the facts which have come on record that the 1st respondent did not follow the prescribed procedure under the Rules for appointments.

15. For overcoming the obstacle created by G.O.Ms.No. 524 dated 20-12-1988, the petitioner is insisting upon the fact that she joined the 1st respondent School on 12-6-1988 and not on 12-6-1991. If 12-6-1988 is taken as her date of joining she could escape from the rigour created by Rule 15(7)(a) and 15(7)(b) of the said Rules which were introduced on 20-12-1988 by G.O.Ms. No. 524, But I am afraid, the facts emerging from affidavits and counter affidavits do not allow the petitioner to escape. Vide RC.No. 31281/D5/94 dated 29-3-1995, the petitioner's case was rejected along with four others on the ground that their appointments were made by the management after issue of G.O.Ms.No. 524 dated 20-12-1988 without following the Rules and procedure laid down in the said G.O., in appointing the teachers, and therefore, their names were rejected and permission was accorded to the 1st respondent-school to fill up the said five posts as per G.O.Ms.No. 1 of 1-1-1994 and roster point and rules in force.

16. This is, therefore, not a case of mere procedural irregularities. The petitioner's original appointment itself did not acquire the seal of ratification, as a result of which the post which the petitioner held became liable to be treated as vacant in view of the provision of Rule 15(4)(a) read with Sub-rule 7(a) and (b) thereof. Hence, the rulings cited by the learned Counsel for the petitioner have no application to the facts of the present case.

17. For all the above reasons, therefore, the writ petition deserves to be dismissed and it is hereby dismissed. No costs.