

(1994) 02 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15068 of 89

M.V. Krishna Kumar and Another

APPELLANT

Vs

V.R. Law College and Others

RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Andhra Pradesh College Service Commission Act, 1985 — Section 2

Citation : (1994) 1 ALT 372

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : M.S.K. Sastry and I. Nagesh, for the Appellant; S.R. Ashok and Government Pleader for Higher Education for Respondent Nos. 2 and 3, for the Respondent

Judgement

Immaneni Panduranga Rao, J.—This Writ Petition is filed for issue of a Writ of Mandamus declaring the Act XIII of 1985 as illegal and inapplicable to the first respondent-College and directing the first respondent to regularise the appointments of the petitioners as full time lecturers giving them University Grants Commission's (in short "UGC") scale of pay with effect from their first appointment with all back-wages and other consequential benefits like seniority, promotion etc.

2. The first petitioner passed M.L. (Contracts including Mercantile law) and the second petitioner passed M.A., L.L.M., (Labour Laws). Both of them were appointed as part-time lecturers in the first respondent-college on a consolidated salary of Rs. 600/- per month. The first and second petitioners have been working from 19-10-1987 and 26-9-1988 respectively. They contended that as held by the Supreme Court and the High Court ad hoc appointments on temporary basis is bad in law and, therefore, they are entitled to be regularised from the respective dates of their first appointment giving them the scales of UGC and all consequential benefits.

3. The learned Counsel for the petitioners argued that Section 2 of Andhra

Pradesh College Service Commission Act 1985, Act 13 of 1985 (hereinafter referred to as "the Act") excludes an Engineering or Medical College or a College established or maintained and administered by any University in the State from the definition of "College"; and that when the intention of the legislature is to exclude Engineering or Medical College from the purview of the Act, there is no justification for including other Professional Colleges like Law Colleges. The legislature in its wisdom thought of excluding an Engineering or Medical College or a College established or maintained and administered by any University in the State from the purview of the Act. The legal profession is not the only profession apart from medical and engineering professions and there are several other professions available. Therefore, in the absence of any material to show that the legislature intended to exclude all professional Colleges from the purview of the Act, the contention of the learned Counsel for the petitioners cannot be accepted.

4. Another submission made by the learned Counsel for the petitioners is that by virtue of the amendment brought out to the Act, by Act No. 25 of 1990, all the private Colleges have been excluded from the purview of the Act and the first respondent-College being a private College, the provisions of the Act have no application to the petitioners. But Act No. 25 of 1990 is only prospective in nature. That being the case, vacancies arising prior to the coming into force of Act No. 25 of 1990 are governed by the Act, viz., Act No. 13 of 1985. If so, the appointments of the petitioners which were made on 19-10-1987 and 26-9-1988 are governed by Act No. 13 of 1985. The Act imposes a clear embargo from making recruitment of lecturers subsequent to 6-9-1985. Prior to the coming into force of the Act, G.O. Ms. No. 905 dated 21-9-1976 permitted the Colleges to make appointments temporarily by a Committee constituted for that purpose. The petitioners were appointed neither following the procedure prescribed under the Act No. 13 of 1985 by a duly constituted Selection Committee nor by the Committee constituted under G.O. Ms. No. 905 dated 21-9-1976. It is, therefore, not open to the petitioners to claim regularisation of their services.

5. The learned Counsel for the petitioners relying upon the decision in *Lusy Sarojini v. Special Officer*, 1988 (2) ALT 577 argued that a direction should be issued to the respondents to treat the petitioners as regularly appointed lecturers with effect from their respective dates of joining the College. The learned Government Pleader for Higher Education submitted that the decision is overruled in Writ Appeal No. 1335 of 1988 dated 17-7-1992, and hence it is no longer good law. On the other hand, the learned Government Pleader submitted that as held by another learned single Judge of this Court in *D.G. Krishnamacharyulu v. Govt. of A.P.*, 1988 (2) ALT 237 only those lecturers who was selected following the procedure of selection as laid down in G.O. Ms. No. 905 dated 21-9-1976 should be treated as regularly filling the posts notwithstanding the fact that their appointment orders indicate that they were appointed on temporary or ad hoc basis.

6. The learned Counsel for the petitioners relied upon the decision in *Jacob M.*

Puthuparambil and others Vs. Kerala Water Authority and others, and argued that where appointments of employees were made by way of stop-gap arrangement till regular appointments are made and are continued for more than two years, they are entitled for regularisation of their services. That is a case arising under Kerala State and Subordinate Service Rules. The decision of the Supreme Court, referred to above, cannot have application when the Act prescribes specific procedure for appointment of lecturers and the appointments are made bypassing that procedure. When the Act imposes a clear embargo against making recruitment otherwise than through the College Service Commission, the appointments of the petitioners which are not made through the prescribed procedure cannot be said to be regular. On the other hand, the appointments are only part-time in nature stipulating payment on hourly basis. The petitioners having accepted the appointments which were made otherwise than through the prescribed procedure, cannot be heard to contend that their services should be regularised.

7. The decision in *Besant Theosophical College v. J. Jahanara Begum*, 1991 (1) A.W.R. 99 relied upon by the learned Counsel for the petitioners has no application to the facts of this case because, in that case the part-time lecturer in Hindi appeared for interview before properly constituted selection committee and was placed in the selection list. It is under those circumstances that the Division Bench held that when once a candidate appeared for the interview before the properly constituted selection Committee and was placed at Serial No. 1 in the selection list, the said candidate is entitled to be appointed as a lecturer on a regular basis and that she is entitled for all other consequential benefits which flow therefrom. In this case, admittedly, the petitioners were not selected as part-time lecturers by a properly constituted selection Committee.

8. The learned Government Pleader relied upon the latest decision of the Supreme Court in *State of Haryana and others Vs. Piara Singh and others etc.* etc., wherein their Lordships held that blanket direction to regularise the services cannot be given. The learned Judges held that the Court must act with due care and caution while issuing such a direction and their Lordships indicated the problems arising out of wholesale regularisation.

9. For the above reasons, I hold that the petitioners are not entitled for declaration as prayed for. However, it is submitted by the learned Government Pleader that the Government have since issued G.O. Ms. No. 302, Education, dt. 23-8-1991 prescribing the procedure for regularisation of lecturers like the petitioners who are temporarily appointed without following the prescribed procedure. The petitioners shall be at liberty to apply to the Government under the said G.O. for regularisation of their services, taking their continued service with effect from 1987 and 1988 respectively into consideration.

10. In the event of the petitioners submitting their applications under G.O. Ms. No. 302, Education, dated 23-8-1991, the second respondent is directed to dispose of their applications within two months from the date of their receipt.

11. With the above directions the Writ Petition is disposed of. No costs.