
(2002) 02 AP CK 0122
In the Andhra Pradesh High Court
Case No : WA No. 1420 of 1997

Secretary to Government and Another	APPELLANT
Vs	
K.C. Venkateswarlu and Others	RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 ALD 623 : (2002) 2 ALT 317

Hon'ble Judges : Ar. Lakshmanan, C.J;I. Venkatanarayana, J

Bench : Division Bench

Advocate : Government Pleader for Higher Education Department, for the Appellant; R. Vijayanandan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, C.J.—The Secretary to Government, Education Department, Government of Andhra Pradesh, and the Director of Intermediate Education aggrieved by the order dated 10-6-1997, passed by a learned single Judge of this Court, allowing the writ petition, being WP No. 17142 of 1993, have filed this writ appeal.

2. The parties shall be referred to by their status in the writ petition.

3. The petitioners, who are 19 in number filed the writ petition stating that they are working as Lecturers, Senior Assistants, Junior Assistants and Record Assistants in Dr. L.B. Junior College, Visakhapatnam (hereinafter referred to as "the College"). That the college, which was running without receiving any financial aid from the Government, was paying its teaching and non-teaching staff, scales of pay, on par with those working in Government institutions.

4. Petitioner No. 1, who is working as In-charge Principal of the College filed an affidavit in support of die writ petition stating that he joined the service of the college in the year 1978 as Lecturer in Telugu, and was put in the pay scale of Rs. 430-20-650-25-888. As per the revised pay scales admissible to Lecturers

working in Government colleges, he submits that his pay would be Rs. 3,259/- per month as on the date of admission of the college to grant-in-aid, and since the college was admitted to grant-in-aid with effect from 16-4-1990, he is now being paid Rs. 2,469/- per month on the minimum scale eligible to a Lecturer, and as a result, he has suffered a loss of Rs. 790/- per month in his pay. Similar is the case of other petitioners.

5. The petitioners submit that the subject of admitting an institution to grant-in-aid by the Government is to prevent exploitation of staff working in private colleges, by their managements and to improve their living conditions, and in this regard, the Government has also issued a G.O. envisaging payment of salaries to the members of the staff directly through bank accounts.

6. The petitioners further submit that the members of the staff working in other institutions, which were admitted to grant-in-aid, along with the college, where the petitioners are working, were being paid consolidated amounts not comparable with the amounts paid to similarly situated members of the staff working in Government Colleges, but that is not so in the case of the staff working in the college, and that their repeated representations to the Government to do them justice failed, and as such, they filed the writ petition, seeking a writ of mandamus directing the respondents to pay them salary in the scale of pay according to the length of service.

7. The respondents filed counter-affidavit denying the allegations made by the petitioners in the writ petition.

8. It is stated in the counter that Dr. L.B. Junior College, was admitted to grant-in-aid with effect from 16-4-1990 vide G.O. Ms. No. 96, Education (CE.II) Department, dated 14-3-1991. Having regard to the policy of the Government, at the time of admission of the college to grant-in-aid the petitioners were allowed the minimum of the time scale of pay on par with other colleges, which were admitted to grant-in-aid. The services of the petitioners for extending the benefit of grant-in-aid, will be taken into consideration only from the date of admission of the college to grant-in-aid i.e., from 16-4-1990. The respondents thus contended that the petitioners are not entitled to any relief, as claimed by them in the writ petition.

9. The learned single Judge, holding that Clause 5 of the impugned G.O. is violative of not only the doctrine of equal pay for equal work, but was also violative of the principles of natural justice, allowed the writ petition by reason of the order impugned in this writ appeal, and issued a writ of mandamus directing the respondents to count the service of the petitioners in the unaided institutions prior to 16-4-1990 for the purpose of fixing their scales of pay, and further directed the respondents to revise the scales of pay of the petitioners, within three months from the date of receipt of a copy of the order.

10. Heard the learned Government Pleader for Higher Education for the appellants-respondents, Sri A. Satyanarayana Prasad and the learned Counsel for

the respondents-petitioners, Sri Vijayanandan Reddy. We have perused pleadings, counter-affidavit, G.O. Ms. No. 96, dated 14-3-1991, the order passed by the learned single Judge in the writ petition, and the grounds of appeal.

11. In our opinion, the petitioners are not entitled to claim the minimum of the time scale of pay with effect from the date of their joining in the college. As can be seen from the counter-affidavit filed by the respondents, the college in which the petitioners are working was admitted to grant-in-aid vide G.O. Ms. No. 96, dated 14-3-1991, after taking into consideration the fact that the said college and other colleges, made irregular admissions, violating the rules in force, and having regard to the policy of the Government, the college was admitted to grant-in-aid with effect from 16-4-1990 under the conditions mentioned in the G.O., and one of the conditions, Conditions No. 5 is that all the teaching and non-teaching posts shall be admitted to aid at the minimum of the respective scales. The college in which the petitioner are claiming to be working, accepted the G.O. and received the grant.

12. The learned Government Pleader for Higher Education, appearing on behalf of the appellants-respondents submits that the management of the college has not chosen to challenge the G.O. and the writ petition at the instance of a few members of the staff, working in the college, that too after lapse of about two years after it was issued, is not maintainable, and is liable to be dismissed on the ground of laches. He further submits that admitting an institution to grant-in-aid is a policy matter of the Government, and the decision taken by the Government on such a policy matter, is not amenable to judicial review under Article 226 of the Constitution of India. The learned Government Pleader further submitted that the action of the respondents is neither arbitrary nor discriminatory as alleged by the petitioners. As per the provisions of the A.P. Education Act, 1982 and the rules made thereunder called "A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987, the Government is well within its powers to limit the grant-in-aid keeping in view its economic capacity.

13. We see merit and substance in the contention put forth by the learned Government Pleader. Admittedly, the management of the college did not file the writ petition, and some of the members of the staff working therein have filed the writ petition questioning the correctness of the G.O. two years after it was issued. It is not in dispute that the college along with other institutions was admitted to grant-in-aid only from 16-4-1990, and having regard to the policy decision of the Government, the members of the staff working therein, were allowed the minimum of the time scale of pay with effect from the date of admission of the college to grant-in-aid. It is not disputed that prior to admission of the college to grant-in-aid, the petitioners were being paid salaries from out of the funds of the college. Since the College prior to 16-4-1990 was an unaided college, it is the look out of the management of the college to pay salaries to the petitioners during the unaided period, and the respondents have nothing to do

with it.

14. The learned Counsel appearing on behalf of the respondents-petitioners argued that the petitioners were getting more salary than that is being paid after the admission of the college to grant-in-aid by the impugned G.O. The impugned G.O. has deprived them of the lawful salaries, and as such, the learned single Judge, was justified in allowing the writ petition filed by them, and no interference is called for in writ appeal at the instance of the Government.

15. The submission of the learned Counsel for the petitioners is untenable for the reason that college in which the petitioners are working is not the only institution, which was admitted to grant-in-aid. Earlier, vide G.O. Ms. No. 170, Education (CE.II-2) Department, dated 12-7-1990, the Government admitted to grant-in-aid a number of colleges and accorded sanction to pay grant-in-aid not exceeding Rs. 8,14,50,000/-. Subsequently, the Government by the impugned G.O., while admitting 21 junior colleges, including the college in question, accorded sanction for payment of grant-in-aid not exceeding Rs. 1,65,76,105/-, and fixed the date of admission of the college to grant-in-aid from 16-4-1990, and in was further directed that the teaching and non-teaching posts shall be admitted to aid at the minimum of the respective pay scales. Admitting an institution to grant-in-aid, fixing the date of admission of a college to grant-in-aid, and extending the monetary benefit, being a policy decision, the petitioners have no manner of right whatsoever to question such a policy for it is a statewide issue, and hence, the prayer of the petitioners to protect their salary drawn by them in the unaided service, cannot at all be accepted.

16. The learned Counsel for the petitioners submits mat the petitioners should be allowed the scale of pay with notional benefits taking into account the services rendered by them prior to 16-4-1990. In our opinion, the said contention has no force because the service rendered by the petitioners in the college upto and prior to 16-4-1990 is purely unaided, and therefore, it cannot be counted for the purpose of pay protection. The Government has power to review the grant-in-aid keeping in view its economic capacity and financial position. Therefore, neither the management of the colleges nor the members of the staff working therein, can claim grant-in-aid as a matter of right.

17. The learned single Judge, in our opinion, has erred materially in directing the Government to release grant-in-aid with effect from a date anterior to the date on which the college was admitted to grant-in-aid, and that too not at the minimum scale as contemplated in the G.O., but on the basis of the pay scales which the petitioners were alleged to be drawing on the date when the college was admitted to grant-in-aid. In our opinion, the learned single Judge has not properly noticed the fact that the college concerned was admitted to grant-in-aid, with a condition, Condition No. 5, which states that all the teaching and non-teaching posts shall be admitted to aid at the minimum of the respective pay scales, to which the college accepted and also obtained release of the grant-in-aid. Therefore, it is neither open to the management of the college nor the

members of the staff working therein to ask for grant-in-aid from a date anterior to the date of admission of the College to grant-in-aid. The reasoning of the learned single Judge is contrary to the settled position of law.

18. For the foregoing reasons, the impugned order is unsustainable and is liable to be set aside. Accordingly, the impugned order is set aside and the writ appeal is allowed. The writ petition, filed by the petitioners stands dismissed. No costs.