

(2001) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 151 and 152 of 1998

The Secretary, A.P. Residential Educational Institutions
Society and Another

APPELLANT

Vs

M. Thimmaiah and Others

RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Citation : (2001) 5 ALT 116 : (2002) 3 LLJ 83

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Govt. Pleader for School Education, for the Appellant;

Final Decision : Allowed

Judgement

1. These two Writ Appeals are directed against the common order of the learned single Judge in W.P.No.27625 and 27624 respectively whereby and where under the learned Judge disposed of the writ petitions with certain directions.

2. For convenience sake, the parties may be referred to by their status in the Writ Petitions.

3. Briefly noted, the facts are:

The petitioners in both the writ petitions are working as either Cooks or Helpers in the Hostel attached to Silver Jubilee Govt. Residential Degree College, Kurnool on daily wage basis. While the petitioners in W.P.No.27524 of 1996 were appointed during the period between 1972 and 1987, the petitioners in W.P.No.27625 of 1996 were appointed in 1990. In respect of petitioners 2 and 3 in W.P.No.27524 of 1996, the writ petition was filed by their sons as the Legal Representatives of the deceased employees. The grievance of the petitioners is that though they had completed more than five years of service, their services have not been regularized as per G.O.Ms.No.212 dated 22.4.1994. It is also stated that the writ petitions filed by them earlier in W.P.Nos.9721 of 1991 and W.P.6952 of 1996 wherein directions had been issued for regularization of their

services keeping in view G.O.Ms.No.193 dated 14.3.1990 and G.O.Ms.No.212 dated 22.4.1994. But their cases were rejected on the ground that they did not satisfy Condition No.2 in G.O.Ms. 212, as they were not working against any sanctioned posts. The petitioners in W.P.No.27625 of 1996 challenged the proceedings of the 1st respondent rejecting their claim for regularization of services.

4. The petitioners, therefore, filed the writ petitions for a direction in the nature of a writ of mandamus directing the respondents to regularize their services from the date of their initial appointment and to pay them in a regular scale of pay attached to the post with all consequential benefits.

5. The learned single Judge disposed of the writ petitions with the following directions.

1. The case of the petitioners who are alive shall be regularized by sanctioning the posts which already existed in the hostel and regularizing their services by paying salary in the scale appropriate to those posts.

2. In respect of the sons of the two who died, N. Naganna and B. Samuel, applications of the sons of the petitioners for compassionate appointment in the posts which have become vacant on the death of these two persons shall also be considered and appropriate orders shall be passed in respect of both. The regularization shall be similar to the orders passed in the case of the Store Keeper as cited above. The compassionate appointments shall be made within two months from the date of receipt of a copy of this order.

6. Aggrieved by the said directions, the Secretary and the Principal of the College filed the present appeals.

7. It appears that during the pendency of the appeals, a supplementary affidavit has been filed stating that the hostel management has been handed over to the Government under Higher Education Department and an amount of Rs.12,80,000 was sanctioned to meet the expenditure of the hostel attached to the college. When the Writ Appeals came up for hearing on 17.11.1998, a Division Bench of this Court dismissed the same as not maintainable on the ground that as the hostel management had been taken over by the Government, it is a Government organization and as no appeal was preferred by the Government against the order of the learned single Judge, the Secretary, A.P. Residential Educational Institutions Society cannot maintain the appeals. This Court also extended time to comply with the order of the learned single Judge by a period of four weeks from the date of communication of the order.

8. Aggrieved by the said order, the Society preferred Special Leave Petitions before the Apex Court and the Apex Court by order dated 1.11.1999 in Civil Appeal Nos.6240 and 6241 of 1999 directed:

9. It is contended by the learned counsel for the appellant that the hostel has now been taken over by the Government and, therefore, the appellant-society is

not a in a position to regularize the respondents. This is an aspect, which should be considered by the High Court in the first instance. This development has taken place after the judgment of the single Judge but it has not been considered by the Division Bench. We, therefore, allow these appeals, set aside the judgment of the Division bench and direct the High Court to decide Writ Appeal Nos.151 and 152 of 1998 afresh. Stay of a action against the appellant will continue till the writ appeals are decided.

10. That is how the present appeals have been listed before us.

11. The only question, which arises for consideration, is as to whether the employees who have been working under a society, were entitled to be regularised.

12. The learned Government Pleader in this case appears both for the society as also the Government of Andhra Pradesh. He submitted that since the hostel has been taken over by the State, the State has also a right to support the appellants.

13. The learned single Judge upon noticing the contentions of the parties inter alia to the effect that the hostel was not being managed by the society but by the students themselves held:

On a consideration of the facts and circumstances of the case, I am of the opinion that the rights of the petitioners cannot be disregarded by the administrative shortcomings. This is a case where a Government Institution was handed over to a society, which is itself run entirely with the Government funds. The petitioners have been working in the institution ever since its inception and by reason of this transfer of the institution from the Government to a Society, the rights of the petitioners are sought to be defeated. Even assuming that at present the petitioners are to be taken only as servants of the Institution and not as Government servants, the vital fact is that the entire funding for the Institution is from the Government, and hence, this must be taken to be indirectly employed by the Government and not on behalf of the students. This has been practically accepted by the impugned order, which has not rejected the claim for regularization on any other condition relating to regularization except the only ground that there was no regular sanctioned post. This ground also is untenable when we refer to the report of the Principal that at the time of taking over, 10 posts were available. The learned counsel for the petitioners submits that apart from these 10 persons and the Store Keeper, the hostel has no other staff. It has been held by the Supreme Court in *JACOB M. PUTHUPARAMBIL v KERALA WATER AUTHORITY*¹ that the employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as on the date of their obtaining their employment must be allowed to continue in their jobs and their services should be regularized. It is unfair and unreasonable to contend that in spite of their working for such a long period, no sanctioned post is available. The sanctioning of post in this regard where the petitioners have been working ever since inception is only a matter of

recognizing the posts, which already existed. I am of the considered opinion that the respondents cannot defeat the rights of the petitioners by withholding such recognition.

14. The learned single Judge, in our opinion, has proceeded entirely on a wrong premise. The question as to whether at the relevant point of time the hostel was being managed by the students or the society was essentially a question of fact. In any event, the learned single Judge had failed to notice the basic principles of law that regularization is not a mode of recruitment. The learned counsel appearing for the parties were remis in bringing to the notice of the learned Judge the decisions of the Apex Court as also the decisions of this Court on the issue.

15. The decisions on the issue are galore but suffice it to mention the recent decisions of the Calcutta High Court in *UNION OF INDIA v REGISTRAR, CENTRAL ADMINISTRATIVE TRIBUNAL*², *SUJAN BANERJEE v UNION OF INDIA*³, *RANJIT KUMR CHANDA v STATE OF WEST BENGAL*⁴ and *UNION OF INDIA v SHRI RAJINDER SINGH*⁵.

16. Reliance placed by the learned single Judge on the decision of the Apex Court in Jacob's case was misplaced. In that case, there existed a statutory provision for regularization. The question as to whether there had been a sanctioned post or not is essentially a question of fact and thus the learned single Judge should not have proceeded on the presumption that there existed sanctioned posts. Further more, mode of appointment or qualifications for holding the posts and other factors are to be taken into consideration before a person is entitled to hold the public post. We are, therefore, of the opinion that the case of each person must be considered upon taking into consideration the scheme laid down by the State in this regard.

17. The learned single Judge, in our opinion, could not have directed regularization of the services of the petitioners. No order could be passed for sanctioning of the posts, which already existed.

18. As already noticed herein before, curiously enough, the learned single Judge even directed compassionate appointment in respect of two petitioners and for regularization of their services. When the deceased employees were not the regular employees of the society, the learned single Judge ought not to have held that the sons of the deceased employees are entitled to be appointed on compassionate ground.

19. No compassionate appointment could be directed unless it is held that such posts were vacant posts and the scheme of compassionate appointment was applicable in relation to the concerned employees who had died. Such a broad direction, in our opinion, does not meet the requirement of law.

20. Unless the conditions laid down in G.O.Ms.No.212 are satisfied, the petitioners cannot seek for regularization of their services as a matter of right,

even though they had put in more than five years of service. The question as regard applicability of G.O.Ms.No.212 has since been considered by a Bench of this Court in SECRETARY, A.P. SOCIAL WELFARE RESIDENTIAL EDUCATIONAL INSTITUTIONS SOCIETY v P. VENKATA KUMARI⁶ and in M.D., A.P. BEVERAGES CORP. LTD. v M. PETER⁷

21. For the reasons aforesaid, the order of the learned single Judge cannot be sustained and it is accordingly set aside. The 5th respondent is now directed to consider the cases of all the individual employees in terms of G.O.Ms.No.212 dated 22.4.1994 and in the light of the decision of this Court in SECRETARY, A.P. SOCIAL WELFARE RESIDENTIAL EDUCATIONAL INSTITUTIONS SOCIETY v P. VENKATA KUMARI (supra). The Writ Appeals are allowed accordingly. No costs.