

(2002) 06 AP CK 0041
In the Andhra Pradesh High Court
Case No : Writ Petition No. 869 of 1993

V. Sridhar

APPELLANT

Vs

The Secretary, Engineering College, Saifabad, Hyderabad

RESPONDENT

Date of Decision : 18-06-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2002) 06 AP CK 0041

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V. Durga Prasad, for the Appellant; V. Venkat Ramana Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner passed the ITI Certificate Course in the year 1978 and worked for about four years in a Private Organisation. The 1st respondent, which is a Private Engineering College, issued an advertisement dated 16-7-1982 inviting applications to select the candidates for several posts on teaching and non-teaching side. On the non-teaching side, one of the post advertised was of Instrument Mechanic (Electronics). Inasmuch as the petitioner possessed the requisite qualifications, he submitted his application for the same. He was called for interview, which was held on 11-8-1982. On having been selected by the Selection Committee, through appointment order dated 16-8-1992, the 1st respondent appointed him as Instrument Mechanic (Electronics). He was kept on probation for a period of six months. So far as emoluments are concerned, he was offered consolidated salary of Rs.550/- per month.

2. After completion of the period of probation, the petitioner was issued an appointment order on 9-3-1981. The order states that the appointment of the petitioner is regularised with effect from 1-1-1983 in the scale of Rs.350-550. It is further stated that the appointment of the petitioner through the Staff

Selection Committee was as a Lab Assistant. His basic pay was fixed at Rs.380/-. Three years later, through proceedings dated 6-9-1986, the petitioner along with three others were placed in the scale of Rs.425-650. However, this time, he was described as Technician. The petitioner submitted a representation dated 13-8-1986 raising objections as to the description of the post held by him and the scale of pay in which he was placed. Shortly thereafter, through proceedings dated 22-10-1986, the post of the petitioner was redesignated as Lab Technician in the Department of Electronics and Communication Engineering on the ground that he was not qualified for the post of Instrument Mechanic. Through the same proceedings, he was awarded three increments in the pay scale of Rs.425-465 in appreciation of the services rendered by him for the past three years.

3. Thereafter, the petitioner was shown as Technician Grade II with pay scale of Rs.500-800 in the proceedings dated 27-7-1987. The petitioner submitted a representation dated 16-11-1987 briefly narrating about the change of nomenclature of the post as well as the pay scales by the Management from time to time and ultimately requested that he should be treated as Instrument Mechanic for which post he was selected. He went on making representations seeking redressal. At one point of time, the 1st respondent itself has appointed a Committee to look into the grievance of the petitioner and the similarly situated persons. Though the Committee found that there was discrepancy in the order initially appointing the petitioner and thereafter changing the designation from time to time, the 1st respondent failed to redress his grievances. The petitioner claims that he is entitled to be treated as Instrument Mechanic and claim the scales of pay which are approved by the Government from time to time. It is his further case that he is entitled to be posted as Technician Grade-I and extended the scale of pay. Since there was no positive response, the petitioner filed this writ petition seeking the relief that he is entitled to be regularised in the post of.

4. Instrument Mechanic from the date of the appointment and that he is entitled for the scale of pay attached to that post as approved by the Government from time to time.

5. The 1st respondent-Institution, in its counter affidavit, does not dispute the factum of the petitioner having been selected and appointed as Instrument Mechanic. They justified their action of revising the designation of the petitioner on the ground that the petitioner does not hold the requisite qualifications. The respondent has also taken the plea that the petitioner raised no objection while he was being treated as Technician Grade II and, as such, it is not open to him, at this stage, to seek a declaration as prayed for. According to the 1st respondent, since the petitioner is not qualified to hold the post of Instrument Mechanic, he is not entitled to claim the pay scale attached to that post. In addition to the same, the 1st respondent also raised an objection as to the maintainability of the writ petition.

6. Before undertaking the discussion on the merits of the case, it is necessary to deal with the question of maintainability of the writ petition.

7. The contention of the 1st respondent is that it is a Private Engineering College, not in receipt of any grant-in-aid from the Government and, as such, does not answer the description of "State" within the meaning of Article 12 of the Constitution of India. It is submitted that since the petitioner does not complain violation of any statutory provisions by the 1st respondent, the writ petition is not maintainable.

8. The learned counsel for the petitioner, on the other hand, submits that inasmuch as the 1st respondent was accorded permission and affiliation under the provisions of the relevant statutes and since an element of public interest is involved in the matter of ensuring payment of salaries to the persons employed in the 1st respondent-institution, in accordance with the scales prescribed by the Government, the writ petition is maintainable. Reliance is placed upon the judgment of the Hon''ble Supreme Court in K. Krishnama Charulu and ors. vs. Sri Venkateshwara Hindu College of Engineering and another (1).

9. In the case before the Hon''ble Supreme Court, the situation was similar to the one on hand. Employees of a Private Un-Aided Engineering College established in the State of Andhra Pradesh claimed certain benefits relying upon the orders passed by the Government from time to time. The employees filed W.P. in this Court. An objection was raised by the Institution on the same lines, as did the 1st respondent herein. The writ petition was dismissed holding that the remedy available to the employees was to seek redressal in accordance with the provisions of the Industrial Disputes Act. In the appeal preferred by the employees, the Hon''ble Supreme Court held that where an element of public interest is created in granting permission and recognition to the institution, the staff being part of the institution, are entitled to the remedy under Article 226 of the Constitution of India and it was held that the writ petition was maintainable. A further direction was issued that the employees are entitled for the scale of pay on par with the Government employees working in the similar posts. In view of the judgment of the Hon''ble Supreme Court, the objection raised by the 1st respondent as to the maintainability of the writ petition cannot be entertained and the same is rejected.

10. So far as the merit of the case is concerned, the facts that the 1st respondent-institution advertised the post of Instrument Mechanic, the petitioner applied in response to the same, he was selected by the Selection Committee and was issued orders of appointment, are not at all in dispute. Having appointed the petitioner as Instrument Mechanic, the respondents offered him a consolidated salary of Rs.550/- per month. After completion of the period of probation, the respondents placed him in the regular scale of pay. However, while doing so, they have changed the designation of the petitioner. The respondents went on changing the designation of the petitioner and ultimately they rested after describing him as Technician Grade II.

11. From the various proceedings issued by the respondents from time to time, it is evident that they were not consistent as to the basis for changing the

designation of the petitioner. While in proceedings dated 9-3-1983 no reason was stated for designating him as Lab Assistant, in the proceedings dated 23-10-1986 while designating him as Lab Technician, it is stated that the same is done because the petitioner does not hold the qualifications for the post of Instrument Mechanic.

12. Much correspondence ensued between the petitioner and the 1st respondent. The petitioner has been consistently pleading that his appointment was as an Instrument Mechanic and there was absolutely no justification for changing his designation and continuing him the pay scale attached thereto. In the resolution dated 2-11-1983 passed by the 1st respondent, it was stated that after examining the real position vis--vis the qualification of the petitioner, they have come to the conclusion that the petitioner is not eligible to be designated as Instrument Mechanic since the minimum qualification required for the said post was Diploma in the concerned subject. It was further stated that there is no requirement of Technician Grade I in the Department of Electronic and Communication Engineering for the time being.

13. To see as to whether the plea taken by the 1st respondent that the petitioner does not hold qualifications for the post of Instrument Mechanic, it is necessary to verify the notification issued by the 1st respondent in response to which the petitioner applied. In the notification dated 16-7-1982 issued by the 1st respondent, which is filed as the material paper, the qualification against the post of Instrument Mechanic is prescribed as under:

"Instrument Mechanic (Electronics) :- ITI Certificate in appropriate trade or skill. Good working experience of 3 to 4 years in reputed workshop or Engineering College - Matriculate preferred."

14. It is not in dispute that the petitioner possesses ITI Certificate. The Selection Committee considered his candidature and selected him. It is not open to the respondents to contend, at a later stage, that the petitioner does not hold the qualifications. The various orders passed by the 1st respondent from time to time as regards the appointment and designation of the petitioner are inconsistent and without any basis. The Grievance Committee, which was appointed by the 1st respondent-institution, also found that the redesignation of the petitioner from time to time was not proper. Therefore, from the facts referred to above, it is evident that the petitioner was appointed as Instrument Mechanic (Electronics). He was entitled to be continued as such and there was no justification and basis for the respondents in redesignating him as a Lab Assistant, Lab Technician, etc., from time to time. Hence, the petitioner is entitled to be treated as having been appointed, confirmed and continued as Instrument Mechanic with effect from the date of his initial appointment i.e., 16-8-1992.

15. The next question is as to the entitlement of the petitioner to the scale of pay attached to the post, prescribed by the Government, from time to time. It is the

specific case of the petitioner that the AICTE, which is the authority to accord approval for establishment of the Engineering Colleges, has treated the post of Instrument Mechanic as one of the essential post for the purpose of establishment of the college and as a condition precedent for according its approval. It is further stated that respondents 2, 3 and 5, while issuing the orders of affiliation or recognition, as the case may be, to the 1st respondent-institution, have stipulated condition in the orders passed by them that the 1st respondent shall pay the salaries to its employees, in the scales of pay prescribed by the University or, as the case may be, the Government, from time to time. The 1st respondent is not able to persuade this Court that it is not under obligation to implement the salary structure prescribed by the Government to its employees. Having undertaken to abide by the condition as regards the implementation of the pay scales, the 1st respondent cannot turn down and refuse to implement the pay scales, once it was accorded the recognition by the Government. Such an attitude cannot be countenanced. Therefore, the petitioner is entitled to be paid the salary in the scale of pay attached to the post of Instrument Mechanic (Electronics), as prescribed and revised by the Government from time to time.

16. The petitioner was appointed as Technician Grade-I at a subsequent stage. The post of Technician Grade-I is superior to the post of Instrument Mechanic (Electronics). It is evident from record that the Grievance Committee appointed by the first respondent has recommended that the petitioner is entitled to be appointed to the post of Technician Grade-I with effect from 1-7-1987. The Committee, however, took the view that the petitioner shall be extended the scale attached to that post with effect from 11-11-1998.

17. The petitioner, however, has been appointed as Technician Grade-I with effect from 1-2-2001 through order dated 19-3-2001. Once the petitioner was found to be eligible to be appointed as Technician Grade-I with effect from 1987, there is no reason to deny him the benefit of the scale or to defer the appointment against that post. It is accordingly held that the petitioner shall be deemed to have been appointed as Technician Grade-I with effect from 1 -7-1987.

18. So far as the emoluments are concerned, striking a balance between the financial hardships that may be caused to the Institution and the loss suffered by the petitioner, it is ordered that the petitioner shall be entitled for the difference of pay from 1995.

19. The writ petition is accordingly allowed. There shall be no order as to costs.