

(2016) 09 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4259 of 2016

V.S. Prasad Masanam

APPELLANT

Vs

Acharya N.G. Ranga Agricultural University

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 443 : (2017) 1 AndhLD 348

Hon'ble Judges : Sri A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : None Appeared, for the Respondent Nos. 3 and 6; Sri Abhinand Kumar Shavali, Advocate, for the Respondent Nos. 4 and 5; Sri P. Govind Reddy (SC for ANGRAU), for the Respondent Nos. 1 and 2; Sri Prakash Buddarapu, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri A. Ramalingeswara Rao, J. - The petitioner is a Post Graduate, M.Tech (Food Engineering & Technology) from Sant Longowal Institute of Engineering & Technology, Sangrur District, Punjab State. He was appointed as a Teaching Associate in the third respondent college by proceedings dated 10.01.2013 on consolidated basis. However, when his services were terminated by the Associate Dean of the third respondent college on the oral instructions of the Dean on 30.01.2016, the present Writ Petition was filed.

2. The petitioner states that as per the impugned order dated 30.01.2016, he was continued in service till 29.02.2016, but he was not entrusted with any duties after 30.01.2016. On the other hand, on 30.01.2016 four Teaching Associates were appointed on contract basis for the II semester 2015-16. He further states that respondent Nos. 4 and 5, who were appointed as such, did not possess the requisite qualifications and they possessed only M.Sc qualification, which is not a qualification required under Memo dated 11.01.2016. The entire exercise was a malafide exercise and the services of the petitioner

were terminated only to accommodate respondent Nos. 4 and 5.

3. This Court, by order dated 10.02.2016, suspended the impugned proceedings dated 30.01.2016, and seeking vacation of the said order, W.V.M.P.No.654 of 2016 was filed by respondent Nos. 1 to 3.

4. In the counter affidavit it was stated that the petitioner was appointed purely on temporary basis on 10.01.2013 subject to the terms and conditions of the said letter of appointment. The students of the college submitted a representation to the Vice Chancellor when he visited the college in June, 2015 and an enquiry committee consisting of Dean of the Student Affairs and two other faculty members from other colleges was appointed. The committee came to the conclusion that the undesirable and strained relationship in the College was due to the petitioner's acts and deeds. It was also observed that the petitioner was having poor teaching skills and he resorted to biased evaluation of students' performances. 14 students of III year B. Tech Food Technology gave a written complaint to the third respondent on 20.07.2015 complaining against the petitioner alleging incompetence as a teacher. In view of the enquiry, the classes taken by the petitioner were entrusted to one Dr. B. Manjula and the petitioner was asked to teach other subjects. The students found the petitioner totally incompetent to teach and there were complaints from college students of misbehaviour. The conduct of the petitioner became questionable in relation to the girl students and all the complaints were brought to the notice of the second respondent. The second respondent, accordingly, instructed the third respondent to take appropriate action. The third respondent decided to terminate the services of the petitioner by giving a month's notice as contemplated under condition No. 4 of the appointment letter dated 10.01.2013 and accordingly, proceedings were issued on 30.01.2016 terminating the services of the petitioner with effect from 29.02.2016. There are 18 sanctioned posts of Assistant Professors, out of which 6 teachers were appointed on regular basis and 5 Teaching Associates were appointed purely on contract basis for II semester including the teachers appointed on 30.01.2016. Still there are 7 vacancies and the petitioner is being continued in one of the vacant posts. The selection of the four Teaching Associates was made after due advertisement and interviews by the selection committee. The allegation that respondent Nos. 4 and 5 did not possess the requisite qualification was denied. On the other hand, it was stated that the petitioner did not qualify in the National Eligibility Test. With regard to the entrustment of the duties, it was stated that the petitioner, through his Counsel, gave an undertaking at the time of passing of the interim order that he would not insist for evaluation of papers. 72 students of the college gave a complaint to the third respondent against the petitioner and one K. Sahithi. It was also alleged that the petitioner has the support of local political leaders and some antisocial elements and intimidates the students who complain against him.

5. A reply affidavit was filed by the petitioner stating that, though his appointment was temporary, he cannot be replaced by another temporary

employee. With regard to the alleged enquiry against him, he stated that the enquiry does not relate to him at all. The enquiry committee also did not submit any report and the report of the committee was not filed along with the counter affidavit. The allegation against the petitioner was invented for the purpose of the present case. The third respondent took charge on 16.12.2015 and the complaints are subsequent to that date and alleged to have been given by the students of the 3rd year to whom he did not teach at all. There is no allegation of misbehaviour with girl students. A reading of the complaints would disclose that all the complaints are written by one person in the same hand. He also disputed the engagement of services of number of Teaching Associates. The alleged notification inviting applications before appointing respondent Nos. 4 and 5 was not given wide publicity.

6. In the light of the above contentions it has to be seen whether the impugned order of termination dated 30.01.2016 is valid or not.

7. Learned Senior Counsel, Sri A. Satya Prasad submitted that the termination of the services of the petitioner is bad since no notice was issued to him before termination. He relied on the decisions of the Supreme Court in *State of Haryana v. Piara Singh*, (1992) 4 SCC 118 and *Secretary, State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1.

8. Learned Standing Counsel for respondent Nos. 1 to 3, on the other hand, submitted that the appointment of the petitioner is purely contractual and as per the terms and conditions of the letter of appointment, his services can be terminated with one month notice and the same is complied. He relied on *Umadevi (3)*'s case (supra), *Vidyavardhaka Sangha v. Y.D. Deshpande*, (2006) 12 SCC 482, *State of Haryana v. Charanjit Singh*, AIR 2006 SC 161, *Kendriya Vidyalaya Sangathan v. Arunkumar Madhavrao Sinddhye*, AIR 2007 SC 192, *Brij Mohan Lal v. Union of India*, (2012) 6 SCC 502, *Secretary to Government, School Education Department, Chennai v. R.Govindaswamy*, (2014) 4 SCC 769, *Inder Raj Agarwal v. Union of India*, 2015 (4) ALT 596 (DB), apart from an order passed by this Court in W.P. No. 18092 of 2011, dated 29.06.2016.

9. The order of appointment dated 10.01.2013 contains the following conditions:

"1. The appointment is purely temporary on consolidated basis and termination can be made by the University at any time without assigning any reasons there of.

2. He will be paid remuneration of Rs. 23,000/- per month as per rules.

3. He has to perform the duties entrusted to him, connected with College of Food Science & Technology from time to time by his superiors.

4. The contract of appointment is terminable with a notice of one month either side.

5. He is eligible for 15 days of casual leave, and Optional Holidays of 05 days in

the calendar year."

10. The petitioner joined the service accepting those conditions. As per one of the conditions, the contract of appointment is terminable with a notice of one month on either side and the impugned order of termination was passed on 30.01.2016 terminating the services of the petitioner with effect from 29.02.2016. Hence, the said condition is complied with.

11. Learned Senior Counsel relied on Piara Singh's case (supra) and brought to the notice of this Court the observations of the Supreme Court in the following paragraphs and submitted that the adhoc or temporary employee should not be replaced by another adhoc or temporary employee.

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

12. The said decision was rendered in 1992 and much water flowed since then. The issue with regard to claim of persons seeking employment, absorption, regularisation or permanent continuance, temporary, contractual, casual, daily wage or adhoc is authoritatively considered by a Constitution Bench of the Supreme Court in Umadevi (3)'s case (supra). The Supreme Court held as follows:

"....Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged

by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme....

....

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

13. Now it is clear that termination of service with one month notice on either side was provided in the letter of appointment and accepting the same, the petitioner joined the service. Though the petitioner may have some expectation because of his continuance, in the absence of any right for regularization, the compliance with the said condition cannot be found fault with. In view of such compliance, the other allegations relating to the conduct of the petitioner are not dealt with, as the impugned order does not cast any stigma and the averments made in the counter affidavit and reply need not be dealt with in such circumstances.

14. The decision in Umadevi (3)"s case (supra) was followed in subsequent decisions of Brij Mohan Lal"s case (supra) and R. Govindaswamy"s case (supra) relied on by the learned Counsel for the respondents. In Brij Mohan Lal"s case (supra) the Supreme Court was considering the case of ad hoc Judges appointed for the Fast Track Courts. One of the issues considered in the said case is whether appointees to the post of ad hoc Judges under the FTC Scheme have a right to the post. The Supreme Court held in paragraph 174 therein that the appointees have no right to the posts in question as the posts themselves were temporary and were bound to come to an end by efflux of time. It was also held that in the letters of their appointment and the Rules under which the same were issued, it was made clear that they cannot claim any indefeasible right either to regularisation or absorption. Though the fact situation in the instant case is

different, the petitioner cannot claim the right to the post and in fact such a plea was not advanced, and the only plea raised is with regard to the violation of principles of natural justice before issuing the order of termination.

15. In Y.D. Deshpande's case (supra) the Supreme Court held as follows:

"It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employee or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc."

16. The same view was taken in Kendriya Vidyalaya Sangathan's case (supra). While dealing with the question whether the order of termination of services of the respondent in the said case was passed by way of punishment or it had been passed in accordance with the conditions mentioned in the appointment order by which the respondent had been appointed, the Court also considered whether the termination of services was by way of punishment and whether a formal departmental enquiry was required to be held. The Court came to the conclusion that the termination was effected in accordance with the terms and conditions mentioned in the appointment order. The Court considered the decisions in *State of Maharashtra v. Veerappa R. Saboji*, AIR 1980 SC 42, *State of Uttar Pradesh v. Kaushal Kishore Shukla*, (1991) 1 SCC 691, *S.P. Vasudeva v. State of Haryana*, AIR 1975 SC 2292 and *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, (2002) 1 SCC 520. The Court took note of the observations made by a three Judge Bench in *State of Punjab v. Sukhwinder Singh*, (2005) 5 SCC 569 and extracted the following observations:

"It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not, makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or

termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong."

Accordingly, it held as follows:

"As shown above, the nature of enquiry conducted against the respondent was merely a preliminary or fact finding enquiry and no formal full scale departmental enquiry had been conducted against the respondent. In fact, the enquiry officer had himself recommended that disciplinary action be taken against the respondent. However, the authorities chose not to hold a disciplinary enquiry against the respondent and did not serve him with any article of charges or take any further steps in that regard. Instead they chose to exercise power under the terms and conditions of the appointment order. The termination order is wholly innocuous and does not cast any stigma upon the respondent nor it visits him with any evil consequences. The High Court seems to have proceeded on a wholly wrong basis and has treated the enquiry which was only a preliminary or fact finding enquiry into a regular disciplinary enquiry, which was not the case here. In these circumstances the judgment of the High Court is wholly erroneous in law and has to be set aside."

17. The other decisions relied on by the learned Counsel for the respondents are not relevant and directly applicable to the facts of the present case and they are not considered.

18. In view of the clear position of law enunciated by the Supreme Court, as applied to the facts of the present case, the Writ Petition fails and is accordingly dismissed. The miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.