

(2002) 02 AP CK 0144
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 142 of 2001

V.V. Sitaram Charyulu

APPELLANT

Vs

Viyajasarathi and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1), 33(2)
Land Acquisition Act, 1894 — Section 4(1), 6

Citation : (2002) 2 ALD 336 : (2002) 2 ALT 338

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

Bench : Division Bench

Advocate : Movva Chandrasekhar Rao, for the Appellant; N. Rama Mohan Rao, for the Respondent

Final Decision : Allowed

Judgement

1. The dispute in this appeal is relating to the appointment to the post of Principal in Sri Bhavanarayana Swamy Sanskrit College, Ponnur, Guntur district (hereinafter referred to as "SBSS College"). The fourth respondent in the writ petition (V.V.Sitarama Charyulu) is the appellant herein. The first respondent herein - Vijaya Sarathi is the writ petitioner.

2. The first respondent filed the writ petition to declare the action of the State Government in passing the orders in G.O.Rt.No.639, Education (CE.I) Department dated 23.5.1998 filling up the post of Principal by giving promotion to V.V.Seetharama Charyulu, appellant / fourth respondent and consequently to set aside the said order to enable the first respondent -writ petitioner to be continued in service as Principal, SBSS College. The brief facts are as follows:

The first respondent was initially recruited as Lecturer in Sanskrit in Sri Bhimeshwara College of Sanskrit and Oriental Languages, Vidyanagar, Vakadu, Nellore district on 9.7.1969. The said post was admitted to grant in aid by the State Government. A regular Selection Committee comprising of State Government representative as well as University representative has selected

him for being appointed on a regular basis as a Principal. Accordingly, the first respondent started functioning as a regular Principal of Sri Bhimeswara College of Sanskrit and Oriental languages in Nellore district. The post of Principal of the said College was also one admitted to grant in aid and consequently, the salary and allowances were being paid by the State Government directly. While the matter stood thus, the State Government considered running of the Sri Bhimeswara College of Sanskrit and Oriental Languages as uneconomical and consequently decided to close down the said Institution and orders to that effect have been passed by the State Government on 20.1.1998 closing down the Institution and transferring and posting the employees in the said Institution to various other needy educational institutions.

3. Accordingly, the first respondent was transferred and posted as Principal of S.K.M. College of Sanskrit, Palakol, West Godavari district. Before the first respondent could report to duty at Palakol, considering the request of the management of the said College, the State Government changed the place of posting and posted him as the Principal of S.V. College Oriental College, Tirupati. The T.T.D. has raised an objection with the State Government in posting of teachers to their Institutions without any reference to them and the conditions of service of their employees.

4. Noticing this protest of the T.T.D., the State Government ordered for change of the posting of the first respondent from out of Tirupati. Subsequently, the Director, Collegiate Education issued orders on 26.3.1998 transferring and posting the first respondent to SBSS College, Ponnur and instructed that the first respondent should report to duty immediately. In pursuance of this, the first respondent was relieved of duties on 1.4.1998 at Vidyanagar and reported to duty before the Correspondent of the College at Ponnur who admitted him to duty and thus on and from 2.4.1998, the first respondent has been functioning as the Principal of the SBSS College, Ponnur.

5. A compliance report was forwarded by the Correspondent of the College to the Director of Higher Education informing that the first respondent had been admitted to the post and that he started functioning as such from 2.4.1998 onwards. It is further submitted that the salaries were drawn from March, 1998 onwards by the first respondent and that he attended to the admission work of the freshers for the academic year 1998-99 and got 15 students admitted into the first year of the five year integrated B.A. Course. However, the State Government without noticing the effect that the post of Principal, SBSS College, Ponnur has already been filled up by way of transfer of excess staff from the closed College, passed orders in G.O. 639 dated 23.5.1998. The State Government has not noticed that the post of Principal of SBSS College, Ponnur has already been filled up and has issued the orders in G.O. No.639 dt.23.5.1998. The State Government however ordered the Director of Higher Education to secure compliance of the said orders.

6. The Director of Higher Education in turn directed the Correspondent of the

College to admit the first respondent as Principal of the College. Since the orders passed by the State Government are adversely affecting the rights of the first respondent, he approached this Court for redressal. It is submitted that the promotion as Principal of SBSS College was approved pursuant to the regular selections made by the Selection Committee on 24.8.1981 and therefore, he should be allowed to continue in service as Principal of the College instead of allowing some one else to become its Principal at this stage.

7. The first respondent herein filed the writ petition to declare the action of the State Government in passing the orders in G.O.Rt.No.639 filling the post of Principal by way of promotion by the fourth respondent viz., appellant herein as bad in law. The writ petition was resisted by the respondent No.4 by filing a counter affidavit. It was denied therein that the writ petitioner has been functioning as Principal of the third respondent College since the appellant was neither reversed in his position as Principal in the fourth respondent college nor he was genuinely posted at the fourth respondent college as Principal since there is no vacancy to post another Principal in the place of the appellant as the appellant was continuing on that date and his appointment was only awaiting ratification from the Government. Therefore, the R.J.D. has no manner of right or power to post another as Principal of the College pending ratification with the Government. It is further submitted that the R.J.D. is a subordinate to the Government and he cannot act contrary to the decision of the Government.

8. It is further argued that the State Government being supreme authority has ratified the promotion as Principal from 28.10.1990 but the State Government was not filling up the vacancy at present, more so as a matter of fact, the Government clarified to the Commissioner of Collegiate Education that he has to implement the G.O.Rt.No.639 by retaining the appellant and by posting the first respondent to any other College through G.O.Rt.No.1055 dated 18.8.1998. It is further submitted that the appellant's incumbency as Principal has been continuing since 1990 without any break. On the date of posting of the first respondent at the SBSS College, Ponnur, the appellant's incumbency was there in the College as Principal. His posting as Principal was not reverted either by the Management or by higher authorities in the management. The appellant is continuing as Principal in the records of the Management till now and there is no vacancy of Principal in the said College and there is no second Principal post available in the said College.

9. The appellant had been promoted as Principal as per his eligibility in his parent college and his posting as Principal was pending for ratification right from 1990 and therefore there is no question of posting anybody in his place since he has been functioning as Principal and that none can cancel or suspend his promotion since he is only waiting for ratification from the Government and that the second respondent who is a subordinate to the Government has no power or manner of right to supersede the orders of the Government.

10. The learned single Judge allowed the writ petition filed by the first

respondent herein observing thus:

I have given my serious consideration to the matter. It is not in dispute that consequent upon the closure of the institution at Vidyanagar, the petitioner was posted as Principal at Palakkol. But, it appears that some proposals were sent by the fourth respondent Management earlier and they were ratified only after the petitioner has joined the post. Obviously, the Government issued revised guidelines in G.O. Ms.No.134, dt.2.6.1997.

11. The Government appears to have not taken into consideration the subsequent G.O. issued on 2.6.1997 and also not taking into consideration the posting of the petitioner as Principal.

12. Under these circumstances, the petitioner, having been transferred to the third respondent college, the Government could not have ratified the proposals of the third respondent for promoting the fourth respondent in the same college from 28.10.1990. Hence, I find that it is a fit case where the Government has to review the matter keeping in view the orders issued by the Government in G.O. Ms.No.134. Since the petitioner is already continuing as Principal, I do not like to disturb the situation as existing today.

13. Under these circumstances, the writ petition is disposed of with a direction that the Government shall review the order passed in G.O.Rt.No.639 dated 23.5.1998 keeping in view the orders passed in G.O.Ms.No.134 dated 2.6.1997 and also the orders issued by the Director of Collegiate Education in R.C. No.3778/PC II 4/97 dated 26.3.1998 by giving appropriate opportunity to the concerned persons if found necessary.

14. Being aggrieved with the above orders, the fourth respondent filed the above writ appeal.

15. We heard Sri Chandrasekhar Rao, and Sri Nooty Ramamohan Rao, learned counsel for the appellant and first respondent respectively and other counsel representing official respondents. We have perused the pleadings. Our attention has been drawn to the order dated 28.10.1990 which is the proceedings of the Correspondent of Sri Bhavanarayana Swamy Sanskrit College, Ponnur by which the appellant V.V.Seetharama Charyulu was promoted as Principal of Sri Bhavanarayana Swamy Oriental College, Ponnur in the existing vacancy subject to approval of the Commissioner, Collegiate Education, Hyderabad. The appellant was instructed to report for duty forthwith. The appointment was purely on temporary basis and he is liable to be reverted to lower cadre at any time without assigning any reasons whatsoever. G.O. Rt.No.639, Education (CE.I) Department dated 23.5.1998 was issued by the Government of Andhra Pradesh. After thorough examination of the proposals submitted from SBSS College, Ponnur and the Commissioner of Collegiate Education, the action of the Management of the said College in having promoted V.V.Seetharama Charyulu as Principal was ratified through the said G.O. The Director of Collegiate Education was requested to take necessary action in the matter accordingly. G.O.

Ms.No.233, Education (CE.I) Department dated 20.10.1993 was also cited for reference at the time of hearing. G.O.134, Education (CE.I) Department dated 2.6.1997 was issued by the Government of Andhra Pradesh after careful consideration of the proposals. By the said G.O, the private Oriental Colleges in the State shall be taken as a single unit for the purpose of appointment, transfer, seniority, promotion, adjustment of surplus teaching and non teaching staff including the Principals of private aided oriental colleges. The G.O. states that the post of Principal of Oriental Colleges can be filled by any of the following three methods :

- a) by transferring surplus Principals of closed uneconomic Oriental Colleges.
- b) By recruitment by transfer from among the qualified eligible and suitable lecturers of the College and in the absence.
- c) By direct recruitment.

16. The orders issued in G.O. 233 dt.20.10.1993 and G.O. 401 dt.1.11.1994 and G.O. 310 dt.11.8.1995 shall be deemed to have been modified to the above extent. Our attention was also drawn to the proceedings of the Director of Collegiate Education in Rc.No.3778/PC II -4/97 dated 26.3.1998 which refers to the G.o. 134 dt.26.1997 and the proceedings of DCE in Rc.No.3388/PC II - 4/97 dated 22.1.1998. It is useful to reproduce the entire proceedings for the sake of convenience.

17. In modification of the orders issued in Director of Collegiate Education Proceedings 2nd read above, Sri V.Vijaya Saradi, Principal of closed S.B. College of Oriental and Sanskrit languages, Vidyanagar under the orders of transfer to S.V. Oriental College, Tirupati is transferred and posted as Principal, S.B.S. Sanskrit College, Ponnur against the vacant post of Principal.

18. The Correspondent, S.E. College of Sanskrit and Oriental Languages, Vidyanagar is requested to relieve the above incumbent with instructions to join duty at his new place immediately under intimation to this Office. The Correspondent, S.B.S. Sanskrit College, Ponnur is requested to admit the incumbent and report compliance.

19. The proceedings of the Commissioner of Collegiate Education dated 21.7.1994 was also placed before us.

20. In the said proceedings, the attention of the Correspondent, S.B.S. Sanskrit College, Ponnur is invited to his letter dt.2.6.1994 and he is informed that the request for approval of the promotion of Dr.Sitarama Charyulu, as Principal of the college is not feasible of compliance as there are no Government orders prescribing the procedure for filling up of Principals/ Lecturers posts in Oriental Colleges in the State. A reading of the G.O. would only state that there is no prescribed procedure to ratification. It is not stated in the proceedings that the appellant is not eligible to hold the post of Principal. The Correspondent of SBSS College, Ponnur requested the Hon"ble Minister for Higher Education to approve

the promotion of the appellant to the post of Principal at an early date. The Commissioner of Collegiate Education by his proceedings dt.30.11.1994 invited the attention of the Correspondent to the proceedings in C.C.E. dt.21.7.1994 and Letter No.35/1994 dt.22.8.1994 from the Correspondent.

21. The Correspondent was informed that the orders already issued in Commissioner's proceedings dt.21.7.1994 hold good.

22. The appellant by his letter dt.1.6.1998 addressed a letter to the Director of Collegiate Education requesting him to implement the Government orders and to protect his right to work as Principal. By proceedings dt.18.8.1998, the Government of A.P. after referring to the G.O. Rt.No.639, Education Dept., dt.23.5.1998 and DCE Lr.No.1308, dt.29.5.1998 directed the Commissioner to send a compliance report immediately.

23. The counsel for the appellant submitted that when once the appointment is approved and ratified, it relates back to the date 28.10.1990 . In fact there is no vacancy in the post of Principal after that date and therefore posting the first respondent is illegal. In support of the said contention, strong reliance has been placed on a decision of the Apex Court in GRAPHITE India LTD., V. DURGAPUR PROJECTS LTD.,¹ wherein it was held:

THAT approval can date back we have been referred to a decision of this court in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, In this case notification u/s 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 was published on 7/06/1982. Immediately the appellant had sought for approval of the State government through its letter dated 27/07/1982. The government approved the scheme on August 24, 1982 (Section 28 is equivalent to Section 4(1) of the Land Acquisition Act, 1890.

24. Thereafter declaration u/s 32 of the Adhiniyam (equivalent to Section 6 of the Land Acquisition Act) was published on 28/02/1987. Allahabad High court in a writ petition set aside the declaration holding that since prior approval of the State government was not obtained the notification u/s 28 and declaration u/s 32 of the Adhiniyam were invalid and inoperative. Question before this court was whether it would be prior approval or approval given subsequent to the notification u/s 28 or declaration u/s 32 of the Adhiniyam was valid in law. This court observed that if prior approval would have been a pre-condition for further steps, the Act would have said so and this not having been done what is material is to obtain the approval of the State government. This court said that the reason for this appeared to have been that when a scheme has been framed the land suitably required for effective implementation of the scheme should alone be acquired and not in excess in the guise of framing the scheme. Relying on its two earlier decisions in Life Insurance Corp'n. of India v. Escorts Ltd. and Lord Krishna Textiles Mills Ltd. v. Workmen this court held:-

"THIS court in Life Insurance Corp'n. of India v. Escorts Ltd. considering the distinction between "special permission" and "general permission", "previous

approval" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act."

Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act. As to the word "approval" in Section 33(2) (b) of the Industrial Disputes Act, it was stated in *Lord Krishna Textiles Mills Ltd. v. Workmen* that the Management need not obtain the previous consent before taking any action. The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1)."

This court then said that approval envisaged is to enable the Parishad, the appellant, to proceed further in implementation of the scheme framed. Unless approval is given by the government the scheme may not be effectively implemented. This court then said "nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid".

25. The Allahabad High Court in *SHAKIR HUSSAIN V. CHANDOO LAL*² considered the expression "subject to approval by the Court" and observed as follows:

Ofcourse, the expression, "Subject to approval by the court" implies that the arrangements which are considered by him to be most convenient and economical must be made by him first and approved by the Court subsequently. It is not necessary for him to submit his proposal before hand and get an approval though such a course is not impossible. The appointment of a custodian or supurddar and the placing of the attached property in his custody and the taking of its security from him are arrangements within the scope of R.122. But the appointment of a sahana (guard or watchman) putting him in special charge of a property is done under R.123 and must be with the permission of the Court. Ordinarily, difference between the approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act. I also think that although a sahana would not be a surety a supurddar who has given an undertaking to produce the goods when ordered by the Court is a surety although the undertaking is not given to the Court directly but through the attaching Officer.

26. In *U.P.AVASEVAM VIKAS PARISHAD V. FRIENDS COOP. HOUSING SOCIETY LTD.*,³ the Apex Court observed:

IT is to be seen that the language employed therein is that the approval of the State government is necessary. Question is whether it would be prior approval or approval given subsequent to the notification u/s 28 or declaration u/s 32 is valid

in law. If prior approval would have been a precondition for further steps, the Act would have said so. This not having been done, it seems to us what is material is to obtain approval of the State government. The reason appears to be that when the schemes have been framed, the land suitably required for effective implementation of the scheme alone should be acquired and not in excess in the guise of framing the schemes.

27. THIS court in *Life Insurance Corpn. of India v. Escorts Ltd.* ", considering the distinction between "special permission" and "general permission", "previous approval" or "prior approval" in para 63 held that: "We are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1 of the Act." Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved. while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act. AS to the word "approval" in Section" 33(2(b) Of the Industrial Disputes Act, it was stated in *Lord Krishna Textiles Mills Lid. V, Workmen*, that the Management need not obtain the previous consent before taking any action. The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1)

28. IT is seen that the approval envisaged under Exception (iii) of Section 59(I) (a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid.

29. A perusal of the correspondence and the communications issued by the Department concerned would clearly show that the State Government being the supreme authority has ratified the promotion of the appellant as Principal from 28.10.1990 and that the Government as a matter of fact clarified the Commissioner of Collegiate Education that he has to implement the orders in G.O. 639 by retaining the appellant in his post and by posting the first respondent to any other College. The Commissioner of Collegiate Education ought to have taken the approval of the government while posting the first respondent as Principal of the College in question. Since there is a long pending legal battle in the High Court with the Government for ratification. It is further seen that the appellant's incumbency as Principal has been continuing since 1990 without any break. On the date of posting of the first respondent herein, the incumbency of the appellant was there in the college as Principal. It is also not in dispute that the appellant's posting as Principal was not reverted either by the Management or by the higher authorities of the Management and the appellant was continuing as such in the records . The appellant had been

promoted as Principal as per his eligibility and his posting was pending for ratification right from 1990 and therefore, there is no question of posting anybody in his place. The first respondent therefore cannot take advantage of the G.O. 134 dt.2.6.1997 which is not retrospective since the appellant's right for ratification has been pending. The Government kept the file of appellant pending without passing any orders on ratification and surprisingly posted another person as Principal in the place of the appellant. Questioning the said action, the College filed W.P. No.20794 of 1994 and this Court by an order dt.16.10.1996 quashed the said G.O. of appointing somebody in the place of the appellant.

30. The second respondent in that writ petition however posted again the same person through the proceedings dt.13.12.1996 and the appellant challenged the said action of the second respondent before this Court vide W.P. No.2153 of 1997 dt.24.2.1997 and this Court declared that the 2nd respondent has no power and the person who was posted in the place of the appellant shall not continue beyond 31.3.1997. The second respondent has recalled him as per the orders of the High Court and posted him elsewhere and his position therefore has been intact and the appellant has been continuing in the said post. As against the orders passed in W.P. No.20794 of 1994 on 16.10.1996 filed by the College, the then Principal who was posted by the 2nd respondent in the place of the appellant has preferred an appeal to the Division Bench and the Bench dismissed the appeal and thereby confirmed the position of the appellant in the said post. The Government in our opinion has decided that the appellant should be continued in the said post as Principal and the first respondent could be accommodated elsewhere.

31. The writ petitioner suppressed the G.O. 639 though passed on 18.8.1998 in his writ petition which was filed on 24.8.1998. In our opinion the first respondent has no prima facie case or balance of convenience in his favour, since the appellant has been working in the Institution right from the year 1967 onwards and he has been fighting the legal battle right from 1990. However, the learned single Judge allowed the writ petition by directing the Government to review the promotion order of the appellant in G.O. 639 dt.23.5.1998.

32. The learned single Judge ought to have noticed that by the time of filing of the writ petition, the Government had clarified and directed the concerned to accommodate the first respondent in some other college. In our opinion, the promotional avenues of the appellant herein will be permanently closed if he is deprived of the present promotion order. The learned Judge should have seen that G.O. 134 dt.2.6.1997 is only prospective and it cannot take away the vested right of the appellant who was already promoted by the management of the institution and the ratification by the competent authority is only formal relating to the eligibility of the candidate to the post and when once ratification is made, it relates back to the date of promotion on 28.10.1990. The learned Judge has not noticed that the proceedings relating to the ratification order of the appellant cannot be

kept for several years on the pretext that there is no procedure provided by the Government for promotion as Principal and then transfer and post the 1st respondent/ writ petitioner as Principal by an order dt.26.3.1998 even though there is no vacancy since the appellant has already been working as Principal and fully knowing that the Revision Petition No.35 of 1994 filed by the appellant was still pending before the Government. In our view, even assuming G.O. 134 dt.26.1997 is valid, it cannot be implemented without preparing a final common seniority list. The learned single Judge has also not noticed that the Director of Collegiate Education has no jurisdiction to pass the order dt.26.3.1998 and the said order passed by the Director of Collegiate Education is without jurisdiction and illegal in view of the G.O.Rt.No.639 dt.23.5.1998 and G.O.1055 dt.18.8.1998. Thus, in our opinion the order passed by the learned single Judge directing the Government to review the promotional order is wholly unwarranted since G.Os.639, dt.23.5.1998 and G.O.1055 dt.18.8.1998 remain unchallenged. The learned Judge ought to have noticed that there is no vacant post of principal since the post of principal was already filled by the competent authority long back and what all pending was only the formal ratification by the Government which was in fact was done and communicated to the independent units.

33. We therefore allow the writ appeal and set aside the impugned order passed in W.P.No.24377 of 1998 in the interest of justice and fair play. In the result, the appellant Sri V.V.Sitharama Charyulu alone is entitled to function as Principal of Sri Bhavanarayana Swamy Sanskrit College, Ponnur, Guntur district and the Correspondent of that College is directed to allow the appellant to function as Principal with immediate effect.

34. It was argued by the learned counsel for the first respondent that as the first respondent has been functioning as Principal from 2.4.1998 onwards and therefore, he should not be disturbed from that post. We have no hesitation in rejecting the said plea as it is in our opinion unreasonable. The appellant cannot be deprived from functioning as Principal of the said College having regard to the facts of this case. We therefore direct the Government of Andhra Pradesh, Director of Collegiate Education to accommodate the first respondent herein in suitable post in any other College which exercise shall be done within a period of two months. The writ appeal is allowed. However, there shall be no order as to costs.