

HON'BLE SRI JUSTICE R. KANTHA RAO

+ WRIT PETITION No.25312 of 2015

%08.09.2015

Kamireddy Brahma Reddy

...Petitioner

VERSUS

\$ Visakhapatnam Port educational Society, rep. by its
Chairman, Port Area, Visakhapatnam & another

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri Vedula srinivas

^Counsel for Respondents: Sri P. Sriram

? Cases referred

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Writ Petition No.25312 of 2015

Between:

Kamireddy Brahma Reddy

.. Petitioner

And

Visakhapatnam Port Trust, rep. by its
Chairman, Port Area, Visakhapatnam & another

.. Respondents

JUDGMENT PRONOUNCED ON : 08.09.2015

HON'BLE SRI JUSTICE : R. KANTHA RAO

1. Whether Reporters of local newspapers :
may be allowed to see the Judgments?
2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?
3. Whether their Ladyship/Lordship wish to :
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.25312 of 2015

ORDER:

Heard Sri Vedula Srinivas, learned counsel appearing for the

petitioner and Sri P. Sriram, learned standing counsel for the respondents.

2. The 1st respondent is a statutory body under 'The Major Ports Act'. It started educational institutions for the benefit of the children of its employees in the year 1956. The Schools were funded by the 1st respondent and they were directly under the control of the 1st respondent. There were three primary schools and three high schools run by the 1st respondent. Later on, in the year 1977, the 1st respondent incorporated the 2nd respondent Society and started running of the Schools through the 2nd respondent. The 2nd respondent is receiving aid in respect of some of the teaching staff from the State Government and the 1st respondent also releases funds every year to meet the salary and other expenditure of the un-aided posts. The 2nd respondent is only a superfluous body created to give an impression as if it is an independent organization running the schools. The 2nd respondent is also an instrumentality of the State.

ii) The petitioner originally joined in the High School run by the 2nd respondent as a Secondary Grade Teacher and later on he became B.Ed. Assistant in the High School and he continued in the same post and he was also designated as Head Master in the year 2012. While so, the 2nd respondent issued orders dated 31.12.2014 permitting the petitioner to retire from service on superannuation on attaining the age of 58 years.

iii) The petitioner claims that the age of superannuation is at 60 years basing on the amendment to the A.P. Education Act, 1982 i.e., Act 1 of 2015 published in the A.P. Gazette Part IV-B extraordinary dated 03.01.2015, whereby Section 78-A of the A.P. Education Act, 1982 has been amended so as to enhance the age of retirement of

teaching/non-teaching staff of any aided private educational institutions to 60 years.

After the petitioner was superannuated on attaining the age of 58 years, he made several representations to the respondents, right from 20.01.2015, requesting them to continue his service up to 60 years by virtue of the aforesaid amendment. Ultimately, the 2nd respondent replied to the petitioner on 01.08.2015 stating that the petitioner's request cannot be considered.

iv) Therefore, the petitioner filed the present writ petition seeking his re-induction into service as per the amendment under the Act 1 of 2015 and to continue him in service till he attains the age of 60 years. He also claims that he is entitled for salary from the date of his retirement till the date of his reinductment into service.

3. Counter-affidavit has been filed by the respondents contending *inter-alia*, as follows:

The Visakhapatnam Port Trust (VPT) started the Port Educational Society, under the Societies Registration Act, with separate bye-laws to the Society. The day to day administration work of the Port Schools working under the Society will be looked after by the Executive Committee. It is submitted that as per the Bye-law No.22, in case of any doubt, regarding the interpretation of the bye-laws, rules and regulations and any other matter related to the Schools or Society, the decision of the Chairman, VPT shall be final and shall not be questioned in any Court of law.

ii) According to the respondents, under the Educational Society, there are two primary and two high schools functioning with pupil strength of 879 and 49 aided and unaided teaching and non-teaching staff. The expenditure on salaries etc. relating to the aided staff will be

met by the State Government and the unaided staff salaries, along with the maintenance of the infrastructure and other facilities will be met by the 1st respondent's funds through the 2nd respondent. It is submitted that the petitioner worked in Port School as unaided teacher only. Therefore, he is not covered by the amended Act of 1 of 2015.

iii) Next, it is submitted that as per the procedure being followed by the 2nd respondent-Society, a notice was served on the petitioner vide letter dated 05.11.2014 informing him that he is going to retire on attaining the age of superannuation i.e., 58 years. It is further contended that by the time of retirement of the petitioner on 31.12.2014, no government order was received enhancing the retirement age from 58 years to 60 years by extending the facility to the aided institutions. It is the version of the respondents that as per Bye-law Nos. 15(d) and 17 of the Society, the Executive Committee shall fix the scales and service conditions of the teaching and non-teaching staff of the Society and the schools shall generally conform to the scales and other service conditions prevailing in similar aided schools in accordance with the A.P. Educational Rules, 1982. Therefore, it is the version of the respondents that the Society has been following the A.P. Educational Rules, 1982 as amended from time to time to the unaided teaching and non-teaching staff appointed in Port Schools as is being implemented to the aided Port Schools till the posts were admitted to grant-in-aid by the Education Department of the State Government. Therefore, it is contended that as per the bye-laws of the Society, the petitioner being an unaided teacher is not entitled to the benefits as conferred by the Act 1 of 2015, but he is governed by the Bye-laws of the Society.

iv) According to the respondents that the 'rider' on service conditions for the staff of society is only indicative but not a mandatory and the Society is always at liberty to have its own regulations framed

in accordance with its Bye-laws and it is only thereafter, its application comes into picture and all the concerned shall be bound by the same until the same remains unaltered. It is further submitted that the final decision whether to adopt any regulation with prospective or retrospective effect is an absolute prerogative of the Society. The Management Committee, headed by the 1st respondent, has taken a decision not to implement the enhanced retirement age from 58 years to 60 years to the unaided teaching and non-teaching staff of Port Schools due to administrative reasons and therefore, the petitioner was informed vide 2nd respondent's letter dated 01.08.2015 that his request for enhancement of retirement age on par with aided staff cannot be considered. It is further submitted that the aided and unaided staff are distinct in their basis of employment and cannot be termed as equals. Further, the 2nd respondent-Society has no legal obligation to follow the service conditions as laid by the State Government. It is also submitted that even as per the Bye-laws, the Society has to fix the service conditions by itself. However, the Society has laid a guiding factor to enable the School Management to frame such conditions, which shall come into force as decided and approved by the Society.

v) Contending as above, the respondents sought to dismiss the writ petition.

4. It is argued by Sri Vedula Srinivas, learned counsel appearing for the petitioner, that the amendment to Section 78-A by way of Act 1 of 2015, applies to the employees of any aided private educational institutions. Even if the petitioner is working in unaided post, since the educational institution in which he is working, is an aided institution, the amended provisions of Section 78-A of the Act 1 of 2015, which are mandatory, shall be applicable to the petitioner and there is no force in the contention of the respondents that they have no obligation.

5. On the other hand, Sri P. Sriram, learned standing counsel for the respondents, would contend that that since in the subject institution, some posts are aided and some posts are unaided and on account of the fact that the petitioner is working in unaided post, he is not entitled for enhancement of the age of superannuation from 58 years to 60 years, by virtue of the provisions of Section 78-A of the A.P. Education Act, 1982.

6. In the present case, it is necessary to extract the Section 78-A as introduced by Act 1 of 2015, which reads as under:

“2. In the Andhra Pradesh Education Act, 1982, in Chapter XIII, in Section 78-A, -

(1) for sub-section (1) and the proviso there under, the following shall be substituted, namely:-

“(1) Every teacher or member of the non-teaching staff employed in any aided private educational institution, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Provided that every teacher or member of the non-teaching staff employed in any aided private educational institution, who retired from service on attaining the age of fifty eight years on and from 2nd June, 2014 to the date of publication of the Andhra Pradesh Educational (Amendment) act, 2014, shall be re-inducted in to the service/post as such with effect from the date of publication of the said Act:-

Provided further that the said interregnum period from the 2nd June, 2014 to the date of the publication of the Andhra Pradesh Education (Amendment) Act, 2014 shall be treated in such manner as may be prescribed.”

(2) In the Explanation there under, for the words ‘fifty eight years or sixty years, as the case may be’, the words “sixty years” shall be substituted.”

7. From the language employed in the above Section, the nature and character of the educational institution assumes importance and not the employees working in the institution. There is no dispute about the fact that the respondents-institution is an aided private educational institution. It does not lose the character of aided private educational

institution on the mere fact that some of the posts in the said school are not grant-in-aid. Even some posts are grant-in-aid; the institution assumes the character of aided private educational institution. When once the institution is considered to be the aided private educational institution, the question as to whether the petitioner is working in aided post or unaided post, loses its significance and every teaching or non-teaching staff working in the institution will get the benefit of Section 79-A of the A.P. Education Act, 1982, which was substituted by the amended Act of 1 of 2015 in the place of old provisions. As per the bye-laws of the Society, the Executive Committee shall fix the scales and service conditions of the teaching and non-teaching staff of the society and the schools shall generally conform to the scales and other service conditions prevailing in similar aided schools in accordance with the Andhra Pradesh Educational Rules. Though the word that the service conditions shall generally conform to the scales and other service conditions in accordance with the Andhra Pradesh Educational Rules, is used, it is obligatory on the part of the respondent-Society to follow the A.P. Education Act and A.P. Education Rules and they cannot deviate from the said provisions.

8. Further, the State Legislature has brought into existence the amendment to Section 78-A by totally substituting the new provision to the old provision and the same provision applies to the respondent-Society also as per their bye-laws and it is not correct for the respondent-Society to contend that the Executive Committee is under no obligation to follow the amended Section 78-A of the Education Act.

9. As regards to the question whether the provision is prospective or retrospective, it is clear from the proviso to sub-section (1) to Section 78-A that it will operate retrospective from 2nd June, 2014 to the date of publication of the A.P. Education (Amendment) Act, 2014. In the instant case, the petitioner was retired from service on 31.12.2014. Therefore, Section 78-A to the extent it is retrospective as

mentioned in the said provision, applies to the petitioner also. The proviso further clearly says that if any employee, who is governed by Section 78-A of the Act 1 of 2015 was retired after 2nd June 2014, he shall be re-inducted into service/post as such with effect from the date of publication of the said Act.

10. Under the above circumstances, this court is of the considered view that by virtue of amended provision of Section 78-A of the A.P. Education Act, 1982, the petitioner is entitled to continue in service, till he completes the age of 60 years. Accordingly, the order dated 31.12.2014 issued by the 2nd respondent retiring the petitioner from service with effect from 31.12.2014 is set aside and the respondents are directed to re-induct the petitioner into service and continue him till he completes the age of 60 years. The respondents are further directed to pay him the salary and other benefits, if any, in accordance with the provisions under the A.P. Education Act, 1982 and the rules made there under.

11. The writ petition is accordingly allowed. Miscellaneous petitions, if any, in this writ petition, shall stand closed. No order as to costs.

R. KANTHA RAO, J

Date: 08.09.2015
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Date: 08.09.2015

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