

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.10944 of 2005

ORDER:

This writ petition was filed assailing the action of the respondent authorities in not considering the case of the petitioner by giving preference to his service of about 12 years as an Attender in the College and in cancelling his selection under proceedings dated 24.07.2004. He also sought a declaration that the fresh selection held on 13.04.2005 was liable to be set aside and prayed for a consequential direction to appoint him forthwith.

Admittedly, the petitioner and the 5th respondent faced the selection process for appointment to the post of Attender in S.K.V.T. College, Rajahmundry, East Godavari District. Earlier, the petitioner was selected for the said post under proceedings dated 24.07.2004 of the Correspondent of the College, but the same was not approved by the Director of Collegiate Education, Hyderabad, on the ground that no candidates were called for from the Employment Exchange. In the selection process initiated afresh on 13.04.2005, the 5th respondent emerged successful and was appointed thereafter. Aggrieved thereby, the petitioner approached this Court by way of the present case.

By order dated 05.06.2006, this Court directed the respondent authorities to continue the petitioner on the same terms and conditions pending further orders.

It is an admitted fact that the petitioner, belonging to a Scheduled Caste, has been working as an Attender on a consolidated pay in S.K.V.T. College, Rajahmundry, since the year 1992. Pursuant to the orders passed by this Court, he has been continuing in the same capacity all these years. Though

Sri S.M.Subhan, learned counsel for the petitioner, would contend that the 5th respondent failed to produce the requisite education record at the relevant point of time, it is pertinent to note that no challenge has been laid against the actual appointment of the

5th respondent. This Court therefore cannot venture into this aspect of the matter without there being a prayer in that regard.

Insofar as the petitioner's case is concerned, he is now aged over 45 years and is still continuing in the service of the College on the same terms and conditions. He would be over-aged for consideration for regular appointment, though it is stated that three aided vacancies in the post of Attender are available. As he belongs to the reservation category, no doubt, the petitioner would enjoy the extended upper age limit, but notwithstanding the same, he would not come into the zone of consideration for being appointed regularly at this late stage, despite his long experience. The Andhra Pradesh State and Subordinate Service Rules, 1996, however provide for relaxation of the rules, be it by the Governor or by the Head of the Department.

In this regard, reference may be made to the observations made by the Supreme Court in **State of Haryana v. Piara Singh (2)**^[1], which read as under:

“The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above.”

[Emphasis is mine]

Keeping in mind the facts and circumstances of this case, it would be appropriate for the petitioner to approach the authorities for

suitable relief. The authorities would necessarily have to keep in mind the extenuating circumstances of the case and deal with the plight of the petitioner with due sympathetic considerations.

The writ petition is therefore disposed of permitting the petitioner to make an appropriate representation to the Commissioner of Collegiate Education, Andhra Pradesh, ventilating his grievance in detail and seeking suitable relief in accordance with law. In the event the petitioner makes such a representation, the same shall be considered in the light of the observations made supra and in accordance with law expeditiously and in any event, not later than six (6) weeks from the date of receipt of such representation. Till the aforesaid exercise is completed, the interim order granted by this Court shall continue to remain operative.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Date:30.10.2015

GJ

[\[1\]](#) 1992 (4) SCC 118