

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ WRIT PETITION No.16484 of 2002

% Dated 14.10.2015

Durga Prasad Panigrahi.

... PETITIONER

VERSUS

\$ The Registrar, University of Hyderabad,

and another. ...RESPONDENTS

! Counsel for the Petitioner: M/s.Mohan Vinod & Associates

^ Counsel for the Respondents: M/s.Indus Law Firm for R-1

Sri V.Rajendra Babu for R-2.

>HEAD NOTE:

? Cases referred

(2000) 5 Supreme Court Cases 262

2 2000 (5) ALD 619

3 (2007) 4 Supreme Court Cases 54

4 (2007) 8 Supreme Court Cases 100

⁵ (2008) 14 Supreme Court Cases 29

⁶ (2013) 11 Supreme Court Cases 309

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.16484 of 2002

Between:

Durga Prasad Panigrahi.

... PETITIONER

VERSUS

The Registrar, University of Hyderabad,

and another. **...RESPONDENTS**

Date of Judgment pronounced: 14.10.2015

Submitted for Approval:

The Hon'ble Sri Justice A.Rajasheker Reddy

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1. Whether Reporters of Local newspapers
May be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see the fair
Copy of the Judgment? Yes/No

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 16484 of 2002

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ORDER :

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It is the case of the petitioner that he was appointed as Junior Office Assistant through Direct Recruitment based on the selection held in the year 1986 through proceedings No.R/Dev/Rctt/86/NT, dated 24.05.1986 and that he was kept on probation for two years with effect from 07.06.1986 and his services were confirmed through proceedings No.UH/Estt/II/89/1215, dated 16.03.1989. As he was fully eligible and qualified for the post of Office Assistant, applied in response to the notification UH/R/Rctt/89/NT/10, dated 11.09.1989. He was asked to appear before the Departmental Promotion Committee (for short 'DPC') on 15.09.1989 and based on performance in the interview, he was promoted as Office Assistant with effect from 15.09.1989 through proceedings UH/R/Rctt/NT/89/488, dated 17.10.1989 and his services as Office Assistant were confirmed through proceedings No.UH/Estt/II/91/5133, dated 21.12.1991. The post of Office Assistant is the feeder cadre for the post of Senior Assistant and the said Senior Assistant post ought to be filled up 50% by direct recruitment and 50% by promotion by in-service candidates. Though the vacancies in the cadre of Senior Assistant arose in the year 1998 itself, the 1st respondent did not choose to conduct DPC meetings regularly as contemplated under the Rules and instructions. When the respondent University issued notification dated 31.07.2001 calling for applications to fill up the various posts through DPC and among other posts, one post of Senior Assistant was also notified to be filled up on the basis of Merit-cum-fitness quota from among the in-service candidates. In pursuant to the said notification, the petitioner applied for the same. The 1st respondent through proceedings No.UH/P.II/B.6/DDPC/2001-02, dated 15.09.2001 called the petitioner to appear for the written test on 28.09.2001 and accordingly, petitioner appeared for the same. The 1st respondent through its notification dated 17.10.2001 notified that five candidates are being called for the oral test amongst the various Office

Assistants appeared in the written test. The oral test was scheduled to be held on 20.10.2001. The petitioner was one amongst the five candidates who was successful in the written test and was called for the oral test. One of the candidates who came to know that the 2nd respondent's ineligibility for the post of Senior Assistant, made a representation dated 22.10.2001 to the 1st respondent University and also to the DPC about the ineligibility of the 2nd respondent and requested the 1st respondent not to allow the 2nd respondent to participate in the selection process. Even though the 2nd respondent was not qualified, he was permitted in the selection and was selected through the impugned proceedings dated 10.12.2001. Aggrieved by the same, present writ petition is filed.

2. The 1st respondent filed counter affidavit denying the averments in the affidavit filed in support of the writ petition stating that the 1st respondent is not proper and necessary party and that the first respondent is only an employee of the University, as such, this writ petition is not maintainable. It is stated that a vacancy arose in the year 1999 upon the resignation of Y.Ramakrishna Rao and the said vacancy could not be filled up immediately due to administrative reasons. In the year 2001, DPC was conducted for various vacancies including vacancies of Senior Assistants and that the DPC recommended the name of the 2nd respondent among others and consequent to this recommendation, the 2nd respondent was promoted as Senior Assistant. It is stated that the guidelines framed by Department of Personnel & Training (DoPT), vide O.M.No.22011/5/86-Estt.(D), dated 10.04.1989, following the judgment of the Hon'ble Apex Court in SLP No.8058/2001 and Appeal No.8059 of 2001, wherein Supreme Court has held that promotions can be effected only prospectively even where vacancies relating to earlier years are filled up. Basing on the request of the Universities' Non-Teaching Employees Association, a decision was taken to effect that the date of promotion with effect from 1st January & 1st July of the year concerned in view of the administrative delays in conducting DPCs. However, the said practice has been discontinued in view of the DoPT guidelines dated 10.04.1989 and judgment of the Supreme Court referred to supra. It is also stated that the 2nd respondent possessed the minimum educational qualification required to be promoted to the post of Senior

Assistant. The 2nd respondent was awarded M.A Degree by the Annamalai University in the examination held in May, 2001, which was long before issuance of the notification dated 31.07.2001. The last date for submission of application was 10.08.2001. The 2nd respondent submitted Pass Certificate on 19.09.2001 and examination for the Merit-cum-Fitness was held on 28.09.2001. It is stated that the DPC had in its own discretion recommended the 2nd respondent for the said post. The petitioner never objected or challenged the decision of the University in placing the 2nd respondent in the merit list along with the petitioner. It is stated that having appeared before the DPC and having not raised objection at the earliest point of time, the petitioner cannot now turn around and challenge the decision of DPC merely because DPC's recommendation did not suite him. It is also stated that 2nd respondent was given promotion as Senior Assistant and next as Section Officer and at this stage, impugned proceedings cannot be quashed and sought for dismissal of the writ petition.

3. Though writ petition is of the year 2002 and the matter underwent several adjournments for the last six months, the 2nd respondent did not choose to file his counter affidavit.

4. Heard Sri G.Mohan Rao, learned counsel for the petitioner and Sri V.R.N.Prashanth, learned Standing Counsel for the 1st respondent and Sri V.Rajendra Babu, learned counsel for the 2nd respondent.

5. Learned counsel for the petitioner submits that even according to the counter affidavit, the vacancy of Senior Assistant in respect of which, the 2nd respondent was appointed arose in the year 1999 and at that time, admittedly, 2nd respondent did not possess requisite minimum qualification, since he acquired Graduation only on 19.09.2001 and he should not have been considered for the vacancy which arose in the year 1999. He also submits that the last date for submission of application for considering case of the 2nd respondent for selection to the post of Senior Assistant is 10.08.2001 and even by that date, the 2nd respondent has not acquired the minimum qualification for considering his case for promotion. In support of his contention, he relied on the judgments reported in **Bhupinderpal Singh and others v. State of Punjab and**

others, S.V.Satyaprasad v. Commissioner of Collegiate Education, Government of Andhra Pradesh, Nampally, Hyderabad and Ashok Kumar Sonkar v. Union of India and others.

6. On the other hand, learned Standing Counsel for the 1st respondent submits that the petitioner having participated in the selection process, knowing fully well that the 2nd respondent participated in the said selection process, though not acquired requisite qualification for the post of Senior Assistant, is estopped from challenging the same and same amounts to waiver. He also submits that by the time the DPC considered the respective merits of the candidates, the 2nd respondent acquired qualifications. Therefore, DPC thought it fit that the 2nd respondent is qualified and basing on the recommendation of DPC, the respondent University made selection, as such, the selection of 2nd respondent for being promoted to the post of Senior Assistant cannot be faulted. In support of his contention, he relied on the judgments reported in **Union of India and others v. S.Vinodh Kumar and others, Nirmal Chandra Sinha v. Union of India and others and Ramesh Chandra Shah and others v. Anil Joshi and others.**

7. It is an admitted fact that the 2nd respondent acquired necessary qualification on 14.09.2001 and the vacancy, which was filled up in pursuant to notification dated 31.07.2001 issued by the respondent University pertains to the year 1999. By that date, the 2nd respondent did not acquire any qualification. The last date for submission of application for selection is 10.08.2001. Even by that time, the 2nd respondent did not acquire necessary qualification prescribed in the notification dated 31.07.2001. The notification dated 31.07.2001 states that those employees who fulfill the requirements and intend to be considered for promotion under Merit-cum-fitness quota may send their applications on plain paper through proper channel to the Deputy Registrar (Personnel) on or before 10.08.2001 and necessary qualification for promotion and eligibility criteria for the said post is 25% on the results of departmental tests from amongst Office Assistants possessing a University Degree with minimum continuous service of 3 years in the grade on the basis of merit-cum-fitness. In view of the said clause, it is an admitted fact that the 2nd respondent did not fulfill the eligibility criteria for participating in the selection process for

being promoted to the post of Senior Assistant.

8. The University tried to justify its stand in the counter stating that basing on the judgment of the Apex Court in SLP No.8058 of 2001 and Appeal No.8059 of 2001, wherein it is held that promotions can be effected only prospectively even where vacancies relating to earlier years are filled up. The issue before the Hon'ble Supreme Court was not with regard to cutoff date or there was any challenge to the selection made. Therefore, the defence taken by the 1st respondent University cannot be accepted as a ground for promoting the 2nd respondent, though 2nd respondent did not acquire requisite qualification either on the date of notification or on the last date of submission of application. There is no dispute in the principle that no promotions can be made retrospectively. Even the judgment relied on by the learned Standing Counsel in **Ramesh Chandra Shah and others v. Anil Joshi and others (supra)**, it is observed that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents have waived their right to question the advertisement or the methodology adopted by the Board for making selection. In the present case, the petitioner is neither challenging the selection process nor any regulations, but challenging the promotion of 2nd respondent as Senior Assistant on the ground that he did not acquire qualification as on the date of impugned notification. Therefore, the above mentioned judgment of the Hon'ble Supreme Court is not applicable to the facts in the present case on hand. The other judgments relied on by the learned Standing Counsel in **Union of India and others v. S.Vinodh Kumar and others (supra)** and **Nirmal Chandra Sinha v. Union of India and others (supra)** have no application to the facts in the instant case as they were rendered in different contextual background.

9. In **Bhupinderpal Singh and others v. State of Punjab and others (supra)**, the Hon'ble Supreme Court held as follows:

“14. In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several

appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.”

“15. It is clear from the facts of the case that not only the applicants, thousands in number, but the authorities too were also belabouring under an identical wrong impression. That is why the applications were entertained and the applicants called for interview though not eligible by reference to the last date for receipt of applications. The selection process is complete. Even the appointment letters have been issued. The controversy arose because several officers of the Education Department at the District level refused to join the selected candidates in spite of their being armed with appointment letters. Admittedly with a stray exception of one or two, all the applicants have acquired the requisite eligibility qualifications by 30.10.96, the extended date for making applications. From the corrigendum dated 17.10.96 it cannot be clearly spelled out that though the age requirement was to be determined by reference to 30.10.96, other eligibility requirements, i.e. those relating to education, were to be tested by reference to 15.2.96 and not 30.10.96. At least the corrigendum did not specifically say so. There are no malafides alleged. It has not been the case of anyone aggrieved and certainly not a finding arrived at by the High Court that satisfaction of eligibility requirement by reference to the last date of making of the applications was not rigorously insisted on by the authorities of Education Department or the Selection Board for the purpose of accommodating or obliging any favoured candidate or candidates. The enquiry set up pursuant to the orders of the High Court has also not brought out any finding enabling such an inference being drawn. The action on the part of the Selection Board and the authorities of the Education Department, though mistaken and unsustainable in law, was bonafide and a result of loose practice prevalent till then which has been discontinued now. In our opinion it would cause grave injustice to the several appellants before us if their selection and appointment were

struck down and they were now asked to seek employment elsewhere. Most of them, if not all, must have crossed the upper age limit for seeking public employment and the ghost of unemployment is likely to chase them for the rest of their lives. It is not the case of the State Government that the entry of the several appellants before us as teachers in the Education Department, would be a disservice or cause any discontentment in the services or any other problem.”

10. In **S.V.Satyaprasad v. Commissioner of Collegiate Education, Government of Andhra Pradesh, Nampally, Hyderabad (supra)**, it is observed as follows:

“7. Hence, the principle that can be deduced from the above decision would be that the appointing authority has to consider the claims of the employees who are eligible for promotion on the day when the vacancy has arisen. In fact, they are expected to prepare the panel in the month of September every year and it will be in force till 31st December of the succeeding year or a fresh panel is prepared whichever is earlier and only eligible and qualified candidates alone have to be included in the panels that are to be prepared every year and promotions to be effected in the vacancies that have arisen in that year. In that view of the matter, admittedly the petitioner is qualified to hold the post of Senior Assistant during the panel year 1992-93 when vacancy has arisen and the respondent cannot without the preparation of the panel till 1996 in which year respondent No.3 has qualified and cannot promote him on the ground that he is senior-most in the College. I have no manner of doubt that the order promoting the third respondent is ab initio void and it has to be set aside. Accordingly, the order promoting the third respondent as Senior Assistant from 27th August, 1993 is quashed and a consequent direction is given to consider the claim of the candidates eligible for appointment to the post of Senior Assistant during the panel year 1992-93 as contemplated under Rule 4(ii) of the General Rules which have been adopted by the 2nd respondent-management...”

Guideline No.6.4.1 of Guidelines on Departmental Promotion Committees reads as follows:

“6.4.1. Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who

would be within the field of choice with reference to the vacancies

of each year starting with the earliest year onwards.”

In view of the above facts and circumstances and principle of law laid down in the above referred judgments, there is no justification for the 1st respondent University for promoting the 2nd respondent, even though he was not fully qualified as on the date when vacancy arose or at least till last date of making application, as such, the impugned proceedings No.UH/P.II/B.6/2001/1178, dated 10.12.2001 is liable to be set aside and same is set aside.

Accordingly, this writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

14.10.2015.

Note: LR copy to be marked.

B/o.KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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