

HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 13673 OF 2001

ORDER:

1. This Writ Petition, under Article 226 of Constitution of India, is filed by the petitioner, for issuance of *mandamus* to declare the action of respondent in not regularizing her services as S.G.B.T. Teacher, from the date of her initial appointment *i.e.*, 29.06.1991, as illegal, arbitrary and to direct the respondent to regularize her services as S.G.B.T. Teacher by paying all the monetary benefits from the date of her initial appointment.

2. The case of the petitioner, as stated in her affidavit, in brief, is that she was initially appointed as a School Assistant *vide* proceedings of the respondent, dated 29.06.1991, at Model High School, Osmania University Campus, Hyderabad for a period of three (3) months. After expiry of the said period, the petitioner was given further appointment and, as on the date of filing this Writ Petition, she is still continuing as such on temporary basis, on a consolidated pay of Rs.1,000/- p.m. The respondent, through appointment letters, has been *extending* the term of the petitioner from 1991 onwards and as such the petitioner has been performing the duties of regular School Assistant since June 1991 onwards, for a consolidated pay of Rs.1,000/- p.m. Hence, as on the date of filing the Writ Petition, the petitioner, having put up a continuous period of 10 years service, made several representations to the respondent seeking regularization of her services but, on one pretext or the other, the same has been postponed though clear vacancies were available in the University. It is further stated that the Government of Andhra Pradesh have issued several G.Os directing for regularization of the services of the teachers, who have put up a particular length of service, but the services of the petitioner were not regularized, though she has put up a continuous period of ten (10) years

service, for a meager salary of Rs.1,000/- p.m. Hence, the petitioner filed this Writ Petition for the aforesaid reliefs.

3. The respondent-university has filed a counter-affidavit denying the material allegations of the petition *inter-alia* contending that there has been no process of selection, as contemplated under the Andhra Pradesh Universities Act, 1991, nor any rule of reservation was followed at the time of appointment of the petitioner. There was no notification issued for recruitment. The petitioner, who was initially appointed on temporary basis and continuing as such, cannot claim any relief against the respondent-university. There is no provision for regularization of the services of the petitioner; however, she may appear for regular selections, if she is eligible. Further, how the entry of the petitioner was made into the respondent-university can be seen from the office note, which is as follows:

“..... Kindly peruse the letter received from one Miss. M. Sadhana, who has requested for appointment as School Assistant at Model High School, Osmania University.

It is submitted that, Miss. M. Sadhana, possesses a Bachelors degree in Arts and Post Graduate degree in Education from Osmania University.

In view of the endorsement of the Vice-Chancellor, Osmania University on the above application, if agreed to, Ms. M. Sadhana may be temporarily appointed as School Assistant on a consolidated amount of Rs.1,000/- p.m. at the Model High School, Osmania University for a period of three (3) months w.e.f. the date of her joining duty. The expenditure on this score may be met from the provision of Rs.8,00,000/- provided in the budget for payment of wages of additional staff employed at various offices, colleges, departments and hostels on casual basis. Draft orders are also submitted for approval.

Issued *vide* orders No.MR/25/B/255/69/Estt.III, Dated 29.06.1991.....”

4. It is further stated that the appointment order of the petitioner was issued *vide* orders No.Mr/25/B/2555/69/Estt.III, dated 29.06.1991, initially, for a period of three (3) months and, from time to time, fresh appointment orders were issued extending the temporary services of the petitioner. It is further contended that there was no legal basis for regularization of her services; without any sanction from the Government, no post can be created by the respondent-university under the A.P. Universities Act and, in support of the same, placing reliance on the decision of the Apex Court in ***A. Manjula Bhashini Vs. The Managing Director, A.P. Women's Co-operative Finance Corporation Limited***¹ and a Division Bench decision of this Court in ***Osmania University Vs. Smt. N. Vidyavati***², prayed to dismiss the Writ petition.

5. Learned counsel for the petitioner, during the course of argument, submitted that since 1991, till the date of filing the Writ Petition, though the petitioner was appointed as School Assistant, on temporary basis, but from June 1991 onwards she has been performing the regular duties of School Assistant for a consolidated pay of Rs.1,000/- p.m. and, in view of her continuity of services for a period of ten (10) years, through issuance of extension orders from time to time, she is entitled for regularization of her services as S.G.B.T. Teacher with all consequential benefits and prayed to allow this Writ Petition.

6. Heard Sri K. Raghuveer Reddy, learned counsel for the petitioner. None appeared on behalf of the respondent-university and there is no representation on its behalf.

7. The short point that arises for consideration in this Writ Petition is, whether the petitioner is entitled for regularization of her services as

¹ 2009 (5) ALT 58 (SC)

² Writ Appeal No.1179 of 1997

S.G.B.T. Teacher from the date of her initial appointment *i.e.*, 29.06.1991, with all consequential benefits?

8. **POINT:** Admittedly, the petitioner, M. Sadhana Reddy, who is working as School Assistant, on temporary basis, from 29.06.1991 filed the Writ Petition for the aforesaid reliefs. Appointment of the petitioner, as School Assistant, *vide* proceedings of the respondent, dated 29.06.1991, initially for a period of three (3) months at Model High School, Osmania University Campus, Hyderabad and extension of her services from time to time for a consolidated pay of Rs.1,000/- p.m. are not in dispute as the respondent admitted the same in the counter-affidavit. The endorsement of the Vice-Chancellor, Osmania University made on the application of the petitioner clearly reveals that her appointment as School Assistant on a consolidated pay of Rs.1,000/- p.m. at the Model High School is only for a period of three (3) months, from the date of her joining duty, and the expenditure on that score has to be met from the provision of Rs.8,00,000/- provided in the budget for payment of wages of additional staff employed at various offices, colleges, departments and hostels on casual basis. Further, the office note was approved and, thereafter, extension orders were issued from time to time extending the temporary services of the petitioner.

9. At this juncture, it is appropriate to refer to the decision of a Division Bench of this Court in **Osmania University²**, wherein the Division Bench had an occasion to decide the similar issue relating to the respondent therein, who is a Post Graduate in Economics and holding a B.Ed degree belonging to BC-A group, was appointed as a teacher in a leave vacancy with effect from 30.10.1989 on a fixed pay of Rs.1,000/- p.m. in the Model High School *vide* proceedings No.207/255/1969/Estt.III dated 27.10.1989. Though she had put up sufficient length of service and made several

representations to the appellant-university therein, her services were not regularized and further, in response to the notifications for the posts of S.G.B.T Teachers, issued by the appellant-university from time to time, she had applied for the notifications but neither the interviews were conducted nor any vacancies therein were filled up. Hence, she filed W.P. No.1424 of 1996, seeking regularization of her services; wherein the learned single Judge of this Court, taking into consideration her continued service of 8 years, directed the appellant-university to regularize the services of the respondent-petitioner, without further subjecting her to interview and test with a further direction that she would not be entitled to arrears of scales of pay up to 30.01.1996. Aggrieved thereby, the appellant-university preferred Writ Appeal No.1179 of 1997; wherein the Division Bench of this Court, on 08.04.2002, following its earlier decision in W.A. No.621 of 2000, dismissed the Writ Appeal.

10. Further aggrieved, the appellant-university preferred Special Leave Petition (Civil) No.6066 of 2003; wherein the Hon'ble Supreme Court by order dated 01.04.2005 set-aside the impugned judgment therein observing that deeper consideration on merits of the Writ Appeal is required and remanded the matter for fresh disposal. At that stage, the Division Bench of this Court, on 05.03.2010, after hearing the arguments of both sides, in detail, allowed the Writ Appeal No.1179 of 1997, preferred by the appellant-university, holding that the respondent therein was not entitled for regularization of her services, which is as under:

“10. At the outset, learned counsel for the appellant university has submitted that the main relief of regularization, which is sought for by both the teachers in these matters, now stands covered against them in view of the decision of the Supreme Court in **A. MANJULA BHASHINI v. THE MANAGING DIRECTOR, AP WOMEN'S COOPERATIVE FINANCE CORPORATION LIMITED⁽¹⁾**.

11. The aforesaid decision of the Honourable Supreme Court has considered the Andhra Pradesh (Regularization of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (hereinafter referred to as AP Act 2 of 1994) as amended by Amendment Act Nos.3 and 27 of 1998. The Supreme Court also considered G.O.Ms. No.212, Finance & Planning (FW.PC.III) Department, dated 22.04.1994, and G.O.(P).No.112 Finance & Planning (FW.PC.III) Department, dated 23.07.1997 and held that the aforesaid claim of regularization under the said GO's being one time measure and not a continuing scheme with a cut off date 25.11.1993 for seeking eligibility under the aforesaid scheme, the said scheme was upheld. Thus, in view of the aforesaid decision only those persons who fulfill the requirement either under G.O.Ms. No.212 dated 22.04.1994 or G.O.(P).No.112 dated 23.07.1997 alone could stand insulated against the rigor of Section 7 of the AP Act 2 of 1994. The operative portion of the decision of the Honourable Supreme Court in Para 43 is necessary to be noticed and the same is extracted as under:

“43. In the result, the appeals filed by the employees (C.A. Nos.3702, 3703, 3704, 3705, 3706, 3707, 3709, 3710, 3721, 3733, 3734, 3737, 3742, 3744, 3748, 3749 and 3751 of 2006) are dismissed and those filed by the State Government and agencies/instrumentalities of the State (C.A. Nos.3685, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3723, 3724, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3750, 3752, 3753, 3754 and 3755 of 2006) are allowed. The declaration made by the Division Bench that the ban on regularization will be effective from 19.08.1988 i.e., the date on which Act No.27 of 1998 came into force and that all persons who have completed 5 years of service is set aside. It is, however, made clear that the daily wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularized and their services shall be regularized subject to fulfillment of the conditions enumerated in G.O. dated 22.04.1994. With a view to obviate further litigation on this issue, we direct the Government of Andhra

Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularization of the services of the eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or High Court or this Court. Since some of the appeals decided by this order relate to part time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O.(P).No.112 dated 23.07.1997."

13. Thus, in order to seek regularization, the employees must qualify by fulfilling the conditions under G.O.Ms. No.212 dated 22.04.1994 or G.O.(P). No.112 dated 23.07.1997, whichever is applicable. One of the primary conditions under either of the GO's being the fulfillment of requirement of minimum period of service as of 25.11.1993 being 5 years and 10 years respectively, the respondent as well as the writ petitioner in these matters do not fulfill the said primary requirement, keeping in view that the respondent in the appeal is working only from 30.10.1989 whereas the writ petitioner in the writ petition is working from 30.03.1991. Since either of them does not fulfill the primary requirement under the aforesaid GO's, neither of them can claim regularization. Therefore, the relief sought for in both the writs being misconceived and contrary to the aforesaid legal position, the writ appeal deserves to be allowed and the writ petition deserves to be dismissed."

11. In view of the principles laid down by the Apex Court and the Division Bench of this Court in the decisions referred *supra*, the petitioner, who was initially joined in the service as School Assistant, on 29.06.1991, had not put up the required period of continuous service of 5 years, as per G.O.Ms. No.212, as on the cut off date *i.e.*, 22.04.1994, she is not entitled for regularization of her services and, accordingly, the Writ Petition is liable to be dismissed.

12. In the result, the Writ Petition is dismissed.

13. In consequence, miscellaneous petitions, if any, pending in this Writ Petition, shall stand dismissed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date: 23.09.2016.
Dsh



HON'BLE SRI JUSTICE G. SHYAM PRASAD

312



28102016

WRIT PETITION No. 13673 OF 2001

Date. 23.09.2016

DSH