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Between:

Dr. T. Suryanarayana Reddy,
S/o.T.Narayana Reddy,,
Aged 47 yrs, Occu : Lecturer in Telugu,
Osmania College, Kurnool, Kurnool District & 2 others.

.. Petitioners

AND

The State of Andhra Pradesh,
Rep., by its Secretary, Higher Education Department,
Secretariat, Hyderabad & 3others.

.. Respondents

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The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.20785 OF 2010

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ORDER:

Petitioners claim to have been appointed as lecturers against aided posts on 24.12.1996 (1st petitioner in Telugu), 23.08.1996 (2nd petitioner in Commerce) and on 01.01.1999 (3rd petitioner in Chemistry). Petitioners seek to challenge the proceedings dated 15.04.2008, whereunder the request of the petitioners for grant of appointment against aided posts was rejected.

2. Heard Sri Balaji Medamalli, learned counsel for the petitioners and learned Government Pleader for Education (A.P) for Respondents 1 to 3 and Sri. J.Srinivasa Rao, learned counsel for respondent No.4.

3. Learned counsel for the petitioners submit that the order of rejection was ex-facie illegal and it is made in arbitrary exercise of power. The two reasons assigned for rejection of the claim is not valid. There is no justification to fix the cut off date as 25.11.1993 and rejecting the claim on the ground that the petitioners were appointed after 25.11.1993. It is further submitted that the order in G.O.Ms.No.328 dated 15.10.1997 has no application.

4. Elaborating further learned counsel for the petitioners contend that the documents filed along with W.P.M.P.No.43 of 2016 would disclose that several lecturers appointed after 25.11.1993 were absorbed/appointed against aided posts. Whereas the same benefit is denied and such action amounts to arbitrary exercise of power by the

authority. He also submits that the Government has even gone to the extent of relaxing the requirements in selection process by which a person is appointed by private management against aided posts. In support of the said contention he placed reliance on the proceedings in Memo No.PSP 233/IE.II.1/2005-3 dated 04.07.2005 issued in favour of Smt

A. Jaya Lakshmi, Junior lecturer in Civics, A.G.S. Junior College, Tirupathi admitting into grant-in-aid post and he would state that there are several such orders.

5. By placing reliance on the decision of this Court in W.P.No.5189 of 2006 and W.P.No.18923 of 1999, he further submits that the rejection of claim of the petitioners and considering the similar claim of others by referring to unspecified cut off date by the competent authority is arbitrary and such rejection by selective method again amounts to arbitrary exercise of power. Therefore, the proceedings are liable to be set aside and the petitioners are entitled to be absorbed into aided posts.

6. Learned Government Pleader submits that the claim of the petitioners was rejected validly, as admittedly petitioners were not appointed prior to 25.11.1993. He was candid in admitting that the appointments referred to and relied upon by the petitioners were made on account of orders issued by this Court under threat of contempt proceedings, but all those appointments were not valid and sustainable. He would further submit that there cannot be negative equality, merely because somebody else was appointed and the claim for similar appointment cannot be made when those appointments are not valid in law.

7. By relying on the communication from the Management of the college, he would contend that even petitioners appointments were not in accordance with the Government orders issued vide G.O.Ms.No.12 dated 10.01.1992 and therefore, petitioners cannot claim that they

were appointed validly and therefore, their services shall be absorbed into aided posts.

8. As noticed from the impugned proceedings, the two reasons assigned for rejection of claim for regularization are (i) not completing minimum three years of service as on 30.07.1991 or five academic years as on 25.11.1993 and (ii) imposing ban on the recruitment of teaching staff against grant-in-aid posts with effect from 25.11.1993.

9. When specifically asked, learned Government Pleader was unable to give satisfactory answer as to how the conditions of G.O.Ms.No.328 dated 15.10.1997 are attracted for appointment of persons against aided posts in private educational institutions, whereas such G.O, was relating to regularization of lecturers who have fulfilled minimum service as prescribed in the said G.O. Learned Government Pleader was unable to place on record the orders of the Government imposing ban on appointments towards grant-in-aid posts on 25.11.1993. In the orders impugned in this writ petition, there is no reference to any order of the Government whereunder such ban was imposed.

10. Even otherwise, as rightly contended by learned counsel for the petitioners and on bare perusal of the additional set of material papers placed on record, several lecturers who were appointed after 25.11.1993 were granted absorption/appointments against grant-in-aid posts. This statement would clearly disclose that the requirement of completion of three years of service as prescribed in G.O.Ms.No.328 or the condition of appointment prior to 25.11.1993 was not fulfilled by them.

11. The plea of discrimination was considered by this Court in W.P.No.5189 of 2006. The defence taken by the respondent-Government regarding appointment of certain persons who have not fulfilled the conditions on the ground that they were appointed as per

the orders of this Court was summarily rejected. This Court has analyzed in depth the stand of the respondents with reference to imposition of ban and discriminatory treatment between two similarly situated persons. This Court has also emphasized the principles as laid down by the Hon'ble Supreme Court in ***Mohinder Singh Gill Vs Chief Election Commissioner***,^[1] and held that whatever is referred to in the order that is impugned alone should stand, but by way of supplementary proceedings or by way of pleadings in the counter affidavit no justification which is not reflected in the order impugned can be made.

12. As noticed above in the instant case also the order impugned refers to two conditions. As already noted though there is reference to alleged ban, no proceedings are placed on record to show that such ban was imposed.

13. According to the averments in the counter affidavit filed on behalf of the 4th respondent, petitioners have fulfilled all the required conditions; they were appointed against aided posts and their appointment was after undergoing the process of selection as prescribed. It appears from a reading of the counter affidavit that on behalf of the respondent-Management of the College, since it is a minority institution, proceedings of G.O.Ms.No.12 which prescribe selection procedure is not applicable. Therefore there was no deviation in the selection procedure but held that initial selection of petitioners was not validly made. There is no satisfactory answer to this contention. However, the stand of the petitioners that they were validly appointed is not disputed. At any rate the documents placed on record would disclose that there are instances of relaxation of violations in the selections to grant regularization/absorption into aided posts. It is not in dispute that petitioners are fully qualified for appointment to the posts they were selected and they have been working for more than 15 years and in one case more than 20 years.

Thus, on the ground of some irregularity in the selection process they cannot be thrown out of consideration for absorption/appointment to aided posts at this distance point of time.

14. Having regard to the above, the order impugned is set aside. Accordingly the writ petition is allowed. The respondents are directed to consider the claim of the petitioners for absorption/appointment against aided posts in Telugu, Commerce and Chemistry respectively, without regard to the reasons assigned in the order impugned. The said exercise shall be completed within a period of three (3) months from the date of receipt of copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

17th August, 2016
Rds

[\[1\]](#) AIR 1978 SC 851