

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Appeal No.1486 of 2008

Date: 20.07.2016

Between:

The District Educational Officer
Ongole, Prakasam District and 2 others.

..Petitioners

and

Thella Sarojini Devi
and another

..Respondents

**Counsel for the appellant: AGP for School
Education**

**Counsel for respondent No.1: Mr.P.Nagendra
Reddy**

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by Order, dated 17-08-
2005, in WP.No.5878 of 1998, respondent Nos.1 to 3
in the said Writ Petition filed this Writ Appeal.

The brief facts leading to the filing of the Writ

Appeal are stated hereunder:

A.B.M.Junior College, Ongole, Prakasam District, is an aided Institution. The post of sweeper in the said Institution was converted as Class-IV post *vide* proceeding, dated 11.09.1986, issued by the Competent authority with effect from 01.04.1985. One P.Kotaiah was working as Sweeper for whom grant-in-aid salary was sanctioned by the appellants. Consequent on his death, respondent No.1 was appointed in his place as sweeper by respondent No.2 with effect from 01-06-1988. By that time, the Rules notified under G.O.Ms.No.60 Education, dated 28-01-1986, were in force. It is an undisputed fact that under those Rules, no approval of appointment was required and mere intimation of appointment by the Institution concerned to the competent authority was sufficient. Subsequently, the Government framed the A.P.Educational Institutions (Establishment, Recognition Administration and Control of Schools) Rules, 1988, and notified under G.O.Ms.No.524, dated 20-12-1988. Clauses (a) and (b) of Sub-Rule (7) of Rule 15 thereof prescribed as under:

“(a) The educational agencies of the existing schools shall send the list of

qualified candidates whom they have appointed to the competent authority in the prescribed form (Form IV) within a period of 3 months from the date of issue of those rules, for approval of appointments, if not already got approved;

(b) In case any of the educational agencies fail to get the appointments approved by the competent authority within the stipulated period, all such posts (held by qualified or unqualified candidates) shall be treated as vacant and the educational agency shall take action for filling up the post, by following the procedure prescribed under sub-rule (2)".

There is nothing on record to show whether respondent No.2 has intimated the appointment of respondent No.1 to the competent authority before the new Rules under G.O.Ms.No.524, dated 20-12-1988 came into force. However, respondent No.2 appeared to have sent two letters, dated 29.10.1997 and 10.12.1997, evidently for approval of the appointments of respondent No.1 and another person by name N.Vijaya Kumar as contingent sweeper and water man respectively. By Proceeding, dated 21-01-1998, appellant No.1 has rejected the said proposal. As regards the request for approval of the appointment of respondent No.1,

appellant No.1 has stated as under:

“The appointment of Smt.T.Sarojini, Sweeper was made by the management with effect from 01-06-1988. Her appointment was made prior to G.O.Ms.No.524 dated 20-12-1988. Hence, this case will not come under the purview of appointments made contrary to the G.O.Ms.No.524 as per G.O.Ms.No.301 dt.25.9.97.”

Feeling aggrieved by the said action of appellant No.1, respondent No.2 has filed WP.No.5878 of 1998.

Upon considering the respective pleadings of the parties, the learned Single Judge allowed the Writ Petition and observed that under G.O.Ms.No.60 Education dated 28-01-1986, except the intimation of appointment to the authorities concerned, the approval of the competent authority was not required and that though there was no necessity of such approval, the Principal of respondent No.2 has sought for clarification as to the applicability of G.O.Ms.No.524 Education dated 20-12-1988 and that the following clarification was issued by appellant No.2- Director of School Education by proceeding in Rc.No.1126/D1.1/94, dated 13-11-

1994:

“In this connection he is informed that Government in their Memo No.2132/P1/83.3 Edn. Dt. 3-8-84 have issued orders that the post which is converted into last grade service and which has fallen vacant due to promotion or deaths or retirement on attaining age of 60 years of the contingent employee who was absorbed into the post will have to be filled up by following normal procedure applicable to the posts covered by A.P. Last Grade Service Rules. But the above rules were issued by the Government in respect of Government Employees where as no such orders have been received from the Government in respect of staff working in Aided managements.”

With reference to the afore-mentioned facts, the learned Single Judge observed as under:

“At one breadth in the clarification, dated 13-11-1994, issued by the Director of School Education, it was stated that the said G.O.Ms.No.524 Education, dated 20-12-1988 is applicable only in respect of the Government institutions and in respect of aided institutions there are no instructions nor any clarification was received from the Government. That being the case, at another breadth, as per G.O.Ms.No.524 Education, dated 20-12-1988 the case of the petitioner for approval was rejected. It may be interesting to notice here that though there was no necessity of seeking

approval as per G.O.Ms.No.60 Education, dated 28-01-1986, the Principal had sent proposals only to complete the formality, if any, necessary as per G.O.Ms.No.524. I am of the considered opinion that once the petitioner's appointment is made having subjected to due selection process against a regular vacancy of last grade post, her case for approval cannot be rejected."

The learned Single Judge has also adverted to G.O.Ms.No.212, Fin & Plg. (F.W.PC-III) Dept., dated 22-04-1994 and justified the claim of respondent No.1 for regularisation even under this GO as she has completed more than five years as on 25-11-1993, which was prescribed as the eligible criterion for regularisation under the said GO. The learned Single Judge has, accordingly, allowed the Writ Petition with a direction to the appellants herein to regularise the services of respondent No.1 without further loss of time from the date of her first appointment *i.e.*, 01-06-1988 and put her in the scale attached to the post of sweeper with effect from 01.09.2005 with all notional benefits such as increments, seniority *etc.*

During the hearing, the learned Assistant Government Pleader placed before us proceeding

No.1738-A/AV/2008-09, dated 08-08-2008, of appellant No.2 whereunder he has released a sum of Rs.1,24,146/- and placed the same at the disposal of appellant No.1 towards expenditure on payment of arrears of salary to respondent No.1 for the period from 01-09-2005 to 28.02.2007 for implementation of Order under appeal. The learned Assistant Government Pleader submitted that in pursuance of the said proceeding, respondent No.1 is being paid the aided salary; that the respondents have also extended the benefit of the revised PRC scales; and that respondent No.1 is expected to retire in about two years time from now.

The main ground, which is pressed into service by the learned Assistant Government Pleader, at the hearing, is that there is no record to show that respondent No.2 has followed proper procedure while appointing respondent No.1 as sweeper on 01-06-1988. Unfortunately, respondent No.2 has not filed any counter-affidavit to throw light on this aspect. Except making an averment that respondent No.2 failed to follow proper procedure, even the appellants have not filed any material to

substantiate this aspect. In our opinion, having regard to the events that have transpired after disposal of the Writ Petition as referred to above, it will be highly iniquitous to deprive respondent No.1 of the relief granted by the learned Single Judge in the Writ Petition, more so, when the appellants have implemented the said order.

In the light of the above facts, we do not find any reason to interfere with the order of the learned Single Judge.

The Writ Appeal is, accordingly, dismissed.

As a sequel to dismissal of the Writ Appeal, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

—
—
—

(G.Shyam Prasad, J)

Dt: 20th July, 2016
lur

