

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.42349 of 2015; 884, 3117, 17560 of 2016; and
CONTEMPT CASE No.1246 of 2015

Between:

N.Sampath and another.

....Petitioners

and

State of Telangana,

Rep.by its Prl.Secretary, Higher Education, Secretariat Building, Hyderabad, and
others.

....Respondents

JUDGMENT PRONOUNCED ON : 20.06.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.42349 of 2015; 884, 3117, 17560 of 2016; AND
CONTEMPT CASE No.1246 of 2015

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COMMON ORDER:

Heard the learned Counsel for the petitioners and the learned Counsel for the respondents. These cases are being disposed of by this common order as they are interconnected and the fight is for the post of Principal in SKE Degree College, Sirpur Kagaznagar (hereinafter referred to as College).

The petitioner in W.P.No.42349 of 2015 is hereinafter referred to

as the petitioner and the petitioner in W.P.No.3117 of 2016 is hereinafter referred to as the respondent in this order for convenience.

The petitioner was appointed as Lecturer in Commerce in the College by proceedings dated 30.08.1984. He was appointed after undergoing the selection process. His appointment was approved by the Osmania University. The college was admitted to Grant-in-aid vide G.O.Ms.No.170, dated 12.07.1990. The post of the petitioner was admitted to Grant-in-aid with effect from 01.04.1991.

The respondent was appointed in the same college on 21.06.1991. He filed W.P.No.5593 of 2015 seeking a direction to consider his case and promote him as Principal on regular basis in terms of proceedings issued by the Commissioner of Collegiate Education dated 23.08.2014 and G.O.Ms.No.47, dated 14.05.2007 issued by the Government.

This Court while issuing notice before admission in W.P.No.5593 of 2015 granted interim direction on 10.03.2015 and it reads as follows:

“Therefore, the first respondent, the Commissioner of Collegiate Education, State of Telangana, is directed to take all necessary steps for filling up the post of Principal, SKE Degree College, Sirpur Kagaznagar, Adilabad District, on regular basis, which is admitted to grant-in-aid, as expeditiously as possible, preferably within three (3) months from the date of receipt of a copy of this order and in case any in-charge arrangements are made in the mean time, as the educational institution cannot be run without there being a Principal to discharge the functions of the head of the institution, the normal practice of keeping the senior most teacher as in-charge Principal, subject to the willingness and suitability of the individual, shall be adopted.”

When the said order was not complied with, the respondent filed C.C.No.1246 of 2015. In the said Contempt Case, the first respondent therein filed counter affidavit stating that the college submitted proposals to fill up the vacant post of Principal on regular basis by convening the Departmental Promotion Committee (DPC) meeting and accordingly permission was granted for constituting the DPC by proceedings dated

09.09.2015. The college constituted a selection committee and the meeting was held on 05.10.2015 wherein the University nominee did not attend the meeting. The DPC met again on 24.12.2015 and recommended the case of the respondent for appointment to the post of Principal of the college. In the meanwhile, in view of the pendency of the Contempt Case, the Commissioner of Collegiate Education issued proceeding on 28.08.2015 directing the college to appoint the respondent as in-charge Principal. The said order was challenged by the petitioner in W.P.42349 of 2015. This Court by a detailed order dated 29.12.2015 directed the official respondents not to give effect to the recommendations of the DPC for promotion to the post of Principal. However, in view of the retirement of the in-charge Principal on attaining the age of superannuation, the Commissioner of Collegiate Education issued proceedings on 31.12.2015 directing the college to appoint the respondent as in-charge Principal and accordingly proceedings were also issued by the college on 31.12.2015 posting him as Principal. However, in view of the orders passed by this Court in W.P.No.5593 of 2015 directing the college to post the senior most Lecturer as in-charge Principal, the college appointed the petitioner as in-charge Principal in the place of the respondent by proceedings dated 21.01.2016. The same is challenged in W.P.No.3117 of 2016 by the respondent. This Court, by order dated 04.02.2016, suspended the said order. Now the petitioner filed another Writ Petition, being W.P.No.17560 of 2016, challenging the proceedings dated 30.05.2016 appointing the respondent as in-charge Principal. It is not out of place to mention that two Writ Petitions, being W.P.No.12947 of 2014 and W.P.No.1434 of 2015 were filed by the respondent earlier. W.P.12947 of 2014 was disposed of on 28.04.2014 by directing the consideration of the case of the respondent in accordance with law and W.P.1434 of 2015 was disposed of as infructuous on 29.12.2015. In view of the subsequent orders issued by the authorities, W.P.No.5593 of 2015 was also disposed of by this Court on 14.06.2016 as infructuous. Now the above cases are being disposed

of by this common order as they relate to the same dispute.

Learned Counsel for the respondent, Smt.S.V.Indira, submits that the petitioner is not having Ph.D. qualification in order to become eligible for being considered to the post of Principal. She submits that in view of the UGC Regulations and the consequential Government Order in G.O.Ms.No.14, Higher Education (UE.II) Department, dated 20.02.2010, one should have the qualification of Ph.D. for being appointed as a Principal and the relaxation contained in G.O.Ms.No.47, dated 14.05.2007, cannot be applied in view of the subsequent order in G.O.Ms.No.14, dated 20.02.2010.

Learned Counsel for the petitioner submits that in view of the relaxation mentioned in note indicated in the qualifications required for the post of Principal, contained in G.O.Ms.No.47, dated 14.05.2007, his client is entitled for being appointed as the Principal without Ph.D. qualification.

In view of the aforesaid rival contentions it has to be seen whether the petitioner is qualified to be considered for being appointed as Principal of the college.

There is no dispute with regard to the seniority list prepared by the respondents and the petitioner and respondent are at serial Nos.4 and 6 respectively.

FINAL SENIORITY LIST OF TEACHING STAFF AS PER AIDED SERVICE

Sl.No.	Name of the Lecturer	Date of Birth	Date of admission into Grant-in-Aid
4	N.Sampath	09.06.1958	01.04.1991
5	P.Damodar Reddy	10.01.1959	01.04.1991
6	Dr.P.Maruthi Kumar	24.07.1962	21.06.1991

The rules applicable for the post of Principal as per A.P.Collegiate Education Service Rules issued under G.O.Ms.No. G.O.Ms.No.47, dated 14.05.2007 are as follows:

Class and Category of post	Method of Appointment	Educational Qualification
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(1)	(2)	(3)
Class B Category 1 Principal, Government Degree College	By promotion	i) Must possess a Master's Degree with a minimum of 55% of marks or its equivalent degree or grade of B in the 7 points scale with letter grades O, A, B, C, D, E & F, obtained from the Universities recognized in India. ii) Must possess Ph.D or equivalent qualification. iii) An experience of 15 years of teaching as a Lecturer in Government Degree College. Note: (a) Persons who were appointed as Lecturers on or before 01.01.86 are exempted from possessing the qualification at item (ii) above. (b) They are also exempted from possessing minimum of 55% of marks in Masters Degree. However, the percentage of marks should not be less than 50% marks in the relevant subject.

Admittedly, the petitioner and one P.Damodar Reddy shown in the above seniority list did not possess Ph.D. qualification, whereas the respondent is a Post Graduate with Ph.D. qualification. The DPC considered the case of the respondent and one Dr.E.Saraiah Dora, who is another candidate having Ph.D. qualification, and recommended the case of the respondent, being the senior between both of them. The petitioner's case was not considered by the DPC for promotion on the ground that as per G.O.Ms.No.47, dated 14.05.2007 and G.O.Ms.No.14, dated 20.02.2010, the Committee was of the opinion that one should have Masters Degree in the relevant subject with 55% of marks, Ph.D. degree in the connected subject or equivalent qualification, and an experience of 15 years as a lecturer with Grand-In-Aid.

The service rules clearly provide for possession of Ph.D. or

equivalent qualification but the note therein says that the persons who were appointed as lecturers on or before 01.01.1986 are exempted from possessing the said qualification. Admittedly, the petitioner was appointed on 30.08.1984. The final seniority list of teaching staff communicated on 02.12.2014 by the college showed the name of the petitioner at serial No.12 and that of the respondent at serial No.14. The petitioner was admitted to Grant-In-Aid on 01.04.1991, whereas the respondent was admitted to Grant-In-Aid on 21.06.1991. Even as per the final seniority list published by the college as per aided service, the name of the petitioner was at serial No.4 and the name of the respondent was at serial No.6. Thus there is no dispute with regard to the seniority of the petitioner as against the respondent based on entry in service and admission to grant in aid.

Now an argument is advanced before this Court by the learned Counsel for the respondent that for a person to be eligible to be appointed as the Principal as per G.O.Ms.No.14, dated 20.02.2010 adopting UGC Regulations, he should possess Ph.D. The learned counsel further submits that the relevant date for considering the qualifications is the date of admission of the post to Grant-in-aid but not the date of appointment. If that is taken into consideration, the date mentioned in the service rules cannot have any application.

The UGC Regulations, which deal with appointment to the post of Principal read as follows:

“4.2.0. PRINCIPAL

- i. A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) by a recognized University.
- ii. A Ph.D. Degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work and research guidance.
- iii. Associate Professor/Professor with a total experience of fifteen years of teaching /research/administration in Universities, Colleges and other institutions of higher education.

- iv. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), as set out in this Regulation in Appendix III for direct recruitment of Professors in Colleges.”

Even after the said UGC Regulations, there is no amendment to the service regulations issued in G.O.Ms.No.47, dated 14.05.2007. The issuance of G.O.Ms.No.14, dated 20.02.2010 by implementing UGC Revised Pay Scales, 2006 to the teaching staff of Universities and Colleges with effect from 01.01.2006 is only for the limited purpose of implementation of the pay scales, but it does not operate as an amendment to the Service Rules applicable to the candidates. If a particular person was appointed to a post contrary to the UGC Regulations but in accordance with the Service Rules, the said person may not be entitled to UGC pay scales. This is evident from paragraphs 7(3) and (4) of G.O.Ms.No.14, dated 20.02.2010, which read as follows:

“7. Coverage and applicability:-

...

3. These orders also applicable to such of institutions to follow the norms/regulations prescribed by UGC/their respective National Councils, provided the qualifications and other criteria are not lower than those prescribed by the UGC Regulations.
4. These scales are applicable to those university and college teachers who were under the UGC scales of pay as on 1.1.2006 and recruited thereafter and fulfilled all the eligibility criteria laid down by the UGC for the purpose in the UGC Revised Pay Scales, 2006.”

In view of the same, non-consideration of the case of the petitioner by the DPC on the ground that he did not possess Ph.D. in spite of his appointment as lecturer prior to 01.01.1986 is not in accordance with law and contrary to the Service Rules applicable to the petitioner and respondent. Admittedly, the petitioner did not possess Ph.D. and hence, he is not entitled for UGC pay scales. But, it would not disentitle him for consideration of his case to hold the post of Principal.

With regard to the other contention that the petitioner is not

entitled for the relaxation of Ph.D. qualification based on the date of admission of his post to Grant-in-aid, the relevant Rule 4 in A.P.Collegiate Education Service Rules issued under G.O.Ms.No.47 dated 14.05.2007 has to be considered. It reads as follows:

“4. Conditions of appointment:

- (i) Promotion to every post in the service shall be made on the grounds of seniority-cum-merit.
- (ii) In respect of teaching and non-teaching staff of private aided colleges taken over by the Government prior to 27-01-1982, the following procedure will be followed for absorption and seniority in Government.
 - (a) In respect of teaching staff other than Principal and non-teaching staff, 50% weightage will be given for the past aided service rendered under the private management.
 - (b) In respect of Principals, the aided service rendered by them as Lecturers will be given 50% weightage for absorption and seniority in the cadre of Principals only if he/she has completed 15 years of aided service as Lecturer on the date of absorption into Government Service. In case he/she has not completed 15 years of service, his/her absorption and seniority as Principal in Government service will be counted for the date he completes 15 years of total service in both aided and Government.”

The proceedings dated 30.12.2013 issued by the Commissioner of Collegiate Education, A.P., Hyderabad states the date of admission to Grant-in-aid as criteria for fixing the inter-se seniority among the Lecturers for the purpose of seniority. Even as per the said criteria, the petitioner is senior to respondent. But the proceedings dated 30.12.2013 cannot operate as an amendment to service rules, disentitling the petitioner from claiming exemption from possessing Ph.D. qualification based on the service rules as the relevant date for application of such relaxation is the date of appointment as Lecturer only. Hence the contention that in view of the admission of the post to Grant-in-aid at a later point of time to the appointment, the petitioner is disentitled to be considered for appointment to the post of Principal has to be rejected.

Neither the Government Pleader nor the counsel for the respondent did not produce before this Court any other order or rule, disqualifying the petitioner. In view of this, the case of the petitioner should have been considered by the Departmental Promotion Committee.

In view of the non-consideration of the case of the petitioner, the proceedings of the DPC dated 24.12.2015 are liable to be set aside and accordingly they are set aside. It is submitted across the bar that the petitioner would be retiring on 30.06.2016. In view of this, it is not necessary to issue a direction to consider his case at this juncture.

The College is directed to convene a fresh DPC meeting and consider the case of eligible persons as held above and take a decision for appointment of a regular Principal, within a period of three months from the date of receipt of a copy of this order, if there are other eligible candidates available for consideration.

All the Writ Petitions are, accordingly, disposed of.

In view of disposal of the Writ Petitions, as aforesaid, no case is made out with regard to the alleged violation of the interim order in W.P.No.5593 of 2015, and accordingly, the Contempt Case is dismissed.

The miscellaneous petitions pending, if any, in all these cases shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

20.06.2016

Note: Issue C.C in one week.

B/o.

vs