

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.16962 of 2015

Between:

G. Hemalatha

..... PETITIONER

And

The State of A.P. represented by Principal Secretary, Higher Education
Department, Hyderabad

.....RESPONDENTS

The Court made the following:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.16962 of 2015

ORDER:

This petition is filed seeking a writ of mandamus declaring the action of the respondents in preparing seniority list dated 28.04.2015 to fill up the post of Principal of the 5th respondent college by taking the date of admission of the post to grant-in-aid instead of considering the final seniority list dated 25.02.2008 vide impugned proceedings in Rc.No.Spl/2015, dated 01.05.2015 issued by the 6th respondent and consequently appointing the 7th respondent who is junior to the petitioner, as principal of the 5th respondent college as illegal, unjust, arbitrary and in violation of principles of natural justice and also in violation of Articles 14 and 21 of the Constitution of India and to issue a direction to the respondents to consider and appoint the

petitioner as principal of the 5th respondent college basing on the seniority list dated 25.02.2008.

The petitioner joined as junior lecturer (Botany) in the HIRD Junior College for Women, Narasaraopet, Guntur on 02.01.1981. The 7th respondent joined as junior lecturer (Telugu) in the same college on 30.06.1982. The college was admitted to grant-in-aid with effect from 01.09.1985 by orders in G.O.Ms.No.333, dated 21.10.1989 and the Director of Intermediate Education admitted her post to grant-in-aid with effect from 17.02.1982. On 24.01.2008 the provisional seniority list was prepared by the 6th respondent with a specific direction to submit objections if any whereunder the petitioner's name was shown at Sl.No.2 and the 7th respondent's name was shown at Sl.No.4. The petitioner was twice made in-charge principal of the college on 21.02.2012 and 08.05.2012. The services of 7th respondent were approved and her post was admitted into grant-in-aid with effect from 30.08.1982. The petitioner claims to be senior to the 7th respondent with reference to the date of initial appointment and also with reference to the date of approval of the post given by the Director of Intermediate Education.

In the provisional seniority list communicated by the 6th respondent college, the name of Smt. P. Hymavathy was shown at Sl.No.1 and the name of the petitioner was shown at Sl.No.2 and the name of the 7th respondent was shown at Sl.No.4 which is evident from the proceedings dated 25.02.2008. In the seniority list dated 25.02.2008 one Smt. S.Madhuravani, junior lecturer was placed at Sl.No.3 and therefore, the 7th respondent is not only junior to S.Madhuravani but also junior to the petitioner who was retired on 31.07.2014. Therefore, the petitioner claims that she is entitled to be selected and appointed and as a right to continue as Principal in the 5th respondent's college.

However, the 5th respondent college was admitted to grant-in-aid with

effect from 01.09.1985 by orders in G.O.Ms.No.333, dated 21.10.1989. According to the petitioner, her post was admitted to grant-in-aid with effect from 17.02.1982 along with other candidates by proceedings dated 15.03.1990 and thereafter she was paid arrears with effect from the said date.

It is the version of the petitioner that she was kept in charge of the post of the principal right from 1985 till 16.05.2015 in different spells. Recently, she was made in-charge principal of the college i.e. by proceedings dated 21.02.2012 and 08.05.2012 and she also worked as in-charge principal with effect from 01.07.2012 to 16.08.2012 and from 31.07.2014 to 16.05.2015.

Smt.P.Hymavathy who was principal of the college was retired on 30.06.2012. According to the petitioner, as per the final seniority list her case has to be considered for the post of principal of the college as she is the next senior-most junior lecturer eligible to be promoted as principal. Considering the same, the 6th respondent i.e. Special Officer of the 5th respondent college rightly appointed the petitioner as in-charge principal by orders dated 30.07.2012 though the petitioner was eligible to be appointed as principal on regular basis. It is submitted by the petitioner that suppressing all these facts, Smt.S.Madhuravani filed W.P.No.32660 of 2012 challenging the proceedings dated 30.07.2012 wherein the petitioner was appointed as principal in-charge of the 5th respondent college and obtained ex-parte orders on 30.06.2012. In view of the orders passed by this Court in the said writ petition, Smt.S.Madhuravni was appointed as principal in-charge of the 5th respondent college by proceedings dated 30.10.2012. The said proceedings were challenged by the petitioner in W.P.No.37408 of 2012 and both the writ petitions were directed to be heard together. While so, Smt.S.Madhuravani who continued as in-charge principal retired on 30.04.2014 and on account of her retirement, both the writ petitions became infructuous and they were dismissed.

It is further submitted by the petitioner that after the retirement of

S.Madhuravani, the 7th respondent was appointed as in-charge principal of the 5th respondent college with effect from 01.05.2014 vide proceedings dated 29.04.2014. According to the petitioner, appointing the 7th respondent as in-charge principal is illegal since the petitioner is senior to Madhuravani. The 7th respondent in the meanwhile retired from service on 31.07.2014 on attaining the age of superannuation. Therefore, the petitioner was appointed as in-charge principal of the 5th respondent vide proceedings dated 31.07.2014 and assumed charge and was continued as in-charge principal.

Subsequently, the Amendment to Section 78-A was brought to A.P. Education Act, 1982. As per the Amendment, the age of superannuation of the teachers was raised to 60 years instead of 58 years. By virtue of the said Amendment, the 7th respondent was re-inducted into service and was again appointed as principal of the 5th respondent college. Challenging the said proceedings, the petitioner filed W.P.No.1021 of 2012 wherein this Court by order dated 27.01.2015 suspended the proceedings dated 20.01.2015 and directed the petitioner to continue as in-charge principal, however, directed the respondents to take appropriate steps at the earliest to fill up the post of the principal of the college on regular basis as it is an aided post and an educational institution cannot be effectively and efficiently run without there being a regular incumbent in the head of the institution. Thereupon, the 5th respondent got the 7th respondent selected as regular principal of the 5th respondent college basing on the direction issued by the learned single judge in the interim orders dated 27.01.2015. Thus, the 7th respondent was appointed as regular principal of the 5th respondent college vide proceedings dated 01.05.2015 basing on the seniority list dated 28.04.2015 prepared by the 6th respondent as per the admission of post to grant-in-aid.

The grievance of the petitioner is that the seniority has to be counted basing on the final seniority list dated 25.02.2008 but not basing on the seniority list dated 28.04.2015. It is submitted by the petitioner that before

issuing the seniority list dated 28.04.2015, no notice was issued to any of the affected parties including the petitioner. Therefore, it is contended that the entire exercise which resulted in the appointment of 7th respondent as principal of the college is vitiated by *mala fides* apart from being violative of principles of natural justice.

The other contention urged by the petitioner is that the 7th respondent who was retired from service on 21.07.2014 cannot be considered as senior to the petitioner and therefore, cannot be appointed as principal of the 5th respondent college. Thus, according to the petitioner, a person who retires from service is not entitled for any seniority on her reappointment.

Under the above circumstances, the petitioner filed the present writ petition seeking the aforementioned relief.

The principal contentions urged by the respondents in the counter affidavit filed by the respondents 1 to 4 and 7 in their respective counter-affidavits filed by them are that as per the Act 37 of 2005 the unaided service rendered by the teaching and non-teaching staff of private aided junior college shall not be taken into consideration for the purpose of fixation of pay, automatic advancement scheme and pension as it involves huge financial implication to state exchequer. Accordingly, Act 26 of 2006 was enacted. As per the said Act, the increments earned by the employees of the private aided junior colleges prior to the date of admission into the grant-in-aid which were taken into consideration for the purpose of fixation of pay in the aided post shall be cancelled and the pay has to be revised accordingly.

In view of the aforementioned two Acts, the seniority has to be counted only from the date on which the post is admitted to grant-in-aid. According to the respondents, the post of the petitioner and the 7th respondent are admitted into grant-in-aid on the same date i.e. on 01.09.1995. The 7th respondent being older in age to the petitioner, she is selected and appointed as principal of the college. It is further contended by them that to the seniority list dated 01.09.1995 the petitioner has not submitted any objections.

Therefore, she cannot file the present writ petition assailing the appointment of the 7th respondent as principal of the college.

I have heard Sri S. Ramchander Rao, learned Senior Counsel representing Sri K.R. Prabhaker learned counsel appearing for the petitioner, learned Government Pleader for Higher Education (Andhra Pradesh) appearing for the respondents 1 to 6 and Sri G.Vidyasaar representing Smt.K.Udaysri and Sri P. Sudheer Rao, learned counsel appearing for the respondent No.7.

There is no denial to the fact that by following the Act 37 of 2005 and the Act 26 of 2006 in the Junior College for Women, Narsaraopet, Guntur District, the increments earned by the employees prior to the admission to the post/person into grant-in-aid have been recovered and their pay was re-fixed. The increments earned by some of the employees are also being deducted from the pensionary benefits at the time of their retirement.

It is true that the petitioner is senior to the 7th respondent. The date of approval of appointment of the petitioner is 17.02.1982; whereas the date of approval of appointment of 7th respondent is 30.08.1982. But, both of them were admitted to grant-in-aid on the same date i.e. on 01.09.1985. The learned single Judge of this Court though suspended the earlier appointment order of the 7th respondent by interim order dated 27.01.2015 in W.P.No.1021 of 2015 gave liberty to the respondent college to take steps for taking up appointment of principal on regular basis. Therefore, when once the regular appointment of the principal is taken up by the college, the interim order passed by the learned single Judge ceases to have any effect.

The only question which has to be determined in the present writ petition is as to whether the appointment of the 7th respondent as principal of the college is violated or not.

The Act 37 of 2015 and the Act 26 of 2006 are operational and has not been struck down by any competent Court. According to these Acts, seniority

has to be reckoned from the date on which the post of the petitioner and 7th respondent were admitted to grant-in-aid, but not from the date of their original appointment or from the date on which their posts were approved. The crucial date is the date on which their posts were admitted to grant-in-aid. Both of them were admitted to grant-in-aid on 01.09.1985. Admittedly, the 7th respondent is older to the petitioner. Therefore, the promotion made by the 5th respondent college is in accordance with the Act 37 of 2015 and the Act 26 of 2006.

For the foregoing reasons, this Court is of the considered view that there are no valid grounds to set aside the seniority list dated 28.04.2015 and the proceedings dated 01.05.2015 issued by the 6th respondent appointing the second respondent as the principal of the 5th respondent college.

The writ petition, therefore fails and the same is dismissed without any order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 15 .03.2016
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R.KANTHA RAO,J

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Date: 15-03-2016

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