

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.2177 of 2013

In

WP.No.16688 of 2013

And

WP.No.16688 of 2013

COMMON ORDER :

Heard the counsel for petitioner and Sri C. Balajee, counsel for respondents.

2. Yogi Vemana University at Kadapa was established on 09.03.2006 by Act No.28 of 2006. After establishment of the University, teaching staff and non-teaching staff were required for functioning of the University. Therefore, the said University approached the State Government for creation of teaching and non-teaching posts in the said University.

3. The then Government of Andhra Pradesh issued G.O.Ms.No.222 dt.22.07.2006, permitting creation of teaching and non-teaching posts in the said University.

4. The University Engineer addressed a letter dt.01.06.2007 to the Vice-Chancellor of the said University stating that certain engineering staff was required in the Engineering Department to prepare estimates, design, call for tenders and entrustment of works and their execution.

5. One such post recommended for filling up was post of Assistant Engineer (Electrical).

6. Accordingly, the 1st respondent issued advertisement vide Reference No.Advt.Est.04/07 dt.02.07.2007 for the post of Assistant Engineering (Electrical) in the scale of pay Rs.8,815/- – Rs.18,805/-, besides Dearness Allowance and House Rent Allowance and other allowances as applicable to University employees. The said advertisement prescribed a qualification of B.Tech (Electrical) or equivalent, experience of two years and a maximum age of 34 years.

7. The petitioner possessed a Bachelors of Technology in Electrical and Electronics Engineering from Sri Venkateswara University, conferred on him on 08.12.2007. He applied for the said post, and a call letter dt.18.08.2007 was issued to him to appear for interview on 10.09.2007 at 10:00 a.m. The petitioner was selected for the said post, but curiously in the appointment letter dt.12.09.2007, issued by the 1st respondent, it is mentioned that petitioner is appointed on temporary basis as Assistant Engineer (Electrical) on consolidated payment of salary of Rs.8,000/- per month. It is further stated that his appointment is liable for termination at any time, without any prior notice and without assigning any reason therefor.

8. No reason is assigned in the appointment letter dt.12.09.2007 why the petitioner was appointed on consolidated pay on temporary basis when the advertisement published on 05.07.2007 indicated that

the selected candidate would be appointed in the regular scale of pay of Rs.8,815/- to Rs.18,805/-, and that he would also be paid Dearness Allowance, House Rent Allowance and other allowances.

9. It is not in dispute that petitioner was appointed against a sanctioned post, and this is also reflected in the Minutes of the Executive Council Resolution dt.24.02.2009 ratifying his appointment.

10. The petitioner had made several representations to the 1st respondent stating that he is still getting only a consolidated pay of Rs.8,000/- instead of regular scale of pay, and he should be paid the regular scale of pay. The University Engineer made an endorsement dt.16.08.2008 and also another endorsement dt.29.07.2008 on petitioner's representation dt.28.07.2008 made to the 1st respondent recommending that the petitioner be paid the pay scales as per the guidelines of the University.

11. Subsequently, also the petitioner made several representations on 05.06.2009, 21.10.2009, 28.07.2010 and 22.11.2010, and since the respondents did not react favourably, he was constrained to approach this Court by filing the present Writ Petition, seeking a direction to the respondents to pay him the pay and allowances in the regular scale, and pay appropriate Dearness Allowance, House Rent Allowance and other allowances as revised from time to time, apart from increments and other consequential benefits.

12. On 13.06.2013, in WPMP.No.20235 of 2013 in this Writ Petition, this Court noted that the respondents had issued a notification to fill up the regular post with regular pay scale with House Rent Allowance and other allowances, and the respondents were therefore not justified in issuing an appointment order on consolidated pay. It directed the respondents to pay minimum scale applicable to the post of Assistant Engineer (Electrical) within a period of six (06) weeks from that day.

13. WVMP.No.2177 of 2013 has been filed by respondents to vacate the said order.

14. In the counter-affidavit annexed to the Vacate Stay Petition it is stated for the first time that though the petitioner was asked to attend the interview conducted by the Selection Committee of the University for the post of Assistant Electrical Engineer, during the interview, the Selection Committee had not recommended his name for regular appointment but due to exigency of work the petitioner was accommodated on consolidated pay of Rs.8,000/- per month, which was later enhanced to Rs.9,700/- with effect from July, 2010. It is further stated that his services were converted into time-scale employee as per resolution dt.19.02.2011 of the Executive Council vide Resolution No.D-7 with effect from 01.01.2011 comprising of Rs.15,280/- as pay plus 24% Dear Allowance of Rs.3,793/-, totaling to Rs.19,073/-. It is stated that at the time of filing of Vacate Stay Petition, he is drawing pay plus Dearness Allowance of Rs.23,659/- as

on June, 2013. It is also contended that petitioner's appointment order dt.12.09.2007 indicated that his appointment is purely on temporary basis on a consolidated pay of Rs.8,000/- per month, and having accepted the appointment on the said basis the petitioner cannot now seek the present relief.

15. The material placed on record by respondents does not indicate that when the petitioner was appointed on 12.09.2007 he was not found suitable for appointment in the regular post of Assistant Electrical Engineer. The Minutes of the Selection Committee, finding the petitioner not suitable, have not been placed on record. If this contention of the respondents was really true and the petitioner was not found suitable for appointment as Assistant Electrical Engineer, the appointment order dt.12.09.2007 would not have been issued, appointing him on temporary basis on consolidated pay of Rs.8,000/- per month. That apart, his services could not have been converted into a time-scale employee as per resolution of the Executive Council dt.19.02.2011 vide Resolution No.D-7 and he could not have been paid Rs.19,073/- consisting of pay of Rs.15,280/- plus Dearness Allowance of Rs.3,793/-.

16. The very fact that petitioner was paid a pay scale pursuant to the Resolution dt.19.02.2011 with effect from 01.01.2011 indicates that the petitioner was suitable for the regular appointment as Assistant Electrical Engineer, but was arbitrarily and illegally appointed only on temporary basis without any valid basis.

17. The salary statement of petitioner for the months of January, 2011, February, 2011 and June, 2013 show that pay of Rs.15,280/- was granted to petitioner along with modified Dearness Allowance, but why House Rent Allowance and other allowances were denied to petitioner is not explained by respondents.

18. Having acted arbitrarily in appointing the petitioner as a temporary employee after advertising for regular post of Assistant Electrical Engineer, and extracting work from him for the last nine years without implementing pay-scale and other allowances as promised in the notification in the advertisement dt.02.07.2007 published on 05.07.2007, the respondents are *estopped* from contending that petitioner cannot maintain the Writ Petition seeking regular pay-scale and allowances such as Dearness Allowance, House Rent Allowance and the like, which are applicable to University employees. If this is permitted it would be allowing perpetuation of a gross illegality and allowing the respondents to take advantage of their own wrong.

19. Therefore, the Writ Petition is allowed with costs of Rs.5,000/-, and the respondents are directed to pay the petitioner the pay and allowances in the regular scale of pay of Rs.8,815/- to Rs.18,805/- along with Dearness Allowance and House Rent Allowance and other allowances as revised from time to time, apart from increments and other benefits applicable to regular employees of the said University.

20. This exercise shall be completed within a period of eight (08) weeks from the date of receipt of a copy of this order.

21. Consequently, WVMP.No.2177 of 2013 is dismissed.

22. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-10-2016

Ndr/*

