

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.13116 OF 2011

DATE : 09.06.2017

Between :

V.Sudha Rani W/o.Sri V.Subbaiah,
Typist, Aged about 43 yrs,
H.No.2-3-512/134/1/B, Bapunagar, Amberpet,
Hyderabad & others.

..

Petitioners

And

Potti Sri Ramulu Telugu University,
Hyderabad, rep., by its Registrar & Others.

..

Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

The petitioners are aggrieved by the action of respondents in not extending the benefits of pay revision as per Ninth Pay Revision Commission recommendations, notified by the Government vide G.O.Ms.No.137 dated 28.04.2010. The Director of State Audit refused to grant clearance to the University for extension of benefit of revised pay scales to the petitioners. The decision of the Director, State Audit Department was communicated in the form of letter dated 11.03.2011 addressed to the Registrar, Potti Sreeramulu Telugu University, Hyderabad, impugned in this writ petition. Vide said letter, the University was informed that the petitioners were not recruited by following the procedure of direct recruitment and the request made by the University to Government to ratify the action of the University on the recruitments made by them is yet to be acted upon by the Government and therefore, pay scales of 2010 cannot be extended to the petitioners.

2. Facts on record disclose that petitioners were initially appointed on daily wage basis as Typists, Junior Assistants and Data Entry Operators respectively. Petitioners were agitating for regularization of their services. In response to the letter of University dated 24.11.1987, Government vide its letter No.4244/UE3/87-3 dated 28.01.1988, granted permission to the University to make appointments to teaching and non-teaching posts sanctioned to University, but those appointments were directed to be made by direct recruitment by drawing candidates

from the employment exchange or by advertisement or in any other manner that may be prescribed by the Syndicate.

3. Taking cue from the last portion of the order, the matter was considered by the Syndicate of the University and resolution was passed by the Syndicate prescribing the procedure for recruitment to various posts mentioned in the resolution such as U.D. Stenographers, Junior Assistants, Typists, Attenders etc., and the number of posts to be filled up for respective categories. The syndicate prescribed procedure for inviting applications from the candidates working on daily wage basis and selections to be made based on their performance in the written/practical test for 25 marks, weightage for qualification, weightage for service rendered in the University and performance in the entire duty period, subject to fitting into communal roster.

4. Petitioners responded to the notification issued on 01.02.1995. Based on the performance in the written examination, interviews were conducted on 18.02.1995. The Selection committee assessed the performance of the candidates participated in the selection and has drawn out the list of selected candidates from out of number of candidates participated in the selection. Based on the selections so conducted, petitioners were initially appointed on temporary basis on 04.03.1995 and after completion of two years of service, holding that the services rendered by them as satisfactory, their services were regularized and probation was declared. Consequent to declaration of their probation, they have become permanent employees of the University and have been working in the said capacity. Petitioners

claim that as they have been working in the University service, they are entitled to pay scales applicable to the posts in which they are working.

5. Thus, the only issue is, whether petitioners are entitled to benefit of pay revision and whether pay revision can be denied on the ground that ratification sought by the University is not granted by the government and that their appointment is not regular.

6. Heard Senior Counsel Sri G.Vidyasagar for Smt.K.Udaya Sri, learned counsel for the petitioners and learned Special Government Pleader for respondents 2 and 3 and learned Standing counsel for the 1st respondent.

7. Learned senior counsel Sri G.Vidyasagar, extensively referred to various orders and correspondence leading to declaration of probation and continuation of service of the petitioners.

8. He submits that in consequent to the order of the Government dated 28.01.1988, the Syndicate of the University prescribed procedure to fill vacancies and after going through the selection process as prescribed by the Syndicate, petitioners were appointed and therefore, their appointments were validly made, petitioners have become regular employees of the University and thus are entitled to all consequential benefits including extension of scales of pay as revised from time to time and not granting pay scales is illegal.

9. He further submits that the objection raised by the audit is not valid and audit could not have raised objection merely on the

ground that University has written letter in the year 2001 seeking ratification on the decision of the University in making appointment of the petitioners and merely because Government has not made any decision, the claim of the petitioners for extension of pay scales cannot be denied.

10. By referring to the provision in Section 4 of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (for short 'Act 2 of 1994'), he submits that the procedure followed by the Syndicate is in accordance with Section 4 (2) of the Act 2 of 1994 and therefore, their appointments are valid and legal and therefore, petitioners are entitled to all benefits flowing from their regular appointment. There was no illegality or irregularity committed by the University to deny the pay fixation benefits to the petitioners.

11. Learned senior counsel alternatively submits that admittedly, petitioners services have been regularised, working and discharging their duties and responsibilities attached to the post. As long as they are working, they are entitled to pay and allowances as applicable to the post in which they are working. Denying the revision of pay scales to them while applying the same to others amounts to arbitrary exercise of power and illegal. He further submits that there was no requirement to ask for ratification and merely because the University asked for ratification, the status of the petitioners cannot change to deny them the benefits of revision of pay scales.

12. Learned Special Government pleader submits that Act, 2 of 1994 envisages procedure for selection through open recruitment notification or notification through employment exchange. In the instant case, that procedure was not followed. The recruitment was confined to employees working in the University on daily wage/temporary basis and therefore, the recruitment process undertaken by the University is not in tune with the mandate of Act, 2 of 1994. He therefore submits that since the selection process undertaken by the University is not in accordance with the provisions of Act, 2 of 1994, such appointments cannot be stated as validly made and therefore, petitioners are not entitled to the benefits as claimed by them.

13. Having regard to the manner of selection process undertaken by the University, correspondence made by the Director of Audit and his subordinates is only in tune with the provisions of Act, 2 of 1994 and unless the irregularities noticed by the Audit as agreed by the University is cured by way of appropriate orders of the Government, petitioners are not entitled to the benefits as claimed by them. He further submits that Government issued orders in G.O.Ms.No.275 dated 14.12.1995 which require prior sanction by the Government before regularizing services of any daily wage employee. Since petitioners initially worked on daily wage basis, the orders passed by the University appointing them on permanent basis amounts to regularization of their services and such regularization was in violation of the scheme notified vide G.O.Ms.No.212 and the Government orders on the subject and their appointments cannot be treated as regular.

14. Learned Special Government Pleader, therefore justifies the objection raised by the audit and unless and until the appointments made by the University are ratified by the Government, no financial benefits as claimed by the petitioners can be granted.

15. The basic facts are not in dispute. Petitioners were initially appointed on daily wage basis, they have participated in the process of selection initiated by the University in pursuant to the orders of the Government dated 28.01.1988 and after the selection process undertaken by the University they were appointed on 04.03.1995 and their probation was declared on 01.04.1997. Petitioners have been working in the University service for 22 years after their appointment on 04.03.1995 and have rendered considerable service prior to such appointment. Petitioners are paid the pay and allowances as applicable to the post in which they are working. They were also granted the benefits of earlier revision of pay scales and only 2010 Pay revision benefits and subsequent pay revision benefits are not extended to them.

16. The sum and substance of the stand of the petitioners as well as respondents is based on the language employed in Section 4 of the Act, 2 of 1994, more particularly Sub-clause 'b' of Section 4 (1). Section 4 (1) (a) & (b) reads as under :

4. (1) No recruitment in any public service to any post in any class, category or grade shall be made except

(a) from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Commission where the post is within the purview of the said Commission.

(b) from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders issued in that behalf.”

17. plain reading of Sub-clause (b) would show that the Act, 2 of 1994 envisages conducting of selection and preparation of panel by the Selection Committee constituted for the purpose in accordance with the relevant Rules and Orders issued in that behalf. The Government accorded sanction for filling up the vacancies by proceedings dated 28.01.1988. In this order of the Government, Government authorised the University either to make an open advertisement or to notify to the employment exchange or to fill up vacancies in any other manner prescribed by the Syndicate. It is not in dispute that the Syndicate considered the issue and has laid down procedure of selection. The said procedure as laid down by the Syndicate was fully applied before the petitioners were selected and appointed.

18. Having regard to the provision in Section 4 extracted above, and the procedure followed by the University, it cannot be said that the appointment of petitioners is not in accordance with the mandate of the Act, 2 of 1994. The scheme of regularization formulated in G.O.Ms.No.212 envisages regularization of services of employees who have rendered a minimum service of five years as on 25.11.1993. Subject to fulfilment of conditions mentioned therein, regularization can be granted by the competent authority without subjecting them to any selection process. In order to streamline the regularization of claims, Government has issued orders from time to time including orders in G.O.Ms.No.275 dated 14.12.1995. The scheme formulated in G.O.Ms.No.212 is an

exception to the method of recruitment prescribed in Section 4 of the Act, 2 of 1994. Thus, if a person seeks regularization and the same is granted in accordance with G.O.Ms.No.212, he need not undergo the process of selection as required under Section 4 of the Act, 2 of 1994.

19. In the instant case, the services of the petitioners were not regularized by applying the scheme in G.O.Ms.No.212. But they were appointed after following the procedure as indicated by the Syndicate which decision is pursuant to the orders of the Government dated 28.01.1988. Since Government has already authorized the syndicate to prescribe the procedure of selection, the syndicate has indicated the procedure of selection, where under the selection of petitioners were made, there is no requirement for ratification again by the Government as sought to be projected by the audit in their objection. Merely because University sought for ratification in the year 2001 cannot give leverage for the audit to raise an objection without regard to the manner in which the selections were conducted. It is not in dispute that the University is an independent authority. However, University has to follow the norms prescribed by the Government and as noticed from the record of the Writ Petition those norms are observed.

20. At this stage, it is also appropriate to notice that the selection of petitioners is not under challenge and that the Government has not nullified the selections made.

21. It is also appropriate to note that an employee by name S.Ajayvardhan Reddy, working in the respondent-University filed

W.P.No.26129 of 1998. It appears he raised specific objection on regularization of service of petitioners even though petitioners have not completed five years of service by 25.11.1993.

22. Responding to the said contention, in Paragraph 7 of the counter affidavit filed on behalf of the Government in the said writ petition, it was stated as under:

“In reply to para 7 of the affidavit, it is not correct to state that the services of Sri M.Ramulu, Smt.V.Sudha Rani, Sampath Kumar and Ramesh were regularized as Jr.Assts/Typists, etc., though they have not completed 5 years of service as on 25.11.93. Sri Ramesh completed 5 years before 25-11-93 and hence his services were regularized as per G.O.Ms.No.212. The others were recruited after following the procedure for recruitment but their services were not regularized with reference to G.O.Ms.No.212, dt.22-4-94. Similarly, the services of the Juniors to the petitioners i.e., Venkata Malla Reddy, Rathan Jee, Sampath Kumar were not regularized in terms of G.O.Ms.No.212, but they were recruited as Typists after following the procedure for recruitment. Therefore, no injustice was done to the petitioners.”

23. A reading of the above extract would show that Government treated the appointment of petitioners as regular and that their appointments were not as per the provisions of scheme formulated in G.O.Ms.No.212.

24. Having regard to these facts, it cannot be said that ratification is necessary and merely because no ratification is given by the Government the appointments made by the University in the year 1995 are not valid.

25. The correspondence between the University and the Audit department would show that the audit department was stretching itself to go deep and probe in to the manner in which the selections were conducted, as if it was investigating into the selections made. What is required by the audit, as per Section 5 of the Act, 2 of 1994 is to verify whether appointments made are in accordance

with Section 4. In the facts as noted above, it cannot be said that the appointments made are not in accordance with Section 4, more particularly with reference to the role of audit, in these matters. At the most the Audit Department could have appraised the government and solicited its orders.

26. I would have appreciated if the Government has raised such objection soon after proposals were received from the University in the year 2001 for ratification, even assuming that the appointments made in the year 1995 were not strictly in compliance with Section 4 and there was irregularity in the procedure followed, as sought to be contended by the special Government pleader. Government was sitting tight on the proposals for more than 16 years and no reasons are forthcoming why it has kept quiet and allows its audit wing to arm twist the University.

27. Having regard to the fact that such appointments were made in the year 1995 and even before such appointments, considerable service was rendered by the petitioners, at this distance of time, on the said alleged irregularity in the selection process, the appointments made in the year 1995 cannot be declared as invalid, only to deny the pay revision benefits. Thus, it is not equitable to subscribe to the contentions urged by the learned Special Government pleader, more particularly with reference to application of pay revision benefits. It is not in dispute that the petitioners have been working and pay revision benefit is extended to all other employees working in the same posts in which petitioners are working. As long as petitioners are working, their

entitlement to pay attached to the post cannot be denied. It is also appropriate to note that even though the University wrote a letter on 04.07.2001 seeking ratification, assuming such ratification is necessary, Government cannot sit over on that issue for 16 years and on the ground that Government has not given ratification, authority acting on behalf of the Government cannot refer to the said issue and deny the benefits of pay revision.

28. Having regard to the above findings, I am of the considered opinion that the objection raised by the audit is not valid and the same is liable to be set aside.

29. Accordingly, the impugned order is set aside and the writ petition is allowed. The respondents 2 and 3 are directed to approve the pay fixation of the petitioners in the Pay Revision Commission, 2010 pay scales as per the notification issued by the Government in G.O.Ms.No.137 Finance (P.C-I) Department dated 28.04.2010. Such exercise shall be completed within a period of two 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.

9th June, 2017
Rds

P.NAVEEN RAO,J

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