

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.22396 of 2006

ORDER:

This writ petition is filed seeking to declare the proceedings of the 2nd respondent dated 16.01.2005 and Memo dated 21.08.2006 of the 1st respondent, as illegal, arbitrary and to direct respondents 1 and 2 to regularise the services of the petitioners as Class-IV employees in the 3rd respondent college with effect from 07.10.1994 with consequential benefits thereon.

2. The brief facts of the case according to the petitioners are as follows:

The 1st petitioner was working as Watchman, the 2nd petitioner was working as Waterman and the 3rd petitioner was working as Sweeper in the 3rd respondent college with effect from 22.12.1985. The posts in which they were working are contingent posts and they were converted into Class-IV category and admitted into grant-in-aid under G.O.Ms.No.170, Education (CE II-2) Department dated 12.07.1990. The 2nd respondent vide proceedings dated 17.12.1994 allowed the minimum scale of pay with effect from 07.10.1994 and since then the petitioners have been requesting the authorities to regularise their services. The 2nd respondent by proceedings dated 20.05.2000 called for service particulars of the contingent employees who are admitted and allowed to draw the minimum pay. Pursuant to the said proceedings, the 3rd respondent college sent the proposals with the particulars of the petitioners to the 2nd respondent on 07.06.2000. As the petitioners were not regularised, they filed a Writ Petition No.36187 of 1998 seeking a direction for absorption into aided services from the date of granting of

minimum time scale of pay with effect from 07.10.1994 and also for granting of consequential benefits. Counter-affidavit was filed by the respondents to the said writ petition stating that the petitioners case has to be considered only in terms of G.O.Ms.No.212 dated 22.04.1994 for regularisation of services. The said writ petition was disposed of by an order dated 26.12.2003 directing the respondents therein to regularise the services of the petitioners either under G.O.Ms.No.212 dated 22.04.1994 or under G.O.Ms.No.362 dated 07.10.1994 with effect from 7.10.1994 on which date minimum time scales were fixed. The 2nd respondent filed a Writ Appeal No.1864 of 2004 against the order passed in W.P.No.36187 of 1998 and the said writ appeal was disposed of by a judgment dated 2.12.2004 directing respondents 1 and 2 therein to consider the case of the petitioners in terms of G.Os which are applicable to them and pass appropriate orders. While disposing off the said writ appeal, the respondents were also directed to keep in view the aspect that the juniors of the petitioners in other institutions were already regularised in service long ago. Pursuant to the directions of the Division Bench of this Court, the 2nd respondent herein by proceedings dated 16.01.2005 rejected the case of the petitioners for regularisation on the ground that the admission of the petitioners was made during the ban period by the 3rd respondent and hence the petitioners are not eligible for regularisation of their services in terms of G.O.Ms.No.212 dated 22.04.1994 and also on the ground that the petitioners have not complied with the conditions under G.O.Ms.No.112, Finance & Planning (FW.PC.III), Department dated 23.02.1997. With regard to similarly situated persons who were also appointed during the ban period, Government issued G.O.Ms.No.107 dated 09.10.2001 regularising their services in terms of G.O.Ms.No.212 dated 22.04.1994. As the

respondents have not taken into consideration the direction of the Division Bench of this Court that the cases of the petitioners should be considered on par with the juniors whose services were already regularised, the petitioners were constrained to file C.C.No.488 of 2006 before this Court. In view of the orders passed by the 1st respondent dated 21.08.2006, C.C.No.488 of 2006 was closed giving liberty to the petitioners to challenge the proceedings. Hence, the present writ petition.

3. A counter-affidavit has been filed by the 2nd respondent on behalf of respondents 1 and 2. The contentions in the counter affidavit are as follows:

The petitioners were employed in the 3rd respondent college as part time employees on 28.12.1985. The 2nd respondent vide proceedings dated 23.10.1994 called for the particulars of part time Junior Lecturers/ Part time contingent employees from the Principals of Government Junior College/ Correspondents of Private Aided Junior Colleges in the State for fixing of pay in minimum of the time scale of pay attached to their posts in terms of G.O.Ms.No.362 Education dated 07.10.1994. In response to the same, the 3rd respondent has sent proposals. Subsequently, the 2nd respondent, basing on the said proposals, allowed minimum time scale of pay to the petitioners, whose pay was fixed @ Rs.1375/- in terms of G.O.Ms.No.362 dated 07.10.1994 by proceedings dated 04.01.1995. The scheme of regularisation of services and payment of minimum scale issued in G.O.Ms.No.362 dated 07.10.1994 and G.O.Ms.No.328 dated 15.10.1997 are only applicable to the part time Junior Lecturers working in private aided junior colleges basing on their workload, sanctioned posts and other conditions laid down therein. So, the 2nd respondent later found that the minimum

scale of pay of Rs.1375/- allowed to the petitioners working in the 3rd respondent college is irregular, since the contents of G.O.Ms.No.362 dated 07.10.1994 are not applicable to the non-teaching staff, particularly, to the “part time contingent employees” in the 3rd respondent college. The contention of the petitioners that they were working as full time contingent employees in the 3rd respondent college is not correct. The Government has formulated a scheme for regularisation and absorption of the services of part time employees vide G.O.Ms.No.112 dated 23.07.1997, according to which, the part time employees should have put in ten years of service and are continuing as on 25.11.1993, only are to be regularised and hence the petitioners are not eligible for regularisation of their services in terms of G.O.Ms.No.112 dated 23.07.1997. In terms of G.O.Ms.No.362 dated 07.10.1994, the petitioners working in the 3rd respondent college are not eligible to be paid minimum scales, since the same was issued only in respect of part time Junior Lecturers working in private aided junior colleges, but not extended to non teaching staff, particularly, to the contingent staff. Pursuant to the directions of this Court in Writ Appeal No.1864 of 2004, speaking orders were passed rejecting the claim of the petitioners on 16.01.2005. It is further stated that the G.O.Ms.No.212 is applicable to the contingent employees only and as the petitioners are part time contingent employees they are not eligible for regularisation of their services. Sri M.C. Raju and two other contingent staff were appointed as Full time contingent employees and they have filed W.P.No.17206 of 1999 before this Court for conversion of their services as Class-IV employees. This Court by order dated 04.06.2010 directed the respondents to consider the claim of the employees for conversion into Class-IV employees as per Government Memo dated 23.09.1985.

Subsequently, the Commissioner of Intermediate Education, Telangana State, Hyderabad vide proceedings dated 09.10.2014 converted their services as Class-IV employees. Later the Government of Telangana in their Memo dated 27.07.2015 have instructed the Commissioner of Intermediate Education, Telangana State, Hyderabad to review the orders of conversion of the services of Sri M.C. Raju and two others. The contention of the petitioners for absorption as the Class-IV employees as was done in the case of the petitioners in W.P.No.17206 of 1999 cannot be considered since the Government Memo dated 23.09.1985 was not in force after issue of G.O.Ms.No.212 and since petitioners were appointed as part time contingent employees in the year 1985 and prayed for dismissal of the writ petition.

4. Heard the learned counsel for the petitioners and the counsel for respondents 1 & 2 and perused the original record. Even though, notice was served on the 3rd respondent, there is no representation either in person or through counsel.

5. The writ petition came up for admission on 13.10.2006 and notice before admission was ordered.

6. During the pendency of the writ petition, W.P.M.P.No.3871 of 2015 was filed by the petitioner to consider the case of the petitioners for conversion of their services as Class-IV employees in the last grade services in the 3rd respondent's college with effect from 17.12.1994 pending disposal of the writ petition. The said W.P.M.P was directed to be listed along with the writ petition.

7. The first Writ Petition No.36187 of 1998 was filed by the petitioners 1) to declare the action of the respondents for not paying the

salary due to the petitioners from July, 1998 as illegal, 2) to declare that the petitioners are entitled for absorption into aided services from the date of granting time scale of pay, 3) to direct the respondents to regularise the services of the petitioners as Class-IV employees with effect from 07.10.1994. As seen from the record, a counter affidavit has been filed by the respondents to the said writ petition, wherein it is stated that the petitioners are part time contingent employees and were allowed to draw the minimum of scale vide proceedings dated 04.01.1995 based on the scheme laid in G.O.Ms.No.362 Education dated 07.10.1994 which is found irregular now. It was prayed to dispose of the writ petition with a direction to the petitioners to approach the respondents for regularisation of services and under the scheme formulated under G.O.Ms.No.212 dated 22.4.1994 (if they are other wise eligible) as the orders issued earlier under G.O.Ms.No.362 Education dated 7.10.1994 are not applicable to them. The said Writ Petition No.36187 of 1998 was disposed of on 26.12.2003 observing as follows:

“It is immaterial whether the petitioners are governed by the terms of G.O.Ms.No.212 dated 22.04.1994 or G.O.Ms.No.362 dated 07.10.1994, so far as the regularisation of their services is concerned. In view of the specific admission by the respondents that the petitioners are entitled for regularisation of services in terms of G.O.Ms.No.212 dated 22.04.1994, I deem it fit to direct the respondents to regularise the services of the petitioners either under G.O.Ms.No.212 dated 22.04.1994 or under G.O.Ms.No.362 dated 07.10.1994 with effect from the date their services were fixed in the time scale. It is further directed that till the petitioners' services are regularised, they shall be paid salaries in the time scale only.”

8. Respondents herein filed Writ Appeal against the said order i.e., W.A.No.1864 of 2014, which was disposed of on 02.12.2004. In para No.3 of the judgment it is observed as follows:

“The order of the learned single Judge was modified with a direction that their cases shall be considered, as per the terms of the G.O.Ms.Nos.112 or 212 or other G.Os. as are applicable to them and pass appropriate orders.” It was further observed that “the contention of the respondents therein that their juniors in other institutions were already regularised in service long ago also should be kept in view while considering the case of the respondents.”

9. Pursuant to the orders of the Division Bench of this Court in W.A.No.1864 of 2004, the second respondent vide orders dated 16.01.2005 rejected the case of the petitioners for regularisation on the ground that the petitioners were appointed during the ban period in 1985 and secondly, on the ground that petitioners did not complete ten years of service as on 25.11.1993 in accordance with G.O.Ms.No.112 Finance & Planning (P.W.PC.III). But vide G.O.Ms.No.107 Higher Education (CE.III) dated 09.10.2011, Government regularised the services of 25 individuals who were appointed during ban period. The said G.O says “contingent employees” and not “full time contingent employees”. The second ground that they are not eligible in accordance with G.O.Ms.No.112 is also tenable because the petitioners are seeking regularisation under G.O.Ms.No.212.

10. After filing of the Contempt Case, Memo dated 21.08.2006 was issued by the 1st respondent rejecting the case of the petitioners for regularisation. Those two orders are impugned in the present writ petition.

11. The contention of the writ petitioners in the present writ petition is that in the impugned order dated 21.08.2006 of the 1st respondent did not properly consider the aspect that similarly situated persons were issued orders of regularisation vide G.O.Ms.No.107 Higher Education

Department dated 09.10.2001 and that the petitioners were discriminated. As seen from the impugned order dated 21.08.2006, the first respondent has discussed the issue of similarly situated persons i.e., the case of one Mr. K. Raja Rao. As seen from the impugned order, the services of the said K. Raja Rao were regularised along with 24 others. It is stated in the order dated 21.08.2006 that they fulfilled the conditions laid down in G.O.Ms.No.212 dated 22.04.1994, whereas the petitioners in this case did not fulfil the conditions laid down in the said G.O. or G.O.Ms.No.112 and hence their services were not regularised. The impugned Memo dated 21.08.2006 merely states that K. Raja Rao and 24 others, fulfilled the criteria and the petitioners did not fulfil the conditions laid down in G.O.Ms.No.212 Finance dated 22.04.1994. It does not say as to how the petitioners are different from K. Raja Rao and others. The impugned order says that the petitioners are part time contingent workers as evidenced by their deposition in affidavit filed in the Writ Petition No.36187 of 1998 and the orders of the Writ Appeal No.1864 of 2008 dated 02.12.2004. The impugned order shows that the 1st respondent relied upon the affidavit filed in the Writ Petition No.36187 of 1998 and the order in the Writ Appeal No.1864 of 2004 dated 02.12.2004 and comes to a conclusion that they are part time contingent employees. The said conclusion that they are part time contingent workers is based on the above two recitals.

12. The contention of the learned counsel for the petitioners is that even though the impugned order states that the case of the petitioners is that they are part time contingent workers as evidenced by their deposition in the affidavit filed in the Writ Petition No.36187 of 1998 and the orders of this Court in Writ Appeal No.1864 of 2004, they never stated in their affidavit filed in the Writ Petition No.36187 of 1998 that

they are the part time contingent employees. When the original record is verified, it contains the affidavit in Writ Petition No.36187 of 1998 wherein it is stated that the petitioners were working as Water Men and that they were appointed by the proceedings dated 28.12.1985 of the 3rd respondent. It was further stated that the Government framed a scheme for regularisation of persons appointed on Daily Wages/ N.M.R/ Part Time Contingent/ Consolidated pay subject to fulfilment of certain conditions stipulated in G.O.Ms.No.212. It is not stated in the said affidavit that petitioners are part time contingent employees. Secondly, the impugned order relies upon the judgment in Writ Appeal No.1864 of 2004 dated 02.12.2004. In the said judgment in the introductory para, it is stated thus:

“It is their case that they were appointed in 1985 and they have been continuously working as part time contingent employees.”

13. The petitioners contend that it was never their case that they were working as part time contingent employees in any of the pleadings, and that it is the case of the appellant therein that the petitioners herein are part time contingent employees. The case of the petitioners was rejected by the respondents mainly on the ground that they are part time contingent staff but the record shows that they are contingent staff without mentioning as to whether they are full time contingent staff or part time contingent staff.

14. The proceedings of the Director of Intermediate Education, Hyderabad, second respondent, dated 17.12.1994 also describe the petitioners as “contingent employees” at the time of allowing minimum of the scales with effect from 07.10.1994.

15. Vide proceedings dated 20.05.2000, the 2nd respondent sought particulars of “contingent employees”, who were admitted and allowed to draw minimum scales in terms of G.O.Ms.No.362 Education dated 07.10.1994. In reply thereto, the 3rd respondent addressed a letter dated 07.06.2010 to the 2nd respondent giving particulars of the petitioners describing them as “contingent employees”. In these proceedings they were not shown as part time contingent employees. The impugned order dated 21.08.2006 says ‘admittedly’ the petitioners are appointed as part time contingent employees, when it is never the case of the petitioners.

16. W.P.M.P.No.3871 of 2015 is filed by the petitioners seeking a direction to respondents 1 and 2 to consider their case for conversion as Class IV employees in the last grade service in the 3rd respondent college with effect from 17.12.1994 pending disposal of the main writ petition.

17. In the counter affidavit, respondent Nos.1 & 2 have stated that the Government Memo dated 23.09.1985 is not in force after issuance of G.O.Ms.Nos.212 and 112 and the Government vide Memo dated 27.07.2015 have instructed the 2nd respondent to review the orders of conversion of services of Sri M.C. Raju and two others. Hence the prayer in the W.P.M.P.No.3871 of 2015, cannot be considered.

18. As the respondents themselves have shown the petitioners as “contingent employees” and not “part time contingent employees” as discussed above, and as the impugned order did not properly consider the case of the petitioners, the impugned orders are set aside and the respondents are directed to verify afresh and consider the case of the petitioners for regularisation in terms of G.O.Ms.No.212 dated 22.04.1994 and pass appropriate orders.

19. Accordingly, the writ petition is allowed setting aside the proceedings of the 2nd respondent dated 16.01.2005 and Memo dated 21.08.2006 of the 1st respondent. However, the respondents are directed to verify afresh and consider the case of the petitioners for regularisation in terms of G.O.Ms.No.212 dated 22.04.1994 and pass appropriate orders. No order as to costs.

20. Consequently, the Miscellaneous Petitions pending, if any, shall also stand closed.

KONGARA VIJAYA LAKSHMI, J

Date:21.11.2017.
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HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.22396 of 2006



Date:21.11.2017

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