

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.9321 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to call for the records related to the Proceedings in Pc.No.614/ Admn.IV-I/ 08, dated 25-03-2008, issued by the 2nd respondent/ Commissioner/ Director of Collegiate Education, State of Telangana, rejecting the claim of the petitioner for absorption against Grant-in-aid post of Watchman in Sri Visweswara Sanskrit Andhra Kalasala being represented by its Secretary-cum-Correspondent, i.e., the respondents 4 and 5, and consequently direct the respondents 1 to 5 to absorb the petitioner and ratify his services in the post of Watchman or in any other Class IV post in a clear aided vacancy of the said Kalasala.

2. I have heard the submissions of *Sri Sadu Rejeswara Reddy*, learned counsel for the petitioner and of the learned Government Pleader for Higher Education (State of Telangana) appearing for the respondents 1 to 3. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was initially appointed as an Attender, on 01.02.1997, in Sri Visweswara Sanskrit Andhra Kalasala, (hereinafter, 'Kalasala'), which was an un-aided college. Later, he was promoted by the Selection Committee, by its order, dated 29.10.2001. The 4th respondent issued proceedings dated 29.11.2002. By virtue of the said proceedings, the petitioner, who was working as a Watchman in unaided post, was brought into aided post, i.e., in a clear aided vacant post of Watchman in the said Kalasala, through resolution, dated 06.11.2004. As per the resolution, the petitioner was appointed in the vacant

aided post of Watchman in the college. All other persons whose names were reflected in the said resolution were absorbed and they are getting pay scale from time to time; however, the petitioner was getting consolidated payment. The said action of the respondents is discriminatory and is in violation of Article 14 and 39 (d) of the Constitution of India. This petitioner is not being paid the equal pay for equal work. Due to the death of one K.Shankaraiah on 21.10.2001, a clear vacancy of aided Watchman post was created prior to the above proceedings. The petitioner's salary is being paid through his Account No.11786 of Central Bank of India, Warangal. In spite of his absorption from unaided post of Watchman to the aided post of Watchman with effect from 29.10.2001, the petitioner is still drawing the consolidated salary of Rs.1,000/- per month and also enhanced salary. Nonetheless, the petitioner is entitled to pay scale in aided post of Watchman, with effect from 29.11.2002 along with difference of pay and arrears of salary. The petitioner passed SSC, on 29.01.1987, and is fully qualified. The 4th respondent, Secretary-cum-Correspondent of the Kalasala absorbed the petitioner from unaided post of Watchman to the post of Watchman in the Kalasala with effect from 29.11.2002 and another proceeding, dated 23.11.2004, was also issued by the 4th respondent. The petitioner has put in more than eleven years of service. The Secretary-cum-Correspondent and the Principal of the Kalasala, by letter dated 07.11.2002, addressed to the 2nd respondent requested for absorption of the petitioner in the vacant post of Watchman, who has been working as Attender. Thus, the petitioner has been working as an Attender on temporary basis on a consolidated pay of Rs.1,000/- with effect from 01.02.1997 is undisputed. The said salary was enhanced from time to time. The post of Attender fell vacant due to retirement of one S.Pentaiah on 13.01.1996. The petitioner requested for regularization of his services in the said vacant post, as he had completed more than five years of service as an Attender. The College Committee having discussed the issue and keeping in view the services rendered by the petitioner

regularized his services in the post of Attender, which has fallen vacant. The 4th respondent submitted proposal and the 2nd respondent issued orders appointing one K.Yadalaxmi as Attender on compassionate grounds as her husband, K.Shankaraiah, had expired while in service and thus she was appointed as Attender on compassionate grounds. When the aided post of Watchman fell vacant in the Kalasala, the petitioner is to be considered for absorption by ratifying his appointment to the post of Watchman in a clear aided post. Hence, the 4th respondent sought permission to absorb the services of the petitioner in the post of Watchman on regular basis as the petitioner is fully qualified and fulfilling all requirements for absorption in the aided post of Watchman in the Kalasala. The 4th respondent again recommended through letter, dated 23.11.2004, requesting the 2nd respondent for absorption of the petitioner from the post of Attender into clear aided post of Watchman in the Kalasala. Thus, the 4th respondent sought permission twice for absorption of the services of the petitioner in aided post of Watchman in the Kalasala. The petitioner is also entitled to absorption as per G.O.Ms.No.170, dated 12.07.1990 and G.O.Ms.No.226 dated 22.06.1992, wherein, relaxation is given in respect of contingent employees appointed during the ban period and the Department of Collegiate Education is permitted to regularize their services and to admit them to Grant-in-aid with effect from 16.04.1990. The 5th respondent, Principal of the Kalasala, issued a certificate stating that the petitioner is working from 01.02.1997 as Watchman; and as on the date of filing of the writ petition, the petitioner has put in 11 (eleven) years of service; and thus, he is entitled for absorption/ratification of his appointment in the clear aided post of Watchman in the Kalasala. The petitioner filed W.P.No.21688 of 2005 and this Court, by its order dated 01.02.2008, directed to consider the case of the petitioner for regular absorption in the aided post of Watchman as per the recommendation of the 4th respondent, vide letters, dated 07.01.2003 and 23.11.2004, and pass appropriate orders within a period of eight weeks.

Thereafter, the 2nd respondent issued impugned proceedings, dated 25.03.2008, rejecting the claim of the petitioner for grant in aid post and hence, present writ petition is filed challenging the said proceedings.

4. The submissions in the counter of the Commissioner of Collegiate Education filed on behalf of the respondents 1 and 2, in brief, are as follows:

The initial appointment of the petitioner is itself irregular as he is neither a candidate sponsored by the Employment Exchange nor was he appointed as per the prevailing recruitment procedure. Under the prevailing recruitment procedure, at the time of recruitment, a Government nominee should be present. The management has appointed him against the non-existing vacancy and later brought him into aided post after the existing watchman had expired. As per the orders of this Court, dated 01.02.2008, in W.P.No.21688 of 2005, the proposal of the 4th respondent in respect of the writ petitioner's services has been examined as per the Government Orders in G.O.Ms.No.212, Finance & Planning (FWPC.III), dated 22.04.1994, for absorption of the petitioner, Watchman (un-aided), against the Grant-in-aid post and the orders rejecting the request were issued. The said rejection orders were issued by the Commissioner of Collegiate Education; vide proceedings in R.c.No.614/ Admn.IV-1/ 08, dated 25.03.2008. The petitioner has again filed the present writ petition questioning the said proceedings, dated 25.03.2008. The appointment of the petitioner, on 24.01.1997, as Attender is on *ad hoc* basis and it was made by the management of the Kalasala without the prior permission of the Department. Therefore, the said appointment is irregular. As per proceedings Rc.No.4996/ PC.I-4/ 95, dated 18.09.1995, of the Director of Collegiate Education, the managements of private aided colleges should identify the anticipated vacancies that may arise in next three or four months and send proposals seeking permission to fill up the posts in the format given in annexure 'A' for Teaching and 'A-1' for non-teaching posts. The kalasala had not obtained prior permission from the

Department for filling up of the said post. Hence, the appointment is purely unaided and is between the management and the petitioner. The department has also not paid any remuneration or salary to the petitioner. Therefore, the question of absorption or regularization does not arise. The college was established during the year 1950 and subsequently got admitted to Grant-in-aid during the year 1959, vide proceedings, dated 29.01.1959, of the Director of Public Instruction. The Government admitted certain unaided colleges started prior to 1985 to grant in aid during the year 1990-91 and the staff working against these posts were also admitted to Grant in aid. However, most of the contingent employees who were working in the college were appointed during the ban period and therefore, for such employees, Government issued orders, vide G.O.Ms.No.226, dated 22.06.1992, to admit these employees to Grant-in-aid with certain conditions. G.O.Ms.No.226, dated 22.06.1992, is not applicable to the petitioner as it was issued in respect of the contingent employees working in unaided colleges admitted to Grant-in-aid during the year 1990-91. The Government issued G.O.Ms.No.226, Education (CE.II-1) Department, dated 22.06.1992, permitting the Director of Higher Education to regularize the services of contingent employees appointed during the ban period in the colleges, which are admitted to Grant-in-aid during the year 1990. The Kalasala did not follow the prescribed procedure as mentioned in G.O.Ms.No.1119, Education, dated 18.12.1976. There is no proof to show as regards the criterion on which the petitioner was appointed. The petitioner was appointed as Attender on 01.02.1997 in the College in an Un-aided post. The Government issued G.O.Ms.No.212, dated 22.04.1994, formulating a scheme for regularization and absorption of daily wage/NMR working in Government offices and Local Bodies, and Public Sector undertakings and decided to regularize the services of such persons, who worked continually for a minimum period of five years and are continuing as on 25.11.1993. Though the said GO is not applicable to the petitioner, the then Commissioner has

considered his case as per the said GO. However, as the petitioner did not fulfill the conditions of the said GO as he has not completed minimum period of five years of service as on 25.11.1993 and his date of appointment being 01.02.1997, the case of the petitioner was rejected. Hence, the writ petition may be dismissed.

5. The petitioner while reiterating his pleaded case in the writ petition filed a reply affidavit stating *inter alia* that he rendered services against the clear post of watchman and that he has put in more than 19 years of service and that since he has put in more than a decade of service, he is entitled for absorption and that he was selected by the Selection Committee in the presence of a Government nominee and, therefore, his appointment cannot be ignored or brushed aside as irregular and that since the petitioner is working in clear aided vacancy, G.O.Ms.No.226, dated 22.06.1992, is also relevant and applicable to his case.

6. I have bestowed my attention to the facts and submissions. I have perused the material record including the proceedings of the Commissioner of Collegiate Education, dated 25.03.2008, G.O.Ms.No.212, dated 22.04.1994, proceedings of Collegiate Education, dated 18.09.1995, G.O.Ms.No.226 dated 22.06.1992 and G.O.Ms.No.1119, dated 18.12.1976.

7. Admittedly, the petitioner was working as an Attender on temporary basis on consolidated pay with effect from 01.02.1997 in Kalasala of the respondents 4 and 5. The 4th respondent, who is the Secretary-cum-Correspondent of the Kalasala, by his letter dated 23.11.2004, while adverting to the earlier correspondence stated that one vacancy of the post of Attender was caused due to the retirement of one Pentaiah, Attender, on 13.01.1996 and that the petitioner has requested the Kalasala to regularize his services in the vacant post of Attender, since he has completed five years of continuous service and that the committee of the College has discussed the issue and

resolved to regularize the services of the petitioner in the vacant post considering his services. Thus, the Kalasala sent proposal for according permission to regularize the services of the petitioner. However, the Director of Higher Education issued orders, vide proceedings, dated 14.11.2002, to appoint one Yadalaxmi as Attender on compassionate grounds as her husband, K.Shankaraiah, expired while in service. However, after her appointment on compassionate grounds, the post of Watchman has fallen vacant; and hence, a further request was made to consider for regularization of the services of the petitioner in the aided vacant post of watchman which vacancy was caused due to the death of K.Shankaraiah, Watchman. Thus, he sought regularization as a watchman instead of as an Attender. Therefore, the 4th respondent/ Correspondent of the Kalasala made a request to the Director of Collegiate Education, by letter dated 24.11.2004, to accord permission to absorb the services of the writ petitioner as Watchman on regular basis since the post of Watchman has fallen vacant and the petitioner is fulfilling all the requisite qualifications and other requirements for absorption. Since 1997, the petitioner is still continuing in the services of the Kalasala. The petitioner seeks absorption to the aided post of Watchman as per G.O.Ms.No.170, dated 12.07.1990 and G.O.Ms.No.226 dated 22.06.1992 in terms whereof, the contingent employees appointed during the ban period were regularized by giving relaxation and were admitted into Grant in Aid post with effect from 16.04.1990. The petitioner also brought to the notice of the Court the proceedings in Letter Dis.No.Rc.3698/ PC/ 3-4/ 96, dated 30.11.1996, whereby in the circumstances stated in his letter, dated 15.11.1996, Secretary, ABV Degree College, Janagon, and as per orders issued in GO Ms. No. 226, the Commissioner Collegiate Education approved the appointment of T.Narasimha Swamy against converted Class IV post as a water boy in the private aided college, i.e., A.B.V. Degree College, Jangaon. The said appointment was in the scale of Rs.238/- + DA. The said proceedings relating to the appointment of

T.Narsaimha Swamy as a water boy in A.B.V.Degree College, Jangaon, clearly indicate that the Commissioner of Collegiate Education approved the appointment of the said Narasimha Swamy against the converted Class IV post. In the counter filed, the fact of the said benefit being extended to the said water boy of the said college, who is similarly placed as that of the petitioner, is not denied.

8. Learned counsel for the petitioner also brings to the notice of the Court the fact that the petitioner is now aged about 48 years. The petitioner, who was initially appointed as Attender, in an unaided post, on 01.02.1997, on a consolidated pay is being continued for quite some time against the aided post of Attender and on his selection for appointment in the vacant aided post of Watchman in the college as per the proceedings of the Selection Committee, dated 06.11.2004. However, his case for regularization in the aided post of Attender was not considered by the authority, in view of the orders of the Commissioner/ Director of Collegiate Education, appointing one Yadalaxmi as Attender on compassionate grounds as her husband, K.Shankaraiah, Attender, expired while in service. On her appointment as Attender on compassionate grounds, now the post of Watchman has fallen vacant on the death of K.Shankaraiah, Watchman. Therefore, the 4th respondent, Secretary-cum-Correspondent of the Kalasala made a request to the Director, Department of Collegiate Education, to accord permission to absorb the services of the petitioner in the post of Watchman. It is not in dispute that the petitioner is qualified and is having requisite qualifications and in the past, some such cases were considered by the authorities concerned for regularization.

9. Viewed thus, this Court finds that sufficient case is made out for granting the relief and that therefore, writ petitioner has to succeed.

10. In the result, the Writ Petition is allowed and the impugned proceedings in Rc.No.614/ Admn.IV-1/ 08, dated 25.03.2008, are hereby set aside and the

respondents are directed to absorb the petitioner in the post of Watchman or in any other Class IV post in a clear aided vacant post and extend to him the benefit of pay scale and all the eligible service benefits from the date of such absorption. The necessary exercise in this regard shall be completed within two months from the date of receipt a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

12th April, 2017
RAR

M. SEETHARAMA MURTI, J

