

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION Nos. 22466, 22479 & 22494 of 2011

WP No. 22466 of 2011

Between :

Dr N.J Prameela Subhashini W/o Dr Shivaraj
51 years Asst Professor in Chemistry
Department of Chemistry, University College of Technology
Osmania University, Hyderabad

.... Petitioner

And

The Registrar,
Osmania University,
Hyderabad and others

Respondents

.....

JUDGMENT PRONOUNCED ON :05-09-2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? :

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**+W.P. Nos. 22466, 22479 & 22494 of 2011

% 05-09-2017

WP No. 22466 of 2011

#Dr N.J Prameela Subhashini W/o Dr Shivaraj
 51 years Asst Professor in Chemistry
 Department of Chemistry, University College of Technology
 Osmania University, Hyderabad

....petitioner

Vs.

\$ The Registrar,
 Osmania University,
 Hyderabad and others

.....

Respondents

!Counsel for the petitioner : Sri Y V Ravi Prasad

Counsel for the Respondents: Sri Deepak Bhattacharjee, Sr Counsel for
 Sri S Laxmikanth

<Gist :

>Head Note:

? Cases referred:
 (1994) 1 SCC 169
 (2010) 8 SCC 372

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 22466, 22479 & 22494 of 2011

Date :05.9.2017

WP No. 22466 of 2011

Between :

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The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION Nos. 22466, 22479 & 22494 of 2011****COMMON ORDER:**

Heard Sri Y.V.Ravi Prasad, learned senior counsel for petitioners and Sri Deepak Bhattacharjee, learned senior counsel for respondent Osmania University.

2. In these three writ petitions, grievance of the petitioners is not considering service rendered by them on ad-hoc basis for the purpose of extending Career Advancement Scheme benefits (for short CAS). Since the issue being similar in all the three writ petitions, they are disposed of by this common order. For the sake of convenience, facts in W.P. No. 22479 of 2007 are taken into consideration.

3. Petitioner obtained M.Sc degree in the year 1989; M.Phil in the year 1991 and P.hd in the year 1994. Petitioner claims that he worked between 1992-1994 as Part-time Lecturer in Department of Statistics in Osmania University. After undergoing process of selection, he was selected by duly constituted selection committee of University College for Women, Koti (for short Women's college) and was appointed on a consolidated pay as Lecturer in Statistics on 9.8.1995 to ad-hoc post. He continued to work in the said post till he was regularly appointed. In pursuant to recruitment notification issued by the University in the year 2006, the petitioner was selected and appointed as Assistant Professor in Statistics and joined in the Department of Statistics in Osmania University. Petitioners in W P No. 22466 and 22494 of 2011 were appointed as Lecturers in Chemistry on ad-hoc basis vide orders dated 17.9.1993 and worked in the said capacity from 17.9.1993 to 14.5.2007 continuously without any break. They were regularly selected as Assistant Professors and joined in the University service on 14.5.2007.

4. University Grants Commission (for short UGC) introduced periodical financial upgradation/elevation to teaching faculty more as incentive and to remove stagnation. UGC notified guidelines for consideration of claims to grant such financial upgradation. After the revision of Pay Scales in the year 2006, fresh set of guidelines were notified. The post of Assistant Professor is in Academic Grade Pay (for short AGP) of Rs.7000/-; Assistant Professor (Senior scale) in the AGP of Rs.8000/-; Associate Professor in AGP of Rs.9000/- and Professor in AGP of Rs.10000/-. Assistant Professor with AGP of Rs.7000/- and possessing P.hd degree is eligible to move into AGP of Rs.8000/- after completion of 5 years of service.

5. The guidelines also prescribe computation of the past service for consideration under CAS. Under the heading of **Counting of Past Service for Promotion under CAS**, there are 8 paragraphs prescribing various conditions of eligibility. The controversy in these writ petitions revolve around the various conditions prescribed in said paragraphs.

6. In December 2007, notification was issued calling for applications for extension of the benefits of CAS. Petitioners were not considered for extension of the said benefit. In the year 2008 and in December 2010 similar notifications were issued; though petitioners responded but they were not selected. Their representations to ascertain the reasons for not considering request were not responded, compelling the petitioners to invoke the jurisdiction of this Court. Petitioners seek extending the benefits of CAS by placing them in AGP of 8000/- attached to the post of Assistant Professor (senior scale) from the year 2007 and AGP Rs.9000/- in the post of Associate Professor from the year 2010 and to release all the consequential benefits.

7.1. According to learned senior counsel Sri Y V Ravi Prasad, the Women's college is autonomous institution; as it requires teaching faculty to fill positions in teaching faculty, it constituted a selection committee; petitioners were selected and appointed on adhoc basis in the year 1995, pursuant to the regular selection process conducted by the duly constituted selection committee; and they are entitled to seek computation of ad-hoc service for the purpose of extension of benefits under the CAS. Not counting said service, by relying on provision in Section 43 of the A.P. Universities Act, 1991 (for short the Act, 1991) by the University is erroneous. According to senior counsel such provision is applicable only when regular appointments are made by the University and provision has no application for ad-hoc appointments. Ad-hoc appointment is made at the college level. In support of his contention, he placed reliance on Clauses (b), (e) and (f) of CAS guidelines.

7.2. He further submitted, for similarly situated persons their past service was computed to extend the benefits of CAS whereas petitioners were denied and same amounts to discrimination. In support of his contention, he placed reliance on documents filed in material paper booklet granting extension of the scales to those officers. He submitted that similarly situated Lecturers instituted W.P Nos. 10043, 10533 and 10534 of 1993 praying to grant direction to regularize their services as Lecturers in Physics and resorting to continue them as Part Time Lecturers as illegal. The claim of the petitioners therein was resisted by the University on the ground that they were not selected by Selection Committee as contemplated under Section 43 of the Act 1991, therefore their selection is not valid and are not entitled to seek regularisation of their services. This objection of the University was overruled and directions were issued for their regularization. Consequential orders of regularization were issued regularizing their service. After regularizing their services, they were also granted benefits of CAS from

22.9.2007. The order of granting such benefit was issued on 29.11.2008, copy of which is enclosed in material paper booklet at pages 126/127. By reading the said order, learned senior counsel would submit that Dr N Krishnan was appointed as Associate Professor on regular basis only in the year 2007 and on account of computation of past service only he was made eligible to CAS benefits from 22.9.2007. The fact that University resisted their initial claim in the writ petitions of the year 1993 on the ground that they were not selected in accordance with Section 43 of the Act 1991 would show that those persons are also similarly situated to that of the petitioners. To buttress his contention, learned senior counsel read out the averments made in paragraphs 4 and 5 of the affidavit filed in support of the writ petitions, wherein the nature of appointments made by the Women's college and their entitlement for consideration have specifically averred. In response to the said averments, in the counter affidavit it is contended that petitioners were appointed by the Women's college selection committee, which is not duly constituted selection committee, whereas, as per Section 43 of the Act, 1991 and UGC norms, the duly constituted selection committee comprises of Vice Chancellor as Chairman, Dean of the Faculty as Member etc. He therefore submitted that plea raised against the petitioners in the present writ petition is similar to the plea raised before this Court in 1993 writ petitions filed by similarly situated persons. Thus, when benefits of CAS could be extended to the similarly situated persons, denial of the same to the petitioners amounts arbitrary exercise of power and authority.

7.3. Learned senior counsel also placed reliance on another incident where such benefit was granted i.e., with reference to Mr.T.V.Durga Prasad Rao whose application form for grant of CAS benefits is enclosed to material paper booklet at page 162. The tabulated statement in paragraph 10 of the said application form would disclose

that Mr T V Durga Prasad Rao was appointed as Part-Time Lecturer in the year 1993 and continued as Part Time Lecturer till he made such application. His application was considered and he was granted the benefits of CAS by computing past service, as can be seen from the order of the University dated 11.1.2010.

7.4. He further submitted that contention of the University that they were appointed as Academic Consultants is also erroneous; petitioners were appointed as ad-hoc Lecturers. In support of said stand appointment orders/ certificates issued by the college are enclosed.

8.1. Sri Deepak Bhattacharjee learned senior counsel appearing for University submitted that petitioners were initially appointed on ad-hoc basis and consolidated pay paid to them was far less than what was prescribed as one of the eligibility criteria in the guidelines, therefore they cannot claim themselves to be working in Rs.7000/- scale to get into Rs.8000/- scale.

8.2. He would further submit that they were not selected after undergoing regular process of selections. While they were appointed on regular basis, specific clause was incorporated, which reads, "The appointment for the purpose of any service benefits including seniority shall be from the date of joining only". Thus, past service prior to their regular appointment which was made in the year 2007 cannot be computed for the purpose of any other service benefits which includes grant of CAS.

8.3. By referring to Clauses (e) and f-(ii) and (iii) of the guidelines he would submit that in order to acquire the eligibility for computation of the past service even on ad-hoc basis what is required is person must have undergone prescribed selection process as laid down by the regulations of the University. Though Women's college is autonomous institution but it functions under Osmania University and all the

regulations of the University are applicable to Women's college. According to the regulations of the University duly constituted selection committee has to be headed by Vice Chancellor as Chairman. Since petitioners were selected by selection committee constituted by the institution, their selection is not valid and in terms of this Clause, they are not entitled to compute past service.

8.4. He would further submit that whenever a person is appointed to University service, order of appointment has to be signed by the Registrar of the University, whereas, in the instant case, appointment orders were issued by the Director of the College and not even by the Principal of the Women's college; further as per Clause f-(iii) incumbent ought to have been selected to permanent post in continuation to ad-hoc or temporary post, whereas in the cases on hand, there was break in service before they were appointed on permanent basis. He would therefore submit that said appointments cannot be treated as valid appointments to qualify such service for eligibility under the scheme.

8.5. With reference to contention that the teachers who earlier instituted writ petitions in 1993 are similarly situated, learned senior counsel contended that those teachers were appointed as ad-hoc teachers by the University and subsequently appointed under Section 43-A of the Act, whereas in the case on hand, the ad-hoc appointment was not made by the University and therefore there is no similarity.

8.6. He further submitted that in matters of selections and determination of eligibility criteria, the writ Court cannot re-appreciate the evaluation of eligibility made by the administrative authorities/academic bodies. In the instant cases the competent authority found that petitioners did not fulfill the required eligibility criteria and therefore did not extend the benefits of CAS. In support of his contention, he placed reliance on **The Chancellor and another Vs.**

Dr.Bijayananda Kar and others¹ and Basavaiah (Dr). Vs. Dr.H.L. Ramesh and others².

9.1. In reply, learned senior counsel Sri Y V Ravi Prasad contended that when petitioners were appointed on adhoc basis, basic pay of Lecturer was Rs.2200 and by adding Dearness Allowance it was fixed at Rs.4488/-. The grade pay was revised subsequently and grade pay as applicable at the point of time when they were appointed on ad-hoc basis was not less than the grade pay indicated in the guidelines.

9.2. By once again reiterating the averments of respondents in paragraphs 5 and 6 of the counter affidavit, he would submit that only on the ground that the selections were made by the committee constituted at the institution level and said committee was not in compliance with the requirement of Section 43 of the Act,1991, the claim of petitioners to count their adhoc service for eligibility to grant benefits of CAS was denied and no other ground was urged. He further submitted that this was the stand of the University in the 1993 writ petitions instituted by other Lecturers, which was not accepted by this Court and therefore by parity of reasoning the same does not stand the test of judicial scrutiny.

9.3. By referring to Clause (h), he would submit that UGC guidelines clearly mandate that no distinction should be made with reference to nature of management of the institution where previous service was rendered in counting the past service.

10. He raised serious objection on the contention of the learned senior counsel Sri Deepak Bhattacharjee that their appointments were not made by the University and that all such appointments in the University service have to be signed only by the Registrar of the

¹ (1994) 1 SCC 169

² (2010) 8 SCC 372

University and their appointment was not on ad-hoc basis. According to learned senior counsel no such plea was raised in the counter affidavit of the University and therefore same cannot be urged in the oral submissions without affording due opportunity. On this learned senior counsel Sri Deepak Bhattacharjee fairly submits that said contention was not raised in the counter affidavit filed on behalf of the University.

11. It is not in dispute that petitioners were appointed after undergoing process of selection by a committee constituted at the institution level. The University does not deny the fact that a committee was constituted and petitioners were assessed by said Committee and based on the recommendation of the said committee petitioners were appointed, initially on ad-hoc basis. In the writ petitions instituted in the year 1993 the claim of petitioners to regularize their services, was resisted by the University on the ground that they were not appointed after undergoing the process of selection by duly constituted selection committee as required under Section 43 of the Act, 1991. The said objection was over-ruled and directions were issued. In pursuance to the directions issued by this Court, their services were regularized. Documents enclosed in the material paper booklet would show that they were not only granted regularization in terms of the directions issued by this Court, the service rendered by them prior to regularization was also computed for the purpose of grant of CAS benefits. In other words, though the University took the same objection on the nature of appointments made to those Lecturers prior to regularisation, but University computed the service rendered prior to their regular appointments for the purpose of extending the CAS benefits. The documents concerning the appointment and grant of benefits to Mr T V Durga Prasad Rao would also show that Mr T V Durga Prasad Rao was earlier working as part time Lecturer but he was regularised and service

rendered by him prior to regularization was extended for the purpose of extension of CAS benefits.

12. Thus, the objection of the University by relying on the provisions of Section 43 of the Act, 1991 to deny past service for the purpose of computation of the eligibility is not valid. It is also appropriate to note at this stage that Section 43 of the Act, 1991 envisage mechanism for making regular selections to the University service. It is nobody's case that petitioners were appointed regularly prior to 2007. Petitioners were appointed on adhoc basis initially, continued to work on that basis till they were regularly appointed. Petitioners seek computation of adhoc services to claim the benefits of the CAS formulated by UGC. Thus stand of the University that petitioners were not appointed on ad-hoc basis by duly constituted selection committee as per Section 43 of the Act, 1991 is not valid.

13. The respective contentions of the learned senior counsel are on Clauses (b), (e), (f) and (h). To appreciate the stand of the University, it is necessary to consider the scope of relevant clauses of UGC guidelines.

14. Relevant clauses which prescribe eligibility read as under:

(b).. The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.

.....

(e).. The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/Concerned Institutions, for such appointments.

(f).. The previous appointment was not as guest lecturer for any duration, or an adhoc or in a leave vacancy of less than one year duration. Ad-hoc or temporary service of more than one year duration can be counted provided that:

(i).....

(ii). The incumbent was appointed on the recommendation of duly constituted selection committee and

(iii) the incumbent was selected to the permanent post in continuation to the adhoc or temporary service, without any break.

.....

(h). No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), for counting past services under this clause.

15. According to Clause (b), the post in which Lecturer was working should be an equivalent grade or in pre-revised scale of pay of post of Assistant Professor (Lecturer) etc. According to the senior counsel appearing for petitioners, the pre-revised basic pay of Lecturer was at Rs.2200/- and by adding the Dearness Allowance the starting pay given to them was Rs.4488/- and same was equivalent. No other material is brought on record by the University to show that petitioners were not working in the equivalent grade/scale of pay. I am therefore of the opinion that the petitioners fulfilled this requirement.

16. According to Clause (e), the post in which they were appointed on adhoc basis must be by prescribed selection process as laid down by the regulations of the concerned institution. In the instant case, concerned institution was Women's college and it is an autonomous institution. The University also accepted the fact that selection committee was constituted at the institution level and that selection committee selected the petitioners. The selection was on ad-hoc basis. No material is brought on record to show that Women's college was not authorized to constitute its own selection committee and make selections. University was aware of appointment of petitioners. The University has not nullified those selections. At any rate, at this point of time, the University cannot raise plea that initial appointment of the petitioners was not by duly constituted selection committee. Thus, for the limited purpose of computation of past service rendered by petitioners on ad-hoc basis the said service cannot be ignored on this premise.

17. Clause (f) recognizes that ad-hoc appointment for more than one year duration can be treated as valid appointment for the purpose of computation of the past service. There are three requirements for application of this clause; (1) the period of service should be more than

one year; (2) incumbent was appointed on the recommendations of the duly constituted selection committee; and (3) incumbent was selected to the permanent post in continuation to the adhoc or temporary service without any break. The record would disclose that petitioners satisfied all the three conditions. Thus, they are entitled to compute ad-hoc service for the purpose of acquiring the eligibility for the purpose of extension of CAS.

18. In the counter affidavit, the principal objection raised by the University was that the committee constituted by the institution to select petitioners on ad-hoc basis in the year 1995 was not in tune with the mandate of Section 43-A of the Act, 1991 and UGC regulations. As noted above, even in the case of earlier appointments same objection was raised by the University but they were extended the benefit by computing the adhoc service/part time service rendered prior to their regular appointments. Present stand of the University cannot stand the test of judicial scrutiny, having regard to the judgment of this Court in W.P Nos.10043, 10533 and 10534 of 1993 and extending the benefits to those Lecturers in compliance thereof/otherwise as the case may be. It amounts to arbitrary exercise of power and falls foul of mandate of Article 14 read with Article 16 of the Constitution of India. Having regard to the earlier appointments made and benefit granted to others, University cannot be permitted to take such a plea each time when claim is made. In the facts of the case, I am of the considered opinion that university is unnecessarily resorting to avoidable litigation.

19. The decisions relied upon by the learned senior counsel for University have no application to the facts of the cases on hand. In case of **Basavaiah (Dr)** selection of appellants to the posts of Reader in Sericulture was opposed on the ground that they were not qualified. The committee appointed by the University thoroughly scrutinized

qualifications, experience, published works of both candidates, made recommendation for their appointments. The Division Bench of the High Court set aside their appointment. Question for consideration was whether these two appellants before the Supreme Court were qualified to be appointed as Readers in Sericulture. Supreme Court observed that Division Bench was not justified in sitting in appeal over the unanimous opinion of the expert committee. Supreme Court further observed that Courts have to show deference and consideration to the recommendation of an Expert committee consisting of distinguished experts in the field upheld the decision of the University by reverting the decision of the High Court.

20. In **The Chancellor and another**, a day after the selection, three members of the selection committee objected to the selection of Dr. Prafulla Kumar Mahapatra. Over-ruling the said objection, he was appointed. Said appointment was challenged. Objection on the suitability of Dr. Prafulla Kumar Mahapatra was negated by the Supreme Court. Supreme Court held that decision of the academic authority should not ordinarily be interfered by the Courts. Whether the candidates fulfil the required qualification or not is a matter which should be entirely decided by the academic bodies and concerned selection committees which invariably consist of experts on the subject relevant to the selection.

21. In the facts of these cases, principle laid down in the said two decisions have no application. These writ petitions do not concern assessment of suitability of petitioners to a particular academic position vis-à-vis their qualifications and academic skill possessed by them as assessed by expert body. One of the requirements of extension of CAS benefits is putting in minimum service in the lower grade. The UGC guidelines enable computation of the ad-hoc service rendered for the

purpose of acquiring the eligibility for upgradation to the next scale/post. Whether the service rendered by petitioners on ad-hoc basis can be counted as eligible service is in issue. Thus, it is not a case of assessment of suitability and professional competence of the candidates vis-à-vis their academic qualifications, but of computation of the ad-hoc service towards the eligible service to grant benefits of CAS as per UGC guidelines. It is also relevant to note that their eligibility to teach in relevant discipline was assessed before they were selected on adhoc basis and their suitability to hold the post of Assistant Professor on regular basis was also assessed before they were selected and appointed in the year 2007.

22. The possession of required academic qualifications and ability to teach in the concerned discipline, Statistics/ Chemistry as the case may be, is not doubted. They have rendered considerable service while working on adhoc basis. It is also appropriate to note that CAS is introduced to grant periodical upgradation as an incentive to teaching faculty after rendering a particular period of service and possessing required academic qualification. UGC recognized the fact of large number of persons in teaching faculty get initially appointed on temporary/ adhoc basis before they were regularly appointed. Thus, clauses in the scheme, as noted above, are tuned in such a way to enable such lecturers to compute the adhoc service for the purpose of financial upgradation/elevation. The fact that scheme recognizes computation of adhoc service / service rendered even in private institutions would also goes to show that UGC was conscious of existence of such kind of appointments and gives weight to such service to grant periodical upgradation. It is in recognition of fact that such long continuation on adhoc basis and /or service in private institutions would also amount to stagnation. It is an incentive on rendering satisfactory service and therefore scope of computation of service is expanded. This scheme is a

beneficial scheme and intend to address the grievance of teaching faculty on stagnation and to provide incentive of upgradation duly taking note of adhoc service and/or service rendered in private institutions. It being a beneficial scheme, the Clauses of CAS guidelines must receive liberal construction.

23. On cumulative reading of the clauses incorporated in the UGC guidelines, the object of the scheme and having regard to the educational qualifications possessed and ad-hoc service rendered by the petitioners, assessment of their eligibility by duly constituted selection committee at the institution level when they were appointed on ad-hoc basis and by the University when they were regularly appointed, I am of the opinion that petitioners are entitled to seek computation of the ad-hoc service rendered by them to make them eligible for extending the benefits of CAS. Contrary action of the University is illegal and amounts to arbitrary exercise of power. In the facts of this case, such action is also discriminatory.

24. For the foregoing reasons, the writ petitions are allowed. The respondent University shall assess the suitability of petitioners to grant benefits of AGP of 8000 in the year 2007 and promotion as Associate Professor in the year 2010 in the respective disciplines by duly taking note of adhoc service rendered by them prior to their regular appointment and if found suitable shall grant them all consequential benefits including arrears of amounts due and payable. The entire exercise shall be completed within two months from the date of receipt of copy of this order. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:05-09-2017
TVK

Note: L R copy to be marked YES/NO.

HONOURABLE SRI JUSTICE P. NAVEEN RAO



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Date :05.9.2017