

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.3451 of 2009

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for the respondents.

2. The first respondent did not file counter-affidavit, in spite of giving opportunity on 22.11.2017. Even after eight years, no counter-affidavit is filed by the first respondent and hence, this Court is constrained to dispose of the Writ Petition, without counter-affidavit of the first respondent.

3. The petitioner was initially appointed as Junior Assistant on consolidated pay of Rs.6,000/-per month. She states that she is qualified to hold the post since she is a Graduate and also passed CLISc Certificate course. She belongs to BC-B category and she was shown at Sl.No.35 of Seniority List in the cadre of Junior Assistant. It is her case that though she was appointed in a regular vacancy, since there was a ban for appointments at that point of time, she was not given regular time scale and was being paid consolidated amount. In the year 1985, the Government sanctioned certain posts including the post of Junior Assistant and the respondent-University filled up those posts by absorbing the persons, who were working on consolidated pay scale. After she joined duty on 29.10.1990, a Memo was issued on 30.10.1990 showing her at Sl.No.1. She states that one Madhavi Latha, who is a junior to her in the cadre of Junior Assistant, was absorbed on 11.01.1994. In those circumstances, she filed W.P.No.1313 of 1994 seeking regularization of her services from the date of her joining i.e., on 29.10.1990 with all consequential benefits. After filing counter by the respondent-University, this Court

disposed of the said Writ Petition on 13.03.1995 directing the respondents to prepare a scheme and absorb petitioner subject to her eligibility, within a period of six months, failing which she was entitled to be continued in the post and entitled to be paid the minimum scale of pay attached to the post. Against the said order, the second respondent filed W.A.No.622 of 1995 and a Division Bench of this court by common judgment, dated 12.07.1995, confirmed the orders of the learned Single Judge. When a vacancy arose in the first week of June, 2005, for the post of Junior Assistant, she submitted a representation on 01.06.2005, but without considering the said representation, twelve (12) vacancies of Junior Assistants were filled up. When her case is not being considered even though she put in 15 years of continuous service, she filed W.P.No.16289 of 2005 seeking absorption as Junior Assistant. The said Writ Petition was disposed of on 27.07.2005 directing the respondents therein to consider her case for absorption in the existing vacancy.

4. The second respondent addressed a letter to the first respondent on 25.10.2005 seeking necessary permission to regularize the services of the petitioner in the existing vacancy and the said letter was followed by another letter, dated 03.12.2005. In the meanwhile, the second respondent put her in a time scale of 4825-10845 with admissible allowances, by proceedings, dated 05.05.2007. When the second respondent sought for ratification of the proceedings, the Government passed order on 24.05.2008 rejecting ratification and as a consequence to the same, the second respondent passed an order rescinding the earlier order of the regularization and put the petitioner in the minimum time scale,

without sanction of increments vide orders, dated 10.02.2009. The present Writ Petition is filed challenging the order, dated 10.02.2009.

5. The second respondent filed counter-affidavit stating that the petitioner should have appreciated continuation of her services, despite rejection orders passed by the first respondent and also stated that the second respondent suspended the proceedings, dated 10.02.2009, by subsequent proceedings, dated 25.03.2009. Now, it is admitted that after rejection of the case of the petitioner by the Government, the matter was referred to Executive Council. The Executive Council in its meeting held on 19.11.2008 resolved to continue the petitioner and seven others and put them on minimum time scale. Thus, the petitioner was put on minimum time scale on of Rs.4,825/- w.e.f. 01.02.2009. The seniority of the petitioner over Smt S.Madhavi Latha is denied. Pursuant to the orders of this Court in W.P.No.1313 of 1994, a scheme for regularization was framed in G.O.Ms.No.271, dated 20.07.1999, and as per the said Government order, the petitioner does not possess five years of service as on 25.11.1993. Even as per the counter-affidavit filed by the second respondent, it is admitted that the petitioner was appointed as Junior Assistant on 29.10.1990, but she could not be absorbed as she did not complete five years of service as per Act 2 of 1994. In view of directions by Legislative Committee for Backward Classes vide its letter, dated 01.12.2005, the University addressed a letter to the Government to permit the University to regularize the services of the petitioner prospectively in the existing vacancy of Store Keeper, which is equivalent to Junior Assistant cadre. But, the Government in its letter, dated 08.05.2006, rejected the proposal and expressed its no objection to fill up the vacancy of Junior Assistant as per the Rules

duly following the procedure, for direct recruitment. The second respondent by proceedings, dated 05.05.2007, appointed the petitioner as Junior Assistant on temporary basis, subject to approval of the Government. The second respondent addressed a letter on 11.10.2007, requesting the Government to ratify the action in appointing the petitioner and seven others as Junior Assistants on time scale, but the Government rejected the same on 24.05.2008. However, the petitioner was continued along with seven others, but, they were put on minimum time scale. The petitioner was put on minimum scale of pay of Rs.4,825/- with effect from 01.02.2009, without sanction of increments by proceedings, dated 10.02.2009.

6. This Court by order, dated 20.02.2009, suspended the said proceedings and the second respondent complied with the same. The second respondent recommended the case of the petitioner along with others for ratification to the first respondent. Though the second respondent itself is the competent authority in the matter of appointment of staff, it addressed a letter to the first respondent for ratification. The point of competency of second respondent was decided by this Court based on the provisions of the Andhra Pradesh Universities Act, 1991, in W.P.No.21534 of 2012 and batch, dated 09.11.2017 and held that the second respondent alone is competent. The petitioner has been continuing since 29.10.1990. At one point of time, pay scale was also extended to her by proceedings, dated 05.05.2007. This clearly shows that the University wanted to continue the petitioner, but for the order of the Government rejecting the request of the second respondent on 24.05.2008.

7. In view of clear legal position laid down by this Court in W.P.No.21534 of 2012 and batch, dated 09.11.2017, order passed by

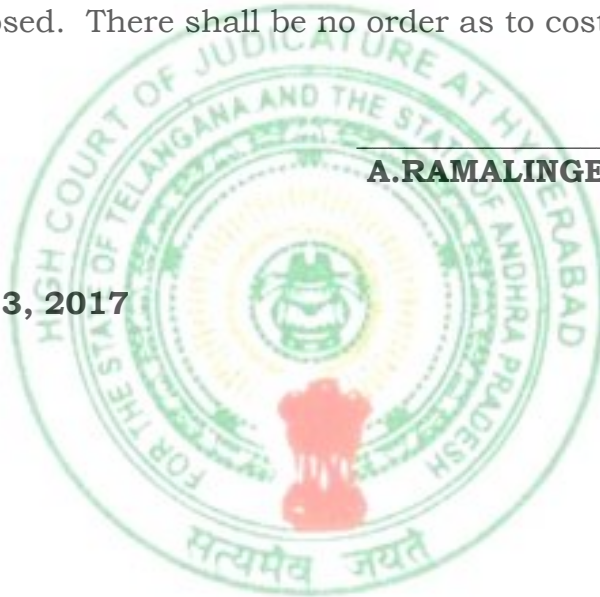
the first respondent on 24.05.2008 is not valid and consequently, the order of the second respondent on 10.02.2009 is also liable to be set aside.

8. Accordingly, the Writ Petition is allowed setting aside the order of the first respondent, dated 24.05.2008, and directing the second respondent to take appropriate action with regard to the case of the petitioner, in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

DECEMBER 13, 2017
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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO



WRIT PETITION No.3451 of 2009

Date: 13.12.2017

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