

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.3158, 3708, 18726,
18732 and 19256 of 2006

COMMON ORDER:

Since the petitioners in these cases share similar grievance, this Court deems it appropriate to dispose of these writ petitions by way of this common order.

2. Petitioners in all these cases are working on contract basis in the third respondent institution on payment of S.S.R Rates. The Commissioner of Endowments, on the recommendations of the third respondent, vide proceedings issued in the months of April and May, 2005, accorded permission to the third respondent to utilise the services of the petitioners on payment of S.S.R. Rates on contract basis. In pursuance of the said permission, the third respondent institution appointed the petitioners and the petitioners have been continuing as such. On the ground that certain irregularities took place during the tenure of the former Commissioner of Endowments during the period 18.01.2005 to 31.05.2005, the State Government vide G.O.Rt.No.1123 dated 06.06.2005, kept the appointment of the petitioners in abeyance. Subsequently, vide G.O.Ms.No.1422 Revenue (Endt.I) Department dated 25.07.2005, the first respondent State Government passed orders cancelling all the appointments. The said orders of cancellation were the subject matter of a batch of writ petitions before this Court and they were disposed of with the following directions:

“For the foregoing reasons, the writ petitions are disposed of, with the following directions:

- a. The Government of Andhra Pradesh, in its Revenue (Endowments) Department, shall issue notices immediately to the individuals, such of the writ petitioners, who are affected by the orders in G.O.Ms.No.1422, dated 25.7.2005, or any other orders or memos, canceling the orders of appointment, upgradation, promotions, or extension of the benefit of scales of pay, as the case may be, pointing out the

grounds, on which it proposes to cancel, or interfere with such orders.

b. On receiving representations/explanations from the affected persons, in response to the show-cause notices, the Government shall pass appropriate orders, latest by 31.10.2005. In case any of the affected employees do not cooperate with the enquiry, or it becomes impossible for the Government, to pass orders within the stipulated time, it shall be open to the Government, to file an application before this Court, seeking extension of time, in individual cases.

c. Till 31.10.2005, the present state of affairs shall continue. In case no orders are passed by the Government, by that date, the concerned employees shall be entitled for the benefit of appointment, promotion, upgradation, extension of benefit of scale of pay, as the case may be, without prejudice to the right of the Government to proceed further even thereafter..

d. Except in cases, where the appointments were made afresh, during that period, the affected employees shall be relegated to their earlier positions, which they occupied, but for the orders of promotion, upgradation, or extension of benefit of scale of pay, as the case may be. If the orders that were cancelled by the Government were only those under which the tenure of contractual appointments were extended, the relevant contracts shall continue to be in force.

e. It is made clear that the arrangement made in this order shall be confined to those persons, who approached this court by filing writ petition.

There shall be no order as to costs."

3. Pursuant to the above orders passed by this Court, the first respondent State Government issued the show-cause notices, saying that the appointments made in favour of the petitioners by the former Commissioner were irregular and the said show-cause notices were replied to. Thereafter, vide G.O.Rt.No.2236 Revenue (Endt.I) Department dated 22.11.2005, G.O.Rt.No.2143 Revenue (Endowments-II) dated 10.11.2005, G.O.Rt.No.2147 Revenue (Endowments dated 10.11.2005 and G.O.Rt.No.2534 dated 17.12.2005, the first respondent State Government rejected the claims of the petitioners for continuation in the third respondent institution.

4. These writ petitions challenge the validity and the legal sustainability of the above said action in rejecting the claim of the petitioners for continuation.

5. Heard the learned advocates for the petitioners and the learned Government Pleader for Endowments and Sri A.Srikantha Reddy, learned counsel for the respondents.

6. Contentions advanced by the learned counsel for the petitioners:

6.1. The impugned action is highly illegal, arbitrary, unreasonable, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

6.2. Respondents adopted pick and choose method by continuing similarly situated persons.

6.3. The similarly situated persons who did not approach this Court are being continued by the respondents on payment of S.S.R. Rates and the same is not disputed in the counter affidavits.

6.4. Proceedings in all these cases were initiated even prior to the tenure of the former Commissioner and Act 2 of 1994 has no application.

In support of their submissions and contentions, the learned Advocates rely on the decision of the Hon'ble Apex Court in *STATE OF HARYANA & ANR. ETC v. MOHINDER SINGH & ORS. ETC.*¹

7. Contentions/submissions of the learned Government Pleader and the learned Standing Counsel:

7.1. Since all the petitioners were appointed without prior approval of the Commissioner or Government, petitioners are not entitled for any relief under Article 226 of the Constitution of India.

7.2. Petitioners cannot ask for regularisation in the absence of regular sanctioned posts.

¹ (2017) 1 SCC 148

7.3. Petitioners have no right either to continue or to request for regularisation.

Learned Government Pleader places reliance on the judgment of the Hon'ble Apex Court in *STATE OF KARNATAKA VS. UMADEVI* ² and the judgment of this Court in *V.V.R.K. SRINIVAS v. STATE OF ANDHRA PRADESH AND ORS.*

8. In the above background, now the issue that emerges for consideration of this Court is_ “Whether the petitioners herein are entitled for any relief from this Court under Article 226 of the Constitution of India”?

9. The material available before this Court manifestly discloses that on the ground that certain irregularities took place during the tenure of the former Commissioner i.e., during the period commencing from 18.01.2005 to 31.05.2005, the State Government cancelled the appointments vide G.O.Rt.No.1422 dated 25.07.2005. The principal contention urged in all these cases is discrimination. In the direction of demonstrating the same, the petitioners herein have placed on record certain documents. In fact, it is pleaded in the affidavits filed in support of the writ petitions that there are a number of similar candidates working in the endowments department all over the State who were appointed by the former Commissioner. It is also stated by the learned counsel for the petitioners that the Work Inspectors whose appointments were cancelled vide G.O.Ms.No.1422 dated 25.07.2005 were re-appointed by the later Commissioner vide proceedings D.Dis.No.A1/40930/2006 dated 29.12.2006. This is not denied by way of filing counter. It is also the submission of the learned counsel that the former Commissioner appointed 18 Watch and Ward employees vide proceedings dated 11.04.2005 and the State Government rejected their claims vide G.O.Rt.No.2530 Revenue (Endowments –II) dated 17.12.2005

² (2006) 2 SCC 1

and they did not approach this Court, but later Commissioner vide D.Dis.No.B3/37216/2007 dated 12.10.2007 permitted them to continue. This is also not denied in the counters. In the same manner, in Nandanavanam there are 22 posts and they were appointed by the earlier Commissioner vide proceedings dated 24.04.2005, but they are still continuing. The said aspect is also not in dispute and is not denied in the counters and in fact vide proceedings Rc.No.B2/8460/2009 dated 19.03.2009, the second respondent Commissioner directed continuation of the said employees. It is also significant to note that in the category of Archakas and Paricharikas there are 8 posts and the persons holding the said posts were also appointed by the earlier Commissioner vide proceedings dated 15.03.2005. It is also stated by the learned counsel that the said individuals also did not approach this Court and they are also continuing. The said statement is also not disputed. It is also to be noted that the name of one Sri K.Rama Krishna Sharma, an Archaka was also recommended along with the petitioner in W.P.No.3158 of 2006 and the said Rama Krishna Sharma, according to the petitioners, is still continuing.

10. It is also not the case of the third respondent institution that the services of the petitioners herein are not required and there is no work in the third respondent institution and admittedly the work of the petitioners is being extracted by the third respondent. The above narration and the realities would drive this Court to arrive at an irresistible conclusion that the respondents herein are discriminating the petitioners herein and the said attitude in the considered opinion of this Court invades the fundamental rights guaranteed to the petitioners herein under Articles 14 and 16 of the Constitution of India. Admittedly, in all these cases the petitioners herein are not praying for regularisation of their services and they are asking only the continuation on par with the similarly situated individuals. Therefore, the

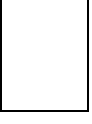
judgments cited by the learned Government Pleader would not render any assistance in the facts and circumstances of the case to the respondents.

11. For the aforesaid reasons, the writ petitions are allowed, declaring the impugned action/impugned orders as illegal and arbitrary and invalid and consequently the respondents are directed to continue the petitioners herein in service. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 24.08.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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18732 and 19256 of 2006

Dated: .08.2017

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