

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No. 16530 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner, is filed challenging the inaction of the management in regularising the services of the petitioner in the post of Lecturer in Library Science in Besant Theosophical College/2nd respondent college and requesting to direct the respondents to regularise the services of the petitioner in the post of Lecturer in Library Science with all consequential benefits and grant other order or orders as the Court deems fit.

2. I have heard the submissions of *Sri G. Vidyasagar*, learned senior counsel appearing for *Smt. K. Udaya Sri*, learned counsel for the writ petitioner, and of the learned Government Pleader for Education (A.P.) appearing for the first respondent. I have perused the material record.

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

The petitioner is a post graduate in Master of Arts. She acquired the said post graduate degree in the year 1991. She also acquired degree in Bachelor of Library Sciences in the year 1993 and Master of Library Sciences in the year 1994 and completed her Master of Philosophy in May, 2007. She joined the 2nd respondent college as apprentice in September, 1994. While she was working as apprentice, a regular vacancy arose consequent to the retirement of an individual in the regular post and since then, she is working in the said post. The Director of Collegiate Education *vide* proceedings, dated 13.02.1998,

permitted the management of 2nd respondent college to fill up the aided vacant post of lecturer in Library Science by duly following the procedure laid down in G.O.Ms.No.12, dated 10.01.1992, as amended in G.O.Ms.No.127, dated 07.06.1993. Accordingly, an advertisement was issued for the post of Lecturer in Library Science. At that stage, one N.Ananthaiah filed W.P.No.44 of 1999 for filling up of the post of Librarian by method of direct recruitment. As per his credentials, he was initially appointed as Record Assistant, which is a non-teaching post. Subsequently, he was promoted as Assistant Librarian with effect from 18.05.1998, which is also a non-teaching post. The said writ petition was disposed of by order, dated 23.07.2003, giving liberty to the 2nd respondent college to fill up the post in accordance with the rules. Aggrieved by the same, said N.Ananthaiah filed Writ Appeal No.1403 of 2003. A Division Bench of this Court, while allowing the said writ appeal, has set aside the order of the learned single Judge of this Court to the extent that the appellant therein (N.Ananthaiah) is not qualified and the third respondent therein (writ petitioner) is qualified and gave a direction to the first respondent therein (2nd respondent college) to take steps afresh to fill up the posts; and, directed the 2nd respondent college to consider the case of the appellant (N.Ananthaiah) for promotion to the post of Librarian in terms of the observations in the said judgment. Long before the said judgment was rendered on 22.08.2006, the 2nd respondent college issued notification, dated 26.08.2003, inviting applications for the post of Lecturer in Library Science. In pursuance of the same, the petitioner applied for the said post as an in-service candidate. A Division Bench of this Court, by order, dated 17.09.2003,

directed the aforesaid Writ Appeal to be listed for hearing and in the meanwhile directed that the selection procedure may go on but final orders shall not be passed. The interviews were held on 20.12.2003; however, results were not declared in view of the interim orders of this Court. Thereafter, the writ appeal was allowed by order, dated 22.08.2006, directing the 2nd respondent college to consider the claim of N.Ananthaiah also for the post of Lecturer in Library Science. Aggrieved by the same, the matter was carried to Supreme Court. The Supreme Court, in Civil Appeal No.121 of 2007 filed by the 2nd respondent college and in Civil Appeal No.123 of 2007 filed by the petitioner, by judgment, dated 04.04.2007, noted that the rules have been amended *vide* G.O.Ms.No.208, dated 29.06.1999, which are to be followed for recruitment to various posts in the colleges and, accordingly, held that G.O.Ms.No.208, dated 29.06.1999, holds the field and dismissed the appeals. In view of the directions of the Division Bench of this Court and the Supreme Court, the recruitment for the post of Lecturer in Library Science has to be done in accordance with G.O.Ms.No.208, dated 29.06.1999. As per paragraph number 14 of the said G.O., the service conditions of the teachers including recruitment, qualifications, selection procedure etcetera have to be as indicated in the appendix annexed to the said GO and the same have to be implemented by all the Universities and the Director of Department of Collegiate Education. In paragraph number 5 of the appendix, the minimum qualification for the post of Librarian/Deputy Librarian/Assistant Librarian are indicated. For the post of Assistant University Librarian/College Librarian/Documentation Officer, the minimum qualifications required are (i) Qualifying in the National

Level Test conducted for the post by the University Grants Commission or any other agency approved by UGC; and (ii) Masters degree in Library Sciences/Information Sciences/Documentation or a qualification or professional degree with at least 55% of the marks or its equivalent grade 'B' in UGC seven points scale and consistent good academic record, computerisation of library. The petitioner possessed requisite qualification for the post of College Librarian and the said N.Ananthaiah did not possess the requisite qualification, inasmuch as he is only a post graduate in Library Sciences with 55% marks. The University Grants Commission, New Delhi, issued a notification, dated 14.06.2006, notifying the UGC (Minimum Qualifications required for appointment and career advancement of teachers in Universities and institutions affiliated to it) (Second Amendment) Regulations, 2006. As per the said regulations, NET remains compulsory requirement for appointment as lecturer for at least with post graduate degree, however, the candidates having Ph.D. degree in the concerned subject are exempted from NET for P.G. level and U.G. level teaching. The candidates having Master of Philosophy degree in the concerned subject are exempted from NET for U.G. level teaching only. In view of the notification issued by the University Grants Commission, which is applicable to the Universities and institutions affiliated to the Universities and institution of NET, candidates who possess the Master of Philosophy degree are also eligible to be recruited, whereas said N.Ananthaiah does not have the necessary qualification of M.Phil., or NET. In fact, the 2nd respondent college forwarded the name of N.Ananthaiah for filling up the said post. Aggrieved by the same, the petitioner filed W.P.No.1831 of 2008. In W.V.M.P.No.203 of 2009 and

W.P.M.P.No.9002 of 2008 in the said writ petition, this Court, while modifying the earlier orders, directed the Commissioner of Collegiate Education, Hyderabad, to re-examine the issue whether said N.Ananthaiah possessed qualifications prescribed in G.O.Ms.No.208, dated 29.06.1999, and observed that the Commissioner of Collegiate Education is free to approve the recommendations of the Selection Committee if he is satisfied that said N.Ananthaiah possessed such qualifications and that on that, the 2nd respondent college is entitled to appoint said N.Ananthaiah as Lecturer in Library Science and that such appointment shall be subject to the result of W.P.No.1831 of 2008. This Court further directed that the said exercise shall be completed within a period of two months from the date of receipt of a copy of the said order. The petitioner came to know that the Government have not accepted the recommendations of the Selection Committee on the ground that said N.Ananthaiah did not possess the requisite eligibility criteria. The 2nd respondent college gravely erred in not recommending the petitioner's candidature for the post, although she has fulfilled all the conditions prescribed in G.O.Ms.No.208, dated 29.06.1999. She has been continuing as Lecturer since 1995; but, her services have not been regularised so far, though she has been continuing with requisite eligibility criteria for regularisation of her services. Hence, the writ petition is filed.

4. In the counter of the 1st respondent, while referring to the contents of various G.Os and the orders of this Court and the Supreme Court, it is mainly urged verbatim as follows:- "In pursuance to the orders of Hon'ble Supreme Court of India, the management of B.T. college,

Madanapalle has been permitted to take necessary action for filling up the post of Lecturer in Library Science/Librarian by recruitment by transfer as per the procedure indicated in G.O.Ms.No.127, Education, dated 07.06.1993 through C.C.E's Procds.Rc.No.149/Admn.IV-3/99, dated 11.09.2007. Accordingly, the management has conducted Departmental Promotion Committee Meeting on 15.12.2007 and approved the name of Sri N.Ananthaiah, Assistant Librarian for promotion as Lecturer in Library Science in CCE's Procds.Rc.No.149/Admn.IV-3/99, dated 29.02.2008, the promotion of Sri N.Ananthaiah, Assistant Librarian as Lecturer in Library Science has been approved duly allowing the State Scale of pay of Rs.10285-21835 in RPS-2005. Further, it is submitted that in G.O.Ms.No.35, dated 27.03.2006, Government have imposed general ban on filling up of the aided posts in Private Aided College except SC/ST backlog vacancies. In the case, the petitioner has been appointed as PTL during 1996 on consolidated pay. There is no scheme for regularisation of services after G.O.Ms.No.328, Education (CE.III) Department, dated 15.10.1997. Further, the said scheme was also annulled vide G.O.Ms.No.283, dated 03.11.1999. As such, her request for regularisation of services against aided post is not feasible of compliance. In the circumstances stated above, it is prayed that this Hon'ble Court may kindly vacate the interim orders, dated 11.09.2009 in W.P.M.P.No.21245 of 2008 in W.P.No.16530 of 2008 and dismiss W.P.No.16530 of 2008 in the interest of the justice and pass such other order or orders as this Hon'ble Court may deem it fit and proper in the circumstances of the case."

5. The 3rd respondent N.Ananthaiah while contending in his counter that the writ petition filed by the petitioner is a gross abuse of process of the Court and while referring to the orders passed from time to time in the writ petition, writ appeals, miscellaneous petitions and SLPs, further stated as follows: "He is qualified and eligible for promotion to the post of Lecturer in Library Science. The Supreme Court of India also confirmed the order of the Division Bench of this Court. The 2nd respondent college failed to take steps for promoting him in terms of the interim directions of this Court, which are confirmed by the Supreme Court. Therefore, he represented the matter to the Commissioner of Collegiate Education, A.P., Hyderabad. By proceedings, dated 13.08.2007, the Commissioner of Collegiate Education, A.P., Hyderabad, directed the 2nd respondent college to give effect to the orders of the Supreme Court and send necessary proposals. Further proceedings, dated 11.09.2007, were issued. Thereafter, a promotion-cum-selection committee was constituted on 15.12.2007; and, after verification of his credentials, his case was recommended for promotion as Lecturer in Library Science as per the directions of the Supreme Court. Thereafter, the Commissioner of Collegiate Education, A.P., Hyderabad, by proceedings, dated 29.02.2008, approved his promotion as Librarian and allowed him the State Scale of Pay. When the petitioner filed this writ petition, in W.P.M.P.No.2286 of 2008, this Court directed that any appointment made to the post of Lecturer in Library Science would be subject to further orders. No consequential orders for promotion were issued to this respondent. On 12.05.2008, the Commissioner of Collegiate Education, A.P., Hyderabad, after taking necessary

recommendations into consideration, directed the 2nd respondent college to give effect to the promotion of the 3rd respondent to the post of Librarian and the same would be subject to further orders that may be passed by this Court. In spite of that, the 2nd respondent college failed to give effect to his selection. Thereafter, the petitioner filed W.P.M.P. No.9002 of 2008 in W.P.No.1831 of 2008 and this Court directed that *status quo* be maintained. As a result, the Selection of the 3rd respondent is not given effect to causing irreparable loss and hardship to him. The State Government issued directions for payment of UGC Scales only to such of those appointees who possessed NET/SLET. Inasmuch as the petitioner also does not possess the necessary qualifications of NET/SLET, her case cannot be considered for appointment as Librarian. The petitioner is not clear in her relief whether she is seeking regularisation or appointment in terms of G.O.Ms.No.208, dated 29.06.1999, by direct recruitment. The only G.O. which governs the field of regularisation is G.O.Ms.No.328, dated 15.10.1997, and the petitioner does not satisfy the conditions stipulated therein.'

6. In her reply affidavit, the petitioner, while reiterating her original stand, has stated as follows: "By issuing G.O.Ms.No.35, dated 27.03.2006, the Government has imposed general ban on filling up of the aided posts in private college except SC/ST backlog vacancies, is wholly misconceived. In this regard, it is submitted that the notification has been issued prior to G.O.Ms.No.35, dated 27.03.2006, and further appointment order has been issued only on the ground of pendency of litigation by Mr.Ananthaiah. Therefore, the said G.O.Ms.No.35, dated 27.03.2006, is not applicable to the present case. Further, the Hon'ble

Supreme Court, in Commissioner of Collegiate Education Vs. R.Srinivas and another, held that lecturers are entitled for regularisation in the cadre post and their regularisation in the aided post will be from the date the vacancy arises in such aided post. The petitioner was appointed in the year 1995 in the vacancy which has arisen consequent to retirement of A.Anki Reddy. Pursuant to the notification issued by the first respondent, the petitioner applied for the post and was selected in pursuance to the notification, dated 26.08.2003, and the 2nd respondent college sent proposals to the Commissioner of Collegiate Education, A.P., Hyderabad, *vide* proceedings, dated 06.08.2012. The 2nd respondent college has submitted another proposal, dated 10.12.2012, duly following the proforma and requested for approval of petitioner's selection. The 2nd respondent college has also sent the requirement of teaching staff on 11.04.2014, wherein, against 6th column, it is stated that "approval is pending with the Commissioner Office and requested that approval might be expedited as the college is facing difficulty in managing the college library without a regular Librarian". In the said letter, the selection committee proceedings were also enclosed. The 2nd respondent college has also sent another proposal to the Commissioner of Collegiate Education, A.P., Hyderabad, on 05.11.2014. In pursuance of the said letter, the Commissioner of Collegiate Education, A.P., Hyderabad, issued proceedings, dated 16.09.2016, requesting the college to submit information in the proforma enclosed with regard to the particulars of the petitioner; and, the same were sent on 18.09.2016, wherein, it is stated that the petitioner was continuing since 1995. Therefore, the petitioner is to be appointed to the post in pursuance of the notification, dated

26.08.2003, with effect from the date of notification, i.e., from 26.08.2003.”

7. At the hearing, the learned counsel for both the sides reiterated the respective contentions of the parties, which are extracted *supra*, in detail.

8. It is stated at the hearing that said N.Ananthaiah, who is 56 years of age as on 14.11.2010, has retired from service by now. There is no dispute about the petitioner’s initial appointment and her qualifications. It is pertinent to note the following material aspects of the matter.

The petitioner filed W.P.No.1831 of 2008 before this Court. While disposing of W.V.M.P.Nos.203 of 2009 and 9002 of 2008 filed in the said writ petition, this Court, by order, dated 01.04.2009, passed the following order:-

“Having regard to these facts, the interim order is modified by directing the Commissioner of Collegiate Education, Hyderabad, to re-examine the issue whether respondent No.3 possesses qualifications prescribed in G.O.Ms.No.208, dated 29.06.1999. If he is satisfied that respondent No.3 possesses such qualifications, he shall be free to approve the recommendations of the Selection Committee and respondent No.2 shall then be entitled to appoint respondent No.3 as Lecturer in Library Science, which will be subject to the result of the main writ petition. The Commissioner shall complete this exercise within a period of two months from the date of receipt of a copy of this order.”

8.1 Pursuant to the above order, proceedings, dated 23.10.2010, were issued by the Commissioner of Collegiate Education, A.P., Hyderabad. Aggrieved of the same, the writ petitioner again filed W.P.No.26557 of 2010. Since that writ petition was dismissed, the petitioner filed Writ Appeal No.516 of 2012. As already noted, the petitioner also filed W.P.No.1831 of 2008. Therefore, the writ petition and the writ appeal

were disposed of by a common judgment, dated 25.06.2012, by this Court. By the said common judgment, this Court held that the proceedings, dated 23.10.2010, of the Commissioner of Collegiate Education, A.P., Hyderabad, are illegal and cannot be sustained and accordingly quashed the said proceedings and allowed the Writ Appeal No.516 of 2012 filed by the petitioner and consequently held that no further enquiry is necessary in W.P.No.1831 of 2008 filed by the petitioner. On 20.11.2012, the office of the Commissioner of Collegiate Education, A.P., Hyderabad, addressed a letter to the Correspondents/Special Officers of all the Private Aided Degree/ P.G./ Oriental Colleges in the State, requesting to furnish details of the persons who are selected duly following the procedure prescribed in G.O.Ms.No.12, dated 10.01.1992, and who are still continuing/working in the college on Court orders. The information was directed to be furnished, on or before 15.12.2012, in the prescribed proforma enclosed to the said proceedings so as to submit the information to the Government. In reply to the said letter, the 2nd respondent college submitted the necessary information in the proforma. A perusal of the proforma submitted by the 2nd respondent college would show that the petitioner is selected as per G.O.Ms.No.12, dated 10.01.1992, as per the minutes of the duly constituted Selection Committee and that she is working against the grant-in-aid post, which post still exists, and that she is attending the work load of 6 hours per day in the Department of Library Sciences and that a proposal, dated 06.08.2012, has been sent for regularisation of her services. It is also stated in the proforma that

the orders in the instant writ petition are awaited and the matter is *sub judice*.

9. The 2nd respondent college again addressed a letter, dated 24.01.2013, to the Commissioner of Collegiate Education, A.P., Hyderabad, referring to the earlier correspondence and requested to approve the selection of the petitioner to facilitate her appointment as Lecturer in Library Sciences in the 2nd respondent college. To the proceedings, dated 16.09.2016, of the Commissioner of Collegiate Education, A.P., Hyderabad, 2nd respondent college sent reply, dated 18.09.2016, to the Commissioner of Collegiate Education, A.P., Hyderabad, and submitted information in the enclosed proforma for necessary action. The said enclosed proforma discloses that this writ petition is pending and that the petitioner is selected by the properly constituted Selection Committee *vide* G.O.Ms.No.12, dated 10.01.1992, and that she is continuing in service as on 18.09.2006, since 01.09.1995. The 2nd respondent college also enclosed the paper notification, copy of the minutes of meeting of the properly constituted Selection Committee and the relevant documents.

10. In view of the chronology of events and the fact that the 3rd respondent N.Ananthaiah retired from service and as the selection of the petitioner to the vacant grant-in-aid post of Lecturer in Library Science is made by the properly constituted Selection Committee *vide* G.O.Ms.No.12, dated 10.01.1992, and G.O.Ms.No.127, dated 07.06.1993, and the necessary paper notification, copy of the minutes of meeting of the properly constituted Selection Committee and the relevant documents

are already submitted to the Commissioner of Collegiate education, A.P., Hyderabad, affirming that the petitioner is continuing in service in an aided post since 01.09.1995, and in view of the common judgment, dated 25.06.2012, of this Court, this Court is of the considered view that there are no impediments now for the petitioner's services to be regularised or for petitioner's appointment against the vacant grant-in-aid post of Lecturer in Library Science in the 2nd respondent college.

11. In the result, the writ petition is allowed directing the respondents to approve the appointment of the petitioner and regularise her services in the post of Lecturer in Library Sciences in the 2nd respondent college and extend to her all consequential benefits from the date of such regularisation. The necessary exercise in this regard shall be completed within two months from the date of receipt of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

28th April, 2017
Bvv

M. Seetharama Murthi, J