

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.6697 OF 2010

Dated:31.10.2017

Between:

Chakravarthula Konda Raju,
S/o. Ch. Narayana Rao,
Age 44 years, Lecturer (Commerce),
Sri Veera Venkata Sathyadeva Degree
College, Annavaram, East Godavari
District and others

.. Petitioners

AND

The State of Andhra Pradesh, rep., by its
Principal Secretary, Endowments Department,
Secretariat, Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.6697 OF 2010****ORDER:**

Heard.

2. Petitioners were temporarily appointed as Lecturers in the years 1996 and 1997 on consolidated pay in the 3rd respondent – College. Petitioners claim to have post graduation qualification. Initially, the remuneration was fixed at Rs.3,000/- per month and subsequently it is raised to Rs.6,000/- per month. Petitioners earlier filed W.P.No.22968 of 2003 praying to grant regularisation of their services. By order dated 31.10.2003, the said Writ Petition was disposed of directing the respondents to consider the claim of the petitioners for regularisation of their services. There appears to be correspondence between the Executive Officer representing the 3rd respondent - College and the Commissioner. In the meantime, alleging inaction in consideration of their claim, the petitioners instituted Contempt Case before this Court. Having received notice of contempt and as there was no response from the Commissioner on the proposal submitted by the Executive Officer on 12.06.2008, proceedings dated 25.06.2008 were issued by the Executive Officer granting regularisation of services of petitioners. However, it was stated that said regularisation would be subject to approval of the Commissioner of Endowments, Andhra Pradesh, Hyderabad. By order dated 02.02.2010, the Commissioner declared the orders passed by the Executive Officer invalid. The Commissioner also held that the petitioners are not entitled to seek

regularisation of their services. According to the Commissioner, in terms of the policy formulated by the Government as notified vide G.O.Ms.No.12, dated 10.01.1992, regularisation scheme is applicable only to those persons who have completed five years of service as on 25.11.1993, whereas the petitioners initial appointment was in 1996 itself and therefore regularisation cannot be granted. The Commissioner further holds that petitioners were not appointed as Lecturers to degree colleges as envisaged and therefore they are not entitled to seek regularisation. The Commissioner directed the Executive Officer to take steps to cancel their regularisation. Accordingly, on 09.02.2010, a show cause notice was issued by the Executive Officer directing the petitioners to show cause as to why regularisation orders granted to them should not be cancelled. At this stage, this Writ Petition is filed.

3. This Court by order dated 25.03.2010 in W.P.M.P.No.8645 of 2010 granted interim stay of proceedings of the Commissioner dated 02.02.2010 and further directed to continue the petitioners on the same terms and conditions existing as on that day.

4. According to learned Senior Counsel for the petitioners Sri S. Ramchander Rao, in terms of the interim orders, petitioners are continuing as Lecturers.

5. According to learned Senior Counsel, consequent to the orders of the regularisation granted by the Executive Officer on 25.06.2008, the petitioners were also granted time scale of pay, but the same was stopped in the year 2010 after the orders of the

Commissioner and they are paid only consolidated salary as of now.

6. Learned Senior Counsel further submits that the orders of the Commissioner are vitiated and the petitioners are entitled to be treated as regular Lecturers with all consequential benefits.

7. He made the following submissions:

(i) As per the orders of the Commissioner dated 07.04.2000, the Executive Officer is competent to grant regularisation of services. Therefore, regularisation granted by him on 25.06.2008 was valid and there was no requirement of ratification of the said order of regularisation. Thus, merely because the Executive Officer sought ratification and regularisation of services of petitioners, *per se* orders of regularisation do not get vitiated and the Commissioner is not competent to hold that the regularisation granted earlier is not valid in law and mandate the Executive Officer to cancel the order of regularisation.

(ii) Once services are regularised and petitioners have become permanent employees of the 3rd respondent – College services of no permanent employee can be terminated without following due process, whereas the show cause notice issued by the Executive Officer as a consequence to the decision of the Commissioner dated 02.02.2010 would amount to termination of services.

(iii) Learned Senior Counsel further contends that by the orders of the Executive Officer dated 25.06.2008, services of ten

employees were regularised whereas the cancellation is only against five employees, the petitioners herein, and therefore the same amounts to arbitrary exercise of power and is also vitiated on the ground of discrimination in not extending the same benefit to all the employees similarly situated.

(iv) He further submits that the petitioners were appointed in the year 1996 and 1997. By the time of their appointment, they were fully qualified and were appointed against regular vacancies and have been discharging the duties and responsibilities attached to the post occupied by them. As the services of the petitioners are required, they are deemed to have been in regular employment from the beginning and therefore the question of treating them as temporary/consolidated employees and not treating them as regular employees after having utilised their services for more than 25 years is nothing but arbitrary exercise of power, vindictive and exercise of such power is unconstitutional.

(v) He further submits that one of the reasons assigned by the Commissioner in not accepting the proposals for regularisation, assuming that such consent of the Commissioner is required, is the procedure as required by G.O.Ms.No.12, dated 10.01.1992, to appoint Lecturers of degree colleges is not followed and the same is erroneous.

8. No counter affidavit is filed on behalf of the Commissioner though the order under challenge is by the Commissioner. After the learned Senior Counsel concluded his arguments and the Court is about to dictate the judgment, a request is made for an

adjournment for two weeks for filing counter affidavit. However, the Court is not inclined to grant such adjournment.

9. The record would disclose that services of the petitioners were regularised by the Executive Officer on 25.06.2008 and consequently, as asserted by learned Senior Counsel, they were also granted scales attached to the post and have drawn the same till the Commissioner passed orders on 02.02.2010. It is seen from the order of the Commissioner, dated 07.04.2000, that the Commissioner authorised the Executive Officer to grant regularisation of services. The employees completed five years of service and possessed other requisite qualifications. Of course, only restriction imposed was, such regularisation would be subject to financial limit of 30% prescribed under the Andhra Pradesh Hindu Religious Institutions and Endowments Act, 1987. Though it is not the stand of the Commissioner, the Executive Officer representing the 3rd respondent – College sought to contend that when regularisation was granted, this condition was not satisfied and that the then Executive Officer acted erroneously in granting such regularisation. According to the averments in the counter affidavit filed on behalf of the 3rd respondent – College that the orders of the Commissioner dated 07.04.2000 are applicable only to those employees who have completed five years of service as on that date and it is not a continuous process and while granting regularisation, 30% financial limit was violated.

10. A bare perusal of the order does not give impression that it is a kind of onetime scheme and is applicable to those persons who

have completed five years of service, but it appears to be a general direction. Though it is sought to be stated in the counter affidavit of 3rd respondent that 30% ceiling limit is exceeded if the financial component of the petitioners salary is taken into consideration, no material is placed on record to substantiate such claim. Even assuming that if what is contended in the counter affidavit is true, on these procedural aspects, regularisation granted to them cannot be held as invalid/*ex facie* illegal and cannot be nullified on that ground, having regard to the fact that the petitioners have been working for more than 25 years. It is not the case of the 3rd respondent – College that the petitioners were not qualified to hold the regular posts and that their services were not satisfactory.

11. That being so and as the petitioners have been working from 1996 and *prima facie* the Executive Officer was competent to grant regularisation and thus validly passed orders dated 25.06.2008 in accordance with the general directions of the Commissioner, dated 07.04.2000, and on account of the regularisation, some kind of hope is created to petitioners, even assuming that G.O.Ms.No.12, dated 10.01.1992, is attracted for regularisation of appointment of Lecturers in unaided degree colleges, the entitlement of the petitioners for regularisation could not have been rejected on that premises.

12. The Writ Petition is accordingly allowed and the proceedings dated 09.02.2010 are set aside. The Commissioner is directed to examine the claim of the petitioners for regularisation of their services having regard to the long service rendered by them and

without looking into the procedure prescribed in G.O.Ms.No.12, dated 10.01.1992 and if the petitioners are found to be otherwise eligible, their services be regularised and shall be granted all consequential benefits. While considering the claim of the petitioners for regularisation, the Commissioner shall also take due note of the fact that by orders of the Executive Officer, dated 25.06.2008, ten employees were regularised, whereas the present action is taken only against five employees, the petitioners herein. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Date:31.10.2017

KH

P. NAVEEN RAO, J

